

31, 1934

In the Privy Council

No. , 1933

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

BETWEEN :

JEAN MACKENZIE,
(Plaintiff) Appellant;

—and—

THE ROYAL BANK OF CANADA,
(Defendant) Respondent.

Record of Proceedings

MESSRS. LAWRENCE JONES & COMPANY,

Lloyd's Building, Leadenhall Street,
London, E. C. 3,
Solicitors for the Appellant;

MESSRS. BLAKE & REDDEN,

17 Victoria Street, London, S. W. I.,
Solicitors for the Respondent.

In the Privy Council

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

B E T W E E N :

JEAN MACKENZIE,

(Plaintiff) Appellant;

—and—

THE ROYAL BANK OF CANADA,

(Defendant) Respondent.

Statement of Case

This is an appeal from the Judgment of the Appellate Division of the Supreme Court of Ontario pronounced on the 23rd day of June, A.D. 1932, allowing an appeal from the Judgment pronounced by the Honourable Mr. Justice McEvoy at the trial in the Supreme Court of Ontario on the 21st day of September, A.D. 1931, declaring that the Defendant had no lien or claim upon the Plaintiff's shares and ordered the Defendant to deliver the same to the Plaintiff.

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No. 1

STATEMENT OF CLAIM

IN THE SUPREME COURT OF ONTARIO

Writ issued 9th day of February, 1928

RECORD
In the Supreme
Court of Ontario
No. 1
Statement of
Claim
April 13, 1928

B E T W E E N :

JEAN MACKENZIE,

Plaintiff;

and

THE ROYAL BANK OF CANADA,

Defendant.

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STATEMENT OF CLAIM

1. The Plaintiff is the wife of John Angus MacKenzie and resides at Island Park Drive, Ottawa.

2. In or about the year 1913 the said John Angus MacKenzie organized a company known as MacKenzie Limited for the purpose of carrying on business as a manufacturer of lumbermen's supplies.

3. In connection with the said business of MacKenzie Limited the said John Angus MacKenzie transacted his banking business with the Royal Bank of Canada, Sparks Street, Ottawa.

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4. Some time prior to January, 1921, MacKenzie Limited and the said John Angus MacKenzie arranged with the Defendant for a credit on account of MacKenzie Limited.

5. For the purpose of securing the credit mentioned in the preceding paragraph the said John Angus MacKenzie requested the Plaintiff to hypothecate to the Defendant the following securities which are the property of the Plaintiff, having been derived from the estate of her late father, viz;—

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100 shares of Common stock of Ottawa Dairy Company Limited,
87 shares of Preferred stock of Ottawa Dairy Company Limited.
And the Plaintiff, without having received independent advice, signed a letter of hypothecation of said shares and therewith delivered to the defendant the said shares.

6. The said business of MacKenzie Limited having become heavily involved, on the 14th day of June, 1921, it executed an authorized assignment under the terms of the Bankruptcy Act.

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7. In the proceedings following upon the said assignment the defendant on the 27th of June, 1921, filed its Affidavit of Claim, being \$164,000.00, and, in accordance with the terms of The Bankruptcy Act, valuing therein the securities held by it against the indebtedness of MacKenzie Limited at the sum of \$265,500.00, but making no mention therein of nor valuing the securities of the plaintiff then in the defendant's hands.

8. On or about the 13th of September, 1921, the defendant filed in the said Bankruptcy proceedings another Affidavit of Claim setting out the amount of its claim in the said proceedings against MacKenzie Limited as amounting to \$121,372.94 and, in terms of the said Bankruptcy Act, valued the securities held against the indebtedness of MacKenzie Limited at the sum of \$125,000.00, but making no mention therein of nor valuing the securities of the plaintiff. 10

9. On the same day, viz. the 13th of September, 1921, the plaintiff, without being independently advised as to her rights, signed, together with the said John Angus MacKenzie, a letter in the following terms:

September 13, 1921.

The Royal Bank of Canada,
 Ottawa, Ont.

Dear Sirs:

We understand that you are filing with the Authorized Assignee of MacKenzie Ltd. an affidavit valuing certain securities held by you at the sum of \$125,000.00 and that the Authorized Assignee will be at liberty to accept your valuation in which case as between the Authorized Assignee and the Bank, the bank's claim would be considered paid in full. It is our desire that you should file the affidavit in question and we hereby agree that your so doing shall not in any way release us from our obligation under guarantees to the Bank nor shall our personal securities be in any way affected until the amount due to the Bank by MacKenzie Ltd. has been actually paid. 20

Yours truly,

"Jno. MacKenzie"

"Jean MacKenzie"

10. On November 14th, 1921, the Trustee under the said assignment consenting, the Registrar in Bankruptcy issued an order confirming and ratifying two Indentures of Release, releasing to the defendant all the realty and personalty set out in the Declaration of Value referred to in the seventh paragraph but which did not include the securities of the plaintiff described in paragraph 5. 30

11.—By the operation of the said claim and subsequent vesting order, the total indebtedness of MacKenzie Limited for which the plaintiff's securities were hypothecated was discharged and the plaintiff was entitled to a reconveyance of her securities from the defendant and since the 27th day of June, 1921, or in the alternative, the said 14th day of November, 1921, the defendant has wrongfully withheld from the plaintiff her said securities. 40

12.—On or about the 25th day of November, 1921, the said John Angus MacKenzie purchased from the defendant the securities mentioned in the

vesting order above referred to, and on or about the said 25th of November, 1921, the said John Angus MacKenzie procured from the defendant advances to the said John Angus MacKenzie amounting to \$125,000.00 for the purpose of satisfying the purchase price of the said assets.

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13.—On or about the 25th of November, 1921, the said John Angus MacKenzie procured the incorporation of a company known as MacKenzie Manufacturing Company, Limited, for the purpose of carrying on the business formerly carried on by MacKenzie Limited and assigned to MacKenzie Manufacturing Company Limited his interest in the assets purchased from

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the defendant.
14.—On or about the 25th day of November, 1921, upon the representations made by the said John Angus MacKenezie that the indebtedness of MacKenzie Limited had not been paid or satisfied but was being assumed by MacKenzie Manufacturing Company Limited and that the securities hypothecated by the plaintiff for the credit of MacKenzie Limited, continued liable for the amount due, the plaintiff, without independent advice, was induced to execute in favour of the defendant, a letter in the following terms:
To: The Royal Bank of Canada,
Ottawa.

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The Agreement under which the Bank has arranged to sell the assets of MacKenzie Limited, which it held under Hypothecation and which have now become its property to John Angus MacKenzie, Manufacturer, of the City of Ottawa, taking securities from MacKenzie Manufacturing Company Limited as set out in the document bearing even date here with, has been entered into at our request and without concurrence, and upon the understanding that the Bank is to be entitled to continue to hold all personal securities hypothecated by us to the Bank as collateral to the indebtedness of MacKenzie Limited, until all moneys advanced by the Bank to MacKenzie Manufacturing Company Limited have been fully paid and discharged, and that

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in the event of default being made in such payment, the bank is to be entitled to all remedies in respect of the securities so hypothecated by us as it would have ben entitled to if the indebtedness had remained that of MacKenzie Limited and we hereby jointly and severally agree with the Bank to execute any and all such further or other documents and assurances for more fully protecting the Bank in respect of all such advances and intebtedness and for securing payment to it thereof, as to the said Bank or its Counsel, may appear necessary or advisable.

Dated at Ottawa, this 25th day of November, A.D. 1921.

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(Sgd) "Jno. A. MacKenzie"
(Sgd) "Jean MacKenzie"

15. On or about the 21st of November, 1921, the said John Angus Mackenzie induced the Plaintiff, who had no independant advice in regard to the matter, to execute in favour of the defendant a guarantee in respect of the indebtedness of MacKenzie Manufacturing Company Limited.

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16. In or about the month of April, 1924, the defendant forwarded to the plaintiff a renewal of the letter of guarantee in respect of the indebtedness of MacKenzie Manufacturing Company Limited. In or about the month of September, 1924, the plaintiff consulted her solicitor and was advised to limit the period during which she would be liable under the said guarantee to 1st October, 1925, and by letter dated 3rd December, 1924, addressed by the plaintiff's solicitor to the defendant it was advised that the plaintiff would not continue the guarantee after 1st October, 1925, and requested the defendant to make other arrangements so that after October 1st, 1925, the plaintiff's securities might be released. 10

17. Immediately after the despatch by the plaintiff's solicitor of the letter of the 3rd of December, 1924, the Manager of the defendant's branch at Ottawa sought an interview with the plaintiff and having represented to her that there was no reasonable ground to apprehend any loss from the pledging of her securities that to press the condition set out in the said letter of the 3rd of December, 1924, might result in seriously handicapping the MacKenzie Manufacturing Company Ltd. without any benefiting resulting to the plaintiff induced the plaintiff to agree to instruct her solicitor to withdraw the letter, and on December 17th, 1924, the plaintiff, relying upon the representations made to her by the defendant's said manager, and without independent advice, instructed her solicitor to ask for the return of the said letter of the 3rd of December, 1924. 20

18. In or about the month of April, 1926, the plaintiff was again requested to renew the guarantee granted by her for the indebtedness of the MacKenzie Manufacturing Co. Ltd., and although repeatedly requested to do so she has persistently refused to sign any further guarantees and intimated that she would not longer be liable under the guarantee which she had already signed.

The plaintiff therefore prays the Court for a declaration: 30

(a) That the plaintiff on the 14th of November, 1921, was entitled to the return to her by the defendant of the securities hypothecated by her to the defendant.

(b) That the letter of hypothecation dated the 25th of November, 1921, was executed by the plaintiff under the misapprehension induced by the representations of the said J. A. MacKenzie referred to in paragraph 14 hereof and the form of such letter, which was drawn by the defendant's solicitors, that the plaintiff's securities hypothecated by her without independent advice, as security for the indebtedness of MacKenzie Limited to the defendant were still liable for such indebtedness, whereas, at the date of said letter the said MacKenzie Limited was no longer indebted to the defendant and the plaintiff was then entitled to the return of her said securities. 40

(c) That the letter of guarantee dated 21st November, 1921, executed by the plaintiff was executed by her under the misapprehension induced by the representations of the said J. A. MacKenzie referred to in paragraph 14 hereof and the form of such letter, which was drawn by the defendant's

solicitors, that the plaintiff's securities hypothecated by her without independent advice, as security for the indebtedness of MacKenzie Limited to the defendant were still liable for such indebtedness, whereas, at the date of said letter the said MacKenzie Limited was no longer indebted to the defendant and the plaintiff was then entitled to the return of her said securities; or, alternatively, that the plaintiff's liability thereunder terminated on the 1st of October, 1925.

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10 (d) For an order that the defendant do execute and deliver to the plaintiff valid transfers or conveyances of the said securities or such securities as may now represent the securities originally hypothecated to the said defendant by the plaintiff.

(e) Her costs of this action;

(f) Such further and other relief as to this Honourable Court may seem meet.

DELIVERED this 13th of April, .A. D. 1928, by Redmond Code, Citizen Building, Ottawa, Solicitor for the said plaintiff.

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RECORD

In the Supreme
Court of Ontario

No. 2

Statement of
Defence
April 21, 1928**STATEMENT OF DEFENCE**

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

JEAN MACKENZIE

Plaintiff

and

THE ROYAL BANK OF CANADA,

Defendant.

STATEMENT OF DEFENCE

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1. The Defendant admits the allegations contained in the first four paragraphs of the Plaintiff's Statement of Claim in this action, and denies all other the allegations therein contained, except insofar as hereinafter specifically admitted.

2. John Angus MacKenzie, the husband of the Plaintiff, was the President and acted as the General Manager of MacKenzie Limited, an incorporated Company which did business with the defendant Bank, and it is a fact that the Plaintiff hypothecated the shares of stock mentioned in the fifth paragraph of the said Statement of Claim to the Defendant Bank as collateral security to the indebtedness to the Defendant Bank of the said Company, the first or original hypothecation being made on the 31st day of December, A. D. 1920. The said original hypothecation was made by the Plaintiff in support of a guarantee given by her to the Defendant Bank of the account of the said Company, which guarantee was from time to time renewed. On each occasion, the Plaintiff had the benefit of competent independent legal advice. 20

3. It is a fact that the said Company became insolvent within the meaning of The Bankruptcy Act in the year 1921, and that its assets were acquired by a newly incorporated Company, MacKenzie Manufacturing Company Limited, and it is a fact that the assets of the said Company held by the Defendant Bank as security were relinquished by the Trustee in Bankruptcy to the Defendant Bank, in manner as provided by the Bankruptcy Act, and that they were subsequently sold to the said John Angus MacKenzie, who in turn resold them to the Company then incorporated under the name of MacKenzie Manufacturing Company, Limited. 30

4. It is also a fact that the said John Angus MacKenzie, as President of the newly formed Company, arranged that it do its banking business with the Defendant Bank, and arranged a credit for it and for the giving to it of

certain securities, including a guarantee from himself and the Plaintiff as collateral to which the Plaintiff gave a further hypothecation of the shares of stock hereinbefore mentioned. In this transaction, the Plaintiff again had the benefit of competent independent legal advice, and was certified to the Defendant Bank by the Plaintiff and her legal adviser, under date of November 21, 1921.

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Defence
April 21, 1928

5. During the course of the negotiations with the Trustee in Bankruptcy of MacKenzie Limited, the Defendant Bank took the precaution of seeing to it that the Plaintiff and her said husband were satisfied with the valuation put by it upon the securities referred to, and also with the arrangement then being made which included a stipulation that although the claim of the Defendant Bank would be considered paid in full as between the said Bank and the Authorized Assignee, this should not in any way release the Plaintiff and her said husband from their obligation under guarantees to the Bank nor should their personal securities be in any way affected until the amount due to the Defendant Bank had been actually paid. In this connection, the Plaintiff again had competent, independent legal advice, as appears by the letter bearing date September 13, 1921, and set out in the ninth paragraph of the said Statement of Claim, which was prepared by the independent legal adviser of the Plaintiff and delivered by him for her to the Defendant Bank.

6. The Defendant specifically asserts that anything done by the Plaintiff in respect of the transactions in the month of November, 1921, having to do with the transfers of the assets hereinbefore referred to to the new Company, was done under competent independent legal advice, and no representations were made by the Defendant in connection with the said transactions which were not true in substance and in fact.

7. With respect to the matters set out in the 16th and 17th paragraphs of the said Statement of Claim, the Plaintiff had the benefit of independent legal advice from the Solicitor now of record for her in this action, who in turn had several conferences with the Manager of the Defendant Bank, and was made fully aware of all facts which in his opinion appeared to be necessary, and which enabled him to give her competent independent legal advice.

8. The Defendant specifically denies that any representations were made by its Manager or anybody on its behalf to the Plaintiff in connection with the matters set out in the 16th and 17th paragraphs of the said Statement of Claim such as therein set out. On the contrary, it was made clear to the Plaintiff through her said Solicitor that if she withdrew from her guarantee, such action would probably result in the immediate winding up of the said Company, and this in turn would probably result in loss to the Plaintiff. At that period of time, there was good reason to expect that the business operations of the Company might prove successful.

WHEREFORE the Defendant submits that this action should be dismissed with costs.

DELIVERED this 21st day of April, A. D. 1928, by Henderson and Herridge, of the City of Ottawa, in the County of Carleton, Solicitors for the said Defendant.

RECORD

No. 3

In the Supreme
Court of Ontario

No. 3

Opening of
Proceedings
at Trial
May 19, 1921

IN THE SUPREME COURT OF ONTARIO

OPENING OF PROCEEDINGS AT TRIAL

BEFORE THE HONOURABLE MR. JUSTICE McEVOY

MACKENZIE vs. THE ROYAL BANK OF CANADA

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Tried at Ottawa, May 19th and 20th 1931, without a Jury.

ARTHUR G. SLAGHT, K.C.,

and

ARTHUR E. CLUFFE

Counsel for Plaintiff

GEORGE F. HENDERSON, K.C.,

and

J. D. WATT

Counsel for Defendant

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HIS LORDSHIP: Mr. Slaght, will you tell me shortly what your case is?

MR. SLAGHT: Yes, my Lord. The plaintiff is a married woman, Jean MacKenzie, married when 20 and living with her husband, John Angus MacKenzie, in Ottawa for a great many years during these transactions. In 1913 the husband entered into a business here as MacKenzie Limited, manufacturing clothing and lumbermen's supplies. He carried on from 1913 until the year 1920 quite successfully, and dealt with the defendant, the Royal Bank of Canada, as his banker.

In the year 1920, the bank wanting him to give additional security, he approached his wife. I will endeavour not to go into controversial matters and to give you a mere outline. The net result was that Mrs. MacKenzie was induced in 1920 to turn over certain valuable assets, being stock of Ottawa Dairy Limited, which she had inherited from her father, who had died some years before, and which stock was her separate estate and personal property at the time. She signed a form of guarantee for the bank at the time these shares were turned over, and she was seen by a Mr. Hill at the time under peculiar circumstances. She was in bed. At all events, the bank from 1913 on became the holders of these securities which we now seek to have restored.

MR. HENDERSON: Mr. Hill was her lawyer.

MR. SLAGHT: I want his Lordship to hear the facts about Mr. Hill.

MR. HENDERSON: Mr. Hill and his firm had been her father's before her for many years. Why not be reasonably fair in opening?

HIS LORDSHIP: Let Mr. Slaght put his case.

Mr. SLAGHT: I am instructed Mr. Hill was not her lawyer.

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MR. HENDERSON: It is undesirable to be controversial in opening.

HIS LORDSHIP: I notice in your pleadings that you set up that he was.

MR. SLAGHT: I especially refrain from that because there will be controversy later in the evidence as to whose lawyer Mr. Hill was. There were some further occasions prior to the year 1921, which in my view is the most important year, the months of September, October and November, which will I think in the end chiefly concern your Lordship in the year 1921, but prior to that time she had been procured by her husband, and Mr. Gray, the Bank Manager, to sign some further, so to speak, renewal guarantees, the securities remaining with the bank all the time.

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In the Supreme
Court of Ontario
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Opening of
Proceedings
at Trial
May 19, 1921

10 In June of 1921 Mackenzie Limited, her husband's company, went into bankruptcy, and after going into bankruptcy, the bank, who were preference creditors, having security under "88" of the Bank Act, having also an assignment of the book debts and accounts, and having also the securities of the wife, valued their securities, as they are required to under the Bankruptcy Act, at two different amounts. Two different affidavits of value sworn by the Bank Manager will be before you in the case. They valued them in June of 1921 at \$265,000. They valued them in September of 1921 at a round sum of \$125,000. We have certain important suggestions to
20 make regarding that, but I am merely going to state the facts, and not give you the controversial aspect of them at the moment. Then having valued the security at \$125,000 exclusive, and not mentioning nor bringing in in any way to the Trustee the wife's securities which they held on top of that, the Bank purchased from the Trustee in bankruptcy all the assets of Mackenzie Limited for the sum of \$125,000, and they discharged the trustee in bankruptcy from their claim, and procured a vesting order to be issued on the 14th of November, 1921, vesting in the Royal Bank of Canada as purchasers the full title to all these assets on which they had claimed a preferential account. There was no advertisement of the assets, no attempt nor
30 opportunity for anybody else to buy them.

Then having purchased them for an amount, which we say on the 14th of November paid in full to the bank all the debts of Mackenzie Limited, our position will be put to the court. I mention this now. My friend may controvert it. The bank were on the 14th of November paid in full Mrs. Mackenzie's securities, if the previous hypothecations were valid — we attack the earlier ones as well — were free from any further charge, we say in law, and the bank had no further right to retain them.

40 We shall offer evidence to show that that legal position was not only not disclosed to Mrs. Mackenzie by the bank, but that it was concealed from her, and she was informed after the 14th of November that the bank still were entitled to her securities and to hold them; and one week later she was then induced afresh to pledge her securities again to a new company which her husband formed, known as Mackenzie Manufacturing Company, Limited and her husband's new company purchased then from the bank the assets that they had been owners of under an agreement that will be placed before you, and a fresh pledge was taken from her as security for the indebtedness

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 at Trial
 May 19, 1921

of the Mackenzie Manufacturing Company Limited. That is the pledge under which they now hold if at all, and we will contend that that pledge was obtained under circumstances which the court will not support or permit to be supported.

Now to give you in a word the subsequent history. Mackenzie Manufacturing Company, Limited, the new corporation, who took no other assets than the old one had had, carried on vicariously for some few years, and she was approached and a subsequent renewal of that guarantee was taken under circumstances I will not discuss, which we attack, and ultimately Mackenzie Manufacturing Company Limited went into liquidation in the year 1924. Then after a couple of years Mrs. Mackenzie began to make inquiries, she never having received copies of any of the documents she signed throughout the years, and had Mr. Ritchie a solicitor here, investigate matters for her, and was advised for the first time that her securities had been freed in law — 10

MR. HENDERSON: Is my friend going to give evidence of that?

MR. SLAGHT: It does not matter whether she was advised, but our position to the court is that she learned then for the first time her true legal rights, and steps were taken to assert them, and ultimately the action brought in 1927, or in 1928 the writ was issued. It came down close to trial a year or so ago, and then something happened whereby — counsel subsequently differed as to what happened. I do not think we need trouble the court with what happened. 20

MR. HENDERSON: There is no difference as to what happened.

MR. SLAGHT: At all events, certain costs were paid by the plaintiff to the defendant, and the action by consent is set down for trial before this court and is here to be tried.

HIS LORDSHIP: I am a little anxious about that. In reading the record it seemed to me that any question about the previous non-trial of the action was wiped out by the consent of parties to set it down, and be tried as though that had not happened at all. 30

MR. HENDERSON: I don't know why my friend said there was any dispute. There is no room for dispute. The action came down for trial at the last minute of the eleventh hour. When it was before the then Mr. Justice Rose counsel for the Plaintiff saw fit, I am not going to say for what reason, to ask leave to discontinue the action.

HIS LORDSHIP: Does it make any difference what the reason was?

Mr. HENDERSON: It does not make a bit of difference what the reason was.

HIS LORDSHIP: Can both counsel agree that it is properly before me for trial now? 40

MR. HENDERSON: Yes. May I say this? Notice of discontinuance was filed, and when the plaintiff under new advice wanted to bring the matter on for trial, and was willing to pay the costs, I did not see how any good purpose could be served by asking that a new writ should be issued and a lot of expense incurred, and consented it should simply be set down for trial.

HIS LORDSHIP: Whatever the history of it may be, I may assume that it is properly before me for trial.

MR. HENDERSON: Absolutely. I just want to explain how that happened. Your Lordship will see that commonsense prevailed.

HIS LORDSHIP: That is the way I suspect it must have been.

RECORD

In the Supreme
Court of Ontario

No. 3

Opening of
Proceedings
at Trial
May 19, 1921

MR. SLAGHT: There is a further matter I should call your attention to now, my Lord, which is that at the time the pleadings were delivered and the writ issued the securities held by the bank of which we seek the return were stock of the Ottawa Dairy Company Limited of two kinds, common and preferred. Since the action has been running the Ottawa Dairy Co. amalgamated, or went in with Borden Company Incorporated, whereby all the shareholders of the Ottawa Dairy were on certain terms of exchange entitled to take stock of Borden Company Incorporated. The Bank and Mrs. Mackenzie through their solicitors discussed the situation, and without prejudice to the rights of either, it was determined that the shares in her name held by the bank, the Dairy shares, should be transferred on the basis of exchange, and the bank should hold Borden Company Incorporated shares in precisely the same plight as they were holding the disputed dairy shares at that time.

MR. HENDERSON: Quite right.

HIS LORDSHIP: That was while the litigation was pending; after the writ was issued and before the matter was on for trial?

MR. SLAGHT: Yes, my Lord.

MR. HENDERSON: It does not make any difference, but it was since I think the matter came on before Chief Justice Rose.

MR. SLAGHT: If we succeed in the relief we ask the judgment of the court will deal with the shares of Borden Company Incorporated. I have asked my friend to send for the certificates so that the precise number of those shares, which cannot be stated to your Lordship now because neither party has in court the exact number, may be stated. We will at a later stage with your Lordship's consent state to you the number of shares of Borden Company Incorporated, which stand in lieu of the Dairy shares, and which therefore are the real subject of the litigation, there are. They have a value I am told — well that may be controversial — but they are of substantial value, between twenty and thirty thousand dollars, probably at the present low ebb of affairs.

I make this suggestion to my friend. There were certain paid up insurance policies which the bank acquired also from her on one of these occasions, and which they now hold, and which I suggest to my friend might be cleaned up in this action, because they will be in the same plight as the Borden shares, and we would be entitled to bring a fresh action.

MR. HENDERSON: It is so long since I have had to do with this, I have forgotten the circumstances. My friend and I can talk about that later. They are not on this record. I have not given them any consideration. This is the first moment that any suggestion of that kind has been made, but my friend is right in suggesting that when Mrs. Mackenzie's legal position is ascertained things will follow rather automatically.

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MR. SLAGHT: They will, except that in terms we have not included those, and it occurred to me for the first time in preparing the case last night, that it would probably meet with the approval of my friend that the judgment of this court might determine the fate of the insurance policies which are held by the bank.

MR. HENDERSON: I do not know whether there are any. I have forgotten all about it.

HIS LORDSHIP: It would look sensible if the situation is the way Mr. Slaght outlines it. If it turns out to be so, it would look sensible to not have any further litigation.. 10

MR. HENDERSON: I quite agree with your Lordship as to that, but at the moment I have no instructions one way or another. This has been a very long story and very involved one. I do not blame myself even for forgetting some of the details.

MR. SLAGHT: You will find in a letter written by Mr. Gray, the Manager, dated Feb. 26, 1931, the Bank's statement of the position of the insurance policies. That will enable you to decide whether they are to be dealt with.

HIS LORDSHIP: I want to ask Mr. Henderson to make any statement to me that he feels he can. Of course, I realize he is acting for the defendant, and there may be a lot of things he will not care to state at his stage. If there is something you can tell me that will help me to listen more effectively, I would like you to do so. 20

MR. HENDERSON: The situation was simply this. Mackenzie Ltd., the company that my friend refers to, had a remarkably successful career during the war, made large sums of money, but unfortunately Mr. Mackenzie and those in charge of the affairs of that company did not set up a reserve to take care of the post-war conditions, as some wiser concerns did, and the result was, as your Lordship remembers, that after the war there came a great shrinkage in values, and as a result of that the company found itself in difficulties, not because of any business depression or anything of that kind, but bankruptcy ensued. The first bankruptcy was because of that shrinkage in value. My friend has commented on the fact that the bank filed two different affidavits valuing the claim and assets. The explanation of that is simply this. Immediately after the bankruptcy the bank filed a claim showing the condition of its account at that time, in the month of June and later on in the autumn, when after negotiations had proceeded between the bank and the creditors of the company, represented by the inspectors of the estate and the trustee, and Mackenzie, it was arranged, because the creditors wanted to carry on, that a new company should be formed, and should take over the assets of the estate and carry on the business. The bank had been realizing on book debts and other securities. The amount of the bank's claim had therefore changed, and also the value of the securities had necessarily changed. 30 40

HIS LORDSHIP: Shrinking all the time?

MR. RENDERSON: It was working both ways naturally. The arrangement having been made with the creditors and Mackenzie who was to form a new company, an agreement was entered into providing that should be done, that the new company should be formed to take over the assets, and in order to carry that out, the bank having re-valued its claim, and re-filed its claim, the trustee in bankruptcy in manner provided by the Bankruptcy Act agreed to release the assets to the bank, and did so, and that was completed by the vesting order which the Bankruptcy Act provides for, So that technically they became the assets of the bank, and were contemporaneously transferred to Mr. Mackenzie, and by him to the new company which was then organized. Formal agreements were signed by both Mackenzie and his wife agreeing that the bank should hold the security, and that the security should be re-hypothecated, as it was. Everything that was done was done under independent legal advice. Your Lordship will find that Mr. Hill referred to is of the oldest firm in Ottawa — Mr. H. P. Hill of Greene, Hill & Hill, and Mrs Mackenzie no doubt will say in the box, as she said on discovery, that that old firm had acted for her father and acted for her. Mr. Hill advised her in the early stages. Later on, and at this particular time of the bankruptcy, she was represented by Fripp and Burritt. Again she was advised by Mr. Gilhooly, and again by Mr. Code. She had a series of advisers from time to time. My friend commented on the fact that the bank for some apparently mysterious reason took new guarantees from time to time. As with every other bank, my Lord, it is the policy of the defendant to have guarantees renewed from time to time and under independent advice.

HIS LORDSHIP: When was the Stuart case?

MR. HENDERSON: This was all done in the light of the Stuart case.

MR. SLAGHT: I will give your Lordship the reference because we are going to rely on that. Your Lordship will find the Stuart case is reported in 17 O. L. R. 1909, page 436, and we rely in the earlier report on the judgment of Chief Justice Moss on page 454, Mr Justice Garrow on page 460. It went to the Supreme Court of Canada and is reported in 41 S. C. R. page 516. We rely on the judgment of Mr. Justice Duff at page 537 and Mr. Justice Anglin at page 550. Then it went to the Privy Council and that is found in 1911 Appeal Cases, page 120.

MR. HENDERSON: Your Lordship will see that was long before any of this business started in 1913.

HIS LORDSHIP: As I think back and remember that case, it went perhaps a little further than the profession generally thought the law was, in its final disposition.

MR. HENDERSON: From 1911 to 1913 your Lordship knows the case was very much in the mind of every bank solicitor.

HIS LORDSHIP: Lawyers during those years, as I think back, were all pretty nervous about taking securities pledged by married women for the accounts of their husbands.

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MR. HENDERSON: I do not suppose there was any case in our time that really attracted more attention than that case, because it was hitting us almost every day.

I do not know that there is very much to add. The new company was organized, took over the assets.

HIS LORDSHIP: You had just dealt with the policy of banks as a matter of ordinary business to renew guarantees from time to time. That was the last thing you said.

MR. HENDERSON: The new company carried on for some time. I do not suppose it makes any difference for what reason, but it was eventually unsuccessful. 10

HIS LORDSHIP: Is the husband still alive?

MR. HENDERSON: Yes, the husband is here, but he is in another business now. That business was simply liquidated closed up, and the bank has been from time to time endeavouring to liquidate the securities.

HIS LORDSHIP: It is practically a cold legal proposition?

MR. SLAGHT: Yes, on the evidence. The husband and wife are not living together now, nor have not been for some years.

MR. HENDERSON: I do not suppose that makes any difference to the legal effect. 20

HIS LORDSHIP: It might make a difference to the weight to be given to the respective parties' evidence.

MR. HENDERSON: I do not think anything turns on that. I am going to rely entirely on Mrs. Mackenzie's evidence. She has been examined for discovery.

HIS LORDSHIP: It is a cold legal proposition.

MR. HENDERSON: I do not want your Lordship to think this has been treated as a cold legal proposition. As a matter of fact, until very recently Mrs. Mackenzie has been paid the dividends on her stocks, notwithstanding the fact that they were hypothecated, and notwithstanding the fact that the old company had been liquidated. And if my friend will permit me to say so, it was on the advice of one of her many legal advisers that the bank ceased paying her dividends, thinking it was better that it should be so. 30

MR. SLAGHT: May I give your Lordship one case that will be of importance and mention it now, because the evidence may have a bearing on it, *Noriah vs. Omar*, 1929 Appeal Cases, page 127, a judgment of the Privy Council, in which the Lord Chancellor says, —

“Nor are their Lordships prepared to lay down what advice must be received in order to satisfy the rule in cases where independent legal advice is relied upon, further than to say that it must be given with knowledge of all relevant circumstances, and must be such as a competent and honest adviser would give if acting solely in the interest of the donor.” 40

HIS LORDSHIP: That apparently means I must be satisfied on the evidence as to the competency of the legal adviser and the question whether he was seized of all the facts.

MR. SLAGHT: Yes.

HIS LORDSHIP: That is a pretty difficult task.

MR. SLAGHT: I think it will be pretty simple in this case, if I may venture that prediction.

HIS LORDSHIP: You agree that is the law I am bound by, Mr. Henderson?

MR. HENDERSON: I would prefer to discuss that when the time comes, but I do think there must be fairness.

10 HIS LORDSHIP: That is the working hypothesis that sits in my mind at the moment. There must be fairness to the woman when she is advised by a competent man. There must not be anything behind. It must be actually fair and open.

MR. HENDERSON: By way of illustration, I distinctly recollect on one occasion refusing to accept the advice of one person for Mrs. Mackenzie, refusing to permit him to be identified —

MR. SLAGHT: I don't think that statement should be made.

Mr. HENDERSON: I am not saying who it was.

20 Mr. SLAGHT: My client had an interview with my friend who was the bank solicitor throughout in these matters, had an interview with him alone. That may be controversial.

MR. HENDERSON: Is my friend going to suggest that? Mrs. Mackenzie came to see me once. I hope I treated her as a lady, and persuaded her to leave me as quickly as possible, go to her own lawyer.

MR. SLAGHT: There will be evidence on that.

MR. HENDERSON: If my friend raises that —

MR. SLAGHT: You raised the fact that you told Mrs. Mackenzie something.

30 MR. HENDERSON: I did not. I say there was one occasion there was a certain gentleman whom I understood to be advising Mrs. Mackenzie, and whom I did not consider a competent adviser. I am not mentioning any names.

MR. SLAGHT: I beg your pardon. I misconstrued what you said. I did not know there were any such in Ottawa. I thought they were all competent at the bar.

MR. HENDERSON: I agree with his Lordship that it should not be a mere formality. The bank should have reason to believe she was really advised, not merely go through the motions.

40 HIS LORDSHIP: My own working hypothesis of the law is that the duty is upon the bank before they accept and expect to bind to know that the woman has had reasonably competent advice and independent

MR. HENDERSON: I think that is a fair way of putting it.

HIS LORDSHIP: That last judgment you have read to me in 1929 Appeal Cases, seems to add a new phase to it, to what I was carrying in my mind.

MR. HENDERSON: In reading that case that particular sentence must not be taken literally. I do not think it carries it further than your Lord-

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ship puts it, because quite obviously in that case it would be impossible. A bank manager cannot be a mind reader. How can he tell? Take, for instance, as in this case, where the Bank Manager knew at the important stage of the proceeding that the solicitor advising had made a real investigation of the affairs, and went into the matter —

MR. SLAGHT: That is very controversial, I may say.

HIS LORDSHIP: The discussion is helping me I think to listen.

MR. HENDERSON: That is the object. I quite appreciate that was my friend's object. I am trying to meet him in that way.

MR. SLAGHT: In the passage I read I would not want your Lordship to think I was giving you obitor, because the head note of the case also says, "But to have that effect", speaking of the independent legal advice, it must be given with a knowledge of all the relevant circumstances and be such as a competent, honest adviser would give." So that is carried into the head note as the decision in the case, and I have given you the exact language of the Lord Chancellor in delivering the judgment.

HIS LORDSHIP: I will read that case.

Plaintiff's
Evidence

MARY S. TIBBETTS, Sworn,

20

No. 4

EXAMINED BY MR. SLAGHT:

Mary S. Tibbetts,
Examination

Q. Mrs. Tibbetts, you have lived in Ottawa for a great many years?
A. Yes.

Q. And you and your husband I understand were friends some years back with Mr. and Mrs Mackenzie? A. Yes.

Q. For how many years back? A. Twelve or thirteen.

Q. I understand that you lived across the road from them in the earlier days when they lived at the summer place known as Farm Point? A. Yes.

Q. In those earlier years prior to 1921 did you, or did you not, visit back and forth, the families, a good deal? A. Frequently — every day and many times a day.

Q. That was a little summer settlement some miles out of Ottawa?
A. Yes.

Q. I understand your children also were friends, and they visited one another? A. Yes, quite so.

Q. In 1921 do you remember any occasion when you went over to the Mackenzie home across the way, when your brother-in-law Mr. Stires from the States was there? A. Yes, I remember that.

Q. Mr. Stires was known as Judge Stires, was he? A. Yes, Judge Stires.

MR. HENDERSON: Perhaps the witness could give the evidence.

MR. SLAGHT: I thought that was introductory.

HIS LORDSHIP: He is trying to fix the occasion.

MR.. SLAGHT: What month of the year was that in as near as you can remember? A. I would say it was the latter part of the summer or the early fall. I really can't tell you exactly.

Q. Of what year? A. 1921.

Q. Will you tell us when you went over on that occasion who were in the Mackenzie house? A. Well, Mr. Stires was a guest in our home, and he had gone over to see Mr. and Mrs Mackenzie, who were friends of his. They had met him through us.

Q. Had Mr. Stires or not visited before with Mr. MacKenzie? A. Yes. Mr. Stires' son was a friend of the young people over at the Mac-

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kenzie's.
Q. And when you went over on this occasion just tell us what occurred as near as you remember?

HIS LORDSHIP: She has not told us anybody who was there yet except the two.

MR. SLAGHT: Q. Who were there? A. There was Mr. and Mrs. Mackenzie and Judge Stires, and I think my husband was in the house as well, there as well. They were in the dining room.

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Q. Do you recall any conversation that was going on? A. Yes, I remember distinctly Mr. Mackenzie was doing all the talking when I went in, and he was talking in a very loud boisterous way, and he was evidently trying to get Mrs. Mackenzie to make —

MR. HENDERSON: I don't want to take unnecessary objections, but I must object to evidence of conversations between husband and wife and other parties at which we were not present.

MR. SLAGHT: Our pleading is that the husband had great influence with the wife, and induced her against her interest by his influence and other means to give these securities under circumstances that cannot be upheld. That is one of the vital issues, part of the res gestae.

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MR. HENDERSON: Even if that were so, that cannot be evidence as against us, my Lord.

HIS LORDSHIP: "A" is pleaded to have exercised overwhelming influence on "B". It is sought to give a conversation between "A" and "B" which would only have any importance if it was of a kind to show that extraordinary influence being exerted, and to establish that he had that power or influence over the other party. In that bald case would you say then that it was not evidence, Mr. Henderson?

MR. HENDERSON: Not unless it were brought to our notice.

HIS LORDSHIP: That is to the bank's notice?

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MR. HENDERSON: To the bank's notice.

MR. SLAGHT. I submit it is perfectly clear throughout in the Stuart case that what occurred leading up to the giving of the securities in question between the husband and wife,, whether the bank knew of it or didn't know of it, is evidence receivable to show, as it is put in the Privy Council at page 137 by Lord MacNaughton, "It may well be argued that there is evidence of overpowering influence, and the transaction brought about is im-

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moderate and irrational, as in the present case proof of undue influence is complete," and throughout the judgments in that case they discuss what occurred between the husband and the wife. The issue has been joined on our pleading that the husband exercised this undue influence. No application was made to strike that plea out. and it would not have succeeded any way.

HIS LORDSHIP: I think, Mr. Henderson, it would be wise to receive the evidence subject to objection.

MR. HENDERSON: There is no jury. I quite agree your Lordship is adopting the proper course for practical purposes. 10

MR.SLAGHT: Q. You were telling us that when you went in Mackenzie seemed to be doing most of the talking, and whom was he talking to, and what was he talking about? A. He was talking about securities and signing of some papers.

Q. Signing by whom? A. Mrs. Mackenzie, and he was walking up and down, and talking pretty strongly, using some pretty strong language.

HIS LORDSHIP: Q. She was, or he was? A. He was. Oh, no.

Q. He was walking up and down? A. Using some pretty strong language, which I must say stopped when I went into the room, but he still kept pacing up and down and talking about these securities and signing of 20 papers, which I didn't know or understand about.

MR.SLAGHT: Q. Did you hear it said at all whom the papers were for? A. I judged from what I heard that it had something to do with signing papers to put Mrs. Mackenzie's securities up as collateral.

Q. Up where? A. As collateral for the bank.

Q. What was Mrs. Mackenzie saying if anything? A. Well, when Mr. Mackenzie got through talking she said, "I don't want to put up my securities. I want to keep what I have for the children and myself," and she was crying and feeling very badly about it.

Q. When the talk was over where did she go? A. She burst out crying again, and she went into her own room down through a hall, and I followed her. I felt very sorry for Mrs. MacKenzie. 30

Q. And what was her condition when she got into her room? Did she stop crying then? A. Oh, no. Mrs. MacKenzie was very fond of Mr. MacKenzie.

MR. HENDERSON: Oh, please!

WITNESS: And he seemed to have an influence over her.

MR. HENDERSON: Oh, now, please!

WITNESS: That he seemed he could get her to do things against her 40 own will.

MR. HENDERSON: Oh, now, witness please! I object to the witness stating a thing like that.

HIS LORDSHIP: I think she has gone as far as she is entitled to.

MR. SLAGHT: Yes, my lord. I would not have asked the question which the witness volunteered the answer to. We have to give what was said and done. Your Lordship will deal with the other problem.

Q. Did she sign any document that day, or in your presence while you were there? A. No, she didn't sign anything.

Q. Do you remember anything that Mr. Mackenzie said to her when he was pacing up and down? You say he was wanting her to sign papers. Anything he said to her about them? A. He said, "You might as well sign them. You are going to lose them anyway."

Q. Did she come in before you left and agree to sign or not?

MR. HENDERSON: Rather leading.

10 WITNESS: I think she appealed to Mr. Stires. That is before she left the room at all. She said, "Do I have to sign these papers? What is your opinion, Mr. Stires? Do you think I have to sign these papers?" And he said —

MR. HENDERSON: Wait a minute. That again is not evidence; conversation between her and another.

HIS LORDSHIP: In the presence of the husband?

MR. HENDERSON: I don't know whether the husband - -

WITNESS: Yes, the husband was still there.

HIS LORDSHIP: I understood that from the way she told it.

20 MR. HENDERSON: Might it be suggested to the witness she is not an advocate? Some of us have more local knowledge than others. I did not understand the husband was there, but even so I must repeat my objection to conversation between her and another person.

HIS LORDSHIP: I think your objection may have a good deal in it, but in the interest of all parties I think it proper to receive the evidence subject to objection.

MR. SLAGHT: Q. Well, then, I have forgotten whether you told me —

30 HIS LORDSHIP: Where you left off was, that she appealed to this Judge who was there, and asked his view whether she had to sign the papers or not.

MR. HENDERSON: May I ask my friend if he is going to call any of the other ladies present (in the court room) as witnesses? I am afraid I must ask that the witnesses be excluded.

MR. SLAGHT: All right, let all the witnesses be excluded.

MR. HENDERSON: I require Mr. Gray to stay in.

HIS LORDSHIP: The way it has developed, the conversation in the summer home there, I think it would be to the advantage of the court that the witnesses ought not to hear each other.

40 - - - (WITNESSES EXCLUDED)

MR. SLAGHT: I want to make this suggestion to my friend. I don't know whether it will appeal to him. I notice he has excluded Mr. Mackenzie. I think if Mr. Gray is to stay in throughout, if the two are to be called, Mr. Gray should be called before Mr. Mackenzie is called.

MR. HENDERSON: That depends upon the character of the evidence. I am not obliged to give any undertaking.

MR. SLAGHT: Otherwise, I will ask that Mr. Gray be excluded.

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MR. HENDERSON: You can't.

MR. SLAGHT: I can ask.

MR. HENDERSON: I have a right to have him here.

HIS LORDSHIP: I think I will follow the practice of Mr. Justice Rose in that regard. He has ruled repeatedly that the witnesses are excluded and the parties are allowed to stay in. If you propose to call the parties you must call them before you call the witnesses.

MR. HENDERSON: I would do so, except in some very extraordinary circumstances. I think your Lordship would expect me to do so.

HIS LORDSHIP: I can see a case where it might be desirable to do 10 otherwise but it would be a very strong case.

MR. HENDERSON: Unless it is going to dislocate things.

HIS LORDSHIP: If the banker is to give accounts of interviews and other things that occurred between him and other witnesses, he had better tell his story first.

MR. SLAGHT: There were several tri-party interviews between the banker, the husband and the wife, when only the three were there.

Q. You were going on to tell us, in this situation Mrs. Mackenzie appealed to her husband's friend, Judge Stires, and what occurred then?

A. I don't remember the exact words but I naturally was very interested 20 in what my brother-in-law said.

Q. If you don't remember — A. The exact words, but I can tell you what it meant. It meant that in his judgment up to that point, that he felt that Mrs. Mackenzie would have to sign the papers, but he hadn't looked into the case very well. He said, "You might save part of it, either the dairy stock or the house on Clemow Avenue."

Q. Was Mr. MacKenzie there when he said that? A. Yes.

Q. He told her that he had not looked into the case very well, but as far as he could see up to that point - -

HIS LORDSHIP: Q. She would have to sign her name to some part- 30 icular thing? A. Yes.

Q. What was it? A. She would have to sign the papers. That is as far as I could understand. And that she might — one of them might be returned to her, either the dairy stock or the house on Clemow Avenue.

Q. She would have to sign the papers but the stock, some stock — A. Yes, Ottawa Dairy stock, but he didn't seem to think she would get both back. I remember that distinctly.

Q. The house on what? A. Clemow.

Q. What was that?

MR. HENDERSON: That was the family residence. 40

HIS LORDSHIP: Q. That was where the Mackenzies lived? A. Yes, a house Mrs. Mackenzie's father built.

Q. The family residence during the main part of the year? A. Yes, during the winter months.

MR. SLAGHT: Q. In the City of Ottawa? A. Yes.

Q. This was out at the summer place? A. Yes.

Q. Prior to that, Mrs. Tibbetts, had Mrs. Mackenzie ever had occasion to come over to your place across the road? Were you near by? A. Directly across the road.

Q. Had she ever come over under any unusual circumstances? A. Well, she certainly had. I remember one time she came over to me, Mr. Mackenzie had thrown her down the steps.

MR. HENDERSON: Now!

MR. SLAGHT: Q. You were not there and did not see it? A. No, she came to me and told me.

10 MR. HENDERSON: Please!

HIS LORDSHIP: I cannot hear what she told you.

MR. SLAGHT: Q. Tell me what condition she was in on this occasion when she came across to you? A. Can I say she was sobbing and crying?

Q. Yes, you can tell not what she said, but how she appeared to be. A. Her dress was torn; her arm was bruised, and her hip was bruised, and she was in a very, very nervous state. She came running over to my house because —

Q. Not because. You can't be sure. I cannot take that from you under our rules of evidence. A. She stayed with me for four days.

20 HIS LORDSHIP: Pardon me, Mr. Slaght. Does she know who was at the Mackenzie house then?

MR. SLAGHT: Q. Do you know who was across the road at the Mackenzie house when she came over? A. Yes.

HIS LORDSHIP: Q. Just whom you had seen during the four days. Who was at the Mackenzie place that you saw? A. At the time Mrs. Mackenzie came over Mrs. Alex Johnston was over there. She had arrived as a week-end guest.

Q. Who else? A. And her small boy. The neighbors were in and out all the time.

30 Q. How old was the small boy? A. Oh, he was just a small boy.

MR. SLAGHT: Q. About how old? Eight - ten - twelve? A. I don't think he was as old as that. I have to think how old he is now. He is about eighteen now so he was a very small boy.

Q. Did she have occasion to go over to your place more than once? A. Yes.

Q. When she was upset? A. Yes.

Q. And then she did go home after four days? A. Yes.

40 Q. I do not think you quite answered his Lordship's question yet. A. I don't quite understand it. I never was a witness before.

Q. She came over sobbing and with her dress torn on this occasion, and who was at the house on the other side of the road? His Lordship does not know if anybody was there. Whom did you see there? A. Mrs. Alex Johnston..

HIS LORDSHIP: Q. She did not cause her arm to be bruised? A. She was the only person that I know of that was there.

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MR. SLAGHT: Q. We are not asking about strangers; we are asking about anybody you know A. The maids of course were in the house. As I wasn't there, I don't know. I was at my own home.

Q. Throughout the years I think you told me that notwithstanding anything that might have occurred, you did say that she was very fond of Mr. Mackenzie? A. Yes, very fond of her husband.

Q. Did she continue fond of him until they separated as far as you could see? A. I should say, if I am any judge of women, that she is still very fond of him.

CROSS-EXAMINED BY MR. HENDERSON:

Q. Mrs. Tibbetts, there is a feature I had hoped not to open up in this case, but I must ask you something about it. How long have you known the Mackenzies? A. I knew them before we went to Farm Point. I suppose about fourteen years.

Q. Did you know them prior to 1911 — before the war? A. Well, 1914 and 1919 —

Q. I don't know how long you have lived in Ottawa, Mrs. Tibbetts. A. You take fourteen from thirty-one and you will know just how long I have known them.

Q. Did you know them when they lived up on Cambridge Street? A. No, I wasn't living in Ottawa when they lived on Cambridge Street.

Q. At this time you speak of, however they may have been living before, they were living in a very handsome residence in Clemow Avenue, were they not? A. Yes.

Q. This cottage at Farm Point was looked upon as probably the finest cottage of its kind in this vicinity, wasn't it? A. I should say it was a fine cottage. I think there are other cottages just as fine.

Q. But it was a very fine cottage? A. It was a nice cottage at the time.

Q. And the Mackenzies were living — shall I say — extravagantly? A. No, I shouldn't say they were living extravagantly. They were people of means, and they were living as people of means.

Q. They were spending a lot of money? A. No, I shouldn't say so. I don't know anything about their private affairs. They were living as people who have means and a right to live well were living.

Q. That would again be your point of view. A. That would be my point of view.

Q. That they were living as people who had means should live? A. Yes.

Q. They were entertaining very lavishly at Farm Point? A. Just like anyone else, in a very simple, nice manner.

Q. Quietly? A. Quietly.

MR. SLAGHT: What possible bearing this can have, I fail to see, my Lord, but I do not want to stop cross-examination.

HIS LORDSHIP: I do not know what difference it may make, but it may make a difference. I cannot stop counsel.

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MR. SLAGHT: Perhaps my friend will enlighten me.

MR. HENDERSON: My friend, of course, has gone on from his own point of view.

Q. Was there not a great deal of entertaining at Farm Point? A. I shouldn't say, not any more than any other summer place.

Q. Were there not week-end parties there frequently? Were there not regularly week-end parties up there? A. Mr. Henderson, I would like to know what you call week-end parties. We all of us have so many parties at our summer homes.

10 Q. Do we? A. Yes.

Q. That is your idea? A. Yes. I invite all my friends up. I have nice little quiet parties. The Mackenzies had the same.

Q. I suppose you will agree that what is and is not quiet is more or less a matter of opinion? A. I certainly do.

Q. There were parties almost every week-end at the Mackenzies? A. I don't know, Mr. Henderson, because I tried to mind my own business.

Q. You said you had parties at your own house? A. I said I have parties. I had a lovely party last week-end.

20 Q. Was there not a great deal of drinking? A. I don't see what bearing it has on the case, Mr. Henderson.

Q. I don't desire you to argue the question. Be good enough to answer.

HIS LORDSHIP: Is it the suggestion that Mrs. Mackenzie was drinking considerably, and liable to give —

MR. HENDERSON: The suggestion is that Mr. Mackenzie was drinking quite a great deal at this summer cottage.

Q. Is that not a fact? A. It was Mr. Mackenzie's own summer cottage. He could certainly do as he liked in his own cottage.

30 HIS LORDSHIP: Q. That is not the question. Is it a fact that Mr. Mackenzie drank pretty freely at the week-end? A. Not at the week-end.

Q. All the time? A. All the time, whenever he was there.

MR. HENDERSON: Q. More or less all the time. That is, he had a habit of what we call prolonged sprees; and then for a time, if he drank at all, he had to drink a good deal. Isn't that so? A. Mr. Henderson, I don't know anything about Mr. Mackenzie's capacity.

Q. I thought you knew the family intimately? A. I don't know anything about Mr. MacKenzie's capacity to drink liquor.

40 Q. I thought you said you know them very intimately? A. I know them as friends and neighbors. Don't ask me questions like because I don't know anything about it.

Q. Was it not well known to the friends of the Mackenzie family that Mr. Mackenzie unfortunately drank to excess? A. He had a very unfortunate habit of drinking which was certainly known.

Q. And he would sometimes become quarrelsome when he was drinking? A. When he was drinking and he was not drinking he was quarrelsome.

RECORD

In the Supreme Court of Ontario

Plaintiff's Evidence

No. 4

Mary S. Tibbetts, Cross-Examination

RECORD
 In the Supreme
 Court of Ontario
 Plaintiff's
 Evidence
 No. 4
 Mary S. Tibbetts,
 Cross-
 Examination

Q. You say even when he was not drinking, do you? A. Yes.

Q. I have had some trouble bringing that out. I am rather interested in what you say about Judge Stires. You know I presume that the Americans have a habit of calling lawyers by the title "Judge"? A. Yes.

Q. Is he, or has he, been a judge in fact? A. He is Judge Stires.

Q. He is a Judge? A. Yes.

Q. I understand, at all events, he is a legal gentleman of undoubted standing? A. Yes. He is a corporation lawyer in New York City.

HIS LORDSHIP: Q. He married your sister? A. My sister's husband. 10

MR. HENDERSON: Q. You say he is the best lawyer in New York City? A. No, I say he is a lawyer over there.

HIS LORDSHIP: I would not think much of her if she did not.

WITNESS: I think he is one of the finest men I know.

MR. HENDERSON: Q. At all events, he is a lawyer of high standing and on the bench? A. I should judge so.

Q. He was a friend of the Mackenzies through their friendship with you? A. Yes.

Q. And had been around there quite a little? A. Yes.

Q. And on this particular occasion Judge Stires happened to be present when a conversation occurred? A. He had gone over to visit his friends the Mackenzies. 20

Q. I am only interested in certain essential facts. He was there, at all events, and he became involved in this discussion that you speak about, did he not? A. I suppose he did.

Q. Why can't you answer me as freely as you did Mr. Slaght? Am I right in thinking he became involved in this— A. Yes, you heard me say he did.

Q. And as a matter of fact he did express an opinion, and in the course of the opinion said he had not had an opportunity of going into the matter fully. Is that so? A. Well, he said as matters looked to him then. 30

Q. Did you know, Mrs. Tibbetts, that after that Judge Stires did go into the matter very fully, and go to the bank, and make inquiries, and look into the whole transaction? A. No, I don't know anything more about it.

Q. Did you know that? A. No.

Q. At all events, if he did, he was undoubtedly competent to do it and to give advice? A. I should judge he was competent to give advice on any subject that he was conversant with.

Mary S. Tibbetts,
 Re-Examination

RE-EXAMINED BY MR. SLAGHT: 40

Q. Do you know how long Judge Stires had been talking with Mr. Mackenzie before you went over, or don't you know? If you don't know, don't guess at it? A. He had been away from our home the greater part of an hour, when I went over really to ask him to come back because we had other plans.

Mr. SLAGHT: I called Mrs. Tibbetts out of order because she had a very important matter at one o'clock.

MRS. JEAN MACKENZIE, Sworn,

EXAMINED BY MR. SLAGHT:

RECORD

In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 5

Jean MacKenzie
Examination

Q. Mrs. Mackenzie, your husband's name is what? A. John Angus.

Q. You are Jean Mackenzie, and before you were married were Jean Andrew? A. Yes.

Q. You were married I understand in 1901? A. Yes.

Q. You were twenty when you were married? A. Yes.

10 Q. And you and Mr. Mackenzie, your husband, from your marriage in 1901 lived with your people, your father and mother, until after your father's death in 1907? A. Yes.

Q. And then as to your upbringing, your father lived in the country, just at Westboro, just out of Ottawa, did he not? A. He did.

Q. And that is where you grew up as a girl? A. Yes.

Q. You went to the public school, and did you attend collegiate for a term or two? A. Attended Lisgar Collegiate.

Q. You did not matriculate? A. No.

20 Q. I understand for some years you attended the Conservatory of Music, and are especially interested in music? A. Yes.

Q. Did you ever have any business education? Ever go to business college or take up shorthand or typewriting, or any business course? A. No.

Q. After your father died in 1907, what did he leave to you? A. Ottawa Dairy Stock, and the house on Cambridge Street.

Q. That was in Ottawa, was it? A. Yes.

Q. The house on Cambridge Street and Ottawa Dairy stock? A. And a few mortgages and two thousand in cash.

30 Q. Later on you pledged the Ottawa Dairy shares with the bank? A. Yes.

HIS LORDSHIP: Q. Did you say a few mortgages or two mortgages? A. A few.

Q. And two thousand in cash.

MR. SLAGHT: Q. I believe you sold the Cambridge Street house later on for what? A. Approximately I think around six thousand dollars.

Q. That is not perhaps important. I am going to ask you whether it was the Ottawa Dairy stock that your father left you, and that came to you under his will, that you later on pledged with the Royal Bank, and that you brought the suit about? A. Yes

40 Q. Now in 1913 your husband started up a company, did he not? A. Yes.

Q. Known as what? A. Mackenzie Limited.

Q. And what of his own money did he put in so far as you know? A. He told me he had saved eight thousand dollars in commissions.

Q. Did he tell you he put that into the Mackenzie Limited? A. That is what I understood.

Q. At that time did you put some of your money into Mackenzie Ltd.

RECORD
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 No. 5
 Jean MacKenzie
 Examination

at his request? A. As collateral.

Q. Did you get your money out later on? Did he repay you that?
 A. Eventually, yes.

Q. In the year 1920 when you gave the agreement to the bank on your Ottawa Dairy stock that we are attacking in this case, had you any money of your own invested in Mackenzie Limited? A. None.

HIS LORDSHIP: That was in 1920?

MR. SLAGHT: That is the first dealing she had with the bank that is under review in this case.

HIS LORDSHIP: "In 1920 I had nothing invested in Mackenzie Limited." 10

MR. SLAGHT: Q. Is that right? A. That is right. It is correct.

Q. And then in 1920 what occurred if anything with regard to your putting up security to the bank? How did it come about? Who first talked to you about it? A. My husband.

Q. And what occurred until along in December you signed the document? Just tell me what occurred between you and him? A. I should say constant friction.

Q. What about? A. Over the signing of these documents again.

MR. SLAGHT: Will you let me have the first guarantee? 20

MR. HENDERSON: Perhaps we should tell his Lordship what has happened. Unfortunately, my Lord, at the time of the former trial a number of these documents were segregated from a general file and put in a separate file which has been lost. The important documents have been identified on discovery, and we have agreed that we shall both of us use copies. I have put together here a set of copies. I think perhaps it is convenient for your Lordship to have them before you.

MR. SLAGHT: I think not, only in this way — I want these to go in. It is very unfortunate for certain reasons that they are missing, but I accept my friend's statement about it, that they have gone astray. The only extent to which I understood there was an arrangement between solicitors for both parties was that without difficulty of proof and so on, we were to put in these copies that we both assume represent the copies of the originals. 30

MR. HENDERSON: I was not suggesting that this all go in now — far from it.

MR. SLAGHT: Oh, just a copy for his Lordship's convenience?

MR. HENDERSON: Just a copy for his Lordship's convenience, and they are here in order as they went in before.

MR. SLAGHT: I did not appreciate that. I thought my friend was suggesting they should go in. I never like anything to go in till I see what it is. 40

MR. HENDERSON: Oh, no, you can put what you like.

HIS LORDSHIP: This witness would probably be more at home if she saw the very document her husband was asking her to sign rather than a copy.

MR. HENDERSON: I think I have the chief original one here as it

happens. There is the first hypothecation and then there was a guarantee signed at the same time.

MR. SLAGHT: I extremely regret the absence of them, but those things happen. I have lost papers.

Q. Then, Mrs Mackenzie, I show you a document on a printed form, red type and so on, dated the 31st of December, 1920, headed "General Hypothecation." Is that your signature? A. Yes.

—EXHIBIT 1 - Hypothecation dated 31st December, 1920.

10 MR. SLAGHT: I should call your attention to the fact, and my friend will agree with me, so the court may not be misled, that written diagonally across this document both in red and black ink are certain obvious bank notations, which were not on it when the lady signed it.

MR. HENDERSON: All of which I think are quite obvious.

MR. SLAGHT: Q. I call your attention that somebody has been making notes on this, written in diagonally. Do you know whether they were there or not when you signed it? A. I am quite sure they were not.

Q. That was signed apparently on New Year's eve, the 31st of December, 1920? A. Yes.

20 Q. You were going to tell me about what had occurred.

HIS LORDSHIP: Q. Are you clear about that, Mrs Mackenzie, that it was signed in the evening after banking hours? A. I wouldn't say in the evening, your Honour.

Q. You said on New Year's Eve? A. The day of New Year's Eve.

Q. It does not occur to one's mind, what happens the last day of the year sometimes. A. It was the day of New Year's Eve, around noon..

30 MR. SLAGHT: We will give the circumstances. Before you tell me about the actual signing of this document, will you tell me what if anything had occurred between your husband and yourself, leading up to the signing of it, and for how long before you actually signed, your husband and you had discussed it if at all. A. I should say perhaps six weeks to two months. I was constantly refusing to sign anything more. He assured me that if he could get the use of my securities again he could have an extra loan of from twenty-five to thirty thousand dollars from the bank.

Q. And then did you agree to sign when he first suggested it? A. No.

Q. Was it discussed more than once prior to your actual signing? A. Yes, many times.

40 Q. And prior to the day you actually did sign it, what had been your position about it, and what had been his? A. Constantly refusing.

MR. HENDERSON: Of course, my Lord, my objection is running generally to this class of evidence?

HIS LORDSHIP: It is very difficult to know before hand what one should reject.

Mr. HENDERSON: I may take it that the objection is continuing to this class of evidence?

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HIS LORDSHIP: Yes, it is.

MR. HENDERSON: It will save me from jumping up periodically.

MR. SLAGHT: Q. In the discussions between you and your husband prior to the day of signing, what occurred? What did he say to you, if you remember anything; and what did you say to him? You told us that you had been refusing his desire that you sign? A. Yes.

Q. What did he say to you in connection with it? A. Yes. Just that, that he could get this extra loan from the bank of from twenty-five to thirty thousand dollars. I said, "Why don't you put up your own securities?" He said, "I have already done so." 10

Q. What else occurred between you and him? Did he say anything else to you when you refused to put up your securities? A. Yes, he did. He used a very pet expression of his. He said if I didn't put them up I wouldn't get anything to run the house anyway, no account, running account for the house. He would cut off any allowance which he was giving me.

Q. Were you ill or sick on the 31st of December, 1920? A. For three weeks I had been ill in bed with flu.

Q. Were you ill in bed with flu on the 31st of December when you signed this? A. I was in bed. I was not better. 20

Q. Had you a doctor in attendance during the three weeks? A. Yes.

Q. Who was the doctor? A. Dr. Dan Smith.

Q. Dr. Dan Smith is now dead, is he not? A. Yes.

Q. Did the Doctor during that interval call to see you? A. Oh, very frequently, yes. Almost every day.

Q. Then you finally told your husband, as you have said to us, that you would sign for him, and what occurred as to your signing? Were you in bed when you signed it? A. To the best of my recollection I was.

Q. And what occurred? Did someone come out to see you? A. Mr. Hill, Mr. "Hammy" Hill. 30

Q. He is a lawyer? A. Yes.

Q. And whose suggestion was it, or when did you first know that Mr. Hill was coming? A. My husband was home. It was at the noon hour when Mr. Hill arrived. To the best of my recollection Mr. Mackenzie was having lunch in the dining room when Mr. Hill arrived, after I had already signed the documents. I understood Mr. Hill was coming out to witness this — I call it a chit.

MR. HENDERSON: That is going rather far again, my Lord.

MR. SLAGHT: Q. Whom did you understand it from? A. My husband. 40

HIS LORDSHIP: Q. Are you swearing to me that after this long argument between you and your husband about whether you would sign or not, you finally agreed to sign on this last day of the year? Your husband, the way I have it in my mind from your words now, got the document signed, and was sitting having his lunch, you being in bed? A. Yes.

Q. And Mr. Hill arrived? A. Yes.

Q. That is the way you want to tell it? A. Yes, to the best of my recollection.

MR. SLAGHT: Q. That is the document I showed you, Exhibit 1. A. Is it?

Q. Yes. A. Yes.

Q. Did your husband read it over to you before you signed it? A. No.

Q. Was there anybody but your husband with you when you signed that? A. No.

10 Q. Then Mr. Hill came out about what time of day? A. Around noon.

Q. And had you known that Mr. Hill was coming? A. Mr. MacKenzie I fancy would have told me naturally that he was coming out. He had made arrangements for him to come. I was not out.

Q. What I want to ask you is this. Did you make any arrangements for Mr. Hill to come and see you? A. No.

Q. Who did so far as you know; or what were you told by your husband about it? A. You mean the exact words?

20 Q. No, I mean the purport. A. Mr. Hill was coming out to sign this little document which is signed afterwards. I had to have a lawyer's signature. I could not go down to his office. To complete the transaction this must be signed.

HIS LORDSHIP: Q. You mean by that it must be witnessed by a lawyer? A. Yes.

Q. Let me get that clear.

MR. SLAGHT: I ask for the production of the document that was dated the 31st of December, signed by Mr. Hill, and this lady.

30 HIS LORDSHIP: Before you leave that, Mr. Slaght, this lady has left in my mind the idea that her husband and she had finally argued this matter out until she had agreed to sign.

WITNESS: Yes.

HIS LORDSHIP: Her husband told her it was necessary to have a lawyer witness the document. Her husband was at lunch and Mr. Hill came in.

WITNESS: Yes.

HIS LORDSHIP: You stop there. There must be another important step after that.

40 MR. SLAGHT: There is. She is referring to another document. There is another document I am now going to produce.

HIS LORDSHIP: I thought it was this document, Exhibit 1, that was signed under those circumstances.

MR. SLAGHT: Q. Mr. Hill did not witness this document? A. No.

Q. You have already told us you signed this, you and your husband alone, before Mr. Hill came to the house at all? A. If that is the document, it was signed that day.

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HIS LORDSHIP: That is Exhibit 1.

MR. SLAGHT: Now, Mr. Henderson, produce to me the second document from the custody of the bank, dated the 31st of December which bears Mr. Hill's signature and Mrs. Mackenzie's.

MR. HENDERSON: (Produces document).

MR. SLAGHT: Q. Did you that day sign some other paper after Mr. Hill came out? A. After it had been, as I considered, completed?

Q. Yes. A. I don't think so. I may have. I was very upset.

HIS LORDSHIP: What happened when Mr. Hill came there? Your husband had got a document signed; he was having his lunch; Mr. Hill came there. What happened after that? A. As I remember, in the bedroom, I simply had to sign this again. Shall I call it a chit? Showing this must be signed in the presence of a lawyer with my name attached. It was just showing it to a lawyer and have it signed. As I understand, a matter of form for the bank, must be signed by a lawyer. 10

MR. SLAGHT: Q. Did you sign something else yourself for Mr Hill?

HIS LORDSHIP: Q. In the presence of Mr. Hill? A. Yes.

MR. SLAGHT: Q. Where were Mr. Hill and your husband? A. Just in the bedroom.

Q. They were in the bedroom with you? A. Yes. 20

Q. And you signed something for Mr. Hill. I had better read this to the Court, I suppose.

HIS LORDSHIP: It is agreed that I understand it by Mr. Henderson that that is a correct copy, and that is the best I can get now?

MR. HENDERSON: Yes, and we have agreed to use it in lieu of the original.

MR. SLAGHT: Q. Do you know whether you were propped up in bed or lying down? A. Yes. I wasn't that ill then.

Q. You were recovering? A. Yes.

Q. But you were in bed when you signed it? A. Yes.

MR. SLAGHT: And then, so that your Lordship will see what that is, perhaps I had better read it to you now. 30

HIS LORDSHIP: It is practically the same as the one that is before me, I suppose.

MR. SLAGHT: Addressed to the Royal Bank of Canada, dated the 31st of December.

MR. HENDERSON: There are three documents there all together. There is the hypothecation; there is the guarantee, and then there is the certificate of independent advice.

HIS LORDSHIP: Your understanding of the situation is that this witness must have signed three separate documents when Mr. Hill was there? 40

MR. HENDERSON: Yes, my Lord. There are three separate documents.

HIS LORDSHIP: There were, and these are copies.

MR. SLAGHT: We fortunately have the original of the document which does not bear Mr. Hill's signature.

HIS LORDSHIP: This is the one according to her story that was signed before the husband sat down to lunch, that was the only one she had signed then.

MR. SLAGHT: Q. Do you know what was contained in the documents that you signed when Mr. Hill was there? A. No, I didn't read them.

Q. Were they read over to you? A. Not that I remember.

10 Q. You have told us you did not ask Mr. Hill to come there. Did you pay Mr. Hill? A. No.

Q. Mr. Hill has furnished us with a copy of his account against Mackenzie Limited for \$2.00. You do not know about that?

MR. HENDERSON: Please keep within the rules of evidence. If you want to call Mr. Hill, call him.

MR. SLAGHT: Until Mr. Hill came that day had you known that he was coming, or until that day?

MR. HENDERSON: That is leading again.

20 HIS LORDSHIP: I think she has told me that. As I understand her, she has gone this far. She says, "I think my husband had told me that a lawyer had to be present to see this signed," and I think her phrase was: "I suppose he told me that he was going to come," and then he appeared while the husband was at lunch. That is as far as she has gone.

MR. SLAGHT: Q. Did you have any talk with Mr. Hill, or explain anything to him about the matter? A. None whatever.

Q. Did he have any talk with you, or explain anything to him about the matter? A. No.

Q. Do you remember anything Mr. Hill said to you? A. No, I understood he was simply there to give his signature to those documents.

30 Q. You told us you had been ill with flu. What was your condition that day, for instance, when Mr. Hill was there? What was your real condition? A. Naturally very weak.

Q. Can you tell us anything else about your condition at that time? A. Well, I was naturally very upset in conjunction with my illness through weakness and arguments.

Q. You say you were upset in connection with the illness and the arguments. What effect would being upset have on you if anything? A. I suppose the usual thing, crying.

40 was. Q. Do you recall whether you were subjected to crying? A. Yes, I

Q. Do you remember whether you had any attack of crying on the day this was signed or not? A. Yes.

Q. At what stage? A. After Mr. Hill had left. I felt that everything was gone.

Q. I did ask you if Mr. Hill rendered any account to you? A. No.

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Q. Or say to you that he was?

Mr. HENDERSON: Please do not lead.

HIS LORDSHIP: I suppose you may not put in her mouth the words you want her to say. Can you remember anything that was said by Mr. Hill to you about this matter on his visit that day?

WITNESS: Do you mean as to advice or anything?

HIS LORDSHIP: Q. Anything at all you can remember that Mr. Hill said to you on account of his being there that day after he went away?
 A. No.

Q. You told me you did not pay him that day. Did he ever say any- 10
 thing to you after that that you remember? A. No.

Q. About his bill? A. No.

Mr. SLAGHT: Q. Let me then ask you to come along now to 1921. Your securities remained with the bank from when you gave them—

HIS LORDSHIP: You have not filed that copy that she says she signed that day when Mr. Hill was there.

Mr. SLAGHT: I asked her if she remembers what it was, and she says she does not, and it was not read to her. I am wondering how I can under those circumstances properly file a copy. They are here for my learned friend to cross-examine on. I want to put everything in. I believe they 20
 were signed undoubtedly. She believes they were signed.

HIS LORDSHIP: She has not made in my mind the impression that she has any recollection of signing three documents, in the presence of Mr. Hill that day.

WITNESS: No.

Mr. SLAGHT: She said distinctly that the first one was not signed in the presence of Mr. Hill.

HIS LORDSHIP: No, not the first one. If Mr. Henderson's sugges- 30
 tion is right, when Mr. Hill went there there must have been three separate documents signed. She does not give any indication that she signed in the presence of Mr. Hill more than one document that day when she was at home sick in bed.

WITNESS: Yes.

Mr. SLAGHT: What is your best recollection on that? A. My best recollection is that the important hypothecation, the really important one, was signed before Mr. Hill ever came out.

Q. You have identified that as Exhibit 1. A. Then there was some- 40
 thing else signed when Mr. Hill was there. Do you call it a guarantee, or this little thing you sign to say you have taken independent advice, you sign with your lawyer? I don't know what you call it. I call it a little chit.

Q. I do not know whether that is a French expression for a small document? A. Is it a guarantee? I don't know. I have signed so many.

HIS LORDSHIP: Q. Can you help me, Mrs. Mackenzie, by telling me whether you know if you signed only one document when Mr. Hill was there or more than one? A. I might have signed more than one.

Q. The impression you have given me up to the moment is that you remember signing one for your husband before Mr. Hill came and one afterwards. Is it one, two or three, or what is it? A. There might have been more than one. Whatever I was asked to sign while he was there, I signed.

Mr. SLAGHT: Q. I think that is a fair way of putting it. Coming along to June of 1921, Mrs. Mackenzie, did anything happen to the business of Mackenzie Limited? A. It failed in June, 1921.

Q. Had you been away that spring? A. We had been West for six weeks.

10 Q. Whom do you mean by "we"? A. Mr. Mackenzie and myself.

Q. Had you discussed with Mr. Mackenzie or anybody else the business and its progress up to that time or had you not? A. Yes. Mr. Mackenzie decided to take this Western trip to appoint new agents through the West for business reasons.

HIS LORDSHIP: Q. The discussion as to the condition of the business was after Hill had left there, carrying away these documents; or are you trying to tell me something now that you discussed with your husband before Hill was there? A. No.

20 Mr. SLAGHT: I had taken her away on, my Lord.

HIS LORDSHIP: Then she and her husband went West, and he went there to appoint agents in the West.

WITNESS: In March, 1921.

HIS LORDSHIP: You had got to the point where it failed in June.

Mr. SLAGHT: Q. Prior to the business failing did you know or expect it to fail? A. No.

30 Q. When did you first learn about there being trouble in the business, and in what way? A. Before we went West Mr. Mackenzie had considerably reduced his staff and his overhead expenses, not with the thought of failure at all, but prices were dropping, business conditions were not as good, and the western trip was taken to help, as I understood, the business.

Q. You returned from this western trip with your husband about what date? A. The 9th of May.

Q. You came back with your husband on the 9th of May, 1921? A. Yes.

Q. Did anything occur after you returned with reference to the business prior to its actual failure? A. Yes.

Q. What? A. Two or three friends called me on my return.

40 Q. You cannot say what they said, but they said something to you, and as a result of what your friends said, what did you do; or did you have a talk with anybody representing the bank? A. May I tell what they said, sympathizing with me?

HIS LORDSHIP: Q. Two or three friends called and - - A. Sympathized with me, as they understood Mr. Mackenzie was going to fail.

Mr. SLAGHT: Q. You must not say that. Did you see Mr. Gray of the Royal Bank after you had had a talk with your friends? A. Yes, I was in the bank where I kept my account, and I drove - - Mr. Gray was going over to see Mr. Mackenzie - - I drove over with him from the bank to

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the office, and I told him, to the best of my recollection, that I had heard these rumours, likelihood of failure.

Q. It is proper for you to tell the Court what you told Mr. Gray because he was the manager of the Royal Bank of Canada here with whom Mackenzie Limited did their business. A. Yes.

Q. And the branch of the bank where you pledged your securities. A. Yes.

Q. What did Mr. Gray tell you? A. When I made that remark to Mr. Gray on the way over he said he hadn't any reason to believe at that moment that Mr. Mackenzie was going to fail. 10

Q. How long after that talk with Mr. Gray did Mackenzie Limited fail? A. The exact date in June? It was not on the 9th of May. It (the conversation with Mr. Gray) was some time between the 9th and the failure.

Q. The failure we can perhaps agree upon occurred on the 14th of June, or some time in June. I do not think it is very important. I don't want to pause too long on this. At all events, your talk with Mr. Gray was between your coming home and before the failure? A. Yes.

Q. And then after that when the Company failed, what next? In the fall of 1921 you were approached again about some documents, were you not? A. Yes. 20

Q. And you signed a paper, as I understand it, on the 13th of September.

Let us have that.

HIS LORDSHIP: Is the original there?

Mr. HENDERSON: No, my Lord, the original is absent.

Mr. SLAGHT: I make the request now, so as not to repeat it each time, that when I ask my friend for these documents from his custody, if he has such originals, we receive them.

Mr. HENDERSON: Undoubtedly, Mr. Slaght. We have not the original. This is a copy from the bank files and I had it in my brief. 30

Mr. SLAGHT: My friend hands me a copy from the bank files of a document of September 13, 1921, which purports to have been signed by John A. Mackenzie and Jean Mackenzie, and is not witnessed, but has on the bottom "Y. A. B." which I think my friend will agree with me is a mistake for "T. A. B."

Mr. HENDERSON: T. A. Beament.

Mr. SLAGHT: Q. Did your husband as a matter of fact take you to Mr. T. A. Beament's office in September? A. Yes.

Q. Did you sign something in Mr. Beament's office? A. Yes. 40

Q. Whose lawyer was Mr. Beament? A. My husband's.

Q. Did you ever ask him to do anything for you? A. No.

Q. Did he ever act for you in any way? A. No.

Q. Did he ever render any account to you, or you pay him anything? A. Never.

Q. Did he ever tell you he was acting for you in any way? A. No.

Q. - You went with your husband to the office of this lawyer, Mr. T. A. Beament, and signed a paper on that occasion which we will put in as Exhibit 2.

(Reads document)

—EXHIBIT 2. Document signed in the office of Beament & Beament, dated September 13, 1921. (Copy).

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10 HIS LORDSHIP: That in substance is an approval of the \$125,000 valuation apparently, or a recognition of it, at any rate, plus the fact that as far as the Mackenzies were concerned, they were still to stand in the same position as if they had not acted upon that valuation

Mr. SLAGHT: I want to discuss the actual language of this.

Mr. HENDERSON: Plus the statement that everybody realized that technically the bank's claim would be paid by this form of transaction.

HIS LORDSHIP: Does it not say so in so many words?

Mr. SLAGHT: "Nor shall our personal securities be in any way affected until the amount due to the bank by Mackenzie Limited has been actually paid".

20 HIS LORDSHIP: It contemplated the actual payment.

Mr. HENDERSON: Before that the document says, "In which case as between the authorized assignee and the Bank the bank's claim would be considered paid in full", and they go on there to remain responsible until the bank's claim is actually paid. They recognize the legal effect my friend talked about.

Mr. SLAGHT: Well, we will see.

Q. Did you receive anything for signing this paper? (Exhibit 2). A. No.

Q. Or any promise of anything? A. No.

30 Q. Why did you sign this paper? What did you have to do with \$125,000? A. I didn't know anything about any \$125,000.

Q. Did anybody explain it to you? A. No.

Q. Did anybody read it over to you? A. No.

Q. Did anybody witness it? A. No. I went with my husband to sign something in Mr. Beament's office.

Mr. HENDERSON: I thought Exhibit 2 was the hypothecation?

HIS LORDSHIP: No, he did not put it in. You see the witness declined to recognize anything as a copy of what was signed.

40 Mr. SLAGHT: Q. When your husband asked you to go to Mr. Beament's office, did he tell you what he wanted you to go there for? A. He had been talking about signing over some of his life insurance to me. It might have been life insurance, it might have been anything. He said I was to go with him to Mr. Beament's office to sign some papers.

Q. Did Mr. Beament explain anything to you?

A. No, he had the papers ready when I went in.

Q. What did you have to do with the \$125,000.00 valuation? A. I didn't know anything about it.

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Q. That was in September. Then on the 21st of November - -
 Just there, Mr. Henderson, before I go to that, I will put in chronologically the vesting order if you will let me have it.

Mr. HENDERSON: (Produces document)

Mr. SLAGHT: I put in now, my Lord, by consent a copy of the original vesting order dated the 14th of November, 1921, signed by George S. Holmsted, in bankruptcy, in the matter of the authorized assignment of Mackenzie Limited. (Reads document)

—EXHIBIT 3. Vesting order, dated November 14, 1921.

Mr. HENDERSON: Vesting order is hardly an appropriate term. 10

Mr. SLAGHT: I will not gain any advantage by calling it that. It is an order in bankruptcy.

Let me have the two declarations referred to there.

(Documents produced).

I put in by consent, my Lord, copies to be treated as though the originals were before the Court, first as Exhibit 4, a declaration of C. A. Gray, sworn the 22nd day of June, 1921, before A. C. Fleming. In this Mr. Gray swears, (reads declaration).

—EXHIBIT 4, Declaration of C. A. Gray, sworn June 22, 1921.

Then I put in as Exhibit 5 declaration of Charles Albert Gray, sworn the 13th of September, 1921, before T. A. Beament. (Reads declaration). 20

—EXHIBIT 5, Declaration of C. A. Gray, sworn September 13, 1921.

I call the Court's attention to the fact that that declaration is absolutely silent regarding any securities that the bank held of the Plaintiff in this case, Mrs. Mackenzie.

HIS LORDSHIP: That was the basis of the vesting order?

Mr. SLAGHT: Yes.

HIS LORDSHIP: It was part of the material before the Court when the vesting order was made.

Mr. SLAGHT: It was a declaration filed in bankruptcy. Those are the two earlier ones filed in the bankruptcy. We put them in by consent. They were official documents filed in the bankruptcy. I will put in now as Exhibit 6 a sworn affidavit of Charles Albert Gray, sworn on the 9th of November, 1921, of which we put in a copy by consent. That would be filed on the procuring of the vesting order. 30

—EXHIBIT 6. Affidavit of Charles Albert Gray, sworn November 9, 1921.

HIS LORDSHIP: One of these declarations was on the 13th of September. That is the day this woman was at Mr. Beament's office? 40

Mr. SLAGHT: Yes, quite right, my Lord. (Reads Exhibit 6). Then there are two schedules referred to attached. We put those in now by con-

sent because they come in the picture at the dates there, although this witness knows nothing about them.

Then let me have, Mr. Henderson, the document of the 21st of November, 1921.

Mr. HENDERSON: There was a document of guarantee and a certificate of independent advice.

Mr. SLAGHT: I want first the document of guarantee.

Mr. HENDERSON: That was Exhibit 4 on the examination for discovery.

10 Mr. SLAGHT: Q. I am sorry I have not got the one with your signature, Mrs. Mackenzie, but do you recall that you signed a document in the bank on the 21st of November, 1921, for Mr. Gray? A. A document?

Q. Yes. A. I think I signed several.

HIS LORDSHIP: Q. About that time do you recollect signing a document for Mr. Gray in the bank?

Mr. SLAGHT: Q. With regard to guaranteeing for the new Company? A. Yes.

20 Q. We will put in the copy that my friend furnishes me with the statement that it is a copy of the original which is lost, and it appears to have been witnessed by Mr. Gray and by Mr. Teddance in the bank, apparently signed in the bank. A. Yes.

—EXHIBIT 7. Document of Guarantee, dated November 21, 1921.

Q. How did you come to go to the bank that day in connection with a document which is a guarantee for the new company, Mackenzie Manufacturing Company, Limited? A. I went with my husband.

30 Q. What had occurred, if anything, between your husband and yourself either on the day you went on prior to that, with regard to your guaranteeing or pledging your securities for the Mackenzie Manufacturing Company? A. I had been approached at Farm Point on putting them up again for this new company some time during September.

Q. With a view to putting them up again for this new company? A. Yes. I hadn't a chance in the world of recovering them unless I put them up for this new company.

Q. You say you hadn't a chance in the world? A. Yes.

HIS LORDSHIP: Q. Who said that? A. My husband.

Mr. SLAGHT: Q. Did you agree when he first approached you. A. No.

40 Q. What did you say to him? What position did you take about putting them up for the new company? A. I refused absolutely. I said I didn't care. I wanted to hang on. If there was any chance of recovery I wanted to hang on to it for myself and the children.

Q. Wanted to hang on to what? A. The securities were up to the Royal Bank. If there was ever a chance of them coming back, I wanted to have them.

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Q. What occurred between you and him with reference to his going into the new company or forming the new company? A. The night it really came to a head I should say was the night Mrs. Tibbetts in her evidence has reference to. Mr. Mackenzie began an argument at dinner hour when he came home that I simply had to sign these things; they were gone anyway.

Q. The old company at this time had been in bankruptcy? A. Yes.

Q. What in your discussion with your husband was your position with reference to his going into a new company? What did you think of that, or rather, what did you tell him about that? A. My advice to him when he was talking of a new company was to forget all about it, sell everything he had and go back in the commission business again which would not require any capital. 10

Q. Your advice was to go back into the commission business. How long had he been in the commission business before he went into the first company? From 1901 to 1913? A. Yes, before we were married.

Q. You say you wanted him to do that. Was he willing to do that? A. No. He said he didn't wish to be declared a bankrupt, because if he was declared a bankrupt he could never start in business again.

Q. Finally you did go into Mr. Gray's office with your husband on the 21st of November? A. Yes. 20

Q. What occurred on that occasion? A. My remembrance, Mr. Gray was there, Mr. Mackenzie and myself, and I take it the papers were already to be signed on Mr. Gray's desk. I said, "I don't want to sign these things".

Q. What did Gray say? A. Just a moment. I said, "I don't want to sign these things". Apparently my back was against the wall. "In order to recover them, or have any chance of recovering them, Jack tells me I will have to sign them for this new company. I hoped they would be free some time". Mr. Gray, to the best of my recollection, said they were never free; they were always the bank's property from the time of the failure. 30

Q. Mr. Gray told you that on that occasion. Was that before you signed the document? A. Yes.

G. Mr. Gray told you your securities had always been the bank's property from the time of the failure? A. Yes.

Q. And never had been free? A. Yes.

Q. Apparently you signed because it is witnessed by C. A. Gray and R. J. Teddance. Who is Teddance, do you know? A. I think he was the accountant.

Q. Before you signed this did you read it over yourself. A. No.

Q. Did Mr. Gray or anyone read it over to you? A. No. I knew 40 what it was.

Q. A guarantee for the new company which you did not want your husband to go into, which Mr. Gray told you as you have indicated. After this was signed was there any other document? A. May I interrupt? Before I signed I said, "If I have to do it I want it on one or two conditions; that I receive my dividends as heretofore from the Ottawa Dairy, and rent-

als if any for the house, and also a deed of Farm Point made and registered to me." I was assured that I would receive my dividends as heretofore.

Q. Was there any other document produced or given to you that day?
A. Yes.

Q. By whom? A. Mr. Gray, this paper to be signed.

Q. (To Mr. Henderson) Let me have the paper Mr. Gray gave her to take to somebody.

Mr. HENDERSON: There is no such paper.

WITNESS: To be signed by the lawyer.

10 Mr. HENDERSON: My friend puts it that way.

Mr. SLAGHT: I am instructed it occurred that way. I ask you for the other document that was prepared in the bank that day.

Mr. HENDERSON: Do you mean Mr. Burritt's certificate? It is there. (Document produced).

Mr. SLAGHT: Q. You say Mr. Gray gave you another paper? A. Yes.

Q. And did he give it to you before or after you had signed Exhibit 7?
A. I had signed everything that was to be signed.

20 Q. Was the other paper already prepared that he gave you? A. It was a paper. I had seen something like it before.

Q. What did Mr. Gray tell you about this paper? A. How shall I put it? That I must take this in order to complete, should I say, the transaction, or complete this signing of my securities, to a lawyer to receive his signature as a matter of form which the bank insisted on having.

Q. Did you go then to a lawyer from Mr. Gray's office? A. Yes, I went over to Fripp & Burritt's office.

Q. And whom did you see at Fripp & Burritt's office? A. Mr. Burritt.

30 Mr. SLAGHT: Then I put in now what my friend furnishes me with as a document purporting to be signed by Mr. Burritt, and purporting to be signed below that by Mrs. Mackenzie, dated November 21st, 1921.

—EXHIBIT 8. Copy of certificate of independent advice dated November 21st, 1921.

Q. When you left the bank office and went over to Mr. Burritt's office, what occurred between you and Mr. Burritt? A. I told Mr. Burritt I brought this paper.

Mr. HENDERSON: I must object to that.

Mr. SLAGHT: She was sent out by the bank manager to get a paper signed.

40 Mr. HENDERSON: No, she was not. She has not said so.

HIS LORDSHIP: I think she may tell.

Mr. HENDERSON: What occurred between her and her solicitor, my Lord?

HIS LORDSHIP: I think she may tell whether she was advised by Mr. Burritt about it or not.

Mr. SLAGHT: Q. What occurred between you and Mr. Burritt?

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HIS LORDSHIP: I do not know that I want to go that far. Did she have any advice from Mr. Burritt at that time as to whether she ought to sign this document or not?

WITNESS: No, I had already signed the document.

HIS LORDSHIP: Q. You had signed the one you took to Mr. Burritt? A. No.

Mr. SLAGHT: Q. The one you took to Fripp & Burritt, did you get any advice from Mr. Fripp or Mr. Burritt? A. Mr. Fripp was away. Mr. Burritt looked at the paper. I told him I had already signed the securities in Mr. Gray's office, that this was just - - I had had this paper sent over as a matter of form, that the bank demanded to have a lawyer's signature to this. 10

Q. That is what you say you told Mr. Burritt? A. Yes. Mr. Burritt then advised me I might as well sign. He signed for me then because already these securities were signed over.

HIS LORDSHIP: I think she may answer the question whether she gave any information to Mr. Burritt as to the condition of affairs beyond that she had signed the guarantee and left it with the bank.

Mr. SLAGHT: Q. Did you give any information to Mr. Burritt when you were over there? A. That I had been in the bank and signed these securities over for this new company. 20

HIS LORDSHIP: Q. Anything more? A. That I knew nothing about the company.

Q. Did you tell him that? A. Yes, your Lordship, but I was told that the securities were gone anyway if I didn't sign for this company, and I stood a chance if they were signed.

Mr. SLAGHT: Q. Did you tell him who had told you that? A. I guess I did. I told him both my husband and Mr. Gray had told me in the bank. 30

Mr. HENDERSON: I object to this.

HIS LORDSHIP: I think you are entitled to object.

Mr. HENDERSON: Mr. Burritt is a reputable member of our profession.

HIS LORDSHIP: The more highly respected he is, all the better for you, but I do not see how I can - -

Mr. SLAGHT: So was Mr. John Bruce in the Stuart case.

HIS LORDSHIP: I am taking this evidence subject to Mr. Henderson's objection. Some other court might be entirely of a different opinion to what I might arrive at. I do not think it is desirable that I should be too arbitrary about excluding. I am receiving it subject to objection. 40

Mr. SLAGHT: Q. You had gone to Mr. Burritt's office from Mr. Gray's office. What did you tell Mr. Burritt when you went in to him with this document prepared? A. I asked him if he would sign this document as I had to have a lawyer's signature to it; I had come from the bank and had signed over my securities for the new company of Mackenzie Manufacturing Company, but it was necessary - -

Q. What else did you tell him? A. I told him Mr. Gray had given me this paper to bring over to him to have signed, as I understand, a matter of form insisted upon by the bank.

Q. What else did you tell him? A. And that I understood my securities were gone anyway. Mr. Burrirtt looked at this signature and he said, "Well, you have apparently signed all these things already".

Q. Why did you tell him you understood your securities had gone anyway? A. Because I was told so in the bank.

10 Q. By whom? A. By my husband and by Mr. Gray. He said they never had really belonged to me. They were the bank's property and held by the bank from the time of the failure.

Q. You told Mr. Burrirtt that, and what did Mr. Burrirtt say to you? A. He just signed it then.

Q. Did he say anything? A. He said, "Under those circumstances you have already signed this as a matter of form. I have not advised you. I know nothing about the condition of this new company, what its status is or anything else". He just signed it because I said, "Well, I have got to have it signed."

20 Q. Did you take that back to Mr. Gray? A. Either took it back or mailed it. It went back.

Q. That is Exhibit 8 you are referring to?

HIS LORDSHIP: Isn't that practically denying the contents of the document? Isn't that what the document says, that he has advised her?

Mr. SLAGHT: Yes, peculiarly worded, my Lord.

30 HIS LORDSHIP: He is signing here a document which says. "I hereby declare that Mrs. Jean Mackenzie has consulted me as to the liability which she incurs by executing the said guarantee so given as aforesaid; that I have advised her fully as to the effect of the same and her liability thereunder and the manner in which the same can be enforced." That is what he signed that day.

Mr. SLAGHT: All I can do is give the court the whole circumstances.

Q. How long were you in Mr. Burrirtt's office altogether. A. I wouldn't say I was there more than ten to fifteen minutes.

Q. Did the bank give you a copy, or did they give you an original of the document that you had signed in the bank, the guarantee? A. No.

Q. Did you have that before Mr. Burrirtt? A. No, I am positive I never took anything but this one thing he signed.

40 Q. Let me ask you here now, did the bank in connection with the various documents - -

Mr. HENDERSON: Do not lead, please. There has been a great deal of leading.

Mr. SLAGHT: Q. Did the bank, or Mr. Gray, or your husband, throughout these transactions, from first to last give to you for yourself a copy of any of the guarantees, agreements, or documents that you signed? A. None.

Q. At any time? A. At any time.

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Q. Then did you know on the 21st of November when you signed these two documents, that the bank had purchased the securities? A. No.

Q. Did you know that the trustee in bankruptcy had settled the claim of the bank by transferring the securities to them? A. No, I would not understand it.

Mr. HENDERSON: That is again leading.

Mr. SLAGHT: Q. Did you know? A. No, nothing was mentioned.

Q. Did your husband, or Mr. Gray, or anyone else tell you that? A. No.

Mr. SLAGHT: Now, Mr. Henderson, let me have a document of the 25th of November. (Document produced). How is it there are originals of some of these documents and not of others? 10

Mr. HENDERSON: These were not marked on the examination for discovery. It is the documents that were produced on the examination for discovery.

Mr. SLAGHT: Q. I should have asked you this, referring again to the document of guarantee that you signed in the bank, Exhibit 7, witnessed by Mr. Gray and Mr. Teddance - - before signing that did you ever speak with any lawyer about signing that document, that new guarantee? A. No, never. 20

Q. You get back into the bank on the 25th of November, 1921, four days later. Is that your signature? (Handing document to witness). A. Yes.

Q. It is addressed to the Royal Bank of Canada, Ottawa, and signed by yourself. And that is your husband's signature, John A. Mackenzie. A. Yes.

Q. And not witnessed by anybody as far as the document shows. It is addressed to the Royal Bank of Canada, Ottawa. (Reads document).

--- EXHIBIT 9. Agreement dated November 25th, 1921, signed by J. A. 30

Mackenzie and Jean Mackenzie.

Q. Did you receive any payment of any money, or any consideration for signing that? A. No.

Q. Did you receive any promise of anything for signing that? A. No.

Q. Do you know where you signed it? A. In the bank.

Q. And why? A. Mr. Mackenzie said I had some more papers to sign in the bank, and I went with him to sign them.

Q. Was Mr. Gray there? A. Yes.

Mr. SLAGHT: I put in as Exhibit 10, my Lord, an original agreement between the Royal Bank of Canada and John Angus Mackenzie, dated the 25th day of November, 1921. That is executed by H. S. Holt, President, and somebody as Superintendent of Branches for the Royal Bank of Canada, with the bank's seal, and it is signed by John A. Mackenzie, and witnessed by H. A. Mortimer. Mrs. Mackenzie, the Plaintiff, is not a party to this agreement. 40

--- EXHIBIT 10. Agreement between the Royal Bank of Canada and John

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Angus Mackenzie, dated November 25th, 1921.

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Q. Did you ever see this agreement, Exhibit 10, that you know of?

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A. Never.

Q. Or anybody tell you anything about it? A. No.

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Mr. SLAGHT: That is an interesting document, my Lord, made between the bank and John Angus Mackenzie. (Reads agreement). The important matter in this case is Schedule D, to which I shall refer, if I may, and part of the assets there set out are 9 insurance policies in which this lady had an interest as beneficiary in some of them, 100 shares of Ottawa Dairy Company common, and 87 shares of Ottawa Dairy Company preferred. I do not want to get into an argument, but I mention for my friend's benefit now, and if the court will permit me to, that this document in our view made Mr. Mackenzie the agent of the bank to have this lady deliver these personal securities of hers to the bank, and that the bank created him their agent, and took a covenant from him so to do.

Then these clauses should be brought to the court's attention, "In the event of the said purchase being carried out and the said assets transferred to Mackenzie Manufacturing Company, Limited, in pursuance of this agreement, the bank agrees that it will cause the owner for the time being of the property described in schedule "C" hereto to enter into an agreement with Mackenzie Manufacturing Company, Limited, in the form set forth in schedule "E" hereto.

"(4) In the event of the purchaser failing to effect a sale of the said goods, chattels, book debts, bills of exchange, etc., to Mackenzie Manufacturing Company, Limited, or in the event of the vendor failing to make the said advance of the sum of \$125,000 to the said Company within thirty days from the date hereof, then this agreement shall become void and of no effect."

So I point out there that in certain events they provided by contract that the bank were not compelled to make the advance at all, and that if Mackenzie did not carry out his part the bank remained forever, as far as anything to the contrary is concerned, the owners of the goods they acquired on the 14th day of November, a couple of weeks before.

I note there is attached to it, Mr. Henderson, and I see no harm in its going in, the agreement between the Canada Realty Company and Mackenzie which is referred to in one of the clauses.

Mr. HENDERSON: It is a necessary part of it. It is a schedule.

HIS LORDSHIP: The Mackenzie Company had failed at that time?

Mr. SLAGHT: The old company, Mackenzie Limited, had failed in June, and this is a new baby, so to speak, of the Bank and Mackenzie.

Q. Now then, a few questions about this matter, this guarantee or this agreement of yours of the 25th of November, Exhibit 9, that you and your husband signed in the bank with Mr. Gray. Were you afforded an opportunity of showing that to anybody or any lawyer before you signed it?

A. No.

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Q. Did you show it to any lawyer, or consult any lawyer about the wisdom or otherwise of signing it? A. No.

Q. And you left it with Mr. Gray the day you signed it in the bank? A. Yes.

Q. In 1922, on the 20th of March, were you asked to sign away your interest in the insurance policies? Do you remember going into the bank and signing something then in connection with insurance policies? A. Yes.

Mr. SLAGHT: I put in, my Lord, the original document.

Q. Is that your signature? A. Yes.

Q. And the witness is Mr. Ridge of the bank again? A. Yes. 10

Q. As far as you know, where did you sign this? A. In the bank. It might be Mr. Ridge, I don't know.

Mr. SLAGHT: It is dated the 20th of March, 1922, and will be Exhibit 11, my Lord. (Reads document).

--- EXHIBIT 11. Agreement, March 20, 1922.

Q. Did you receive one dollar as it says there for signing this? A. I have no remembrance of it.

Q. Did you receive a dollar at any time from anybody for signing any of these documents? A. No.

Q. How did you come to go into the bank to sign away all your interest in your husband's life insurance? 20

Mr. HENDERSON: She has not said she went into the bank.

Mr. SLAGHT: She has sworn she signed it in the bank, and she thought Mr. Ridge was a bank - - -

Mr. HENDERSON: She knows he was not, surely. This is really getting to be almost pathetic.

Mr. SLAGHT: You just reserve your comments.

Mr. HENDERSON: Mr. Ridge was Secretary of the Mackenzie Company. She is answering questions without knowing what she is answering.

Mr. SLAGHT: Q. Who is Mr. Ridge? A. When you presented that to me I understood he was in the bank. 30

Q. Do you know Mr. A. H. Ridge? A. There was a man by the name of Ridge years ago in Mr. Madkenzie's company.

Mr. HENDERSON: She is answering at random.

Mr. SLAGHT: Q. How did you come to sign this document, or at whose instance were you requested to sign it? A. Mr. Mackenzie's.

Q. Do you recall anything that occurred between you and him prior to your signing it? A. Only that he required more capital. He was putting up the life insurance to get extra security or extra money from the bank. 40

Q. Did you go to, or see any lawyer, in connection with this document of insurance, at all? A. No.

Q. Or did you receive any advice other than what your husband told you? A. No.

Q. Prior to signing this document? A. No.

Q. Except for this insurance of \$55,000 on your husband's life, did he have any other life insurance in your favour that you knew of, or was that cleaning up the whole business? A. I didn't know what policies he had in my favour.

Q. Did you ever know of any others except these 11 policies, or did you understand that to be all his life insurance? A. No, I understood he had other policies. I thought he had other policies.

Q. Do you know anything about them? A. No, I do not. I have never seen them. I don't know anything about them.

10 Q. At all events, you signed those over under the circumstances you have told us? A. Yes.

Q. In April of 1923 did you sign something further? Did you sign a document in April, 1923, which appears to have been signed by you on the 18th of April, and witnessed by Mr. Walter J. Gilhooly, and a letter signed by Mr. Gilhooly at the same time? Do you remember going to see him? A. Yes.

Q. Did you take documents to Mr. Gilhooly when you went? A. I took the same thing to have signed by a lawyer for the renewal of the securities or hypothecation.

20 Q. Who gave it to you? A. It may have been mailed, or I may have got it in the bank, but I got it from the bank.

Q. Why did you take it? Why did you sign and why did you go to Gilhooly? A. Because it is required by the bank that the renewals as a matter of form must be renewed every year. That is what I understood.

Q. And what occurred between you and Mr. Gilhooly when you went to him? A. The same thing. I just asked him if he would sign them. He read it over, and he said, "You have already signed. This is a renewal. You have already signed everything over to the bank". He said, "This is not advice". To put it as he would put it, "You have already signed them over to the bank". I said, "I know, but as a matter of form the bank require that I should have a lawyer's signature to this to hand in with the renewal".

30 Q. Did Mr. Gilhooly sign? A. And he signed.

Q. Did you pay him anything? A. No.

Q. In what way did you go to Mr. Gilhooly? A. Well, as a friend. he was very frequently at our home.

Q. Did he ask you for any pay, or receive any pay? A. No.

Q. Did you ever have a bill from him? A. Never.

40 Q. Did he give you to understand anything about a charge or lack of charge? A. No, never mentioned it.

HIS LORDSHIP: Did you go alone?

Mr. SLAGHT: Q. Did you go alone? A. Oh, yes, I went alone.

--- EXHIBIT 12. Guarantee, dated 18th April, 1923.

--- EXHIBIT 13. Certificate of independent advice signed by Walter J. Gilhooly, dated April 18th, 1923.

Q. What if anything occurred between you and your husband before the Gilhooly document was signed in April, 1923? Did you have any talk

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with your husband about it? A. I don't think so. Renewal was necessary, and I just took it and signed it, and had Mr. Gilhooly's name. There was no consulting a lawyer or anything before. It was just a renewal.

Q. Then coming along to October of 1924. Were you asked by somebody in October, 1924, to sign another renewal? A. Yes, the renewal came in again.

Q. What did you decide to do that time? A. I decided not to renew.

Q. What did you do then? A. I saw Mr. Code.

Q. That is Mr. Redmond Code? A. Yes.

Q. Did you go to see him about the matter? A. I did. 10

Q. And as a result did you engage him to do anything for you? A. Yes, I asked him to write a letter to the bank. May I say that on the advice of a friend who is not here - - he was the one who advised me not to sign any more renewals or guarantees, and I went to Mr. Code.

Mr. SLAGHT: I would like the original letter, please, from Mr. Code to the bank, dated the 3rd of December, 1924. (Copy produced).

Q. Would this be the letter Mr. Code sent on your instructions, dated December 3rd, 1924? A. (No response).

Mr. SLAGHT: I put it in by consent, being a copy of the original which was at one time in the custody of the Defendants and has been mis- 20
 laid with the others. (Reads letter).

- - - EXHIBIT 14. Copy of letter, Redmond Code to the Royal Bank of Canada, dated December 3rd, 1924.

Q. Did you discuss with Mr. Code the affairs of the Company or the position of the Company? A. Well, I told him the way Mr. Mackenzie was looking after the business, neglecting it and otherwise, that I couldn't see any hope of success; it would be better for me to take a chance then and see what would happen if I refused to give that guarantee any longer.

Q. Having had that letter sent to the bank, did you have any commun- 30
 ication from Mr. Gray?

Mr. HENDERSON: I don't think there was any letter written by Mr. Gray to Mrs. Mackenzie. I never heard of any.

HIS LORDSHIP: This letter sent by Mrs. Mackenzie's lawyer saying she would not continue after October, 1925, would naturally demand an answer from the bank acknowledging receipt of it, or something.

Mr. HENDERSON: To Mr. Code; Mr. Code has the letters we sent.

HIS LORDSHIP: You would expect to find a copy of that with the bank.

Mr. HENDERSON: There were verbal communications. 40

Mr. SLAGHT: He did not write Code in answer to that. Mr. Gray took that to his bosom for two weeks.

Mr. HENDERSON: It ended in two letters written by Mr. Code to the bank.

HIS LORDSHIP: There is no answer by the bank to that letter, Exhibit 14?

Mr. SLAGHT: I have requested it from my friend and he says there is no answer.

Mr. HENDERSON: That is my recollection.

Mr. SLAGHT: Q. After you had instructed Mr. Code to despatch the letter of December 3rd, which is Exhibit 14, did you hear from the bank or from Mr. Gray? A. Yes, I had a letter from Mr. Gray.

Q. Have you got that letter? A. No, that is years ago.

Q. Did you keep it or not? A. For a time. Requesting me to call in and see him in the bank.

10 Q. Did you go into the bank in answer? You have not the letter anyway? A. No.

Mr. HENDERSON: It is not in the affidavit prepared by Mr. Code at the time.

WITNESS: Mr. Code didn't see this letter. It was sent to me through the mail.

Mr. HENDERSON: It is not here.

Mr. SLAGHT: Q. Here or not here, it is simply a letter asking you to come in? A. Yes, call in.

20 Q. Did you go in in answer to Mr. Gray's request? A. No.

Q. Why? A. Because I felt that it was going in to discuss this letter. He would probably wish to discuss this letter which I had sent in regard to the guarantee.

Q. So you deliberately stayed away? A. I did.

Q. A little later on, after the 3rd of December, were you in the bank? A. Yes.

Q. Did you keep your personal bank account there too? A. Yes.

Q. In Mr. Gray's bank? A. Yes.

30 Q. Did you go into the bank to see Mr. Gray? A. No, I went in in connection with my business, my account.

Q. Did you seek Mr. Gray out on that visit, or what happened?? A. No, I just saw Mr. Gray, and he asked if he might speak to me for a few minutes in his office.

Q. Did you go to his office yourself before being invited? A. No, I was in the bank.

Q. And when you went in the bank on your business about your account, did you intend to go and see Mr. Gray? A. No.

Q. Mr. Gray saw you, and asked you, you say, to come into his office? A. Yes.

40 Q. And what happened then? A. He told me he had received this letter from me.

Q. That is the Code letter? A. Yes, the Code letter. He explained to me, "Of course, you know the bank are not going to wait a year to start operations to close out this company, Mackenzie Manufacturing Company, if this letter goes forward". I should take it that as a friend—I had always regarded him as such—that he thought it was wiser to withhold that letter, which he had done for two weeks.

RECORD

In the Supreme
Court of OntarioPlaintiff's
Evidence

No. 5

Jean MacKenzie
Examination

RECORD
 In the Supreme
 Court of Ontario
 Plaintiff's
 Evidence
 No. 5
 Jean MacKenzie
 Examination

Q. He had withheld Code's letter from where? A. I suppose head office where it was supposed to go to.

Q. What did he tell you about it?

HIS LORDSHIP: He told her the bank would not wait any year if this letter was to be sent forward.

Mr. SLAGHT: Q. And he had held it back for this couple of weeks? A. Yes.

Q. Was there anybody but you and Mr. Gray in the office? A. No.

Q. And then was there anything else he told you, or was that all? A. I said I didn't care; I was absolutely through. I felt certain that Mr. Mackenzie was not looking after the business, not paying attention to it, and there was no use carrying on. I think at that time Mr. Gray said he had done his best with Mr. Mackenzie to try and straighten him up and to attend to business. He said, "I feel that at the present time—I have every reason to believe that he will, business seems to have picked up, that he will do better in future." I believe he had possibly been in making promises to Mr. Gray. "I feel it would be a grave mistake to let this letter go forward at the present time." I replied to that; I said I didn't wish to be hard on him or do anything that was really going to injure the business, and a very short conversation after that in regard to that. I consented to withhold the letter for a short time, see how Mr. Mackenzie would behave. 10 20

Q. Did you tell Mr. Gray or he tell you what to do in connection with withholding the letter? A. That I would require Mr. Code to write a letter withdrawing that.

Q. Mr. Gray told you you would require to have Mr. Code? A. My word was not sufficient, I take it. He was to withdraw that letter.

Q. Gray told you to have Code withdraw it? A. Yes.

Q. Did you go to Code and tell him to withdraw it? A. I went to Mr. Code and told him exactly. 30

Q. When as regards your talk with Gray? A. Afterwards I walked over to Mr. Code's office. 30

Q. The same day after your talk with Mr. Gray? A. I fancy it was the same day.

Mr. SLAGHT: The next is the letter of Mr. Code of the 17th, of which I put in a copy by consent. (reads).

- - - EXHIBIT 15—Copy of letter Redmond Code to C. A. Gray, Dec. 17, 1924.

Q. That was apparently written by Mr. Code as a result of your visit to him after seeing Gray? A. Yes. 40

Q. Do you remember if before you saw Mr. Gray this day when he asked you to come into his office, had you seen my friend Mr. Henderson? A. Frequently I would see Mr. Henderson on the street. I had seen him. I would frequently see Mr. Henderson on the street.

Q. Did you see him in his office? A. I saw Mr. Henderson. I went in to pay a bill of Holbrook's to one of his junior members of the firm, and

on my way out of the office I met Mr. Henderson coming along the corridor. He shook hands with me, spoke to me. He asked me to come in, sit down, have a little chat, and I went in and sat down with him in his part.

Q. Who was Mr. Henderson acting for in connection with this matter?
A. He was the bank's lawyer. I was not going in to consult him.

Q. What occurred between you and Mr. Henderson? A. We talked over various things in a friendly way.

10 Q. I do not want any matters of friendly nature unless they relate to your position with the bank? A. We did discuss Mr. Mackenzie's business and the way Mr. Mackenzie was acting, also an official who was in Mr. Mackenzie's office at the time on the books.

20 Q. I don't want that. Tell me any talk you had if any about your continuing your guarantee or withdrawing it? A. I told Mr. Henderson naturally I was very worried about my securities, that I understood they were up to the bank, and the way things were going in the business I didn't know what to do. It was not a question of asking his advice at all. He said, well apparently the only thing to do was—the securities were there, and the one chance I had was to let them go on with the chance that Mr. Mackenzie would pull up and continue to do better, but that was not given to me as legal advice. He was just speaking to me in a friendly way.

Mr. HENDERSON: Just personal conversation.

WITNESS: There was more personal conversation, of course.

Mr. SLAGHT: Q. You told us about having a talk with Gray, and then going over to Code apparently on the 17th of December, 1924, or the day before, and telling Mr. Code to withdraw your previous letter of the 3rd of December. What caused you, or influenced you, if anything, to go to Mr. Code and tell him to withdraw the letter? A. I should say the result of my conversation with Mr. Gray.

30 Q. You told us before you did not go into the bank to see Mr. Gray. He called you into his private room and had that conversation with you?
A. Yes, he was in the bank.

Q. Was there anybody else there? A. No.

Q. Then let me ask you this with regard to Mr. Gray. You had known him for a very long time? A. Yes.

Q. You have told us of several interviews that you had with Mr. Gray and your husband, the two of you being in his office? A. Yes.

40 Q. What were the relationships between yourself and Mr. Gray down to the time when you decided to demand your securities back? A. Always very friendly, always a feeling of trust and confidence in Mr. Gray, regarding any affairs of my own.

Q. What were your social relations between you and Mr. Gray, and your family and his, if there were any? A. I think they were always very friendly. We visited back and forth for many years.

Q. During the time these papers were being signed? A. Oh, yes, after the first failure in June—yes, always.

Q. After the first failure in June, 1921? A. Yes.

RECORD
In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 5

Jean MacKenzie
Examination

Q. To what extent did you visit? We have some friends we see occasionally, and some we see more often. To what extent did the Grays visit you if at all? A. We were always in Farm Point in the summer. We had a great many friends for week ends.

Q. Did Mrs. Gray have occasion to spend time over night with you there? A. Well, we would have week ends. They were there frequently, and had been for years.

Q. You mean by week-end, staying in your home as guests over night? A. Yes.

Q. Did Mr. Gray stay there also? A. Yes.

Q. Did you attend at their house for dinner? A. In the past years.

Mr. HENDERSON: Does my friend think any legal result would come from this?

Mr. SLAGHT: Legal result or no legal result—I would not bother putting it in if I did not think it had a bearing. She said she had great confidence in Mr. Gray. I want to see how far they were apart.

Q. Did you attend their house occasionally? A. Yes.

Q. You and your husband, and Mr. Gray and Mrs. Gray? A. Yes.

Q. Did your children visit back and forth? A. My children were very young just then.

HIS LORDSHIP: Q. And their children? A. Their children were very young, yes.

Mr. SLAGHT: Q. Then let me ask you in 1921, the occasion that Mrs. Tibbetts spoke of—do you recall that occasion also? A. That you spoke to Mrs. Tibbetts of?

Q. Yes. A. Yes.

Q. What occurred when Mrs. Tibbetts came over on that occasion? A. You mean the signing of the documents?

Q. Yes. A. Practically what she has told you already. Mr. MacKenzie had been discussing all during dinner, and arrived at a very heated argument, and by the time Mr. Stires came over to see us, and was continuing on when Mrs. Tibbetts came in.

Q. Was that prior to your signing up? A. Yes, he was asking me to sign these documents. He broached the subject at dinner that night definitely, although he had spoken of it before.

Q. You and your husband continued living together, but you do not at the present time live together? A. No.

Q. There have been unfortunate differences. How long since you and he lived together? A. Over six years.

Q. Down to the time when you separated did you have any separation agreement? A. No.

Q. What occurred? I do not want any details of this except to know whether he left your home or you left his home? A. He just left the home.

Q. And since he left the home have you had any means of your own for your support? A. Well, I had the dividends from the bank. I had them for a while, and my rental from the house—I had that.

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Q. When did the dividends from the bank cut off? A. The dividends from the bank—I got a notice from the bank three years in January, on New Years' Eve, or the day of New Years' Eve, notifying me that I would not receive my dividends.

--- Court adjourned at one p.m. until 2.15 p.m.

--- ON RESUMING at 2.15 p.m.

Mrs. JEAN MACKENZIE, Recalled, Examination

By Mr. SLAGHT: (Cont'd).

RECORD
In the Supreme
Court of Ontario

Plaintiff's
Evidence

No. 5

Jean MacKenzie
Examination

10 Q. Then, Mrs. Mackenzie, I will conclude with you in just a very few questions. I find it necessary to ask you, since you have separated from your husband, and living by yourself, have you any means of support, any occupation or anything of that kind? A. No.

Q. What has become of all the assets that you received from your father's estate? Have you any of those left? A. Well, the assets from my father's estate, of course, were the Ottawa Dairy Stock.

Q. I mean other than what the bank have, have you anything else left? A. No. I did have a house but it has been sold.

Q. Which house was that? A. The house on Cambridge Street was sold and the money from that and more was put into the house on Clemow which was sold last June.

20 Q. The house on Clemow was sold under mortgage or what? A. Yes. I was unable to keep the payments up.

Q. How have you been able to support yourself recently the last two or three years? A. Well, sometimes, not regularly, from Mr. Mackenzie, and parting with a great many treasures which I have.

Q. You mean household goods, selling that sort of thing? A. Yes.

Q. In connection with the support by Mr. Mackenzie, have there recently been some steps taken by you through the court, or Police Court? A. Yes, through Mr. Cluffe.

30 Q. In connection with support? A. Yes, which has been very unsatisfactory.

Q. That is, there are arrears of that? A. Oh, yes.

Q. You do not get them. Have there been any friendly relations between you and your husband since he left you? A. Oh, we might pass on the street and say, "How do you do?" Not lately.

Q. Have you discussed this case, or the preparation of this case, or the testimony? A. Oh, not at all.

CROSS-EXAMINED BY MR. HENDERSON:

40 Q. Now, Mrs. Mackenzie, you were born and brought up in the neighbourhood of Ottawa? A. Yes.

Q. Miss Andrew? A. Yes.

Q. I forget the date when you were married? A. Nov. 19, 1901.

Q. That is just thirty years ago now. And your husband was then, I gather from what you say and what I think I know, in the commission business; that is, selling goods on commission? A. No.

No. 5
Cross-
Examination

RECORD
 In the Supreme
 Court of Ontario
 Plaintiff's
 Evidence
 No. 5
 Jean MacKenzie
 Cross-
 Examination

Q. At that time he was working for Bates? A. No, he was with J. W. Woods.

Q. He was with the J. W. Woods Company which carried on a business similar to that with which we have had to do, carried on by the Mackenzie Company afterwards. That is where he learned the business? A. Yes.

Q. I do not want to go into it in detail, but before this business was opened up he was carrying on a commission business? A. After he left, do you wish me to tell you? The coffee business after he left Woods, and then the commission business.

Q. It is a fact that your husband was an exceptionally good salesman? 10
 A. Yes.

Q. Recognized as such.

HIS LORDSHIP: The time he quit Woods he went into the coffee business, and then what was the next one?

Mr. HENDERSON: In the commission business.

HIS LORDSHIP: That is, the commission business supplying lumber people?

WITNESS: Different branches.

Mr. HENDERSON: Q. Selling goods for wholesalers on commis- 20
 sion? A. With Mr. Lewis White.

Q. In partnership with Mr. White? A. Yes.

Q. He had worked up quite a connection in that way? A. Yes.

Q. Then he entered the business you believe of Mackenzie Limited?
 A. Yes, after my father's death.

Q. In what year? A. My father died April 20, 1907.

Q. And it was shortly after that that he entered into this business.

Mr. SLAGHT: No, it was 1913.

WITNESS: Well, it was after father's death.

Mr. HENDERSON: Q. Considerably after? A. Yes. 30

Q. The point I wanted to bring out was this, that he happened to enter into this business shortly before the war broke out? A. Yes.

Q. The business was going quite strongly when the war broke out?
 A. Yes.

Q. And it just happened that the kind of business that he was in fitted in with war conditions. The goods he was handling were very largely goods required by the Dominion Government for war purposes? A. Yes.

Q. And during the war the business grew very rapidly? A. Yes.

Q. And it prospered exceedingly well, didn't it? A. Yes.

Q. Now you had up to some date—I am going to ask you what date— 40
 been living on Cambridge Street? A. Yes.

Q. And that is perfectly respectable, of course, but a somewhat unassuming neighbourhood in Ottawa? A. What do you mean by unassuming?

Q. Don't you know? A. Perhaps.

Q. Quiet? A. Yes, very nice.

Q. Clemow Avenue is looked upon as one of the exceptionally fine streets in Ottawa where property is very valuable? A. At that time it was just starting, yes.

Q. But it is part of the Federal Driveway, and looked upon as one of the fine streets? A. Yes.

Q. All the residences on that street are exceptionally fine residences. A. They are now.

Q. When did you build on Clemow Avenue? A. To the best of my recollection I think it was the year before War broke out.

10 Q. I don't want to bind you down to any particular day. It was about that time anyway? A. Yes.

Q. From that time on as business prospered, you lived, and your manner of living changed in accordance with your prosperity, didn't it—not unnaturally perhaps? A. How do you mean changed?

Q. You lived very much better? A. I consider we always lived very well.

Q. Comfortably A. Yes.

20 Q. From that time on you spent very much more money in living, didn't you? A. Yes, perhaps.

Q. Could you give me some idea of the comparison between your method of living on Cambridge Street and your method of living on Clemow Avenue? A. In what way?

Q. In money. A. Naturally it took a little more to run a larger home.

Q. Could you give me some figures? A. No, I couldn't give any figures.

Q. Then you also acquired the Farm Point property? A. Yes.

Q. That was during the war time, wasn't it? A. Yes.

Q. You had a very handsome cottage up there? A. Very comfortable.

30 Q. And really very handsome, wasn't it? A. I don't know.

Q. You entertained a great deal up there? A. Certainly.

Q. Entertained a very great deal didn't you? A. Well entertained—we had our friends visit us frequently.

HIS LORDSHIP: Was your husband then selling.

Mr. HENDERSON: The husband was at that time in the Mackenzie business.

HIS LORDSHIP: Q. Mackenzie Limited were then making contracts for war supplies? A. Yes.

40 Mr. HENDERSON: Q. That is, uniforms and tents and that sort of thing? A. Yes.

Q. And he did a very large business, and during that period they (the business) moved into larger business premises on Queen Street? A. Yes.

Q. The company? A. Yes, later on some time.

Q. You were yourself a director of the Mackenzie Company? A. What do you mean by director?

RECORD

In the Supreme Court of Ontario

Plaintiff's Evidence

No. 5

Jean MacKenzie Cross-Examination

RECORD
 In the Supreme
 Court of Ontario
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 No. 5
 Jean MacKenzie
 Cross-
 Examination

Q. Don't you know? A. My idea of a director is being paid to attend directors' meetings and take an active interest in those meetings and the running of the business.

Q. You were in fact a director of the company, weren't you? A. If I was it was only—what shall I say—a dummy. I had no active part in it nor attended meetings.

Q. At that period of time your husband and you were on the very best of terms? A. At times.

Q. In the days of prosperity, when the business was prosperous, weren't you? A. Not always. 10

Q. I do not mean to say you did not have little scraps. When did you ever get to be on other than good terms? A. What do you mean?

Q. I do not want to take up a long time with it. I am trying to hurry over the story and sketch the story for his Lordship. I understood you and your husband were on very good terms as husband and wife? A. When he was himself.

Q. I will deal with that. From the beginning of things your husband had an unfortunate failing, hadn't he? A. Yes.

Q. He used to get on what we commonly call sprees, and in between those sprees he would have to be abstemious as far as liquor is concerned? A. Yes. 20

HIS LORDSHIP: Q. Was that true at the time of the marriage? A. Well, I was not cognizant of the fact when I married him.

Q. As soon as you did marry him? A. Within a year I knew.

Mr. HENDERSON: Q. And that has been his unfortunate weakness? A. Yes.

Q. But he is a wonderfully good-hearted chap, isn't he? A. Sometimes.

Q. But quarrelsome in liquor perhaps? A. Yes, and sometimes without liquor. 30

Q. I do not want to put words into your mouth. I am trying to get the picture. You had great confidence in his business ability, hadn't you? A. At that time, yes.

Q. And, as a matter of fact, Mrs. Mackenzie, is it not a fact that he had a great deal of confidence in your business ability? A. No, I don't think so.

Q. Didn't he? A. No.

Q. Weren't you supposed to be quite a level-headed woman? A. Not in business, certainly not.

Q. Didn't he talk over his business with you? A. No, very seldom, only to say he might have a big contract and he was going to make so much money, etc; and as to the running of the business, and the management and how much money he was making, I didn't know. 40

Q. But he did make big money and you drew large amounts from the business? A. He possibly did.

Q. Between you those amounts were spent? A. I suppose they were spent. I don't know what he drew from the business.

Q. As far as your own affairs are concerned, it is a fact that you had an account with the Royal Bank yourself? A. Yes, I always kept my account there.

Q. And you used to occasionally borrow on your own account from the bank? A. Not large sums.

10 Q. I am not suggesting large sums, but you hypothecated this very Dairy stock with the bank long before this transaction started? A. What transaction?

Q. In 1911, didn't you? A. There was nothing up to the bank at that time in 1911.

Q. Now stop and think. A. When Mackenzie Limited was formed.

Q. When did you first hypothecate this very Stock, the Dairy stock to the bank? A. The beginning, the start of Mackenzie Limited, when Mr. Mackenzie was in the commission business.

Q. I mean on your own account, not as collateral for Mackenzie Limited. A. I never put up my stock

20 Q. What, Mrs. Mackenzie? A. To borrow money from the bank?

Q. Or to permit an overdraft from the bank on your own personal account. A. With what bank?

Q. The Royal Bank. A. The Royal Bank was not in existence when my father died.

Q. I am not talking about when your father died. I am talking about 1911, two years before Mackenzie Ltd. started. A. I have no recollection of that.

Q. Will you try and think? A. I am trying to think.

30 Q. I find I am a little wrong, Mrs. Mackenzie. After Mackenzie Limited was going, in 1917, it is three years before you first hypothecated this stock on account of Mackenzie Limited. You had hypothecated it on your own account? A. What do you mean I had hypothecated on my own account?

Q. You had pledged this stock to the bank? A. For Mr. Mackenzie.

Q. No, for yourself, your own account, starting first on the 6th of January, 1917. Do you recollect that? A. 1917?

Q. Yes. I find, Mrs. Mackenzie, that on the 6th day of January 1917, you had hypothecated this very stock to the bank on your own account. A. For what purpose?

40 Q. The document does not show. Will you look at this document and see if that is your signature. (handing document to witness). A. Yes.

Q. These two signatures here? A. Yes.

Q. Do you see January 6th, 1917? A. Yes, I see that.

Q. The same shares as collateral security held on your own account? A. You mean to say that I borrowed that for myself, my own interests?

Q. Yes, I don't know where the money went. So far as the bank knew, your own account. A. Perhaps I can explain that.

RECORD

In the Supreme
Court of OntarioPlaintiff's
Evidence

No. 5

Jean MacKenzie
Cross-
Examination

RECORD

In the Supreme
Court of OntarioPlaintiff's
Evidence

No. 5

Jean MacKenzie
Cross-
Examination

Q. Do you recollect that? A. I recollect putting up my security, my stock, which did not come out in my evidence this morning, for Mr. Mackenzie to buy out—he was in difficulties with the partners he had taken in.

Q. I don't want the story.

HIS LORDSHIP: If you do not mind, Mr. Henderson, I would like to know, and I think she ought to have an opportunity to tell me. If she borrowed this money for her husband, that is one thing. If she borrowed it for her own purposes, it is another. I would like to know which it is the witness thinks.

WITNESS: Mr. Mackenzie came home. He had taken in partners, Mr. W. J. Bell of Sudbury, Mr. Archie Foster. Mr. Leonard Foster was in the office and another one, he had taken them in. 10

Mr. HENDERSON: Q. When you say taken in partners you mean these men had bought shares in the company? A. Yes. And two Americans, I can't remember their names. This was to enlarge his business in the west, is what he told me. After he had taken these men into the business he discovered he had lost control of the company. Later on, as these two Americans were very great friends of his and wished to get out of all their holdings in this country, they quietly sold out their interest, which I believe was in the neighbourhood of \$15,000, to Mr. MacKenzie to get control of the stock again. He came to me and approached me at that time, asking me to put up the stock, it was during the war, assuring me there was absolutely no danger; he was making money so fast that this money would be returned in a short time, which it was. That must be what I signed in 1917. 20

Q. That may very well be, Mrs. Mackenzie. I did not know that. At that time you did business with the bank? A. I did business through Mr. Mackenzie.

Q. You did the business personally? A. I couldn't do that. I wouldn't go to the bank and ask them to give me \$15,000. 30

Q. I suggest to you that you did the business personally, and were then informed by Mr. Gray that he could not do business with you unless you had independent legal advice. Do you recollect that? A. No, I do not.

Q. I suggest to you that is the fact. Would you contradict it? A. No. I am positive that my husband at that time influenced me as he had done before to put up this money.

Q. I do not know anything about that, and I am not asking you about that. At that time do you recollect going to Mr. Hill? A. Not that time.

Q. I am saying at that time? A. I have no recollection of that time. I have of 1920 but not that time. 40

Q. Do you remember some time before that, in the month of March, 1916, the question of hypothecation of this stock arising? A. No. On that date I could not be - -

Q. Mr. Hill you know, don't you? A. Very well.

Q. He belongs to the firm now known as Greene, Hill and Hill? A. And at that time it was Christie, Greene and Hill.

Q. And before that it was Penny, Christie and Hill. You knew that, didn't you? A. No, I had never met any members of the firm in my married - -

Q. You told me on your examination for discovery that the reason you went to that particular firm was that they had been your father's lawyers? A. I had heard my father mention Mr. Christie. I had never met Mr. Hill.

Q. That is why you went there? A. No, I did not mean why I went. A law firm meant nothing to me. I had never had occasion to consult them or go to them or be taken to them.

Q. You know, as a matter of fact, that it is a firm with the very best reputation? A. Certainly.

Q. You went there, and Mr. Hill went into it very fully, didn't he, at the time? A. Not before I signed the papers.

HIS LORDSHIP: What date are you talking of? You started to talk of a date in 1916.

Mr. HENDERSON: I am talking of 1916.

HIS LORDSHIP: Q. Are you talking of 1916? A. Mr. Henderson started with 1917. Now he has gone back to 1916.

Q. Are you talking of 1916? You went to Mr. Hill in 1916? A. I have no recollection of that. 1917 I understand was the time. It would be approximately 1916 or 1917 that it was put before me.

HIS LORDSHIP: You produced a document to the witness. Will you file it so I may be able to follow?

Mr. SLAGHT: It is something not included in the affidavit on production.

Mr. HENDERSON: It was not thought material.

HIS LORDSHIP: I am only looking at it for a simple thing. She said she signed that, and it will fix the date, that is all.

30 --- EXHIBIT 16—Bank Form "Collateral Securities held on account of Jean Mackenzie".

Mr. HENDERSON: Q. Is it not a fact that Mr. Hill advised you from time to time from that on? A. From time to time?

Q. From time to time. I do not want to go into all the particular occasions.

HIS LORDSHIP: Advised as to what?

Mr. HENDERSON: As to signing bank documents similar to this.

40 WITNESS: No, not from time to time. I am telling you my clear recollection of Mr. Hill, his presence, when my husband said he had \$8,000 to put in this business

Mr. HENDERSON: Q. Would you be good enough not to bring your husband in at the moment? I want to simply deal with your relationship with Mr. Hill. I said to you that starting back in 1916 or 1917 you were advising from time to time with Mr. Hill as to the hypothecation of your Dairy stock with the Royal Bank? A. No, I have no recollection of

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dealing with them from time to time. I have no recollection of going to him from time to time.

Q. Will you say you did not? A. I say as far as my recollection will allow me, I have no recollection of going to him from time to time.

Q. Is it not a fact that in the first instance you went to Mr. Hill quite apart from your husband? A. What date?

Q. At the beginning, the 1917 transaction? A. 1913 you mean?

Q. The 1917 transaction. I do not want to tie you down to any particular date.

HIS LORDSHIP: She says 1913. 10

WITNESS: That is the clear recollection I have of Mr. Mackenzie taking me to Mr. Hill to get this \$10,000 loan.

HIS LORDSHIP: Q. Is that the first time? A. That is the first time.

Q. That would be four years before 1917? A. Yes, that is the first.

Q. That makes a material difference, it seems to me.

Mr. HENDERSON: Q. I see there was an hypothecation starting in 1913? A. That was the beginning of Mackenzie Limited.

Q. Starting in 1913 I see you did hypothecate this stock at the very beginning, and did that under Mr. Hill's advice? A. I didn't do it under his advice. I went with Mr. Mackenzie to Mr. Finney and from his office walked upstairs to have the thing completed after it was arranged I should get this loan. 20

Q. You went with Mr. Mackenzie to whom? A. To Mr. Finney of the Bank of Ottawa.

Q. He was the manager of the Bank of Ottawa at that time. A. Yes.

Q. What has that got to do with Mr. Hill? A. The same as usual. A lawyer must sign it afterwards. I went up with Mr. Mackenzie to Mr. Hill's office after we had arranged about the loan.

Q. I show you another document. That is again your signature, is it not? A. Is this what you showed me just now? 30

Q. No, this is another one. Are these your signatures? You see there April 14, 1913, the stock was then hypothecated on account of Mackenzie Limited. A. Yes, I said that.

Q. Didn't Mr. Hill give you what we call independent advice at that time? A. Before I signed the papers, the hypothecation?

Q. Yes. A. And go into it fully? No.

Q. I say didn't Mr. Hill advise you? Didn't Mr. Hill give you a certificate as to that? A. After I had signed and agreed to let Mr. Mackenzie —after I had promised—after considerable, as usual, argument; I went down and these hypothecations were signed, but Mr. Hill did not go into the business and advise me fully, and tell me what I was liable for until after. 40

Q. Until after when? A. I had signed them already.

Q. Until when? A. The same as I had signed these other things.

Q. Was that after, the occurrence in 1913? A. That is my clear recollection of 1913.

Q. I will take you at your word. In 1913 your husband over-persuaded you to pledge your stock? A. To start this company.

Q. Is that a fair way of putting it? At that time you say your husband took you to Mr. Hill? A. Yes.

HIS LORDSHIP: First they went to the Bank of Ottawa and made the hypothecation. and then her husband took her to Hill.

Mr. HENDERSON: That hypothecation was not with the Bank of Ottawa.

10 WITNESS: I know I went to the Bank of Ottawa.

Mr. HENDERSON: Q. Aren't you confusing it with the fact that Mr. Hill's office happens to be immediately adjoining the Bank of Ottawa upstairs? A. Yes.

Q. Are you conflicting your ideas on that account. A. I don't think so.

Q. I do not quite follow why you should go to the Bank of Ottawa?

A. Well, it was my father's old bank too. He kept his money there.

Q. Did you go and consult Mr. Finney of the Bank of Ottawa whether you should do this or not? A. No, I never asked his advice about signing anything.

20 --- EXHIBIT 17—Bank Form, "Collateral Securities held on account of J. A. Mackenzie etc."

Q. Let us pass on from Mr. Finney because I am concerned now with an hypothecation at the opening of this business. This business had its account in the Royal Bank from the beginning in 1913, didn't it?

HIS LORDSHIP: When the company was about to be started or was just about being started.

30 Mr. HENDERSON: Q. That bears you out in your recollection because the heading of it says, "J. A. Mackenzie, Mackenzie Limited". That would indicate that that was just about the time the business was being started. The account may have passed to the Bank of Ottawa for some time. I do not know about that. The point I am making is this. As far back as 1913 you hypothecated this stock for the business? A. Yes.

Q. And you say that Mr. Hill did not go into the matter thoroughly then? A. No, any more than I knew anything about it.

Q. Later on you had some further talk with Mr. Hill? A. In connection with that?

Q. Yes. A. Not to my recollection. Once it was signed, it was signed.

40 HIS LORDSHIP: You have certificate 69, 87 shares. On the same date you have certificate 58, 142 shares.

Mr. HENDERSON: One lot was common.

HIS LORDSHIP: That is stricken out with a pen.

Mr. HENDERSON: Q. His Lordship points out that is stricken out with a pen. You got that stock back? A. Yes.

HIS LORDSHIP: This is an old record, and when it was given back the banker struck it out.

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Mr. HENDERSON: Q. You got it back, and I see by that record you put it up again later on, and again got it back. It was up two or three times there? A. It was up, as I told you, during the war when Mr. Mackenzie was likely to lose control of the business, when he approached me to put it up to buy these two Americans out.

Q. Starting in 1913, and carrying on till 1920 you were dealing with Mr. Hill from time to time on this subject? A. What do you mean by time to time? How many times?

Q. I am asking you how many. You ought to know better than I. How many times did you put this stock up? A. You have it 1913. It went up again, I don't know if all the stock went up, but sufficient for Mr. Mackenzie to realize \$15,000 to buy out these two American friends of his during the war. That was reported to me by Mr. W. J. Bell, and Mr. Mackenzie bought out all his partners. Then there were no more dealings. 10

Q. Mr. Hill gave certificates of independent advice for you on at least three occasions, didn't he? A. What are the three occasions?

Q. There was the 1913 time, 1917, and 1920. A. I have no recollection of seeing Mr. Hill in the 1917. I have a clear recollection of 1913 and 1920.

HIS LORDSHIP: Q. Did he give you a certificate, is what you are asked. A. Yes. What do you call a certificate? I mean the little thing you sign. 20

Mr. HENDERSON: Q. I mean a certificate means a certificate of this man that you had consulted with him, that he had discussed the matter with you, and that he advised you for your own interest and nobody else's that it was a wise thing for you to do to put this stock up to assist your husband, and let you know what danger you were taking. A. No, I am positive Mr. Hill never advised me that way.

Q. Did he give you a certificate with the substance of what I said in it? A. As I said this morning, Mr. Henderson, this form must be signed by a lawyer in order to make it legal with the bank. My recollection of Mr. Hill is he signed once in my room when I was ill in 1920, and once in 1913. 30

Q. I realize that you say now that you treated these as merely chits, that is the phrase you used. That is the sort of thing you sign at a club. A. Yes.

HIS LORDSHIP: Does she mean, Mr. Henderson, that Mr. Hill gave a certificate as early as 1913, you can call it a chit, or call it what you like? Did he give you a certificate in substance like the certificate that has been read here today once or twice, showing he had advised you and gone into the matter with you, and told you your responsibility, and what was likely to happen, and all about it? Is that the kind of paper that you mean to say Hill give in 1913 that you have a recollection about? 40

WITNESS: How shall I answer that? My recollection is that Mr. Hill not at any time went thoroughly into the state of the business to advise me.

HIS LORDSHIP: I am not asking that. I would like you to answer.

Mr. HENDERSON: Q. You know Mr. Hill's signature, don't you?
 A. No, I don't think I do.

Q. Haven't you seen his signature very frequently? A. I have not.

Q. Do you recollect his signing a certificate of this kind for you on March 6, 1916? I show you one which apparently has his signature. A. I couldn't swear to Mr. Hill's signature. I can swear to my own.

Q. Is it not a fact that Mr. Hill on several occasions gave you certificates—and, by the way, were they printed documents filled in? A. I fancy they were printed documents, printed or otherwise.

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10 HIS LORDSHIP: Q. I have here a certificate dated Nov. 21, 1921, which has been put in. You are talking to me about getting a certificate from Mr. Hill in 1913. I would like you to just read that over, and tell me whether that is the kind of document you are saying to me that Mr. Hill gave so that you could validate the transaction you were making, if you like, in 1913. A. This is not the printed one to which I am referring.

Q. Can you read the sense of it? Do you say that Mr. Hill gave you one in 1913 which contained the substance of that one, or do you remember? A. I don't think I could be positive on it. I couldn't even if I ever read this - -

20 Mr. HENDERSON: Q. In speaking of a printed form I did not desire to trap you. Do you say it was a printed form? I suggest to you it was not. There was never a printed form of that, but always the same writing. It is a form of words approved by the bank. A. Yes.

HIS LORDSHIP: Never sent out in printed form?

Mr. HENDERSON: Never sent out in printed form.

WITNESS: Wouldn't you call that printed?

Mr. HENDERSON: Q. No, that is typewritten. There is a clear distinction between print and typewriting. A. Then perhaps I am wrong, 30 typewritten or printed.

Q. I suggest to you that all these documents signed by different lawyers, and purporting to be certificates of independent advice for you, are in the same phraseology simply dated differently. Don't you know that is the fact? A. Are you referring to independent advice?

Q. I call it the certificate, the certificate of which Mr. Hill gave you at least three, Mr. Burritt gave you one, Mr. Gilhooly gave you one, and Mr. Code gave you one, always in the same words, but, of course, dated on different dates—didn't you know they were always the same? A. I fancy so.

40 Q. You think they were? A. Yes, they had to be signed as a matter of form for the bank.

Q. You need not repeat that again and again. A. That was my feeling.

Q. Do you solemnly think that Mr. Hill on these different occasions made a misstatement of fact to the bank? He certifies to certain facts. A. The fact that he advised me independently before I ever signed anything in his office. Is that what you mean?

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Q. "I hereby declare that Mrs. Jean Mackenzie has consulted me as to the liability incurred by her in hypothecating the said shares as security to the Royal Bank of Canada", and so on. Do you say that is not the fact?

A. I say the fact is this, that I had hypothecated them before I saw any lawyer.

Q. "I have advised her fully as to the effect of the said hypothecation and her liability thereunder, and the manner in which the same can be enforced, and that she understands the nature and effect of the said transaction". Do you think Mr. Hill deliberately misled the bank in that? A. After you do certain thing, then you have done it, and then you are advised you have done so and so, and you are liable. That is my feeling towards Mr. Hill. 10

Q. You had been liable on different occasions. You had gotten your stock back, and you had pledged it again on different occasions? A. Under pressure.

Q. And in each case you yourself also signed these certificates, didn't you? Do you recollect what you said? "I hereby admit and declare that the above letter is true and correct and that Mr. H. P. Hill, the writer of the above letter in advising me of the legal effect of the above transaction was consulted by me as my solicitor separately and distinctly from any legal advice which was given to my husband in connection with this matter, and in my interests only". You signed that. You did not sign the one I have in my hand now, but the others his Lordship has in front of him. 20

HIS LORDSHIP: Have I one signed by Mrs. Maskenzie?

Mr. HENDERSON: Yes, my Lord.

HIS LORDSHIP: I have a number of copies, but her actual signature to that kind of document, is there one?

Mr. SLAGHT: No, the one my learned friend has in his hand and said to the witness that she signed that document does not bear her signature. 30

Mr. HENDERSON: I did not say she signed that document. I had just shown it to her a moment ago.

HIS LORDSHIP: We have gone this far, Mr. Slaght, that you have put in the circumstances what you have put before the court as though they were true copies of what Mrs. Mackenzie signed, and there is one of them, the one on the 21st of Nevenber, that has the very same words in it, although, as you say, I have not seen her signature to any document of that kind yet. In the way counsel have gone on, I have been treating this as if I had seen her signature.

Mr. HENDERSON: Q. I have just had a document handed to me. Is this your signature, Mrs. Mackenzie? A. Yes. 40

Mr. HENDERSON: I put this in, my Lord. (reads document).

Mr. SLAGHT: That is another non-production.

--- EXHIBIT 18—Letter plaintiff to the manager of the Royal Bank of Canada, Ottawa, October 18, 1915.

HIS LORDSHIP: That is not Mrs. Maskenzie's letter. That is a letter put in her hand by the bankers.

Mr. SLAGHT: An entirely different thing from any of the other forms.

Mr. HENDERSON: Q. I read it to you, and I want you to look at it as I read it to you at question 123 of your examination for discovery.

Mr. SLAGHT: I do not quite know what the rule is, my Lord, about my friend producing document after document now when he has apparently got them here as part of his case, and has not put them in his affidavit on production.

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10 Mr. HENDERSON: My friend knows there is no rule.

HIS LORDSHIP: I think the practice is that judges shrug their shoulders and say, "You should not do it, but I cannot have the rights of the parties determined without seeing all the documents that throw any light on it".

Mr. SLAGHT: I do not think you can exclude it perhaps, but it is a pity it is done this way.

Mr. HENDERSON: If my friend looks at the affidavit on production he will see it refers to a large bundle of other documents, and if we had produced everything the affidavit would have been endless.

20 Q. Will you look at question 123 on page 12 of your examination for discovery, Mrs. Mackenzie?

"123 Q. This is matter of considerable importance, Mrs. Mackenzie, your recollection. I would ask you to look at a document, dated December 31, 1920, in which Mr. Hill certifies that he has advised you in regard to the transaction with the bank - - that is your signature at the bottom, is it?" A. "Yes."

A. Yes, I said that this morning.

30 HIS LORDSHIP: That is not the one you are showing me now. What you are showing me now is October 18, 1915. What was shown to her was December 31, 1920.

Mr. HENDERSON: I am coming now to the documents already on file. Your Lordship has this one of December 31st, 1920.

HIS LORDSHIP: Have I one of the 31st?

Mr. HENDERSON: No, you have not, for this reason; I thought it was marked as an exhibit, but she did not identify it.

40 HIS LORDSHIP: Mr. Slaght tried to get her to identify it, and she refused, so he did not put it in. I supposed that in the end you would prove that this was a copy and the best evidence available, and I left it there.

Mr. HENDERSON: Q. May I now ask you to look at this document which is a copy—you will see it is marked as an exhibit—of the document that was shown you in connection with that question I have just put to you? Do you recollect that? A. This is the same thing as before, isn't it?

Q. It is the same form, yes. A. This was signed in my bedroom.

HIS LORDSHIP: Was that document available on the date of this examination?

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Mr. HENDERSON: Yes, my Lord, the original was actually marked on this examination.

HIS LORDSHIP: There is nothing there to indicate it was marked, but it does look as though it was there proven.

Mr. HENDERSON: I think the indication must come a little later, my Lord. These copies were made from the originals—not these very copies but I have copies in my brief made from the originals. We had other copies.

HIS LORDSHIP: And they show that fact?

Mr. HENDERSON: Yes, and I know it is the fact that they were.

--- EXHIBIT 19—Certificate of H. P. Hill, dated 31st December, 1920. 10

Mr. HENDERSON: Q. You recollect that now, and the document Mr. Burritt signed was also signed by you in the same manner? A. What do you mean by the same manner?

Q. In the same form that was shown to you on the examination. Wasn't it? A. Under different circumstances.

Q. I am taking the physical document. This is what I call a certificate of independent advice. The one given by Mr. Hill was also signed by you, was it not? A. You mean?

Q. Signed by you on the bottom? A. You mean the 1920? 20

Q. Yes. A. Yes.

Q. Later on the one given by Mr. Burritt was also signed by you.

HIS LORDSHIP: The one given by Mr. Hill, she gives a separate --

Mr. HENDERSON: That is another story, my Lord.

HIS LORDSHIP: This is another one from Hill.

Mr. HENDERSON: That is the important one.

Q. Take the one given by Mr. Burritt, that was similarly signed by you at the bottom, wasn't it? A. In his office.

Q. I don't care where. A. What do you mean similarly signed?

Q. You signed it? A. Yes, I left the bank and went over there. 30

Q. The one given by Mr. Gilhooly you also signed? A. Renewal.

Q. And the one given by Mr. Code you also signed? A. Which was a renewal, believing of course they were up and the bank's property, absolutely.

Q. Are you suggesting that each one of these men stated what was not true to the bank? A. No, am not.

Q. They are all lawyers of high standing, aren't they? A. Yes.

Q. All lawyers of excellent standing, and honest men. Are you suggesting that they signed these solemn documents as a mere matter of form? A. As a matter of form. I went to them and asked them as a matter of form because the bank demanded it to sign this, that a lawyer must sign this as a matter of form, that the bank demand it. 40

Q. Didn't you know all through this whole transaction that a bank could not take an hypothecation from a married woman without her being independently advised by a lawyer? A. Before she signed anything?

Q. I don't care when. Didn't you know you had to have independent advice? A. I had always been told you should consult a lawyer, before you signed anything.

Q. That is not answering my question. If I do not make it clear let me know. You were a married woman, weren't you? A. Yes.

Q. You were giving these securities for, we will say, your husband practically, his business. You knew that, didn't you? A. Yes.

Q. Didn't you know that in a case of that kind the law did not permit a bank to take your securities, the securities of a married woman, unless she had independent legal advice? A. No, I don't think I was told that before I signed them.

10 HIS LORDSHIP: Q. You were not asked what you were told. Did you know that? Did you appreciate in your own mind that the substance of the thing was, in order that the bank could affectively get away from you your securities to pay your husband's debt, that you must be advised by some lawyer, so you would know what you were doing, and what responsibility you were taking, or else it would not be an effective handing away of the securities at all? Did you know that in your own mind or not? A. No, I don't think I did, your Lordship.

Mr. HENDERSON: Q. What did you know about that? A. My idea is this; I signed these papers without seeing a lawyer before I assigned the securities.

20 HIS LORDSHIP: Q. You have told me that many times. I may say to you, so far as my judgment of the matter goes, the fact that you signed the papers and then went over to the lawyer to consult as to whether you had signed wisely or not does not make any difference, whether you did it an hour before you went to the lawyer or an hour after. That does not help you any. Get that out of your mind. If you had gone to the lawyer, and the lawyer had said, "No, Mrs. Mackenzie, you should not do this at all, you will likely lose your property, it is not fair for your husband to have put you in this position at all", you would have walked back to the bank and said, "The lawyer says I should not do it; I regret doing it, and I am not bound by it".

30 Mr. HENDERSON: May I ask your Lordship to state to the witness if she had not brought back the certificate the transaction would not have gone through?

WITNESS: I learned that later.

HIS LORDSHIP: It does not make any difference. You seem to be at a misunderstanding about that. That does not change the whole matter.

Mr. HENDERSON: Q. You knew in the course of the earlier transactions that if this certificate was not given the transaction would not go through, didn't you? A. No, I believed that from the time you signed your hypothecation the bank could use it once.

40 Q. You said just now "I learned that later." When did you learn that? What period of time did you learn it? A. I think I learned most of that since I have been in consultation with Mr. Cluffe.

HIS LORDSHIP: I think, Mr. Henderson, it is not worth while spending much time about that, because that is not the gravamen of Mrs. Mackenzie's trouble. She says, "I knew as a matter of form I had to go to a lawyer and get this thing done, and I went as a matter of form, notwithstanding I

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signed these documents time after time saying it was not a matter of form". She says, "I went as a matter of form because my husband asked me," and that is her story.

Mr. HENDERSON: Q. You knew this, of course, that as a woman you would have been quite content to leave the matter to your lawyer. If he had made proper inquiry you would have been quite content to follow his advice? We will take the particular cases we are concerned with; Mr. Hill, Mr. Burritt, Mr. Gilhooly and Mr. Code; if they had made proper inquiry you would have been quite content to follow their advice? A. If they had told me not to sign anything, had gone into the matter thoroughly, and advised me not to sign, as to what was likely to happen to me, I certainly would not have signed. 10

Q. And similarly, if they had gone into the matter thoroughly and said it was all right to sign, you would have signed? A. If they could prove to me everything was quite all right, my securities were perfectly safe.

Q. If they had made proper inquiry into the matter and advised you it was all right to sign, you would have been quite content to sign? A. I think I will object to that, Mr. Henderson. I never really wanted, advice or otherwise, to put up my stock at any time for Mr. Mackenzie. 20

HIS LORDSHIP: Q. You did put it up without even going into it according to your story? A. Yes.

Q. If they had gone into it and said, "Yes, it is all right," do you think you would have been much less likely to have gone on with it? Surely, that must be plain. If you were willing to do it when they did not go into it at all; if they did go into it, and said, "Go on, Mrs. Mackenzie, you are all right" you do not want me to think you would not have gone on then, do you?

Mr. HENDERSON: Q. Will you answer that? A. Are you asking me a question, your Honour?

HIS LORDSHIP: Q. Yes. A. What shall I say?

Q. I do not know. A. I can only say as I repeated before, I felt I had to sign them. I was being importuned by my husband all the time to sign. No matter what happened, unless I was shown he was insolvent absolutely - - 30

Q. You mean if the lawyer had said, "Mrs. Mackenzie, you had better not sign this. I do not think it is safe," you were so importuned and so overwhelmed by your husband you would have gone on and signed it anyway? A. I think if the lawyer had told me it was absolutely dangerous, "no matter what your husband tells you, you are going to lose your stock," I would call that - -

Mr. HENDERSON: Q. We will pass from that. As a matter of fact, Mr. Hill was acting for you off and on for several years? 40

HIS LORDSHIP: Q. Did Mr. Hill do anything more for you during these several years except to give you these certificates? A. No, I never consulted him about anything.

Q. Anything else? A. Nothing else.

Mr. HENDERSON: Q. I suggest to you that Mr. Hill did as a matter of fact go to the bank and make inquiries and satisfy himself. What do you say as to that? A. I don't know.

Q. I suggest to you he did precisely what his certificate says he did? A. I don't know if he did or not.

Q. The time that Mr. Burritt—Mr. Burritt as you know is in partnership with Mr. Fripp? A. Yes.

10 Q. Another firm of high standing here. It is a fact, is it not, that after the bankruptcy of the first company you consulted Mr. Fripp? A. I asked him - -

Q. Will you simply answer my question? Did you not consult him? HIS LORDSHIP: She has a right if she does not want to accept the word "consult", to correct it, surely.

WITNESS: I did not consult him. Does that mean consult a person for advice?

Mr. HENDERSON: Q. You went to Mr. Fripp as your lawyer? A. No, he is not my lawyer. I knew him intimately, personally. I asked him to attend the creditors' meetings.

20 Q. He did attend the creditors' meetings for you, didn't he? A. Yes.

Q. Did you not know that after the creditors' meetings were held a question arose as to whether or not the business should be wound up, or whether it should be reorganized and carried on? A. No, I didn't know that.

Q. Didn't you know there was a time during which it looked as though it would be wound up, sold out? A. I know nothing about what was going on at these meetings that Mr. Mackenzie attended.

Q. Didn't Mr. Fripp tell you what went on at the creditors' meetings?

30 A. He did not. I asked him to attend the creditors' meetings to see if my name was in any way mentioned. He told me he attended I think three meetings, my name was not in any way mentioned, and he had nothing to say at the meeting.

Q. Why were you afraid of your name being mentioned? A. I wasn't afraid.

Q. Do you mean to say he attended those meetings on your behalf only to see if your name was mentioned? A. Yes, I wanted to know what was going on.

40 Q. I am suggesting to you that Mr. Fripp and his partner, Mr. Burritt, acted on your behalf during these negotiations, and that Mr. Burritt made himself thoroughly familiar with all the negotiations? A. If he did he didn't tell me anything; neither did Mr. Fripp. I knew nothing about the reorganization of the new company.

Q. You signed certain documents in connection with the reorganization that we have had put in here today. A. I believe I did afterwards. I was not told what they were at the time.

Q. And you signed those under Mr. Burritt's advice, didn't you? A. You mean I signed in November when I signed the securities over?

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Q. Yes. A. I signed something before that. Didn't I, your honour?

Q. There are a few days difference in dates here and there.

HIS LORDSHIP: The one you are talking about is the one of the 25th of November signed by her and her husband, 1921? Then there was that agreement, she was not a party to that. There was that one of the 25th of November, and it seems to me there was an earlier one she signed.

Mr. HENDERSON: Yes, my Lord.

Mr. SLAGHT: September 13th is the earlier one, and Burritt never saw that.

HIS LORDSHIP: September 13th is the first thing she signed. 10

Mr. SLAGHT: That is the one Beament drew. She did not show that to anybody or have any advice about it.

Mr. HENDERSON: She says she did not. I am cross-examining on it.

Q. All these documents—I suggest to you that Mr. Burritt was familiar with them all. A. Why would he be?

Q. Because he was Mr. Fripp's office man who did this business. A. To my certain knowledge the only person, and I was assured by Mr. Fripp who attended the meetings, was Mr. Fripp himself.

Q. Mr. Fripp attended the meetings and had Mr. Burritt look into the details of the things. A. There was no details to look into that I know of. 20

Q. Mr. Burritt did later on certify that he had an understanding and so advised you. A. I never saw Mr. Burritt all summer long, until I went in to see Mr. Fripp, and he was away, and Mr. Burritt signed this.

Q. When Mr. Burritt says that he had advised you fully as to the effect of your liability, do you say he is not telling the truth? A. I think I told you—May I say I left the Royal Bank after I had signed all the securities. I went over on the representation to me that I had no other chance to secure them, and I was given this paper to take to a lawyer, didn't say Mr. Fripp or Mr. Burritt, to have it signed, must have a lawyer's signature. 30

Q. You took it to Mr. Burritt. Did you know these documents were all part of the one transaction? They were all part of the reorganization of the business? A. Nothing.

HIS LORDSHIP: They are all part of the hypothecating of the stock.

Mr. HENDERSON: And that was a term of the reorganization of the business.

HIS LORDSHIP: Q. You must have realized that all these documents you were signing were part of the business of pledging your stock for the purpose of getting the money to go on with? A. Your honour, the document I signed in Mr. Beament's office on the 13th of September was never explained to me what it was, or that it had anything to do with the reorganization of any company. I was simply asked to go with Mr. Mackenzie to Mr. Beament's office to sign a paper. 40

Q. That is not what you are asked about at all. You went to Mr. Burritt's office on the 21st of November, and you say before you went you had signed a document hypothecating your stock, but you went and signed a

paper there, and got him to sign it, and what this all started about, Mr. Henderson asked you, do you mean to say that Mr. Burritt when he signed this document and gave it back to you to give to the bank, and said in it, "I hereby declare that Mrs. Jean Mackenzie has consulted me as to the liability which she incurs by executing the said guarantee so given as aforesaid; that I have advised her fully as to the effect of the same and her liability thereunder and the manner in which the same can be enforced; and that she understands the nature and effect of the said transaction;" all you are asked is, was Mr. Burritt mistaken about that, or how do you account for his signing that, and your signing a statement that what he said was true? That is the real question A. All I can say is, you do not wish me to say and repeat that he advised me what I was liable for. After I had made the break and done it he did say, "This is what you are going to be liable for".

Q. What did he say you were going to be liable for? A. My husband's debts in this new company I suppose.

Q. You mean to give security against your husband's debts in this new company? A. I said that this morning, your Honour. I didn't wish to do it.

Q. You did not wish to do it but you finally came to the point where you did do it, knowing that would be the result? A. Finally I wore down. I did sign these things believing there was no other chance at all.

Mr. HENDERSON: Q. That there was no other chance to keep the business going? A. No. Mr. Mackenzie told me my securities were gone anyway; the bank has got them and - -

Q. If this transaction had not gone through, they would have been, wouldn't they?

HIS LORDSHIP: She swore Mr. Gray told her, "Anyway the only salvation is sign or you are sunk".

Mr. HENDERSON: Q. Didn't you know it was an open question for some time whether the bank, which was the big creditor, would permit the business to go on or not? There was some months' delay about that I think. A. You mean after the failure?

Q. Yes. A. I knew there were a great many meeting my husband was attending day after day in the city, the nature of which I don't know.

Q. And your husband was very anxious about it? A. He was anxious. He began discussing saying he was starting in business again.

Q. Am I right in recollecting that you told my friend Mr. Slaght this morning your first thought was he had better let that business go and go back into the commission business? A. Sell everything, let it go, pay what he could to his creditors.

Q. Letting it go would have meant letting your stock go. You knew that, didn't you? A. No, I had reason to believe there might be a chance if everything was sold, all the book debts, all the stock in trade, everything—there would be a building on Queen Street—if everything went, that there would be a chance, that that would be a chance to release my securities.

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Q. There was always a chance because I suppose it was explained to you that the bank thought it had more security than the amount of its debt. You know that is the usual way? A. I fancy they require more.

Q. They require more than the face amount of the debt, but you personally were very anxious that the business should carry on? A. No, I was not.

Q. Did you not go to Mr. Gray and ask him to use his offices to carry on? A. To carry on a new company?

Q. To let the business go on in some way or another? A. No.

Q. Did you not see Mr. Hillary, the Supervisor of branches of the bank, and ask him to let the business go on? A. No, I did not. I was visiting in Toronto. Mr. Hillary had been a friend. I was talking to Mr. Hillary, and he said to me, "My advice is to sell everything you can, throw everything into your husband's business". I said, "Are you talking to me as a friend or bank manager? I don't want him to start. I want him to start in the commission business where he don't need any capital."

Q. At that time you knew your stock was pledged to the bank? A. Yes.

Q. And you thought it really belonged to the bank? A. Yes.

Q. And if the business were wound up you would not get it back? A. No. Just as you said now, the bank always has more security than the amount of the loan. Mr. MacKenzie assured me that if everything he had was sold it would release more than the amount of my security.

Q. That may even happen yet. It is possible. The matter has not yet been finally closed, and you know the bank has not attempted to sell that stock. A. No, outside of the Clemow Avenue house.

Q. The Clemow Avenue house was sold under the mortgage which was held by the bank. The bank did not sell that.

HIS LORDSHIP: Was there no balance for the bank out of the house? 30

Mr. SLAGHT: The bank bought the equity subject to a mortgage of \$58,000, and they own it now.

WITNESS: That is the Queen Street.

Mr. HENDERSON: No, we are talking about the house.

WITNESS: I think there is a balance of \$5,000, your Honor, put to my credit.

HIS LORDSHIP: They credited you with \$5,000 between the value of the house and the sale price. There was \$5,000 to the good for the bank.

Mr. HENDERSON: Mr. Gray tells me about \$6,000, and that will appear in his evidence. 40

Q. When the business was reorganized it was again apparently successful for a time, wasn't it? Things went well? A. Well, apparently.

Q. You say that on one occasion Mr. Gray invited you into his office. Did I understand you to say that he drove you to see Mr. Mackenzie? A. He what?

Q. You spoke of a time when you and Mr. Mackenzie had been out in the west together. A. Oh, yes, drove in a car.

Q. You came back I understand in the month of May? A. Yes.

Q. What year was that? A. 1921.

Q. Then you said shortly after you came back Mr. Gray invited you into his room in the bank. A. No, I didn't say he invited me. I said I drove from the bank with Mr. Gray to Mr. Mackenzie's office on Queen St.

Q. You said you drove from the bank; drove in what? A. In a motor car.

10 Q. Whose motor car? A. Mr. Gray's.

Q. Drove from the bank around the corner to Queen Street? A. To Mr. Mackenzie's office.

Q. The bank is on the corner of Sparks and Metcalfe. A. We went around the corner to Mr. Mackenzie's office.

Q. Do you mean to say you took a motor car to do that? A. I don't think we went specially to get the motor car. It was closing time anyway, about the end of the day, about the time we would go to Farm Point.

20 Q. I suggest to you you are imagining that incident. A. I am not imagining it.

Q. What happened at Mr. Mackenzie's office? A. I was going around to call for him to take the train. I was downtown.. Mr. Gray was going around perhaps to see Mr. Mackenzie. We drove around.

Q. What is the point of that story? A. The point of that story was this, Mr. Henderson, that in the meantime three different friends had called me up sympathizing with me, that they heard Mr. Mackenzie was going to fail, the first indication I had.

Q. What time in May was it? A. It would be some time after the 9th of May, and before the end of May or first of June.

30 Q. Can't you get it better than that? A. I can't put it down to the date.

HIS LORDSHIP: The best she did this morning was to say it was after she came back from the west and before the date of the assignment.

Mr. HENDERSON: You came back from the west, 9th of May? A. Yes.

Q. I suggest to you that at that time it was well understood the assignment was inevitable? A. I am positive I came back on the 9th of May, and we left for Farm Point. That was because Mr. Mackenzie was not in any fit condition to go to business that day, and we went to Farm Point by motor.

40 Q. That was common practice? A. We stayed in Ottawa two or three hours and went straight through.

Q. How long was it before he was back at business then? A. It was not very long. I should think perhaps three, or four or five days.

Q. That would bring us around to the last half of May? A. Probably around the 12th or 13th.

Q. However, notwithstanding that the failure did occur, and the business was reorganized. I want to pass on to the time when Mr. Code was act-

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ing for you, because something happened then. We are again dealing with a lawyer of excellent standing, aren't we? A. Yes.

Q. And Mr. Code for many months took a very great interest in your affairs? A. This was my first visit to him.

Q. But following that visit Mr. Code took a very great interest in your affairs, and it was Mr. Code who eventually launched this action, wasn't it?

A. Yes.

Mr. SLAGHT: There are two questions rolled in one there.

Mr. HENDERSON: I will ask them one at a time.

Q. Mr. Code did take a very great interest in your affairs, didn't he? 10

A. Yes.

Q. And he wrote this letter that we have heard, saying that under his advice he was recommending you to renew the guarantee, but that you would not do it again after a certain period.

HIS LORDSHIP: That was her first visit to Code?

Mr. HENDERSON: Q. That was your first visit to Code. Am I right in thinking, knowing Mr. Code as I do, that he would not have written that letter without some little conversation with you? A. Oh, Yes.

Q. Quite a lengthy conversation? A. I don't know about very lengthy, Mr. Henderson. It didn't take me long to tell him that I was worried about the business and I wished to withdraw my guarantee. 20

HIS LORDSHIP: What is that exhibit?

Mr. HENDERSON: Nothing turns on the phraseology of the letter, my Lord.

Mr. SLAGHT: It is Exhibit No. 14, my Lord.

Mr. HENDERSON: Q. That letter was written on Dec. 3, 1924. Where was the company doing business then? A. Over in Hull.

Q. The company's business had fallen on evil days? A. Well, Mr. Mackenzie was not attending to the business, if that is the way you mean. 30

Q. And speaking generally, the reason the business was not a success was because Mr. Mackenzie did not attend to it? A. Yes.

Q. And that again was not because he lost any of his salesmanship, but this unfortunate habit of his did not improve? A. Yes.

Q. It is not pleasant to renew that to either you or anybody else. The premises on Queen Street are right in the heart of everything, and a very valuable piece of property, aren't they? A. Yes.

Q. And the moving of the business to Hull meant a very great economy of rent and management? A. Yes.

Q. They went over to a comparatively cheap premises in Hull, possibly better suited for labour conditions, too, but it was a question of economy, and the business was then commencing to struggle, wasn't it? A. I think so, yes. 40

Q. As a matter of fact, even before it moved to Hull there was very serious talk of its being closed down? A. I don't think while they were on Queen Street, Mr. Henderson.

Q. Stop and think. A. Well, I didn't know it. I know he moved to Hull to cut down expenses, but he had every confidence to get on.

Q. You knew, of course, that all through this second stage of business if the bank had refused to carry on at any time, that would have meant that the business would be at an end? You knew that? A. Certainly.

Q. Of course, your husband is an optimist, isn't he? A. I think pretty much.

Q. And you were still optimistic? A. Well, I took his word that things were going to be all right.

10 Q. And everybody tried to be optimistic, and this move to Hull was in the hope that with economy things would carry on? A. Yes.

Q. As a matter of fact, they did look better for a while, didn't they? A. Yes.

Q. And you know that he had a pretty good lesson about that time, very seriously talked to about how he should behave, and that sort of thing? A. Talked to by Mr. Gray?

Q. Yes, and others in the bank. You knew he went to Montreal, to the head office? A. No, I didn't know that.

20 Q. Didn't you know that? A. No, I do know Mr. Gray spoke to him on many occasions.

Q. I think it is fair to say throughout that Mr. Gray did anything he could? A. He tried to do his best with him.

Q. To try and make the business a success, and keep the business going. I do not know that it is unfair to say in that, Mrs. Mackenzie, that a great many were largely influenced by sympathy for you. A. Perhaps.

Q. A desire to keep you going. You knew that, didn't you? and you were anxious to keep going, weren't you? A. I was very anxious the business should go along.

30 Q. You were very anxious the business should go along because it was your bread and butter practically, wasn't it? A. Yes.

Q. Just to touch upon an unfortunate phase of the evidence, at that time you and your husband had had no break. The break between you and your husband had not then occurred? A. No.

HIS LORDSHIP: That was on what date?

Mr. HENDERSON: Q. What was that date? A. I couldn't give you the date when he moved to Hull.

Q. Mr. Gray thinks it was in 1923. A. Yes.

HIS LORDSHIP: There was no break, of course, with your husband in 1923. When was the break?

40 Mr. HENDERSON: Q. It was not till after the business was closed up, was it? A. Oh, yes, I think it was around 1920. I have to go back to the date on Sandy Hill when I was in Dr. Moore's apartment.

Q. It was the tail end of it? A. Yes.

Q. It did not happen all at once? A. No.

Q. Your husband's family were living in Ottawa. He went to them for certain periods and came back to you again.

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HIS LORDSHIP: Q. There was no break in 1923. You say the break was six years ago from now? A. I would say about that. Might be five or six, your Honour. I could tell if I could look up the lease on the place on Sandy Hill.

Mr. HENDERSON: Q. After Mr. Code wrote this letter he came to you again and informed you that if that letter went forward to the head office it might mean that the bank would not carry on the business? A. No.

HIS LORDSHIP: That is not her story. Her story is that the banker told her - - -

Mr. HENDERSON: Q. Didn't Mr. Code tell you he was afraid that if this went forward - - A. No, he didn't tell me that. 10

HIS LORDSHIP: He told her that, but it was after the banker had pointed out to her, "If you persist in that letter - -"

Mr. HENDERSON: Yes.

HIS LORDSHIP: Just a minute, Mr. Henderson.

Mr. HENDERSON: I know her story, my Lord.

HIS LORDSHIP: If you do, go on.

Mr. HENDERSON: Q. You have said to Mr. Slight you had a conversation with Mr. Gray in his room in the bank? A. Yes. 20

Q. In which he told you that he had held the letter back for a fortnight; he was afraid if it went forward to head office the result would be disastrous? A. The substance of it, that the bank would not wait for a year to start operations to close him out. They would start at once to begin operations, and I think Mr. Gray felt the business was doing better, and that is what he told me.

Q. Hadn't Mr. Code been looking into the affairs of the business and reached some conclusion? A. No, he had not. I left Gray's office and went over to Mr. Code's and asked him to withdraw the letter for a time.

Q. Didn't you know Mr. Code had made independent inquiry? A. I don't know what he made. He didn't tell me. 30

Q. Didn't you know Mr. Code had gone to see Mr. Gay? A. No. I don't know he went to see Mr. Gray. He didn't inform me.

Q. Did Mr. Code express any opinion to you as to whether or not you should withdraw this letter? A. When I took this letter back to Mr. Code, saying, "We will hold it for a while," at that time he said he thought I was making a mistake to withdraw it.

HIS LORDSHIP: Q. Is that the way it happened? When you had your talk with Mr. Gray you took the letter back to Mr. Code with your own hands? A. I took the letter back because it had to be withdrawn, yes, your Honour. 40

Mr. HENDERSON: Q. Can you help me? There is a hiatus in our correspondence here, Mrs. Mackenzie, but I find a copy of a letter written by Mr. Code on the 18th of December, saying,

"In reply to your letter of the 17th ins. I may say that your understanding is correct and that my letter of the 3rd instant has been withdrawn and cancelled without reservation."

A. That was the letter about withdrawing the guarantee.

Q. There is one in already asking them to give back the document.

HIS LORDSHIP: That letter you are reading now is the missing letter. That is the one we could not find.

Mr. HENDERSON: I had that for my friend this morning. The missing letter is a letter Mr. Gray appears to have written to Mr. Code under date of the 17th.

HIS LORDSHIP: Code would have that letter and nobody else.

10 Mr. HENDERSON: Q. You recollect this letter being written by Mr. Code, "I may say that your understanding is correct and that my letter of the 3rd instant has been withdrawn and cancelled without reservation."

A. No doubt he would have to write the bank and withdraw my letter.

Q. That is what you intended him to write? A. I asked him to withdraw the letter for a while.

Mr. HENDERSON: I will put that letter in, my Lord.

Mr. SLAGHT: That is a copy.

Mr. HENDERSON: It is a copy we have on our file. It is a copy we have sent from head office.

20 --- EXHIBIT 20—Copy of letter, Redmond Code to C. A. Gray, December 18, 1924.

Mr. HENDERSON: Q. Exhibit 9, that is the undertaking and I think it was prepared in Mr. Beament's office. Do you say it was signed in the bank? That is the one before Mr. Gray and Mr. Teddance.

HIS LORDSHIP: This one is not witnessed, at all Exhibit 9. I do not know whether that is what you have in mind.

Mr. HENDERSON: Yes, that is what I have in mind.

Q. There is no witness to this, Mrs. MacKenzie. I want to ask you why you think that was signed in the bank. Let me show it to Mr. Gray.

30 Perhaps it was.

HIS LORDSHIP: There is one that was witnessed by Mr. Ridge.

Mr. HENDERSON: That is another story. This one I think probably was signed in the bank.

Q. I want to call your attention to this, that at one stage of the proceeding the intention was that the younger Mr. Beament should act between the bank and the new company. Did you know that? A. No, I don't think I ever read it. I am positive I never read any of these things.

Q. Do you remember hearing these things talked over? A. Absolutely no.

40 Q. Mrs. Mackenzie, generally speaking are we to understand that you simply signed these documents? A. Nilly-Willy.

Q. Nilly-Willy. A. Absolutely.

Q. You knew at the same time that Mr. Beament was protecting your husband's interests, didn't you? A. I knew he was his lawyer.

Q. The lawyer for the company, and there was no antagonism between you and your husband at that stage; that is, there was no way in which Mr. Beament when protecting your husband, should not protect you

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at the same time, to see that these documents were all in order? A. Well, he was acting for my husband.

Q. He was never your separate lawyer? A. No.

Q. Whether you call yourself a dummy director or not, you were a director of the company? and a stockholder in the company? A. A Stockholder?

Q. Yes, you must have been, and you had your securities up for the company, and Mr. Beament was protecting the company, that is, the Mackenzie interests, against the bank. You knew that. A. Put that again, Mr. Henderson. 10

Q. Mr. Beament was looking after the Mackenzie interests to see that the bank did not steal a march over them, if I may put it that way. A. I don't know. I suppose he was looking after Mr. Mackenzie. He was his lawyer. Naturally he would have to consult him I suppose.

Q. Mr. Beament, like all the rest, might have been called a personal friend of yours too? A. No, never.

Q. He was another lawyer of high standing? A. He was not any personal friend.

Q. You would have confidence in him? A. I don't know whether I even thought of him. I was asked to go to sign these papers with my husband. 20

Q. You had confidence in Mr. Beament's integrity. There was never any question in his presence between you and your husband? A. You mean any question arising or dispute?

Q. Yes. A. No. I think that was about the only time I went there.

HIS LORDSHIP: Q. Did you ever go to any lawyer with your husband and have any dispute before the lawyer between you and your husband? A. No. I don't think so, your Honour.

Mr. HENDERSON: Q. Then this other document, how did you come to say that Mr. Ridge belonged to the bank? A. I don't think I said he belonged to the bank. I didn't recognize the name when I looked at it first. When you said Mr. Ridge, it naturally came back to my mind who he was, but Mr. Slaght I think had made a mistake in pronouncing the other name of the accountant in the bank. 30

Q. The name of the accountant in the bank, Teddance, nothing like Ridge. A. No, I didn't look at that this morning.

Q. You knew Mr. Ridge was for many years in your husband's employment? A. Oh, yes.

Q. A trusted employé? A. He was for a while.

Q. For quite a time he was the one handling the finances? A. Yes.

Q. He was the one you would go to for money very often? A. Very often. 40

Q. You knew Mr. Ridge very well? A. I knew him in the office.

Q. He was a nice gentlemanly Englishman? A. Yes.

Q. How did you come to forget him and say he was a bank clerk?

A. I don't think I said he was a bank clerk. When it was presented to me this morning I didn't even look at the name. The accountant's name

was wrong. Mr. Slaght had mispronounced it. That was a mistake. I didn't even look at the name till you said Ridge. Then I knew who it was. It was not when it was first shown me.

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10 Q. Mrs. MacKenzie, may I just come back to Mr. Burritt for a moment. Here is a letter I see in which Mr. Burritt says, "Your favour of the 19th instant received, and the statement sent us is insufficient for me to intelligently advise Mrs. MacKenzie. What I desired was a statement signed by the Auditor of the company. If you have such a statement, which of course I would like to be the last one, I would undertake to return the same to you after having looked it over." Did you know Mr. Burritt was making that kind of investigation? A. I was dealing with Mr. Burritt that winter in regard to the income from my husband which was supposed to be fifty dollars a week. I was not receiving it. Mr. MacKenzie was away for six weeks. During most of that time I did not receive anything. I asked him to call up Mr. Wise who was then on the books. He would give no information. He said, "The only thing I can get is to ask for a statement of the company's affairs at the present time."

20 Q. You went back to Mr. Burritt in 1926? A. Yes, several times to look after my income.

Q. You have had several lawyers advising you? A. That was not advice. He was looking after my income.

HIS LORDSHIP: Do you want that letter filed?

MR. HENDERSON: I do not think so.

HIS LORDSHIP: I was asking Mr. Slaght.

MR. SLAGHT: I do not think it makes any difference.

30 HIS LORDSHIP: The woman says she does not agree with Mr. Henderson's suggestion that his was an investigation into the company on the question of advising her as to whether she ought to pledge her stock or not. It was an investigation because he was in arrears in the matter of alimony.

MR. SLAGHT: My friend Mr. Cuffe and Mr. Henderson's partner have brought the shares of the Borden Company here, and a statement has been prepared which is headed as follows, "Shares of Borden Company, Incorporated which the defendants now hold in place of the Ottawa Dairy Company shares lodged with the defendants by the plaintiff." Then it gives the certificate numbers and the number of shares, the details of the matter. It amounts to 294 shares, and by consent we can put that in.

EXHIBIT 21 — List of number of shares of Borden Company, Inc. held by bank.

40 HIS LORDSHIP: That now stands in the place of the Ottawa Dairy stock that both parties agree probably this woman got from her father's estate.

MR. HENDERSON: If my friend so desires, the pleadings may be treated as amended.

MR. SLAGHT: By consent, just to that extent.

MR. HENDERSON: Your Lordship will deal with it in that way.

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HIS LORDSHIP: It will go in the notes. If such an amendment is made, you agree it should be made,, and I will make it if necessary.

MR. SLAGHT: Did you consider that the matter of the insurance?

MR. HENDERSON: I did not. There is a totally different story about it. You will open up a new avenue.

MR. SLAGHT: Without your consent it cannot be done. I am suggesting it will end the litigation.

MR. HENDERSON: I would tell you what the story would be, and I think you will see the undesirability.

MR. SLAGHT: I appreciate your courtesy in offering to. I don't think we need to put into the record any other story unless you are going to permit it to go in. 10

That concludes the plaintiff's case, my Lord.

MR. HENDERSON: You asked that Mr. Gray should be called first. didn't you, Mr. Slaght?

MR. SLAGHT: If you are calling Mr. MacKenzie.

MR. HENDERSON: I intend to call Mr. MacKenzie.

MR. SLAGHT: That was my suggestion.

DEFENCE

Defendant's
 Evidence

20

CHARLES ALBERT GRAY, Sworn,
 Examined By MR. HENDERSON:

Q. You are the Manager of the defendant bank at Ottawa? A. Yes sir.

Q.. That is to say, the main office at Ottawa? A. The main branch it is called.

Q. You supervise other branches somewhat. How long have you held that position? A. Eighteen years.

Q. That is, during the whole of the time with which we have to do in this litigation? A. No, that first transaction mentioned there was before I came, the first transaction in 1913 was prior to my coming there. 30

Q. Eighteen years carries us back— A. The spring of 1913.

Q. That was just before you came. Then what was your first business connection with either Mr. or Mrs. MacKenzie or the company? A. Well, the account was in the branch when I came, and it has been operated continuously since that time. I can't remember the first transaction. There were loans at the time, and loans fluctuated.

Q. Looking at Exhibits 16 and 17, will you be good enough to tell me which is the first one, the earliest transaction with which you had to do? I want to refresh your recollection. A. This entry of March 14, 1914. 40

HIS LORDSHIP: Q. Is that in Exhibit 16 or Exhibit 17? A. Exhibit 16, my Lord.

Q. Exhibit 16 refers to your first transaction? A. Yes, my Lord.

MR. HENDERSON: The first entry on Exhibit 16? A. The first entry on this security register sheet.

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Q. Will you tell me, refreshing your recollection from these exhibits, what the bank had to do with this Ottawa Dairy stock? A. Well, the first entry,, I am sorry, did not involve Ottawa Dairy stock. It was five shares of Ogilvie Flour Mills.

Q. On whose account? A. On Mrs. MacKenzie's personal account.

Q. That is security she then owned? A. Her own security for a loan to herself.

10 Q. Had you any knowledge of the purpose for which she was borrowing? A. I think I may have at the time, but I have not refreshed my memory about that and do not remember now.

Q. Coming on to the first transaction of Ottawa Dairy? A. That was on June 6, 1917.

Q. She says she was then borrowing some money for the purpose of putting it into this business. Did you know that? A. I am sorry I can't recall; that loan apparently remained only for a limited period. The securities were delivered to her again February 18th. So that was a short-term loan.

Q. It might be consistent with what she says. A. Yes.

20 HIS LORDSHIP: Q. Her first account, as I remember it, of borrowing on these shares was in 1913? A. That was for J. A. MacKenzie, your Lordship.

Q. That might be. I assumed from her story all these borrowings were really for the purpose of her husband, although that may have been directed to herself.

MR. HENDERSON: Perhaps I might put it in that general way, if I may, my Lord; the substance of her position is that she borrowed at different times, she is not very clear as to how many times; but always for the benefit of her husband or her husband's business.

30 WITNESS: Although I was not here when this entry went through in 1913, the loan was certainly for his account against those securities.

MR. HENDERSON: Q. The earliest loan you see there, that is the 1913 one, shows that it was for his account against those securities? A. Yes.

Q. How many borrowings were there altogether on those securities?

HIS LORDSHIP: On the Ottawa Dairy stock?

MR. HENDERSON: Q. On the Ottawa Dairy stock, where they were taken in, and then returned again, before they got into stay more or less? A. Well, the first loan made in 1913 apparently carried on until 1917.

40 They were released at that time, in April, 1917. In June, 1917, they were taken in again in Mrs. MacKenzie's own name, and were released in February, 1918.

HIS LORDSHIP: Q. That is not the Ogilvie stock? A. No, your Lordship, that is the Dairy stock.

Q. In June, 1917, they were re-pledged. Is that right? A. Yes, your Lordship, re-pledged in Mrs. MacKenzie's own name.

MR. HENDERSON: Q. If you had known that that was for bus-

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iness purposes, was there any reason why it should not have gone in the firm account or company's account? A. Well, I think if it had been it would have gone into the company account very readily, very naturally.

HIS LORDSHIP: Q. You know these people pretty well? A. Yes, your Lordship.

Q. How much money was it? A. I am sorry this record does not show the amount, your Lordship. I think it was just a small amount for some temporary purpose. That is my recollection.

Q. I was trying to get at whether Mrs. MacKenzie had anything she would need a considerable sum of money for at that time. A. I think it was not a considerable sum. It was just a small amount. 10

Q. If it was a small amount, I do not think it helps or hurts us. Of course, it might show the amount of experience she had in dealing.

MR. HENDERSON: Q. Will you tell his Lordship what experience to your knowledge Mrs. Mackenzie had in hypothecating securities with your bank through you? A. I think she was quite well experienced in what was required.

MR. SLAGHT: That is not the way to put it.

HIS LORDSHIP: It is his opinion.

WITNESS: I think she was quite well versed. There was no need of explaining to her. Some people have to have the procedure explained but I think Mrs. MacKenzie knew that. 20

Q. In her very first transaction with you you assume she knew it well enough that you did not need to explain it. Is that right? A. Yes, your Lordship.

MR. HENDERSON: Q. How did she come to take this certificate away and bring it back? A. I can't remember the exact circumstance. I know she wanted the certificate. It was free at the time, in April, 1917, and she came and signed for it in the ordinary way and took it away. 30

Q. How did you come to get the certificate of independent advice from Mr. Hill? A. Well, up to then the 1913 one, as I say, I don't know anything about.

Q. The first one you do know about? A. The first one was - -

HIS LORDSHIP: Q. The first time you had to deal with her about pledging stock was the Ogilvie stock. Is there anything you want to tell me about that? A. The Ogilvie certificate, your Lordship, was for herself, advances in her own name, and there was no legal independent advice on that. It was simply a matter of endorsing the certificate and a note form.

Q. The next time was 1917? A. June, 1917, was in her own name. There was no independent legal advice then. 40

Q. When did you first begin legal advice? What is the next one? Is there any before 1920? A. I think there is one, your Lordship. There is one October 8th, 1915, for MacKenzie Limited.

Q. That is going back again. A. This is for MacKenzie Limited.

Q. We are trying to get it in order of date. We started with 1913 and got to 1917. Now we are back to 1915.

MR. HENDERSON: Q. Look at this document, Do you know whose signature that is? A. Mr. H. P. Hill's signature.

Q. You are familiar with it? A. Yes.

Q. That is dated March 6th, 1916. It is the form we have had here.

MR. SLAGHT; Is our signature on that?

Mr. HENDERSON: No.

MR. SLAGHT: I object to that being put in.

MR. HENDERSON: At the end it is not signed by Mrs. Mackenzie.

10 Q. Where was that document given to you? A. There is a letter dated October — I think the same date as this entry here, October 18, 1915. I think there is a letter signed by Mrs. MacKenzie on the desk there.

HIS LORDSHIP: Q. Do not talk about it if you have not got it. A. It is there.

Q. Get it and let me see it. (document produced) This is a certificate dated March 6th, 1916, that Mr. Slaght is objecting to. Let us deal with that.

20 MR. HENDERSON: Q. You say that is connected with Exhibit 18. Is that it? A. This was an incomplete letter of advice taken with the securities on October 18, 1915. This letter should have been signed by Mr. Hill, although he purports to state his advice had been taken. His certificate had not been put on at the time, but it was remedied in March, 1916, when the irregularity was noticed.

Q. And this document was then obtained? A. This document from Mr. Hill was the independent advice—

MR. SLAGHT: Is this the one he last spoke of?

MR. HENDERSON: Yes. What he says, Mr. Slaght, is that when this letter Exhibit 18 was taken, the certificate should have been obtained from Mr. Hill. This is ex post facto dated March 6th, 1916.

30 HIS LORDSHIP: Do you want to mark that?

MR. HENDERSON: Yes, my Lord.

HIS LORDSHIP: I am allowing it in. I do not think in the circumstances it has very much probative power.

MR. HENDERSON: I do not think it makes an awful lot of difference.

HIS LORDSHIP: I am not shutting it out because somebody else might think differently.

— EXHIBIT 22 - Certificate of independent advice from H. P. Hill, dated March 6th, 1916.

40 MR. HENDERSON: Q. To what extent had Mr. Hill to do with Mr. MacKenzie's affairs to your knowledge?

MR. SLAGHT: Does he know?

MR. HENDERSON: Q. I am asking for your knowledge. A. This was all I knew about his contact in a business way.

HIS LORDSHIP: Do you know how you came to get this certificate from him at this late date? A. It was about four months after it came to our attention the certificate was incomplete.

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Q. How did you come to get Hill to sign it? A. He was mentioned in the letter she had signed.

Q. How did you come to get Hill to sign this piece of paper four months after, saying he had advised this woman about this transaction? A. I can't remember whether we got it through Mrs. MacKenzie or directly from Mr. Hill, I don't know.

Q. I should think likely directly from Mr. Hill.

MR. HENDERSON: Q. You don't recollect that? A. No.

Q. Later on when Mr. Hill gave the certificate in 1920, how did that come about? 10

MR. SLAGHT: What Exhibit is that?

MR. HENDERSON: That is Exhibit 19, the one she did not identify and I got in later.

Q. This is the certificate of independent advice with the hypothecation of the 31st of December, 1920. I want to know so far as your knowledge tells you what Mr. Hill did in that connection? A. Mr. Hill telephoned me that he had been asked to advise again with reference to lodging these securities with the bank for advances, and subsequently, within a day or two after telephoning, he came down to discuss the matter, and he went over the situation — 20

MR. SLAGHT: I do not know whether in Mrs. MacKenzie's absence—

HIS LORDSHIP: Where is Hill now?

MR. HENDERSON: He is in Ottawa.

HIS LORDSHIP: He is here. He is available.

MR. HENDERSON: He is available to either party, if my friends want him. I have not thought it proper to bring any of these gentlemen here, my Lord.

HIS LORDSHIP: That is your matter, but what I have in mind is, this witness is now swearing Mr. Hill telephoned him about this, and he came down and went over the matter. Mr. Hill is available to either party to test the truth of that. 30

MR. HENDERSON: We all know that.

HIS LORDSHIP: He went over the matter, whatever that means.

WITNESS: I mean he asked for information respecting the condition of the account, which I explained to him, and anything he wanted to know, I told him. He knew what the loans amounted to and what our securities consisted of.

MR. HENDERSON: Q. Was that before or after he gave this certificate? A. That was before. 40

Q. You got the security then. You know that? A. Yes.

Q. I do not want to stretch the story out too long. We have heard the story that the company continued in business for some time after that. Then we come to the period of the insolvency. Mrs. MacKenzie says that some time after the 9th of May in the year of the insolvency she and her husband came back from a trip to the West. Do you recollect that trip to the West? A. Yes, very well.

Q. She says you then told her, or she said something to you about having heard some rumours of the company being put into insolvency — I am not giving the exact words — and you told her there was nothing in it, that you drove her over to her husband's office on Queen Street. What do you say as to that? A. I have no recollection of that at all, no recollection of the conversation or of driving her over to the office.

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10 Q. What was the fact on that date as to whether or not the company was in difficulties? A. Just about that date, or very close to that date, the company got into difficulties very shortly after that, I addressed a communication to our supervisor in Toronto, from where we were supervised at that time, acquainting him with the conditions which had been revealed to me by Mr. MacKenzie.

Q. What had been Mrs. MacKenzie's practice about speaking to you about the affairs of the business? Had she previously spoken to you about the affairs? A. Yes, quite frequently we discussed the progress of the company and the conditions generally of the business.

Q. You have heard what she said about her husband's weakness? A. Yes.

20 HIS LORDSHIP: I would like if you would develop that a little more, Mr. Henderson. Mrs. Mackenzie discussed the progress of the business.

MR. HENDERSON: Q. Starting when? I want to develop that and come back to that conversation again?

HIS LORDSHIP: Frequently he said.

Mr. HENDERSON: Q. What does that mean? A. I had been in contact very shortly after coming here—saw them very shortly after coming here in 1913.

30 HIS LORDSHIP: Q. This is a serious thing you are saying now. You are saying this woman was discussing the progress of her husband's business quite frequently.

MR. HENDERSON: Q. What kind of discussion did you have? I am speaking of shortly after you came there. A. They were friendly discussions.

Q. What was the nature of the discussions?

MR. SLAGHT: If he can tell us one, he had better swear to it.

HIS LORDSHIP: That was what I had in mind. "I remember one discussion," and give us as near the date as possible.

WITNESS: The nature of the discussion was—

40 HIS LORDSHIP: Q. When was it, where was it and who was present? Start with that. The one you remember best. A. I don't remember any one as being vital with reference to proceedings, but there were discussions or talks from time to time as to how the business was coming on, what volume of business was being obtained, also conversations with reference to Mr. MacKenzie personally.

MR. HENDERSON: Q. How would those conversations arise? I want to get a starting point. A. Arise by casual meetings either in the

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Mackenzie house where I went from time to time, or Mrs. Mackenzie came into the office from time to time.

HIS LORDSHIP: Q. Do you remember any occasion when Mrs. Mackenzie came to your office and discussed the progress, and amount of loans, or anything of that kind, about this business? A. On the occasion of each renewal of the guarantee there was contact.

Q. There was contact. Of course, there was contact.

MR. HENDERSON: Q. Explain what happened. Indicate what the conversation would be.

MR. SLAGHT: If he is swearing to an occasion and conversation, that is all right. If he is not, I do not want him to construct a story that is not based on the fact. 10

MR. HENDERSON: Q. His Lordship wants you to tell about some specific occasions that come to your mind if you can, some occasion you can recollect talking to Mrs. MacKenzie. A. I can recollect having talked to Mrs. MacKenzie in 1920, shortly before the security was taken, with reference to the taking of the additional security, that is, her stock, at that time. She asked at that time about the progress of the business, what I thought of it. I told her at that time that I thought the business was not improving, but a very excellent prospect and my recollection of that occasion was that she had no misgivings about giving the security, not to me at least. 20

Q. What was the difficulty in 1920 after the war? A. Our loans had gone on increasing, and additional money was needed to carry on the business, and it was for that purpose the additional security was required.

Q. What was the difficulty with the assets? A. The difficulty with the assets and the business was that the war-time business had stopped, and the company was looking about for new lines of business, new customers, and they were getting that well in hand to some extent by getting business up in the north country, where they had done business before. 30

Q. What effect had the post-war conditions on the value of the assets? A. Of course, a tremendous shrinkage in the inventory which was not fully realized or appreciated until 1921.

Q. Was that generally the case with business men about that time? A. With that particular branch of business.

Q. To what extent was that discussed with Mrs. Mackenzie? I interrupted you for a moment. The big customer had been the Government, and the Government had ceased to be the big customer? A. Yes. The new business was developing, coming along very promisingly. 40

Q. Do you recollect about that time any efforts being made to get more capital into the business? A. Not so much at that time as in 1923.

Q. Can you recollect any other discussions with Mrs. Mackenzie? I want to know to what extent she took an interest in the business, and knew about the affairs of the business? A. All through 1921 there were many conversations, particularly about the reorganization of the business. Both Mr. and Mrs. Mackenzie were very anxious to have the business continue,

to continue the assets which the bank held as security after the assignment in 1921, and which it was considered had a substantial value over and above the indebtedness. And Mrs. Mackenzie was very interested — they were both very interested all through 1921 until the agreement was finally completed to get the new business reorganized.

Q. In connection with the reorganization, when did the failure occur, the first failure? A. I think it was the 14th of June, 1921.

10 Q. Then it was on in November before you got the reorganization completed. What conversation had you with Mrs. Mackenzie during that period, and what was going on that she knew of? A. I can't remember specific conversations, but there were many interviews, particularly with Mr. Mackenzie. I can't remember the particular occasions on which Mrs. Mackenzie was present.

Q. Did you know whether or not she was legally represented after the insolvency and during the reorganization period? A. During the insolvency, the meetings of creditors, I noticed Mr. Fripp present, and learned from him and from Mr. Mackenzie — I can't remember whether I learned from Mrs. Mackenzie that he was there representing her.

20 HIS LORDSHIP: I do not know that I can receive that.

MR. HENDERSON: Q. What you learned from Mr. Mackenzie I do not think is evidence. What you learned from Mr. Fripp himself would be I think.

HIS LORDSHIP: Suppose a man comes and says he is the agent of somebody else, would it shift the onus?

MR. HENDERSON: She says Mr. Fripp was representing her for the purpose of attending the meetings of creditors.

Q. What about Mr. Burritt? What did you know about him? A. Mr. Burritt as a partner of Mr. Fripp I had been in touch with.

30 Q. What did you know of him at that time? A. I had been in touch with him some little time before the letter of independent legal advice was given in November 1921. He wished to know very definitely what was happening, and he had access to everything that had happened; what the agreement was, what the understanding was; that is in the event of the liquidator abandoning the bank's security.

HIS LORDSHIP: Q. Do you mean to say you showed him that agreement? A. No, your Lordship, I didn't show it to him.

Q. Nobody else showed it to him? A. I told him where he could get it and he was quite interested.

40 Q. What you feel and what you are quite satisfied with does not help me very much. If you can tell me definite things you know about what Mr. Burritt did, and what steps he took to inform himself, and particularly the dates he did it.

MR. HENDERSON: Q. Tell me what he knew, and as closely as you can, the dates. A. I had been in touch with him for a period of about three weeks on a number of occasions prior to the signing of the letter of independent advice.

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HIS LORDSHIP: Q. And that was November 9th? A. That was November 14th.

Q. For three weeks before that you were in touch with him? A. I had been in touch with him two or three times during that three weeks.

MR. HENDERSON: Q. You had talks with him, and to whom did you refer him to see the documents? A. I referred him to Mr. Beament and to yourself.

Q. To see the documents.

HIS LORDSHIP: Q. Did they have the documents? A. Yes, your Lordship. 10

Q. They were in the offices of these lawyers instead of in the bank? A. They had not then been signed. They were in process of preparation.

MR. HENDERSON: Q. You referred Mr. Burritt there, and subsequently in conversation with Mr. Burritt was any reference made to these documents by him to you? A. Not to specific documents as far as I can remember. He knew of the general situation.

HIS LORDSHIP: Q. This talk about, he knew of the general situation; you may just as well cease repeating that to me, because it does not mean anything to me at all.

MR. HENDERSON: Q. You informed Mr. Burritt of these documents, and told him where he could see them? A. Yes. 20

Q. Did he tell you afterwards whether or not he had seen them?

HIS LORDSHIP: He said he had not.

WITNESS: No, I don't think he told me he had seen them.

MR. HENDERSON: Q. At all events, you told him where to get the information? A. Yes.

Q. And you subsequently got the letter of independent advice from him? A. Yes.

Q. And the transaction was completed. I do not need to go into that again. These documents speak for themselves as to the way in which the transaction was completed? A. Yes. 30

Q. In connection with the letter of independent advice, you took a re-hypothecation of the securities, a new guarantee? A. New guarantee and new letter.

Q. How did Mr. Gilhooly come into the matter? A. I had no contact with Mr. Gilhooly. He did not come to me, but it has been our practice—

HIS LORDSHIP: Q. I do not want to hear that. If you know anything about Mr. Gilhooly, tell me. 40

MR. HENDERSON: He is going to say, "It is our practice, and we carried on in accordance with that practice."

WITNESS: The renewal guarantee was given out, not to Mr. Gilhooly but to Mrs. MacKenzie, and it came back completed.

HIS LORDSHIP: That agrees exactly with what the woman says.

MR. HENDERSON: Quite. That was a mere incident. There is nothing in that.

Q. Then we come on to the time of the transaction with Mr. Code. You got this letter from M. Code that you know of, with a letter of independent advice, saying that the gurantee would not be renewed later. You have heard what Mrs. MacKenzie said about your approaching her in the bank, and telling her you had held that letter of Mr. Code's for two weeks, not sending it through to head office, and intimating it would be unfortunate if it went through to head office. What do you say happened at that time? A. Mr. Code asked me about the condition of the business. I explained it to him as fully as I could.

HIS LORDSHIP: Q. When? A. Late November or early part of December.

MR. HENDERSON: Q. You got the letter. Mrs. Mackenzie tells us I think rightly— A. No, he asked about the business prior to the receipt of the letter.

Q. So that prior to the receipt of the letter, having that as a date, Mr. Code had had some discussion of the business with you? A. Yes.

Q. Then you got the letter, and after the letter when did you next see either Mrs. MacKenzie or Mr. Code? A. Mr. Code brought the letter in, the completed letter, with the notice of termination in about a year's time.

Q. He delivered the letter personally? A. He delivered the letter personally.

Q. And did you read it in his presence? A. I read it in his presence.

Q. What happened? A. I explained to him that the bank would not care to carry on with a limited letter of guarantee. I asked him to ascertain if Mrs. Mackenzie really meant to terminate after that period as she intimated. I said I would like him — that I would not send the letter on till I learned definitely from them what was in her mind, and he wished, suggested or wished, that I should hold it until I found out from her.

Q. Did you have any further discussion with him as to the business situation then? A. No, not after he had come in and asked about the condition of the business.

Q. What followed after that then? A. Mrs. MacKenzie came in on one occasion, and there was some conversation about it, and I said the same thing at that time.

Q. She says that you asked her to come in and talk about it? A. I didn't write her to come in.

HIS LORDSHIP: Q. Did you not hear what she said? It was perfectly plain. She said she was in the bank getting a cheque cashed or something. You came out and said, "I want to see you in the office." She came in, and you told her this story, that it was not a safe thing to do to insist upon that letter, and she had better have it handed back and you gave her the letter and she carried it back to this man. Is that correct? A. No, your Lordship, it is not correct. As I remember it, Mrs. MacKenzie came in the office. I didn't know whether she came in to

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cash a cheque or otherwise. I inferred that Mr. Code had suggested that she come in, and we discussed it for my part with that understanding. I said exactly the same thing to her as I said to Mr. Code.

Q. The only thing I see in this that you differ in at all is, she said she had a bank account in your branch and she went in there with some matter of ordinary business, and that the Manager, being yourself, and being in your office, saw her there, and came out, and asked her to come in to discuss this matter, and that you then took her into your private office, and told her that if she insisted on that Code letter being carried out, that the bank would not carry her husband any longer. A. That, your Lordship, is not quite the way I understand it. She came in the office. 10

Q. Do you mean she came into your private office in the bank? A. That is my recollection.

Q. Without your going out to the rotunda of the office and asking her to come in? A. I have not the slightest recollection of meeting her outside.

Q. That is where you and she differ. A. Yes, your Lordship. What I remember about that, she came into my office and the conversation then - -

Mr. HENDERSON: You had spoken to Code.

HIS LORDSHIP: That is the part that she apparently did not know. 20

WITNESS: I understood Mr. Code had asked her to come in.

HIS LORDSHIP: Q. I do not know any reason why you would understand that, unless she told you. Do you swear she told you that? A. No, your Lordship.

Q. You are a mind-reader. A. I had been waiting to hear from Mr. Code as to what was going to be done with this letter, whether I should send it on or not. I understand this was the culmination or an incident in the proceedings. So when she came in I made the same remark I made to Mr. Code. I wished to know whether she really meant it. If she did, we would send it on and await the head office's action. 30

Mr. HENDERSON: Q. She said, as I recollect her evidence, that you gave her back the letter, and she took it away with her. Is that what happened? A. No, Mr. Code, as I remember, had the letter all along.

HIS LORDSHIP: No, he did not.

Mr. HENDERSON: Mr. Code wrote you for the letter on the 17th.

HIS LORDSHIP: He wrote you afterwards.

Mr. HENDERSON: Q. He had brought the letter in to you some days before. I forget the exact date, Mr. Gray. It had been left with you for about ten days. 40

Mr. SLAGHT: The 3rd of December was one, and the 17th the next.

Mr. HENDERSON: Q. About a fortnight. And Mr. Code wrote you on the 16th or 17th asking you to hand it back to him? A. Yes.

Q. He actually got it back

HIS LORDSHIP: Q. Hadn't you better be frank about it! I do not mean to say you are not being frank. You do not know. A. I can't remember when it went back. He asked me to return it I think on the 16th or 17th.

Mr. HENDERSON: On the 17th of December he said,
 "I would be obliged if you would return to me the letter which I
 wrote you covering Mrs. J. Angus MacKenzie's guarantee".

Then you appear to have sent him over a letter immediately in answer to that which we have not found; and then he says (Ex. 20):

"In reply to your letter of the 17th inst. I may say that your understanding is correct and that my letter of the 3rd instant has been withdrawn and cancelled without reservation".

10 Q. Does that refresh your recollection? A. No, it really does not. I can't recall just how the letter went back.

HIS LORDSHIP: Q. Mrs. MacKenzie says she can, and that you gave her the letter and she carried it back to Code. Have you any reason to think she is not recollecting correctly? A. No, your Lordship. I must say I can't remember.

Mr. HENDERSON: It may very well be that she delivered Mr. Code's letter, and that may explain her evidence that instead of getting it the one time, she got it another time.

20 HIS LORDSHIP: The thing looks to be perfectly regular in this sense. Code wrote the letter and Code delivered the letter, as Mrs. MacKenzie says, and then Mr. Gray pointed out to him it was a very difficult and very dangerous thing to do. Then some ten days or so after that—Code had perhaps seen Mrs. MacKenzie, or perhaps not—it does not matter anyway—he saw Mrs. MacKenzie in the bank, and he called her attention to the seriousness of the matter, and whether she carried the letter back to Code, or whether he mailed it, what difference does it make?

Mr. HENDERSON: She says, having met Mr. Gray in the bank, this having been said to her, she went to Mr. Code.

HIS LORDSHIP: With the letter.

30 Mr. HENDERSON: I think she went from Mr. Gray to Mr. Code, and got from Mr. Code this letter which she brought back to Mr. Gray, and got there the letter. Then that would reconcile the whole story.

HIS LORDSHIP: I think Mrs. MacKenzie remembered, and I think she was pretty well alarmed when this witness told her, "If you insist on this there will be wigs on the green," and she went straight to Mr. Code and said, "We had better withdraw it".

Mr. HENDERSON: Q. After that did Mr. Code make any further investigation into the affairs of the business? A. After December 17th?

40 Q. After this transaction on the 17th and 18th of December, 1924. I perhaps have a better recollection than you have. A. Any further investigation of the business?

Q. Do you recollect Mr. Code going into the matter pretty fully?

Mr. SLAGHT: That is a very friendly suggestion, isn't it?

HIS LORDSHIP: He says he does not remember.

Mr. HENDERSON: Q. You do not recollect that? A. No, I don't remember any further investigation. That terminated the letter of independent legal advice.

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Q. In her examination Mrs. MacKenzie has told us that Judge Stires was at one time at Farm Point, and taking an interest in her affairs. Did you know him? A. Yes, I met him.

Q. Did he call on you at the bank? A. Yes.

Q. Did he make enquiries into the matter? A. Yes, I met him in company with Mr. MacKenzie during the liquidation.

Q. Did he make any enquiries at the bank, and did you furnish him with information?

Mr. SLAGHT: He had no authority from Mrs. MacKenzie to do anything for her. 10

Mr. HENDERSON: Q. I simply asked the fact, did you furnish Judge Stires with information?

Mr. SLAGHT: I object to that question.

Mr. HENDERSON: Q. As to the affairs of the company? A. Yes.

Q. And Mrs. Tibbetts and Mrs. MacKenzie have both said he was here quite a little time? A. Yes.

Q. Do you recollect what particular period of time that was, whether it was the organization period or not? A. He was here attending one of the meetings. I think he attended both meetings of creditors representing some of the American creditors. He was also spending a holiday here as I remember. 20

Q. They say he stayed here for some little time. Having reference to the guarantee of November 21st, 1921, Mrs. Mackenzie says, "I told Mr. Gray that I did not want to sign that. He told me that my securities were never free, were always the property of the bank." I may not be quoting her exact words. You see what I mean. Everybody knew that technically the bank had been paid off - -

Mr. SLAGHT: Do not make such a statement please, Mr. Henderson.

Mr. HENDERSON: I am trying to refresh his recollection as to one incident. I do not want to take all afternoon. 30

Q. She says that when handing in or signing the document of guarantee of November 21st, 1921, she told you that she did not want to sign, and that you told her that her securities were never free, that they were always the bank's property. A. That was really the understanding of the bank, and this agreement that was taken was for that purpose, that they were perhaps technically free - -

HIS LORDSHIP: Q. Your mind on the matter apparently as I gather it, was that they never were free, that you always had those securities there to protect the bank, and you had never given them up, and were not bound to give them up. A. The securities were taken for that purpose and for that contingency. 40

Q. Your view of it is that they continued that way, not only that they were taken for that purpose, and what the woman says that you told her would be saying just what was in your mind.

MR. HENDERSON: Except that there is this little addition, that they were technically free—

HIS LORDSHIP: He did not tell her anything about "technically free."

WITNESS: No, your Lordship.

MR. HENDERSON: I think he was starting to say so.

MR. SLAGHT: He says not.

HIS LORDSHIP: He says what the woman said about it was pretty much what happened. Isn't that so, Mr. Gray?

MR. HENDERSON: Q. She says at the time Mr. Burritt gave this certificate that Mr. Gray told her it was merely a matter of form. A. No, I never referred to the procedure in that manner at all.

HIS LORDSHIP: Q. That did not agree with your mind on the matter? A. No, your Lordship. I never considered it as being a matter of form.

Q. If you did, you would not say so, being a banker. I suppose you did tell her very likely that it had to be done if these documents were to be effective? A. To carry on the new company, your Lordship.

Q. It had to be done, and I think that is what she said practically, although she puts it in other words.

20

CROSS-EXAMINED BY MR. SLAGHT:

Q. Mr Gray, let me see if there are some phases of the matter that you and I can be quite agreed about. Would it be correct to say that Mrs MacKenzie, her husband and yourself were on a friendly social basis throughout these years? A. Yes sir.

Q. Pretty much as she put it? A. Yes.

Q. And that so far as you could gather from your relations with her, the lady was having from time to time a bit of trouble with her husband because of an unfortunate habit; would that be correct? A. That would be correct.

Q. And as far as you could gather also, she trusted you? A. I think so.

Q. And you would expect her to rely to some extent, at all events, on anything you might tell her that you thought would be best for her to do? A. Yes, I think she did.

Q. I expected you to agree with me in all of those observations. And I want to go along at once with you to the situation in 1921, or perhaps I will, instead of stepping back very far, have you go with me to the 31st of December, 1920. That you will recall was when the securities of hers got into the bank's hands at a time when they stayed there ever since? A. YES.

Q. Do you say that at that time, in December 1920, you did speak with Mrs. MacKenzie about the progress of the business? You used that expression? A. Yes.

Q. Further in the month of December I took it that you did not remember anything vital that you told her, but you gave her to understand

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that the business was flourishing and improving? A. I did not say flourishing.

Q. You are right. That is my word, but that the business was getting along nicely.

HIS LORDSHIP: It was promising much.

MR. SLAGHT: Q. It was promising much? A. Yes.

Q. Mr. Cluffe reminds me that he recalls that you used, "an excellent prospect for success." Is that right? A. I think so.

Q. That was what you gave to her mind when she came to you about it? A. I think so. 10

Q. Let me ask you if in December, 1920, the former war-time business had all ceased entirely? A. I think it had, but I am not in a position to give you a complete picture of that because I was not running the business.

Q. I took you down as saying the war-time business had stopped. A. I think it had. You asked me if it had ceased entirely.

Q. I took it that was what you meant. A. Well, practically.

Q. May I put it to you that for the last five years the war-time business had been the chief backbone of the business. A. Prior to that? 20

Q. Yes. A. Yes sir.

Q. So that the business which was the chief backbone of the company's business had stopped. That is just another way of throwing those sentences together. Now you used the expression, not that you told her this, that the company were looking for new lines at that time? A. Yes.

Q. And they were looking for new lines but had not yet secured new lines, had they? A. They had secured some new lines, yes.

Q. In December, 1920, will you tell me any new line of a thousand dollars that this company had secured? A. You mean new line of credit or customers? 30

Q. You did not mean line of credit. A. No, I was not sure whether you meant new line of goods to handle, or new lines of customers to supply.

Q. Either one or the other, will you swear to a thousand dollars of new line of customers? A. I couldn't do that without seeing our list of trade paper and so on.

Q. You are here to tell us about the conditions at that time which enabled you, or which you knew, at all events. You have already told me what you told the woman. You cannot swear to any new lines of business. Will you swear to a thousand dollars of new lines of goods that they handled at that time? A. No, I cannot give that detail of the business. 40

HIS LORDSHIP: You mean will he tell you any new customers that they sold a thousand dollars worth?

MR. SLAGHT: Yes, my Lord.

Q. Any customer that they had developed as a new line at that time? A. No, I can't give you the details of that.

HIS LORDSHIP: Q. Let me put it a little broader for my benefit. If you cannot tell one customer that amounted to a thousand dollars, can

you tell me as a fact that they had a number of new customers that would amount to a thousand dollars? A. Yes.

Q. You can say that? A. Yes. If it had not been so we would not have been willing - - -

Q. That won't do. I thought you could recollect it. If you can not we had better leave it.

MR. SLAGHT: Q. The company were looking for new lines. That is what you mean by that?

MR. HENDERSON: He says they had obtained new lines.

10 MR. SLAGHT: Q. I want to exhaust what was this flourishing state of affairs, or rather, what was the state of affairs as you knew it, and on which you gave her your summary of it? You said to my friend that the company had new prospects at that time. Do you remember saying that?

A. I think I meant they were developing new prospects, or endeavoring to develop new prospects.

Q. Can you tell me any new prospects they had? A. No.

Q. Can you swear that you knew of any new prospects they had? A. I swear I was satisfied that they were improving the business over what it had been.

20 Q. I suggest to you that in December, 1920, there had been, and was in that month, a tremendous shrinkage in the inventory. What do you say? A. Well, I don't know in that particular month. There certainly had been through 1920.

Q. Through 1920 the inventory had been undergoing a tremendous shrinkage? A. Yes.

Q. You did not tell Mrs. Mackenzie that? A. I can't say whether I developed that particularly or not.

30 Q. If it had been undergoing through the year 1920 a tremendous shrinkage in the inventory, may I take it that by the month of December this tremendous shrinkage had reached the top, or the bottom, in shrinkage for the year? A. Yes, for the year.

Q. You knew that? A. No, I didn't know that in December, 1920, exactly.

Q. That was a bad thing, wasn't it? A. The shrinkage?

Q. Yes. A. Yes, certainly.

40 HIS LORDSHIP: Q. You are a banker apparently with a pretty large experience, if I may put it that way. You had a good many customers who were manufacturing people. Did you need anybody to tell you that shrinkage in inventories was going on in 1920 at a rate that was making everybody's head swim? A. No, your Lordship. We knew there was shrinkage. We didn't know how much it was. I don't know whether Mr. Mackenzie knew or not.

Q. It would not be much use for you to tell him you did not know? A. We knew there was, but we didn't know to what extent it had developed in the business.

MR. SLAGHT: Q. That is the state of affairs which culminated in

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the last month of the year 1920, of which you were aware when you encouraged this woman to put up all the security, I suggest to you, that she had in the world to back her husband's business? A. Yes.

Q. May I suggest to you that the down-hill grade of this business, which it had been travelling at for six or eight months, the last half of 1920, continued right on down-hill for three months of 1921 and went into bankruptcy? A. Yes.

HIS LORDSHIP: Q. Would I be right in assuming that when these men who were said to be advising Mrs. MacKenzie legally came to you for information about the state of affairs, that you told them practically the same kind of thing that you have just now said you told Mrs. MacKenzie? You told them about the business about the same way you indicated you thought it was? A. Yes, your Lordship. 10

Q. And they advised her to go on? A. Yes.

Q. Give up these securities, or put them up, whatever you like to call it. The men who came to ask you about the prospects of the business, for the purpose of advising her, you gave practically the same kind of lead? A. Yes.

MR. SLAGHT: Q. That would be encouragement? A. Yes.

Q. Do you agree with me that in January, February, March, and April of 1921 the business continued going right on down-hill, because I have got some bank figures here. A. Yes. 20

Q. And in June it went into bankruptcy? A. Yes.

Q. How much in dollars had you increased the bank's position by then? And on the 31st day of December did you know she was in bed the day she signed that document? A. No, I didn't know that.

Q. You have no reason to doubt it now? A. No.

Q. How much in dollars did you increase the bank's position from the 31st day of December during those months of the following year that it went down the hill to bankruptcy? How much did you better the bank's position at the expense of Mrs. MacKenzie? A. The security which she gave us consisting of the Ottawa Dairy shares were worth about \$10,000 at that time. 30

Q. And the house? A. The house we did not get until later. I am sorry I just can't recall.

Q. You got the house very shortly after.

HIS LORDSHIP: You got it before the bankruptcy some time, and it was only five months to the bankruptcy.

MR. SLAGHT: Q. How long after you got the stock did you get the house or do you remember? A. I can't remember exactly. I think in the spring. 40

Q. The down-grade of the business was still carrying on down towards bankruptcy. You got the house? A. Yes.

Q. You did not warn her of bankruptcy when you got the house? A. Didn't foresee it at all.

Q. What was the house worth? I suppose there was an equity in it.
A. It was considered to be worth about \$25,000 to \$30,000.

MR. HENDERSON: It turned out to be six thousand.

WITNESS: The mortgage I think was about six or eight - six or seven, I am not just sure exactly.

MR. SLAGHT: Q. That would leave an equity of twenty or twenty-two thousand? A. Yes.

Q. Which you regarded at the time as the security which you were getting from her by way of the house? A. Yes.

10 HIS LORDSHIP: Q. By getting the two sets of security you improved the bank's position about thirty thousand dollars? A. Yes.

MR. HENDERSON: Gave more credit.

HIS LORDSHIP: That may be so.

MR. SLAGHT: Q. When the actual bankruptcy came did I understand you to say that you indicated to Mrs. MacKenzie you believed there would be a surplus over the indebtedness? A. A surplus of the bank's security over the indebtedness of the company?

Q. Yes. A. Yes, I did.

20 Q. A substantial surplus? A. Yes.

Q. You told her that at the time, or just after the bankruptcy? A. I don't know that I used the word "substantial." I said there would be a surplus.

Q. That would encourage her to feel that if she left things alone, she would get some of her securities back in a substantial way, would it not? A. Yes.

Q. That was your purpose in telling her that. At all events, you did tell her? A. Yes, I was convinced of it.

30 HIS LORDSHIP: Do you think this witness means by that that he thought there was enough that belonged to the company and to Mr. MacKenzie that Mrs. Mackenzie's securities would be returned to her intact?

MR. SLAGHT: Either intact or practically so.

MR. HENDERSON: They all thought so at that time.

HIS LORDSHIP: Q. That is what you mean, is it, there would be enough in the business that her securities would get back to her, practically the whole of them? A. I fully expected that.

Q. That is how you felt about it, and that is what you meant to say? A. I had every hope of that.

40 MR. SLAGHT: Q. I started on this taking down that you told her there would in your opinion be a substantial surplus over the indebtedness. You did tell that to Mrs. MacKenzie at the time, after the bankruptcy? A. Yes.

Q. And to such of her lawyers, if any, as asked you about it? A. Yes.

Q. Is that correct? A. Yes.

Q. Let us see what you people did between June and the 14th of November. I take it that your position is, Mr. Gray, that by the deal that was

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then made — I suppose you had lawyers advising you, had legal advice — that it was so manoeuvred that Mrs. MacKenzie's securities lodged to help the company never got free at any moment of time? A. It never was really intended they should. The securities were there, put up to the bank for the purpose of protecting the bank against loss.

Q. I do not use the word "manoeuvred" offensively at all. Do not misunderstand me in this, that I am intending to offend at all, but was it not worked out, as you understood it, or attempted to be worked out under the advice of your solicitors, that you at the wheel for the bank saw that her securities, which were about \$30,000, never would get free at all, and they were safely tucked away on a new company form. A. Yes, surely, but it depended on this arrangement going through, and the trustee in bankruptcy releasing those securities. 10

Q. I know, but that was one of the objects the bank had in view, not to let her securities get away. A. That was our procedure.

HIS LORDSHIP: Q. The plan of operation was to hang on to her securities until you got the new incorporation launched? A. Yes.

MR. SLAGHT: Q. You told me, and you still think today, that if the company had been liquidated in June of 1921, allowed to be wound up, that there would have been a surplus of securities for Mrs. MacKenzie. That was your opinion then and your opinion now. A. Of course, it had to be worked out. That was why we were keeping her securities. 20

Q. You indicated to her at that time that in the bankruptcy proceedings there would be a surplus of assets there and securities? A. Company assets, yes.

Q. And you still think there would have been? A. Yes.

Q. So if it should turn out that Mrs. MacKenzie's view at that time was that her husband— I mean if it should be true, and I am not asking you to assent to it as true, but she has said so — if it should be thought by the court to be true that Mrs. MacKenzie's view then was, and that she advised her husband and desired him to forget the new company and not to form it, but to go back into the commission business where he worked before, and let the business be sold, it would have turned out that that she was right, and that would have been the best thing for her. A. I don't say it would have. It might have. 30

HIS LORDSHIP: Q. On the chance of cleaning this business up by selling it to strangers, do you think there was a real chance that you would realize enough money to have left Mrs. MacKenzie's securities free? A. Your Lordship, it would have realized less under forced sale by the bank undoubtedly than in the way it did, but we were still satisfied with our position, that there was enough security there. 40

MR. HENDERSON: It is not yet worked out you know.

MR. SLAGHT: Q. I want to see what you did by way of getting Mrs. MacKenzie to agree that her securities were not free. Give me the letter of the 13th of September please. You heard Mrs. MacKenzie say that the letter of the 13th of September, 1921, signed by herself and her husband,

which I will refresh your memory with, and on the paper of Beament & Beament was prepared in the office of her husband's lawyer, Mr. T. A. Beament. A. Yes.

Q. And then lodged with the bank? A. Yes.

Q. And I suggest to you that you took no steps whatever to see that Mrs. MacKenzie had any independent advice in connection with the letter of the 13th of September, Exhibit 2. What do you say? A. I say we did not insist on Mrs. MacKenzie giving a separate letter of independent legal advice with each step that was taken. We were leading up to the step which finally transpired when Mr. Burritt advised her on the 14th of November, 1921.

Q. I know you are leading up to the consummation, I want to see if you agree with me there on the fact, not that I am saying you ought to have, but is it a fact that you took no steps in connection with this document which she signed and lodged with you, drawn by Beament, her husband's solicitor — you took no steps to see that she had a lawyer of her own? A. No, she did not insist on getting independent legal advice.

Q. Let us discuss your two affidavits of value here and see what they mean. The affidavit of the 13th of September (Exhibit 5) made by you — I do not need to read that all to you. There was an affidavit sworn before Mr. Fleming on the 22nd day of June (Exhibit 4). That was at the time of bankruptcy. In that you swore a valuation on the stock you had under Section 88 of the Bank Act at \$117,500.00. Is that right? A. Yes.

Q. Where did you get that figure you swore to? A. Those figures were from the MacKenzie Limited books.

Q. Your hypothecation of book accounts, collateral collections, bills and notes was \$103,000.00. Where did you get that figure? A. Those were also from MacKenzie Limited books.

Q. Your real estate, 140 Queen Street, Ottawa, \$45,000.00. Where did you get that figure? A. That was perhaps not exactly from Mackenzie Limited books. I think it was on the books at a larger figure than that, but that seemed a reasonable figure over and above the mortgage.

Q. Did you consider \$45,000.00 was a reasonable figure for the Queen Street property over and above the mortgage? A. That was the consideration at that time, yes.

Q. And you still say that was correct? A. Yes.

Q. There would not be any real change in the value of that property in three or four months? A. No.

Q. You agree with me? A. Yes.

Q. Then I call your attention to the fact that in your next affidavit of the 13th of September, in less than three months—

MR. HENDERSON: You overlooked the fact that the \$45,000.00 includes the Duke Street mortgage also, property which afterwards disappeared.

MR. SLAGHT: Is there a difference in the two?

MR. HENDERSON: Yes, one is at the other end of the city.

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HIS LORDSHIP: Taking both into account, that does not seem to make that difference, does it, Mr. Henderson? I do not quite see the point.

MR. HENDERSON: \$45,000.00 covers two separate pieces of property.

HIS LORDSHIP: What I understood this witness to mean was that putting the two properties together there was an equity which he considered fairly well valued at \$45,000.00.

MR. HENDERSON: Yes. My friend has brought in the contention that on the next affidavit the figure is put at thirty. That is as to one property only.

MR. SLAGHT: I will clear that up. 10

Q. Referring to the difference between the item of \$30,000.00 and \$45,000.00, had any property been sold in the meantime? A. By the bank, no. No property had been sold.

Q. Nor released by the bank? A. No.

Q. Will you tell me why you valued at \$30,000.00 the real estate in your declaration of the 13th of September, 1921 which you had valued at \$45,000.00 less than three months before? A. The Duke Street property was not included.

HIS LORDSHIP: Q. Why was it not included? A. I think that mortgage was being foreclosed. 20

MR. SLAGHT: Q. But it had not been foreclosed. The bank still had it. A. We had not sold it.

HIS LORDSHIP: There was just as much property, as I understand you, at the one time as there was at the other.

MR. SLAGHT: Q. That is clear, isn't it? A. Yes.

Q. Why was there a difference of \$30,000.00?

MR. HENDERSON: The difference is fifteen thousand, my Lord.

MR. SLAGHT: Q. You will agree with that, whether you were contemplating foreclosure proceedings or not, when you made the affidavit on the 13th of September the bank had just the same real estate as collateral security to value as they had when you made the affidavit on the 22nd of June. A. Yes. 30

Q. Explain please, if you can, why you reduced the \$45,000.00 which you have carefully sworn to me now you believed to be an accurate and honest valuation on the 22nd of June? What was your purpose in pulling that down to \$30,000.00 on the 13th day of September? If you will not tell me, I am going to suggest a purpose to you. A. The valuation of the assets was being put in at a figure corresponding with the indebtedness. If the liquidator wished to exercise his right to redeem at that figure, we were quite prepared to release the securities and take payment, but he decided not to take over the securities at that valuation and abandoned the securities to the bank. 40

Q. May I call your attention to this phrase which I find in both these declarations, "and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made

under oath and by virtue of the Canada Evidence Act". You are familiar with that? A. Yes.

Q. I presume you would conclude when you made these declarations that that phrase meant what it said? A. Yes.

Q. Now then, sir, as you are here stating that you make the valuation of the securities held by the bank to the amount of \$125,000.00, including the details of the items, how can you justify making a declaration fixing that value of \$30,000.00 on it, in order to pull it down to make it just fit your debt? A. Well, I thought the valuation before, although it corresponded closely with the amount on the books was too high, I don't think that amount could have been realized for it.

Q. Then you thought too that the valuation of \$45,000.00, as you told me just five minutes ago, was in your opinion an honest valuation.

Mr. HENDERSON: Was at that time.

Mr. SLAGHT: I was careful to ask him that. Three or four months would not make any difference he said.

Q. Do you still adhere to that as the reason why you were able to swear it was only worth \$30,000.00 when you came to the month of September; or was there a much deeper reason which you are going to tell me shortly? A. I think the valuation had really come down.

Q. When did you reach that conclusion? This afternoon?

Mr. HENDERSON: Oh, now!

Mr. SLAGHT: Q. I want to be fair, Mr. Gray. I understood you to tell me a few moments ago that you believed \$45,000.00 to be an honest valuation for that property, that the lapse of three or four months' time would not change the valuation at all, and then you admitted to me you did put it in three months later at \$30,000.00 to make it accord, to make the total accord with the debt that was due the bank by the company. That was the real reason, wasn't it? A. I think it was largely the reason, yes.

Q. Let us see what would have happened if you had put that in at \$45,000.00 instead of \$30,000.00. The total then of the sworn valuation by the banker on the securities that the bank held a preference on and had possession of would have been \$140,000.00 instead of \$125,000.00, wouldn't it? A. Yes.

Q. And had the bank put the same valuation on that property then as they did before, as the bank's claim was only in round figures \$125,000.00, if the bank had kept those assets they would have had to pay over in cash to the trustee \$15,000.00, wouldn't they? A. I suppose so.

Q. If those assets instead of having been bought by the bank from the trustee in bankruptcy, had been offered to any other buyer, and the other buyer had been willing to buy on the sworn valuation of June, they would have bought the estate at \$140,000.00. A. If they had been sold, yes.

Q. Then, of course, Mrs. MacKenzie would have been in a very nice position if she were selfish and looking to her own position, wouldn't she, because the company's assets would have paid the bank in full and left \$15,-

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000.00 over for execution creditors to have, and Mrs. MacKenzie would have been handed back all her assets. A. Yes.

HIS LORDSHIP: Q. And you rather anticipated that situation at one stage. It looks perfectly plain to me now that Mr. Slaght develops it. If you really had \$145,000.00 or \$140,000.00 worth of real assets there that could have been turned into money by careful handling, then you could have paid the debts of the company, the secured debts, and left \$15,000 to be paid to execution creditors, and handed back to Mrs. MacKenzie her securities.

A. Yes, your Lordship.

Q. I suppose that was in your mind when you had the conversation she tells us about, and that you seemed to me to practically agree with her about. A. Undoubtedly we anticipated a surplus in securities. 10

Q. And if that \$15,000 had been carried forward, if the bank wanted to take over the securities they would have had to pay \$15,000? A. Yes.

Q. And there was no open public sale? A. No, your Lordship. The liquidator decided not to redeem.

MR. SLAGHT: Q. Did you encourage him in that?

HIS LORDSHIP: The inspectors were the people who had to decide I suppose.

Mr. SLAGHT: Q. But the bank were anxious to carry it out that way? A. We encouraged them to take them over at the lower valuation, if he takes them over at that figure. 20

Q. Having told me you took no steps to see that Mrs. MacKenzie got any independent advice in connection with the document she signed with her husband in his lawyer's office on the 13th of December, I ask you whether the bank did not complete this transaction by getting a vesting order through by the court on the 14th of November 1921? They got the deal through on the 14th of November, is that right? A. Got possession of the assets?

Q. Yes. A. Yes.

Q. These dates are important to my mind at least, and you agree with me on that. If Mrs. MacKenzie was not bound by her letter of the 13th of September, Exhibit 2, was there anything else you got from her between the 13th of September and the 14th of November that you can show to me that would make the bank entitled to hold her securities for one minute on the morning of the 15th of November, because if there is, I want you to tell me of it A. No, I think the letter of independent legal advice was what we considered necessary. 30

Q. There was not any letter of independent legal advice up to the 14th of November, was there? A. No. 40

Q. On the morning of the 14th of November, assuming for a moment that Mrs. MacKenzie is not bound by this Exhibit 2 of the 13th of September—on the morning of the 14th of November, 1921, she was entitled to go into the bank and say, "Hand me back my securities." A. I did not think so.

Mr. HENDERSON: Does your Lordship think there is any good purpose to be served by discussing law with the witness?

HIS LORDSHIP: That is a question of legal construction.

Mr. SLAGHT: Yes, it is. I accept my friend's suggestion.

HIS LORDSHIP: All he is asking for is, assuming this letter of the 13th of September was the only thing he had to perfect the independent advice, between that and the 14th of November when you got your vesting order there had been nothing further obtained from Mrs. MacKenzie. If there had, let me know what it is.

Mr. HENDERSON: One does not have to have a certificate of independent advice. It is a question of fact.

10 HIS LORDSHIP: Q. Do you know of any other document, or any other thing that added to your rights at all? A. No..

Mr. SLAGHT: Q. I feel I was at fault in putting that question which is a legal one, but Mr. Henderson set me right. On the 15th of November, the day after you got the vesting order, if Mrs. Mackenzie had come into the bank and asked for her securities, you would not have given them to her. You would have told her they were still the bank's? A. Yes.

20 Q. Because she says that shortly after that, and on the 21st of November, she signed the guarantee of the 21st of November which appears to have been witnessed by you and Mr. Teddance. A. Terrance.

Q. In the bank, she says, before she went out to get any letter. A. Yes.

Q. And she has told us that on that occasion you gave her to understand that her securities were still bound to and the property of the bank? A. Yes.

Q. That is correct? A. Yes.

Q. Because his Lordship took that up with you I think, and you assented that you gave her that understanding? A. Yes.

Q. And sent her off to Burrirt's office with that in her mind from you? A.. Yes.

30 Q. And you would not be surprised if, as she has sworn, she told Mr. Burrirt, "Mr. Gray says that my securities are still bound to the bank". You might expect the lady to tell the lawyer what you had told her about the position over there? A. Yes.

Q. You heard her say Mr. Burrirt told her if that was so there was no use his going into the matter, and she might as well sign. A. Mr. Burrirt had gone into the matter prior to that.

Q. Never mind that. Did Mr. Burrirt ever see the vesting order of the 14th of November? A. I can't say definitely. His firm was acting for Mrs. MacKenzie, and they knew what was going on.

40 Q. At all events, you let her leave your office telling her that was the legal position, and expecting that she might reasonably repeat that to her lawyer from you? A. Yes.

Q. You are being very fair with me. You do not recall using the expression as she put it, that they never were free. I think you said you did not recall that? A. That I told her that?

Q. The effect of what you told her was, as you explained it to His Lordship, in accordance with the original intention that you set out to ac-

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comply, the lady's securities had never got away from the bank's hold.

A. No.

Q. Knowing what you have been fair enough to tell me today, that you still adhere to the view that if there had been a winding up of the securities after the bankruptcy of the first company, she would have got her securities back in full, don't you think it would have been fairer to have told her that she had a right to choose to take her securities after the 14th of November, and on the 21st if she wanted them back? A. I didn't think she could take them back at that time.

Q. I will not go into that again. You relied on the letter of the 13th of September for whatever it was worth? A. Yes.

--- Court adjourned at 5.30 P.M. until 9.30 A.M.

--- May 20, 1931, on resuming at 9.30 A.M.

Mr. HENDERSON: With your Lordship's permission and my friend not objecting, I omitted to ask Mr. Gray one point. I had better put it in now and my friend can cross-examine.

CHARLES ALBERT GRAY, Recalled, Examined.

--- By Mr. HENDERSON:

Q. Mr. Gray, I forgot to ask you about the hypothecation in November, 1921. Was there one? A. Yes, there was an hypothecation.

Q. It is one of the last documents? A. This is a copy of the original.

HIS LORDSHIP: Was that found since again?

Mr. HENDERSON: No, my Lord, this is not an original. The original is lost. We overlooked putting it in.

HIS LORDSHIP: That is the one made on the 13th of September?

Mr. HENDERSON: Starting the 13th of September. It is really dated the 21st of November.

HIS LORDSHIP: She signed one on the 13th.

Mr. HENDERSON: The 13th of September was a letter saying that they would carry on. Your Lordship will remember in November the transaction was closed up and a new certificate was given by Mr. Burritt.

HIS LORDSHIP: I thought we had a typewritten copy of that.

Mr. HENDERSON: No, we had not. We were talking on the assumption it was in really; in fact, I cross-examined Mrs. MacKenzie on the assumption it was in.

HIS LORDSHIP: The difficulty was when Mrs. MacKenzie was in the box she declined to identify it. When Mr. Slaughter produced those documents she declined. He said, "Well, I can't put them in now." Then this is the right time.

--- EXHIBIT 23—Hypothecation form dated November 21, 1921.

Mr. HENDERSON: There was a guarantee which compared with the hypothecation in each case. There were three documents that went to make up the complete transaction; guarantee, hypothecation and letter of independent advice, and we omitted putting in the form of hypothecation.

--- BY Mr. SLAGHT:

Q. Mr. Gray, your counsel has just put in as Exhibit 23 a copy of an hypothecation signed by Mrs. MacKenzie on the 21st of November, 1921. As you have already told us, this is the document that she signed in your office before she went over to Mr. Burritt's office. A. I don't know whether it was signed before or after. It was signed in that connection.

HIS LORDSHIP: Q. Are you able to deny what she says, that it was signed before? She says she remembers that it was. Are you clear enough about it to say she is wrong? A. No, your Lordship, I don't know whether it was before or after. I didn't think it important at the time.

Q. I do not know that it is very important either.

MR. SLAGHT: Q. Then, Mr. Gray, just a very few matters and we are through. I want you to fix the date when the MacKenzie Manufacturing Company Limited, which is the second company, went on the rocks or into litigation. I am instructed it was the 20th of October, 1926. Is that correct? A. That is the date.

Q. That is the date when the second company went into liquidation, and who became the liquidator of that company? A. The liquidator was P. S. Ross and Sons, Montreal.

Q. And then at the time of that liquidation the bank had from the MacKenzie Manufacturing Company, Limited the pledge of their stock under Section 88 of the Bank Act, and the book debts, and so on, as we have heard? A. Yes.

Q. Then what occurred between the Bank and the liquidators after that liquidation? You valued your securities I assume under the Act? A. Yes, we did.

Q. And you did not surrender them; you retained them? A. We retained them.

Q. As against your debt? A. Yes.

Q. Is that correct? A. That is correct.

Q. And secured a release, or took the securities over as you had done before? A. Yes.

Q. Your debt against the company was released? A. No, our debt still exists.

Q. How does it still exist if you took the securities over? A. We have not been paid. We really took the securities and realized on what was realizable and we still have an amount unpaid.

HIS LORDSHIP: Q. You realized as far as they would go? A. Yes, your Lordship.

MR. SLAGHT: I do not know that he quite means that, my Lord

Q. You realized on some of them, but you still hold securities which you have never realized on? A. Yes.

Q. I think you furnished a statement as to what you still have on hand unrealized on. I show you this memorandum which I am instructed is one prepared by you. Is that correct? A. Yes.

MR. SLAGHT: I will put this in, my Lord, as Exhibit 24.

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HIS LORDSHIP: Was that not put in?

MR. SLAGHT: It was a statement that the bank furnished us on re-quest.

MR. HENDERSON: It is all right, is it, Mr. Gray?

WITNESS: Yes.

MR. HENDERSON: I had not seen it before.

--- EXHIBIT 24 — Statement of securities held.

HIS LORDSHIP: I thought the securities they had in hand that were held in lieu of the Dairy stock was one of the exhibits you got the bank to make up and put in yesterday. 10

MR. SLAGHT: That was, my Lord, at the time of the first liquidation of the first company, but now I have gone forward to 1926, because it is the second company that went into liquidation in 1926 for whom the present guarantee was given by her, and for whose debts her shares are now held.

MR. HENDERSON: As I understand, my Lord, a great deal was more or less historical. My friend has gone into the whole history of the business, but the real question now turns on the second business.

MR. SLAGHT: The second guarantee.

HIS LORDSHIP: The guarantee I thought he was directing the main force of his attack to was the one of 1921. 20

MR. SLAGHT: It is, my Lord.

HIS LORDSHIP: Thesecond company lived from 1921 to 1926?

MR. SLAGHT: Yes, my Lord.

MR. HENDERSON: And it also gave pledges to the bank pursuant to the agreement that was made during what I call the reorganization period. It re-hypothecated the security.

HIS LORDSHIP: Mr. Slaght's contention apparently in his cross-examination of this witness, if I appreciated it yesterday, was that on the 13th of September, or at some date about that, 1921, there were a few days in which Mrs. MacKenzie's securities were in a position that she might have gone to the bank and said? "I want my securities." 30

MR. HENDERSON: There was at least theoretically a moment of time.

MR. SLAGHT: From the 14th of November until the 21st of November.

MR. HENDERSON: Then we say they were re-hypothecated and so continued.

HIS LORDSHIP: It I appreciate what this witness said, — I am not saying what the law is on it, but apparently the facts are made out — Mr. Slaght's contention will be as a matter of law there were seven or eight days there that she could have said, "I want my securities." 40

MR. HENDERSON: Yes, my Lord, that is my friend's argument.

HIS LORDSHIP: That is his point. Whether it is good or bad I am not saying.

MR. HENDERSON: The securities are now held under the hypothecation I put in this morning.

MR. SLAGHT: The one you put in this morning is the hypothecation of the 21st of November, 1921, and is the one you now hold them under, and that is the one I am attacking.

Mr. HENDERSON: Your Lordship will remember what my friend called the vesting order. That is the court order confirming the bankruptcy arrangement, the 14th of November.

MR. SLAGHT: That will all straighten out in the argument.

10 HIS LORDSHIP: On the 14th they got the court order, and on the 21st she went through the form of hypothecating again. If I am right, she renewed that hypothecation on a number of occasions afterwards under circumstances which are attacked, of course.

MR. SLAGHT: Q. This is Exhibit 24, the memorandum that you prepared showing the assets of MacKenzie Manufacturing Co. Limited, and assets of J. A. MacKenzie lodged as collateral, and showing also certain Borden shares of Mrs. MacKenzie, all of which assets the bank are still holding undisposed of. A. Yes.

Q. Exhibit 24 shows an indebtedness of the MacKenzie Manufacturing Co. of \$106,160. A. Yes.

20 Q. And then it shows that the Queen Street property which formerly belonged to the MacKenzie Manufacturing Company Limited was sold by the liquidator, and bought in by the bank, subject to a first mortgage against the property of \$58,000. A. Yes.

Q. That is correct? A. That is correct.

Q. So that the bank are now the owners of the Queen Street property, subject to the Huron and Erie mortgage of \$58,000. That is correct? A. Yes.

Q. And what are you doing with the Queen St. property? A. It is rented to a department of the Dominion Government.

30 Q. For \$17,000 a year? A. For \$17,000 a year.

HIS LORDSHIP: Q. On what sort of lease? A. A five-year lease, your Lordship.

Q. Expiring when? A. I can't remember the date.

Q. Roughly? A. I think it was about three years to run.

MR. SLAGHT: Q. I understand that a reasonable valuation on that Queen Street property would be \$150,000. A. I can't get that.

40 Q. Not now perhaps, but in 1926 that was a reasonable valuation. A. You couldn't get it then. If it had been obtainable then it would have been sold then. At the present time we have not been able to get an offer for it really.

Q. I am instructed that you or Mr. MacKenzie got a valuation on it which at the time you thought was reasonable, either in 1926 or 1927. A. Mr. MacKenzie got a valuation, an architect's valuation. I can't remember the figure but the architect's valuation was up to that figure.

Q. Up to \$150,000? A. Yes.

Q. Was it in excess of that? A. I can't remember the exact figure. I think it was. I think it was \$160,000.

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Q. Would you say that was not a fair valuation at that time? A. I say it is not a realizeable value.

HIS LORDSHIP: Q. It might be worth it but you could not get the money? A. Yes.

MR. SLAGHT: Q. As appears in Exhibit 24, the life insurance, which it appears from the document we put in, the life insurance policies, you procured in the year 1922, and your statement shows that there is a fully paid cash surrender value on life insurance of \$8,800. A. Yes.

Q. On some of the policies? A. Yes.

HIS LORDSHIP: That is, bunching them, a surrender value of \$8,800. 10

MR SLAGHT: On some of them

HIS LORDSHIP: On all that have a surrender value.

MR. SLAGHT: No, because there is another figure here.

Q. And a further cash surrender value on some of the others of \$3,000? A. That \$3,000. I think is subject to a loan against those policies. The net cash surrender value of these other policies I think in the Equitable is -- I think it is one half of that. There is a loan representing premiums and non-forfeiture which has gone against those policies.

Q. \$8,800. is a fixed cash surrender value? A. That is fixed on paid up policies. 20

Q. Without any loan trouble? A. Yes.

Q. Then your statement shows \$3,000. of a cash surrender value on some other policies, against which you say there is a loan of approximately \$1,500? A. Yes.

Q. So the total cash surrender value of the policies the bank held would be \$8,800. plus \$1,500? A. Very close to that.

Q. That would be \$10,300? A. Yes.

Q. Then your statement shows that you have a balance in Collateral Cash Account, consisting of proceeds of sale of Clemow Avenue house and accumulated dividends on Borden shares of \$6,833? A. Yes. 30

Q. So that is in addition to the \$10,300, and you have set it aside in a special account. The bank have received \$6,833 more. A. That consists of Mrs. MacKenzie's accumulated dividends on the Borden stock.

Q. But the bank have the money? A. Yes.

HIS LORDSHIP: Q. Does that mean you set up a special account for her dividends and deposited them? A. Yes.

MR. SLAGHT: Q. Because of the litigation? A. No, not because of the litigation.

HIS LORDSHIP: A special account in which they kept track of her dividends. If there is any question about it, they will know what it is. 40

WITNESS: Yes.

MR. SLAGHT: Q. Then we have on top of that the equity in the Queen Street property which your bank have bought, and which you are not able to tell me the present value of? A. Yes, it is not realizeable now.

HIS LORDSHIP: Q. Is that where the business house was? A. Yes.

MR. HENDERSON: Before they moved to Hull.

WITNESS: That had been operated some years prior to going to Hull.

MR. SLAGHT: Q. There are four other securities here; 20 shares of Uplands, Limited; 20,000 shares of Coeur D'Alenes Lead Co., one share of Rivermead Golf Club; and \$700, in bonds of the Hunt and Motor Club; which you have not put a value opposite. A. It is almost impossible. That \$700 bond of the Hunt and Motor Club is probably worth close to \$700.

Q. The others are doubtful assets, so probably a thousand dollars would be about the value of those. A. I think that would be over.

10 Q. Five hundred would you assent to? A. Between five and six hundred.

Q. I will take five hundred, because it is not important to a hundred dollars. May I ask you why you did not realize on these assets in 1926 after the liquidation, but still continue to hold for five years these assets unrealized, and Mrs. Mackenzie's personal securities unrealized? A. Because we hoped to liquidate the debt out of the company's securities.

Q. Instead of your hopes being realized, they are perhaps of less value today than when you might have first sold them in 1926? A. Well, it is possible. I would not say that definitely.

20 Q. You don't know? A. No.

Q. At all events, you have held them for five years? A. Mr. Mackenzie has been endeavouring to dispose of the Queen Street property, and we are leaving that to him to some extent, rather than put it up for sale ourselves, realizing the bank attempting to put it up for forced sale would possibly result in a smaller net than Mr. Mackenzie.

Q. Would you let me see those Borden stock certificates? A. I am sorry; I did not bring them today. I did not know you wanted them again today.

30 Q. Let me see the exhibit that sets them out. As I gather from the correspondence, the Borden stock certificates were received early in 1928? A. Yes, exchanged.

Q. The correspondence is in the month of February. May I take it they were exchanged and received in February? A. That was the date. The actual certificates might not have come forward until later.

Q. I don't care about that. The date the bank and Mrs. Mackenzie agreed to substitute it, and the bank communicated that to the company and became entitled to that would be in February, 1928? A. Yes.

40 Q. Have you followed the price of these Borden shares at all since 1928 when you received them? A. I have at times, not steadily.

Q. I am instructed by a brokerage firm who have looked it up for me, that the high price at which these Borden certificates sold from the time the bank got them in 1928 down to the end of 1930, and I am not troubling with 1931 because I do not expect they would be high, that they sold in the year 1929 at \$203.75 a share before the split. A. Yes, I think that is correct.

HIS LORDSHIP: What do you mean before the split?

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MR. SLAGHT: I will ask him, my Lord, because we have not heard of that yet.

Q. And subsequent to that time when they sold at \$203.75 the Borden Company split the shares and gave you two for one? A. Two for one.

Q. So that holding now 294 Borden shares, you originally held only half that many? A. Yes.

Q. And at the time you held half that many, in the year 1929, the high price as you have told me was \$203.75? A. Yes.

Q. So to translate that into money, half of 294 is 147 shares, and 147 shares at \$203.75 per share amounts to \$28,890. A. Approximately that. There are some bonus shares, I think about eight or so. 10

Q. That would be approximately \$28,890? A. Yes. My impression of the high value was around twenty-six or twenty-seven. I didn't think it was as high as twenty-eight.

Q. At these figures it is \$28,890.

HIS LORDSHIP: Without the bonus shares?

WITNESS: No, that includes the bonus shares.

MR. SLAGHT: Q. I want to get if we can on to the record the fact that if Mrs. Mackenzie was entitled to have received these shares back from the bank, and if she had sold them at the highest market price, she would have received approximately \$28,890, or could have, in the year 1929? A. Yes. 20

Q. And conversely, of course, if the bank had seen fit to sell them at that time, the bank would have received that much money for them? A. Yes.

Q. Why didn't you sell them at that time? A. We were not taking the arbitrary position of selling the securities.

Q. Why? A. We would have done so if we had been asked by Mrs. Mackenzie, certainly. We were attempting to realize on the other securities first before realizing on the personal securities. 30

HIS LORDSHIP: Q. You had then, and still have, a considerable bunch of securities or assets of the principal debtor? A. Of the company, your Lordship.

Q. That is the principal debtor, isn't it? A. Yes.

Q. Your plan you say was to realize everything that the principal debtor owned before you broke in upon the securities pledged as guarantee securities only? A. That, your Lordship, was the intention.

MR. SLAGHT: Q. Her law-suit of course was running in 1929. The law-suit was begun in 1928. 40

MR. HENDERSON: It was running backwards. The action had been discontinued.

MR. SLAGHT: I am sorry I made a mistake. It should be \$29,890 instead of twenty-eight thousand. It will only take a moment. Would you just check that with a pencil, 147 shares at \$203.75?

WITNESS: Yes.

MR. SLAGHT: Q. So that the true amount of the top price at that time, in 1929, is \$29,890. A. It would not be so much as that with these other eight shares. The other eight shares I think were given after that high point, so you are putting the bonus shares in at the high point. I think they were not distributed until after the division.

HIS LORDSHIP: Q. After the high price? A. And I think after the split. I am not just clear about that point.

Q. When you got them, what was the price then? How much would it take off?

10 MR. SLAGHT: Q. What was the price when you got them? We will take off the difference between \$203.75 and the price when you got the eight shares. A. I did not prepare myself on that.

Q. What was the best price you could have sold the eight shares at? A. The eight shares and the split shares, I should think possibly seventy. Those are the bonus shares.

HIS LORDSHIP: Q. \$203.75 was the high price in 1929. You say after 1929 you got eight bonus shares? A. I couldn't say exactly on that.

20 Q. What was the best price you could have gotten for the eight? A. About seventy.

MR. SLAGHT: Q. I think our present figure will stand when I call the witness' attention. I am instructed that it was during 1928 that the Borden Company issued rights to buy one share of Borden for every 12 shares, and that therefore you are mistaken in your recollection that the bonus shares were not issued in 1929. A. Until after 1929.

Q. No, before 1929; that during 1928 the bonus shares were issued. That is a memorandum.

MR. CLUFFE: It is furnished by the Secretary of the present Borden Company in Ottawa.

30 MR. SLAGHT: We can call him if necessary.

MR. HENDERSON: There is no such person.

WITNESS: That seems to be correct. It would be prior to 1929.

MR. SLAGHT: Q. At least we have a safe figure for the high, \$29,890. Then, Mr. Gray, another point. I want you to tell me how high the loans got from the bank to the old company, Mackenzie Limited, at the end of 1920, and will you refresh yourself from your own memorandum which you prepared at the request of counsel? In 1920 how much money had you loaned to Mackenzie Limited? A. The high in 1920 was \$236,400.

40 Q. May I take it that that would be a December figure? A. Yes, that would be at the end of the year.

HIS LORDSHIP: That would be December 31st, 1920?

MR. SLAGHT: Yes, my Lord.

Q. Now look in the year 1921 and tell me the highest amount that your bank loaned in 1921? It would appear to be \$186,200? A. \$186,200, yes. That two thirty six might not have been in December. That does not give the month to month.

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Q. If you have any doubt I would like you to corroborate that. If you want to change it after you are out of the box, step back and I will permit you to alter it. You think it would be in the month of December? A. What I mean, we have the high for 1921 as one eighty six. If the two thirty six in 1920 had been in December, the 1921 high would also be the same.

Q. In talking of the highest amount the bank loaned Mackenzie Limited in 1921, we need only consider from the 1st of January, 1921, down to the month of June, 1921, because then it went into bankruptcy? A. Yes.

Q. And you have given the court the high figure there. 10

HIS LORDSHIP: That would mean that from 1920 to 1921, June, the loans had been reduced about \$50,000?

MR. SLAGHT: Oh, yes. They were selling goods and getting into a more liquid position.

Q. And that state of affairs was brought about at least with the concurrence of the bank, and perhaps with the suggestion of the bank.

HIS LORDSHIP: And may be under the pressure of the bank.

MR. SLAGHT: Q. That is, getting in the money, getting down the loans? A. The loans were higher than we wished them to be, of course. 20

Q. Is it correct that in the spring of 1921 the bank's attitude was to have the company get in money and get the loan reduced? A. Yes. 20

Q. And that was just after you got hold of Mrs. Mackenzie's securities? A. The Dairy stock, yes.

HIS LORDSHIP: Q. Had you any security of hers when you got the Dairy stock? A. No, your Lordship.

Q. I am right in assuming that about 1917 or so all the old pledges which she had made with the Bank had been cleaned up? A. Yes.

Q. And in 1920 you got a new holding of her securities? A. Yes, your Lordship, of the stock. 30

MR. SLAGHT: Q. Now, Mr. Gray, just one other matter. Do you recall that prior to 1921 Mackenzie Limited had had some trouble with a book-keeper named Foster? A. Yes.

Q. And it had come to the attention of yourself as Manager of the bank that some moneys through Foster had been deposited in another bank, and not put in the firm's account? A. Yes.

Q. And you took that up with Mr. Mackenzie? A. Yes.

MR. HENDERSON: Would you mind not referring to that name unless it is necessary? There is a reason for it which I will tell you afterwards.

MR. SLAGHT: You can delete it if you like. 40

MR. HENDERSON: I don't know how this arises. I succeeded in getting complete restitution there on the faith of a promise.

MR. SLAGHT: If my friend wants it, you can say a book-keeper and delete the name Foster from this record. I have no desire to hurt anybody.

Q. Mr. Mackenzie got hold of certain bonds at that time, did he not? A. Yes.

Q. Dominion of Canada bonds? A. Yes.

Q. Did he turn over to you personally a bond at that time? A. No.

Q. A bond of a thousand dollars? A. No.

Q. Were you and he working together on the matter of the recovery of the bonds? A. No, not working together. I found this condition.

Q. You had the bank's solicitor, Mr. Henderson, take it up? A. Yes.

Q. For the purpose of assisting MacKenzie Limited and MacKenzie in getting them back? A. Yes.

HIS LORDSHIP: Getting back the moneys that were deposited in this other bank.

10 MR. HENDERSON: Oh, no.

MR. SLAGHT: All that were getting away.

MR. HENDERSON: I will tell you the whole story.

MR. SLAGHT: I don't think it is necessary.

HIS LORDSHIP: Let us put on the record whatever there is to go on.

MR. HENDERSON. I will tell my friend the whole story and then he can cross-examine along that line.

MR. SLAGHT: Q. I want you to refresh your memory again and see if at the time, or just after that transaction occurred which we have last referred to, whether Mr. Mackenzie turned over to you a Dominion of
20 Canada bond for a thousand dollars? A. No, he did not.

Q. Then or at any time? A. No.

Q. Or a cheque for a thousand dollars? A. No.

Q. Did you never have any personal dealings with him about money matters? A. We were always dealing with money matters.

Q. As distinct from your dealings for the bank, Mr. Gray, did you personally have a deal with Mackenzie? A. No.

Q. On behalf of yourself personally? A. No.

Q. You told us yesterday about having given Mrs. Mackenzie certain
30 information in December of 1920 when you desired her to turn her securities over to the bank. Did you give the same information to Mr. Mackenzie that you gave to Mrs. Mackenzie in December, 1920, regarding the promising condition of the company? A. I was not giving him any information at all about it.

Q. He perhaps had means of getting his own information. Then let me ask you this; how did you approach, or how did the bank approach Mrs. Mackenzie to give this additional security; by their approaching her directly, or by having Mr. Mackenzie ask her about it? A. I think first through Mr. Mackenzie.

40 Q. Through Mr. Mackenzie you first approached her? A. Yes.

Q. And then approaching her through her husband first, you had an interview with her on the subject yourself before she consented? A. Yes.

Q. How many interviews did you have with her before she finally consented to put up her personal securities? A. It is not possible for me to recall that.

Q. I want them approximately.

Half a dozen at least? A. No. I don't think I had half a dozen.

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Q. Give us your best judgment on how many? A. I don't think it was discussed more than twice..

Q. Did you go to the house, or did she come to the bank? A. I think it was in the bank.

Q. Did you send for her, or did you have her husband bring her in? Did she come alone to see you on either of the two occasions that you do recall, or was she brought by her husband at your suggestion? A. No, she was alone, but I can't remember whether she came in because of the knowledge that we wished it, or just what inspired - -

Q. On the occasion that you gave her the information that we went over in detail yesterday; as to your opinion of the promising future for the company, she was alone with you? A. Yes. 10

--- RE-EXAMINED BY MR. HENDERSON:

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Q. My friend has put questions to you—take, for instance this last question, “when you gave her your opinion as to the promising future of the company, she was alone with you,” and you answered “yes”; what did that “yes” answer; what part of that question? A. That we were alone. 20

Q. Nothing more.

Mr. SLAGHT: It answered the whole question. That is unfair.

Mr. HENDERSON: The whole question, of course, was unfair. My friend's questions are generally unfair. You have been answering so many questions that are double-barrelled - -

Mr. SLAGHT: I do not propose to answer that sort of criticism, my Lord.

Mr. HENDERSON: I am not blaming my friend.

HIS LORDSHIP: I may say to you, Mr. Henderson, that aside from his answer to the general question now, my understanding of his evidence was that he did tell Mrs. Mackenzie what Mrs. Mackenzie said in effect that he told her, that the thing was promising. He said himself excellent chance and excellent prospects. 30

Mr. HENDERSON: I propose to ask him as to that.

HIS LORDSHIP: He has made his statement upon that phase of the matter when it was not a double-barrelled questions, and if this is a double-barrelled question I only take it as confirming the other. Perhaps he ought to have his attention drawn just the way you have, without any offence to Mr. Slaght.

Mr. HENDERSON: I am not suggesting any offence. 40

Mr. SLAGHT: I just rose because of my friend's observation that Mr. Slaght's questions were usually unfair.

HIS LORDSHIP: He was only joking.

Mr. SLAGHT: As it has gone into the record, I must not without at least showing I have observed it have my reputation entirely destroyed.

Mr. HENDERSON: I will quite admit that many of my questions are similarly unfair.

Mr. SLAGHT: That does not flatter me.

Mr. HENDERSON: And I do not think I have destroyed my reputation.

HIS LORDSHIP: Mr. Slaght says, "Speak for yourself, John."

Mr. SLAGHT: I will accept the last statement, my Lord.

Mr. HENDERSON: Q. My friend asked you how many interviews you had with Mrs. Mackenzie before you finally persuaded her to pledge her security. Have you any comment to make upon that question put to you? A. I think two.

10 Q. Have you any comment to make upon the question as put to you. "before you finally persuaded her?" A. I didn't persuade her or attempt to persuade her.

Q. Did you at any time persuade her? A. I didn't try to persuade her.

Q. What was the character of the interviews you had with her? A. We discussed the company itself and the advisability of carrying on, and informed her the head office wished this security in order to carry on the business, and it was left to her to decide whether she would - -

20 Q. Did you at any time attempt to persuade her to do anything against her will? A. No, I did not.

Mr. SLAGHT: That was a very weak "no".

WITNESS: Absolutely no. There was no persuasion attempted.

HIS LORDSHIP: It is not a question whether you persuaded her or not.

Mr. HENDERSON: That is not pleaded.

HIS LORDSHIP: That is not the crucial question.

30 Mr. HENDERSON: Q. My friend asked you as to why, or commented upon the fact that you did not sell the Borden stock at the big prices of 1929, and you said it had been the policy of the bank to try and liquidate the company assets first. Was there ever at any time any difference in that policy? A. No, that has always been the policy right through.

Q. Did you ever have any conversation with Mrs. Mackenzie as to the desirability of selling the stock? Was that ever broached to you by her or anybody on her behalf? A. No.

Q. Were you ever asked to sell it? A. No.

Q. If she had wished you to sell it at any time, would there have been any reason why you should not sell it, and hold the cash in lieu of the stock? A. We would have complied, or re-invested it in any way she wished.

Q. You did, for instance, make the exchange? A. Yes.

40 Q. Am I right in understanding that there is still a hope that the company assets will pay off the debt? A. Yes, we still hope for that.

HIS LORDSHIP: Q. I hope for it too, but is that real? A. Your Lordship, Mr. Mackenzie - -

Q. No, I just want to know, wakening your mind up to the whole situation, is there any real, honest hope which a bright business man could entertain that there is any way of getting this debt all paid without resorting to

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Mrs. Mackenzie's securities? A. Your Lordship, if this property is worth what it is said to have been worth - -

Mr. HENDERSON: The Queen Street property, your Lordship, is the key to the situation. I want to tell your Lordship something about that property.

HIS LORDSHIP: I would like to get this man's answer to that question, and I do not want a lot of explanations about it. If you say, "Yes, viewing the whole situation I honestly think that there is a chance—"if you are able to swear that, swear it. If you cannot, say so.

WITNESS: I certainly can swear that the existing first mortgage is \$54,000. - - 10

HIS LORDSHIP: Q. I want your judgment as a business man. Is there any honest real chance of realizing enough out of the properties, outside of Mrs. Mackenzie's securities that are available, to pay the whole thing? A. I think there is.

Mr. HENDERSON: Q. And that turns on the value of the Queen Street property? A. Yes.

Q. Which is very centrally located? A. Yes.

Q. Just one building between it and the Hunter Building? A. Yes. 20

HIS LORDSHIP: Q. That is the building that the Government are renting for \$17,000? A. Yes.

Q. It is right next to the one they are using all the time.

Mr. HENDERSON: Your Lordship will recollect the Hunter Building and the Garland Warehouse across the road.

HIS LORDSHIP: I can project myself far enough ahead that the Government might want that very badly some day.

Mr. HENDERSON: If somebody came along wanting that kind of property. If it were Toronto or Montreal somebody would come along.

Q. And if somebody wants to pay anything like the architect's value there you see a hope? A. Yes. 30

Q. Can you tell me, Mr. Gray, about why the Duke Street property is not mentioned in the second affidavit? A. It transpired after the first valuation to the liquidator that the security on the Duke Street property was in question, having been taken within too short a period of the assignment.

Q. Within the sixty-day limit? A. Yes.

Q. And the liquidator challenged the bank's right to hold it as a security? A. It was questionable, so we didn't put it in.

HIS LORDSHIP: Q. Was it within the 60 days? A. It had been taken within 60 days of the assignment. 40

Q. It was within that section of the Act? A. Yes.

Q. As a fact I mean? A. Yes.

Mr. HENDERSON: Q. Then my friend asked you about the 13th of September. "Between the 13th of September and the 15th of November, no other letter or thing to change your position." When did those documents come together? A. The agreements?

Q. You will remember the letter or agreement that was signed on the 13th of September. Then nothing happened after that apparently in writing until the 15th of November. What had been going on in the meantime? A. There had been negotiations with reference to that agreement all through that period.

HIS LORDSHIP: That is the agreement to which Mrs. Mackenzie was not a party?

Mr. HENDERSON: Yes, my Lord, she was a party to it.

Mr. SLAGHT: She was not a party to the real one.

10 HIS LORDSHIP: Let me see the one you are talking about. You had better go slowly enough to let me get it in my head.

Mr. HENDERSON: The one I am talking about is the one to which she was a party on the 13th of September.

HIS LORDSHIP: I think I have that in my mind.

Mr. HENDERSON: Mr. Gray said he had no certificate of independent advice as to that document by itself, and then my friend put it to him that between that date and the 15th of November when the certificate of independent advice was given, no other letter or thing, my friend says, had occurred to change our position. I just want to see what was going on in the
20 certificate of advice of the 15th of November.

WITNESS: The negotiations for the assets of the company which we were holding were in process.

HIS LORDSHIP: Q. There were negotiations for the assets of the company which you were holding? A. Yes, your Lordship.

Mr. HENDERSON: This letter of the 13th of Sept.—perhaps I had better refresh your Lordship's recollection as well as the witness'—is addressed to the Royal Bank of Canada on the letterhead of Beament and Bea-
30 ment. (Reads letter Exhibit 2).

Q. Now you spoke of certain documents having been spoken of between yourself and Mr. Burritt, and you were referring Mr. Burritt to the lawyers to see them. Was this document one of those? A. Yes, the documents were all together.

HIS LORDSHIP: I understood you to say you never showed that document to Mr. Burritt.

Mr. SLAGHT: He did say that yesterday.

Mr. HENDERSON: He did say that.

HIS LORDSHIP: What is the use of his saying to me now these doc-
40 uments were all together? Of course they were all together in a pigeon-hole in the bank.

Mr. HENDERSON: That is not the question. Your Lordship did not grasp the question. I said, "Was this document one of those you spoke of to Mr. Burritt, telling him where he could see them?" He said, "Yes, it was." The documents were then with the lawyers?

WITNESS: Yes.

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HIS LORDSHIP: He says now, "I spoke to Burritt about this 13th of September document."

Mr. HENDERSON: Telling him it was with the lawyer and he could see it there.

HIS LORDSHIP: He has not said that. Is that what you mean?

WITNESS: That is what I mean. They were all together.

Mr. HENDERSON: That is the question I put.

HIS LORDSHIP: You want to rest something upon the fact that the documents were all together. That does not tell me anything. What Mr. Henderson says is something real. What you say does not mean anything to me. What Mr. Henderson says to you is, "You told Burritt that there was such a document in existence, and where he might see it." Is that what you mean to say? 10

WITNESS: No, your Lordship, I did not describe this document at all. I told him where he could see all the documents in connection with the agreement.

Mr. HENDERSON: Q. And this document was one of those? A. Yes.

HIS LORDSHIP: Q. You have no knowledge, or have you, whether he ever did see that document? A. No, your Lordship.

Mr. HENDERSON: Q. You cannot say that he actually saw it? A. No. 20

Q. You don't know whether he ever went to the office or not, but you got his certificate subsequently? A. Yes.

Q. And that was on the 15th of November.

HIS LORDSHIP: Was that the date of the certificate? It was about that. It does not seem to me that was the actual date.

Mr. SLAGHT: 21st of November.

Mr. HENDERSON: The certificate is dated the same date as the hypothecation. 30

Q. What did happen on the 15th of November then? I have got a little mixed in my dates. A. Nothing I have any recollection of.

HIS LORDSHIP: You are thinking of the 14th of September, the date of the vesting order.

Mr. HENDERSON: My friend put it in the question as the 15th, and I took it down at the time.

Mr. Slaght: I merely put a question as to the legal position then the next day after. There was no document on the 15th.

HIS LORDSHIP: The only document is the vesting order, and that was on the 14th. 40

THE REGISTRAR: The 14th of November, my Lord.

HIS LORDSHIP: Oh, the 14th of November!

Mr. HENDERSON: Q. The only other thing I want to ask you about is as to this conversation which you had with Mrs. Mackenzie, which I think his Lordship has very accurately paraphrased by saying that you told her at that time that the situation was excellent, or promising, some such phrase as that. I just want to know how that arose, and what you said, and

what you knew, or thought you knew at that time about the character of the business. A. That was in November, 1921?

Q. I understand it was in connection with the signing of these documents. I am not clear whether it was as of September, October or November. I do not think it makes much difference. It was at that period of time. Here is the situation, Mr. Gray, --

Mr. SLAGHT: Please do not give a lot of data to your own witness,

HIS LORDSHIP: You have opened his mind up now, and he has in mind the conversation. You know the conversation we are talking about.

10 What Mr. Henderson has asked you, very fairly I think, is, what do you remember about how that conversation came about?

Mr. HENDERSON: Q. Perhaps we had better get the date of it. At what stage of the proceedings was it? A. I am not sure whether you are speaking about the interview in 1920 in reference to the business at that time, or in 1921 after the liquidation of the first business.

Q. I cannot go further than to say, I am speaking of a conversation that has been referred to two or three times, in the course of which you expressed to Mrs. Mackenzie a favourable opinion as to the prospect of the business.

20 HIS LORDSHIP: It was promising and an excellent opportunity.

Mr. HENDERSON: Q. It was promising, and an excellent opportunity, promising well—and obviously you did not expect insolvency from what you told her then. Then my friend said insolvency did follow in six months. First of all, about when was it? A. It was during the early part of December, 1920.

Q. That was in the early part of December, 1920, and how did that conversation arise? A. My recollection is it was in connection with the hypothecation of the shares, the dairy shares, and I had confidence in the business at that time.

30 Q. Explain why you had confidence in the business, and why, what would naturally seem surprising to his Lordship, the bankruptcy occurred so soon after that? What occurred to change your opinion in the meantime? A. The bankruptcy occurred in 1921, in June.

Q. Six months later.

Mr. SLAGHT: Less than six months.

WITNESS: There was no indication of such a thing pending. It came as a great surprise to me, I know to Mr. Mackenzie also, in May of 1921.

40 HIS LORDSHIP: Q. Mr. Gray, let me tell you frankly what is in my mind. Why were you then pressing this woman for these securities, if you hadn't anything in your mind that was pending? A. Loans had been increasing, and we wanted to reduce the loans, and it was to secure the additional advances.

Mr. SLAGHT: You did not give him any. You cut him down.

Mr. HENDERSON: Now, please, Mr. Slaght; I think you will find it is quite the other way about. That is what I am trying to bring out.

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Q. What happened about that time? What was going on? A. That was the cause of it. The loans were not coming down as we expected; in fact, they were increasing and we wanted this security, which we knew had been up before and supposed was available.

HIS LORDSHIP: Q. You mean it had been up for that small loan that was staightened out in 1917. In other words, you knew she had these shares? A. Yes.

Mr. HENDERSON: Was it a little, small loan?

HIS LORDSHIP: What was it? It was less than fifteen thousand.

Mr. HENDERSON: That was her own personal little one. She had had it up twice at different times for the company. 10

HIS LORDSHIP: Exhibits 16 and 17 show the other two times, but they do not show the amounts. Can you enlighten me about that, Mr. Henderson? How much did she get on those two occasions?

Mr. HENDERSON: She did not get anything herself. She had put it up for the company.

Mr. HENDERSON: Q. Was it used for any specific amount on those occasions? A. Yes, I haven't the information here. I might be able to get the information from that sheet. 20

HIS LORDSHIP: Exhibits 16 and 17 are the two exhibits.

Mr. HENDERSON: There is a sheet furnishing my friend with information that might show.

WITNESS: The shares were hypothecated on October 8, 1915.

Mr. HENDERSON: Q. For how much? A. \$50,000. That was the high loan.

Q. That was the amount of the loan, and it was general security behind the loan of \$50,000, with other collateral.

HIS LORDSHIP: Q. If it fell on evil days it might be to make good \$50,000. That is the October one, and that was paid off in 1917? A. No, the 1917 was her own personal. 30

Q. When was that hypothecation got rid of? It came in on the 8th of October, 1915, and it was discharged - A. The loans were paid in May, 1916.

Q. Is that when he borrowed the money to get rid of the American shareholders, to keep control of the company? A. It is close to that date, your Lordship, but I don't know of that being the exact purpose.

Q. You are not willing to admit that. You are unable to admit it? A. I am not able.

Q. May, 1916 it was paid off. There was another hypothecation that was for the benefit of Mackenzie Limited? A. This is the one, Mackenzie Limited. 40

Q. Is that the only one for Mackenzie Limited before 1920? A. There was one in 1912 and one in 1913.

Q. I know that was disposed of too. What makes me hesitate is, I understood you to say that it was 1917 before Mrs. Mackenzie's earlier pledgings were released because of the debt being paid.

MR. HENDERSON: I think we got a little at cross-purposes there.

WITNESS: 1917 was her own personally.

HIS LORDSHIP: Q. As far as Mackenzie Limited was concerned, she went behind a debt with her stock of \$50,000. In May, 1916, the debt was paid, and her shares were released? A. Yes.

Q. And then there was no more pledging of her shares for Mackenzie Limited until the 1920 occasion we have been talking about? A. No, your Lordship.

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10 MR. HENDERSON: May I say just a word about that defalcation of an employé that was spoken about? My friend will stop me if he thinks I am leading too far.

Q. There was a certain employé, and your bank took over another bank in Ottawa? A. Yes.

Q. In looking through the books of the bank you found to your surprise - -

20 MR. SLAGHT: May I say to my friend I am only really interested there in the answer to one question, whether Mr. Mackenzie gave this gentleman a thousand dollar bond or consideration about that time. That is all I am interested about. The rest was only to bring it to his mind.

HIS LORDSHIP: He said no.

MR. SLAGHT: But I propose to ask Mr. Mackenzie.

MR. HENDERSON: Q. You recovered certain matters, certain securities from this employé, including a number of bonds, as my friend says. Did Mr. MacKenzie personally have anything to do with the recovery of those bonds? A. Well, I didn't. The matter was turned over to him.

Q. Did Mr. Mackenzie get back the bonds? A. Oh, yes.

Q. Have you forgotten? Has your memory failed you?

30 HIS LORDSHIP: Let me get at the commencement of it. Was the situation that the employé was a bonded employé?

MR. HENDERSON: No.

HIS LORDSHIP: He was not a bonded employé. Then the bond was somebody's money.

MR. HENDERSON: My friend asked him about Dominion Government Victory bonds. The defalcation came back in that form.

HIS LORDSHIP: The money that had been deposited in this bank?

MR. HENDERSON: The money that had been taken and deposited in this bank.

40 HIS LORDSHIP: Supposed to have been extracted from the Mackenzie business in some improper way.

MR. HENDERSON: And put into Victory bonds, and it came back in the form of bonds.

WITNESS: They came back through you.

MR. HENDERSON: Q. Who got them back? A. You got them back.

Q. Did Mackenzie have anything to do with it? A. He went to you and consulted you.

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Q. Exactly in that sense. That is all.

HIS LORDSHIP: I suppose the Mackenzie Company must have got the lead from the bank. This man got this money some place. Let us find out. I do not see how you can disassociate Mr. Mackenzie with it altogether.

MR. HENDERSON: Technically it was done through him.

HIS LORDSHIP: In reality he was the man who wanted it. It was not the bank; it was not you; it was Mackenzie. Everybody ought to be happy that they got the money back.

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Evidence

No. 7

J. A. MacKenzie
Examination

JOHN ANGUS MACKENZIE, Sworn,

10

EXAMINED BY MR. HENDERSON:

Q. Mr. Mackenzie, we have been talking a lot about the Mackenzie Manufacturing Company, and Mr. Mackenzie the husband of the plaintiff in this action. You are that party, are you not? A. Yes.

Q. You are the President of Mackenzie Limited, and Mackenzie Manufacturing Company? A. Yes.

Q. I do not want to go over all the history of the business again, but the plaintiff in this action is your wife, and she tells us that you were married quite a few years ago, and we have had something about your history. What I want to ask you about is the extent to which your wife was kept advised by you as to the business that was carried on. First of all, she was a director of the company, was she not? 20

HIS LORDSHIP: Which company are you speaking of now?

WITNESS: I think she was but never actively.

MR. HENDERSON: I think my friend will permit me to put it.

MR. SLAGHT: No, I would rather you ask questions than put it if you please.

MR. HENDERSON: I was going to help you.

MR. SLAGHT: Don't help me. Just go on without helping me. 30

MR. HENDERSON: Q. To what extent did you keep her advised of the condition of the business from time to time? A. As a matter of fact, not a great deal, only as husband and wife everything was going along fine.

Q. Most of the time things were going on fine? A. Yes.

Q. We have sketched the business, and we have been told how very prosperous you were during the war period, the Government being the big customer. Then after the war we know about the insolvency in 1921. A. After the war, two years following the war, was our most prosperous years.

Q. And then when did things commence to tighten up? A. When 40 the market started to break.

Q. What do you mean by the market starting to break? A. Well, when cotton and wool started to go down in price.

Q. When was that? A. I think it was in 1920 it started.

Q. When you say the market, what do you mean? Are you talking about some local market? A. No, I am speaking about the price of cotton and wool.

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HIS LORDSHIP: Q. Was that your big raw material? A. Yes.

Q. And had you a big stock of that on hand? A. I had.

Q. And that fell? A. And I had many contracts too.

Q. The contracts would be a very nice thing to have. A. I mean contracts to buy, and contracts to sell, and they would not take the goods then when the market broke, but I had to.

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10 Q. "Cotton and wool was largely my raw material for the factory." Is that it? A. You could put them about fifty-fifty.

MR. HENDERSON: Q. Do you mean cotton and wool generally were 50%? A. No, I handled about as much cotton as I did wool.

Q. His Lordship asked you, taking cotton and wool generally, what proportion did the two together make of your raw material? A. They would be all my raw material.

20 Q. Explain what your business was. Perhaps that will explain it. What were you manufacturing? A. Well, we were manufacturing lumbermen's and railway contractors' supplies. That means the clothing end—means shirts, overalls, Mackinaws, pants, tents, tarpaulins.

Q. It was either cotton or wool? A. And shirts.

Q. You were under contract to buy a great deal? A. Remember two cases I fought here- - -

HIS LORDSHIP: You had a considerable stock of that on hand ready to make up when the market broke. That is the first step.

WITNESS: Yes.

HIS LORDSHIP: And then you add to that, "I had bought futures in those goods which I had to stand up to after the market broke."

30 MR. SLAGHT: Apparently tried to get out of one with a law-suit Mr. Henderson had, but they did not succeed.

WITNESS: We succeeded in that. We took two law-suits. We won both of them.

HIS LORDSHIP: Everybody understands that. Manufacturers who were loaded up with a lot of raw material when the market broke, and were tied up with contracts for futures, they were slaughtered, that is all.

MR. HENDERSON: Q. Did that break come slowly or quickly? A. It came in a hurry.

40 Q. And up to that time had you any reason to doubt your position? A. No, none whatever.

Q. Take up to the end of December, 1920, was there any trouble about your position? A. Oh, yes, I began to worry about it then, because I was fighting them then to keep stuff out of the place.

Q. The parties from whom you were buying? A. Yes.

Q. You saw the thing coming? A. Yes.

Q. Had Mr. Gray any reason to worry? A. No. As a matter of fact, I don't think anybody in the bank was worrying then about that kind

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of stuff, not only Mr. Gray or his head office, because when I spoke to them they laughed at me at head office.

HIS LORDSHIP: Q. When did the head office send Mr. Gray word that they must have, or would like to have some more security? Do you know that? A. They didn't ask him for more security, neither did we give any more security at that time.

MR. HENDERSON: Q. On the 30th or 31st of December of that year your wife hypothecated the dairy stock, Mr. Mackenzie. How did that come about? A. That stock had been up for years.

Q. What do you mean by that? A. It was in the bank for years. 10
As a matter of fact, this is the thing I wish to make clear — that stock was put up in the first place to the Bank of Ottawa.

Q. Your wife said something about that yesterday which I did not understand, and perhaps I had better clear that up now so as to make your wife's evidence more understandable. What had you had to do with the Bank of Ottawa? Were you there before the Royal? A. I was with the Bank of Ottawa at that time. They were my bankers.

Q. Before the Royal were? A. Yes.

Q. And this stock had been up with the bank of Ottawa? A. Yes.

Q. For the company? A. For the company. Well, it was Mac- 20
kenzie and Company then. It was not a limited company at that time.

Q. That was before it was incorporated? A. Yes.

Q. Go on. You were saying the stock had been in the bank. Tell us the history of the banking vicissitudes? A. You might as well have it. It will explain the thing. We were dealing with the bank of Ottawa. We put it up first and wanted to start a factory. We had eight thousand in the bank, and we wanted ten thousand, a line of credit of ten thousand. This stock was put up at that time. It was not worth very much, because that is all they would give us, was the \$2,000. on the stock. But as we went 30
along we were asking more money. Finally we owed the bank about \$17,000, and they took the stock and transferred it into the names of some of the men in the bank of Ottawa.

Q. That is on the register of the dairy company? A. Yes. That knowledge came to Mrs. Mackenzie from the Manager of the Dairy Company, and she didn't like it, neither did I, and I went to Toronto. A friend of mine in the Traders' Bank - -

MR. SLAGHT: Is this something you did not want? I do not object if you want it.

MR. HENDERSON: I think it is interesting. 40

HIS LORDSHIP: Q. The banker has told us, Mr. Mackenzie, that all the debt was cleaned up in 1917, her debt and the company's debt, and everybody else's, and that was the end of it.

MR. HENDERSON: The importance of it to my mind is this, my Lord; I want to give your Lordship an understanding of what Mrs. Mackenzie's business experience was with this stock.

WITNESS: It was not very much because it has been in the bank from that time on, and she didn't bother with it, except when the Bank of Ottawa turned it over that time and she got worried.

MR. HENDERSON: Q. Now, Mr. Mackenzie, she tells us that at one time — I am not very clear about the dates, and I am not sure that Mrs. Mackenzie was — she very strongly objected to hypothecating this stock, and that there were unpleasant scenes between you. A. That is true.

HIS LORDSHIP: Q. That is true? A. Yes sir.

MR. HENDERSON: Q. Do you remember an occasion at Farm Point
10 in 1921 when Judge Stires was visiting the Tibbetts, your neighbors? A. Oh, yes, I remember.

Q. It is said that in 1921 there was a very strenuous difference at Farm Point between you and your wife as to the hypothecation of this security, and that Judge Stires and Mrs. Tibbetts came in at the end of an interview.

HIS LORDSHIP: Judge Stires was there visiting and Mrs. Tibbetts came in.

MR. HENDERSON: Q. Judge Stires had been visiting the Tibbetts' and had been over at the Mackenzie house. Do you recollect that? A. I remember him being up at Farm Point. I certainly do.
20

Q. I wanted to know something about Judge Stires. He is described to us as a lawyer of high standing who was on the bench, who came here representing at that time some of your creditors, some American creditor. Is that right? A. That is true.

Q. Did he attend meetings of creditors? A. Yes sir.

Q. Did he look into the affairs of the company?

HIS LORDSHIP: How does he know?

MR. HENDERSON: Q: Not unless you know personally? A. I couldn't tell you that only in a general way. He asked me, and they were
30 after me about a certain thing. I said, "It is a lie." He said, "That is what they are trying to put on you."

Q. Had it anything to do with this transaction? A. With this stock, no. That is with the company. That stock was outside of the question entirely.

Q. Another matter between Judge Stires' client and you. We are not concerned with that. I want to know just how much was Judge Stires around here during the period of the insolvency and the reorganization of the business? A. Oh, may be visiting us a couple of days, maybe longer. I wouldn't like to answer that, but I know it was within a very — well, I
40 could say within a week, I am sure.

Q. It was within a week? A. Yes.

Q. But he was interested in the company? A. I think he was more interested in us, about Mrs. Mackenzie and myself personally.

Q. He did take an interest in Mrs. Mackenzie and yourself personally, did he? A. Yes.

Q. In what way? A. He was related to Mrs. Tibbetts. They were quite interested when this trouble came along, and I guess probably she

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had something to do with him coming. She said he was very clever in anything like that, and he would be glad - -

HIS LORDSHIP: Do you think, Mr. Henderson, I ought to listen to conversations?

MR. HENDERSON: Not what he guesses.

HIS LORDSHIP: I realize that nobody has asked him. I feel that I ought to interpose at this point and say, "I don't want that kind of thing." I know what Mr. Henderson wants, but you are not telling him what he asks.

MR. HENDERSON: Q. What I want first to know is, to what extent Judge Stires was in a position to advise either you or Mrs. Mackenzie at that time? Did he have sufficient knowledge of the business? A. None whatever I would say. 10

Q. You would say he did not. If that is the case I cannot help it. Did he attend the meetings of creditors? A. Yes.

Did he advise Mrs. Mackenzie? A. I don't know.

Q. You don't know whether he did or not. I am more concerned with what I call the reconstruction period, after the insolvency. I do not want to go over with you all that happened. The new company was organized and took over the assets. Did you yourself have an understanding of the legal method that was adopted? A. No, I did not. 20

Q. I suppose you left that to your lawyer? A. Absolutely.

Q. Do you know who was acting legally for Mrs. Mackenzie at that time?

MR. SLAGHT: Better ask him if anybody was.

MR. HENDERSON: Q. Was anybody? Put it that way. A. I am not in a position to answer that because I really am not certain, but I surmise Fripp and Burritt.

HIS LORDSHIP: Q. Do not surmise. Do you know she had a legal adviser of her own? A. I can't answer that. 30

Q. Just a minute. If you know that at that time she had a lawyer of her own, why tell me. If you do not know, tell me you do not know.

MR. HENDERSON: Q. You don't know whether she did or not? A. I would have to answer it that way. I will have to say I don't know.

Q. Who was acting for the company at that time? A. Mr. Beament.

Q. Now, Mrs. Mackenzie suggests that you forced her to sign certain documents.

HIS LORDSHIP: Oh, no.

WITNESS: It depends on how you mean by forced. 40

MR. HENDERSON: Q. How did Mrs. Mackenzie come to sign the documents she did sign?

HIS LORDSHIP: Pledging the stock.

WITNESS: I asked her to sign them.

MR. HENDERSON: Q. What was her attitude at that time? A. Well, it was not very pleasant.

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Q. And what was the situation, Mr. Mackenzie, how did it come about that she did sign? A. I told her that if she did not sign it, there would be no company.

Q. What about that? A. She signed it and the company went on. That was all.

Q. What was her attitude as to there being no company? She says that at the beginning at least — I am trying to put it fairly — she wanted you to let the company go, and go back to the commission business. A. She suggested that often.

10 Q. And what was her desire? What did she want to accomplish?
 A. She wanted her stock, and that was the whole story.

Q. Why didn't she get it? A. Because the bank had it.

Q. Why did she sign afterwards then? A. They had it anyhow, and she might as well sign. That was all. I wanted to continue. They could close me out at any time.

Q. Did you ever try to see if you could continue without it? A. No.

Q. That is the general situation. She did sign? A. Yes.

20 Q. And I suppose that is all you can help us. I do not want to go into the detail.

HIS LORDSHIP: I do not suppose there is any real dispute about it beyond that point. That is the real crux.

MR. HENDERSON: Everything turns on that point. That is all I am concerned with.

HIS LORDSHIP: We have had an account from Mrs. Mackenzie and from the banker in which I do not see very much difference.

30 MR. HENDERSON: I only called Mr. Mackenzie because we all knew he was here, and I thought it was proper. I did not know what he was going to say. I thought it was the proper thing to call him and put him in the box.

HIS LORDSHIP: I think you are right. I would have been very dissatisfied if somebody did not call this man.

MR. HENDERSON: Your Lordship will understand it is not the ordinary relations of husband and wife. They are separated at the moment. In view of that fact I thought it was my duty to put him in the box.

--- CROSS-EXAMINED BY MR. SLAGHT:

40 Q. Mr. Mackenzie, down until the unfortunate domestic separation of you and Mrs. Mackenzie a few years ago, may I take it that except for an odd spat, which we all have with our wives, you and she got along well?
 A. I thought so.

Q. And that she was fond of you? A. Ask her.

Q. I did and she said so. What do you say? A. That is a pretty hard question to answer.

Q. She behaved like she was fond of you outside of the time when you would have little troubles? A. Oh, I really think she was, yes.

No. 7
 J. A. MacKenzie,
 Cross-
 Examination
 (Commenced)

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HIS LORDSHIP: He does not want to boast.

MR. SLAGHT: I do not want to make him boast.

Q. May I take it that while you are a pretty good-natured fellow, sometimes you are a strong-minded fellow also? A. Well, I am carrying a black eye.

Q. Now? A. Right at the present time.

Q. I did not mean strong-armed. You are strong-minded. When you make up your mind you are going to have something, you usually try and get it? A. Yes.

HIS LORDSHIP: Q. Is it true that you are a very successful salesman? Is that the honest word to say? Somebody said that here. A. You would not think so the last year or so. 10

MR. HENDERSON: He certainly had a wonderful reputation. There is no doubt about it.

HIS LORDSHIP: If a man really is what we sometimes call a high-pressure salesman, you do not need to talk very much about whether he is strong-minded or not.

MR. SLAGHT: We take a look at that chin. There is another evidence of it. I don't see the black eye.

HIS LORDSHIP: Is there any use spending time getting this witness to say, "I am a strong-minded man." 20

MR. HENDERSON: No use getting him to say things about himself as to which there is no dispute.

HIS LORDSHIP: Why spend time? Your witnesses have sworn to it, and Mr. Mackenzie has not denied it yet.

MR. SLAGHT: Thank you, my Lord, I will stop that now.

MR. HENDERSON: We can pay similar compliments to Mrs. Mackenzie.

MR. SLAGHT: Q. Just a word about this worrying you were doing along in 1920. You told my friend that shortly before December 1920, "I began to worry because I was trying to keep goods out of the factory." That is the time in the fall of 1920 when you were loaded up too much with contracts and goods, is it not? A. Yes. My people had cancelled theirs. My customers had cancelled three quarters of a million. 30

Q. When you spoke to Gray and the head office about that, that would be about that time, would it? A. No, it was Mr. Hillary, I went to about this.

Q. You told him the situation? A. I told him I thought we were in trouble.

Q. Did you say Hillary laughed? A. Yes. He said, "What are you worrying about?" I said, "I will tell you; it is going to go worse;" and I said, "If you have any more accounts like mine you had better look into them." 40

Q. You seem to have kind of caught his mind with that.

HIS LORDSHIP: Q. When would that be? A. I guess that would be in January of 1921, coming on after the first of the year.

Q. You are talking to Mr. Slaght as if it was in 1920. A. I was worried then. When I spoke to Hillary it would probably be around-

MR. SLAGHT: Q. You made a special trip to speak to Hillary at Mr. Gray's suggestion? A. Yes.

Q. Before going to Toronto see Hillary you had been talking with Gray who was your bank manager here. A. Yes.

HIS LORDSHIP: Q. Is Hillary the Supervisor? A. Yes, Mr. Norman Hillary.

MR. SLAGHT: Q. I think Mr. Gray told us, if I remember, that there was a time there that he suggested you go up and see Hillary? A. Yes.

10 Q. Prior to going up to see Hillary you had taken Gray into your confidence with regard to your worries? A. Yes.

Q. What attitude did Gray take about it? Was he on the fence, or did he agree with you, or did he say, "You had better go and see Hillary?" A. Well, like every bank manager, they want to help you, but you want to help yourself and get your debt down. That was the whole thing.

Q. Was it in December or November that Gray first asked you to get your wife to put up this security, or do you remember? A. I wish I had some papers - -

20 Q. I will help you to this extent, Mackenzie. She was sick, she told us, to two or three weeks with flu, sick in bed, and it was the last day of the year when Hill got out there, and she signed it for you. Do you remember that? A. No sir, I do not.

Q. How long before she signed up was it that you were tackling her about it, and things were nasty between you over it? Was it two or three weeks, or a month, or how long? Can you remember that? A. Oh, there was more or less haggling going along then all the time.

HIS LORDSHIP: Q. How soon did it begin? A. It began just as soon as I started to go broke.

30 Q. You know what I mean. You have been given one date. Does that help you? Mr. Hill came to your house once? A. I don't remember that.

Q. You don't remember his visit to the house at all? A. No sir.

Q. You cannot say that Hill ever did show up at your house? A. I can't say that.

Mr. SLAGHT: Q. When you talked with Gray about these difficulties and he wanted you to get your wife to put this up, did you tell her that Gray wanted her to put it up? A. Naturally.

40 HIS LORDSHIP: Q. Naturally or unnaturally, did you tell her? A. I wouldn't say Mr. Gray; I would say the Bank.

Mr. SLAGHT: Q. I don't care; bank or Gray. As you told my friend Mr. Henderson, she did not want to? A. No, she had wanted her stock back for a long time.

Q. You say the bank had told you that unless she put it up, unless she signed, that they were going to close you up?

Mr. HENDERSON: He did not say that.

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Mr. SLAGHT: Q. You told my friend Mr. Henderson as to why she did sign it; that the bank had it anyway, "might as well sign, and I told her, sign it or there would be no company." Do you remember that? A. That is right.

Q. Did you get that idea from the bank? A. Yes.

Q. Did they tell you to pass it on to her? A. No.

Q. You got that from the bank? A. Not in so many words.

Q. That is the way you put it to her? A. Yes.

Q. Perhaps this will help you. Here is a bill from Messrs. Hill, Greene and Hill, December 31st, 1920, "Attending Mrs. J. Angus Mackenzie, advising her as to her liability under guarantee to the Royal Bank, two dollars", charged to Mackenzie, Limited. Do you remember that? A. No sir. I never saw that, and I never saw Mr. Hill. I only have rumour to know that she went there. 10

Q. I am instructed Mackenzie Limited paid this bill of two dollars. A. How would I know?

Q. Well, you were the boss. Maybe you don't remember. A. I didn't pay the bills.

Q. Do you suggest that Mackenzie Limited did not pay this bill for two dollars? A. I would not. 20

Mr. SLAGHT: I will put this in.

Mr. HENDERSON: That has not been identified in any way.

HIS LORDSHIP: I am afraid, Mr. SLAGHT: - -

Mr. SLAGHT: I guess that is right.

HIS LORDSHIP: He has not gone far enough. He says he does not know that bill; he never saw that bill.

Mr. HENDERSON: He never saw Mr. Hill.

HIS LORDSHIP: If Mr. Hill were to deny being there, you cannot corroborate it by this witness. 30

Mr. SLAGHT: No.

Q. You remember there was some trouble prior to 1920 about an employé of the company, whose name Mr. Henderson thought we had better not mention. He got some of the company money deposited in a wrong bank, in another bank? A. Yes.

Q. You took that up with the bank, and they got Mr. Henderson into it, and it was straightened out, and got most of the money back for the company? A. Yes.

HIS LORDSHIP: Q. Was it the bank got Mr. Henderson into it, or was it you through the bank? A. Would it make any difference? 40

Q. I don't know. You are not concerned about whether it makes difference or not. All you have to tell me is what you know. A. I know I went to Mr. Henderson.

Q. You are the person who went to him? A. Yes.

Mr. HENDERSON: As a matter of fact, Mr. Gray came with him.

HIS LORDSHIP: They both came and they got the money, got the bond.

WITNESS: We got a bunch of it anyway.

Mr. SLAGHT: Q. A bunch of bonds? A. And other things.

Q. Did you at that time give Mr. Gray a bond, do you remember?
A. No.

Q. Speak out. A thousand dollar bond? A. No.

Q. Tell us what occurred about that? A. Do you mean about the stuff we got back from this fellow?

Q. Did you give Mr. Gray a thousand-dollar bond at that time? A. I did not.

10 Q. Or any bond? A. No. There is some stuff in the box there yet but it is not much good.

HIS LORDSHIP: Q. Did you give it to him then, the stuff in the box? A. It is still there in my box, no.

Mr. SLAGHT: Q. Did you give him a gift at that time, your Bank Manager? A. Well, we had been exchanging gifts for years.

Q. Leave out the lolly-pops and Christmas boxes, and tell me whether about that time you gave Mr. Gray a gift. You were so pleased about the finding of this stuff and getting it back, did you make a personal recognition to Mr. Gray at that time? A. No, because they were all there. We
20 sold the bonds. I couldn't have given him any.

Q. Any money? A. No. I never gave him a dollar in my life.

Q. You and he were great friends? A. Yes.

Q. You kept him fully posted as to the condition of the company at all times? A. He and the auditors too, quite open.

--- RE-EXAMIED BY MR. HENDERSON:

Q. Who were the auditors of the company? A. Crawley and Milne.

Q. Recognized as the leading firm here in Ottawa.

30 HIS LORDSHIP: Somebody spoke of that man who became the assignee.

MR. HENDERSON: Q. Which was the trustee in bankruptcy, Mr. Crawley or Mr. Milne? A. Mr. Crawley. Mr. Milne did most of the active work.

Q. No trouble about that; they were a leading firm of auditors. They rendered statements to the bank I suppose from time to time? A. Yes.

Q. My friend asked you about Mr. Hill. You say you never saw Mr. Hill? A. I know Mr. Hill very well.

Q. You would meet him from time to time? A. Known him for
40 years.

Q. You knew he was advising your wife, did you? A. I understood so.

Q. But you did not come in contact with him? A. No.

Q. These other lawyers who advised her, did you come into contact with them at all? A. Not in any connection with advice to Mrs. Mackenzie, no.

MR. HENDERSON: That is the defence, my Lord.

RECORD

In the Supreme
Court of Ontario

Defendant's
Evidence

No. 7

J. A. MacKenzie,
Cross-
Examination
(Concluded)

No. 7

J. A. MacKenzie,
Re-Examination

Conclusion of
Defence

RECORD

R E P L Y

In the Supreme
Court of Ontario

Plaintiffs Reply

No. 8

Jean Mackenzie
Examination

MRS. JEAN MACKENZIE, Recalled,

EXAMINED BY MR. SLAGHT:

Q. Mrs. Mackenzie, I just wanted to ask you, when did you learn for the first time that your securities which you pledged on the 21st of November, 1921, to the bank for the new company had been freed before you signed that pledge?

MR. HENDERSON: My friend asked that in-chief. 10

MR. SLAGHT: It arises out of your examination of Mr. Gray.

MR. HENDERSON: You cannot go on forever.. My friend went into that fully.

HIS LORDSHIP: Do you concede that she swore that she did not know until recently that her securities were free at about the time of this 1921 pledging?

MR. HENDERSON: Yes, my Lord, I concede she has already said that.

MR. SLAGHT: That is all I was going to ask her.

MR. HENDERSON: Your Lordship is not trying to bind me to any precise form of words? 20

HIS LORDSHIP: I may as well tell you frankly. I do not want to have any misunderstanding. My recollection of what Mrs. Mackenzie said was that until recently, perhaps about the time this litigation began, or something of that sort- -

MR. SLAGHT: I thought so. I was not sure, but am going to ask the leave of the court to ask her now.

MR. HENDERSON: If it is only for that, it will take less time than talking about it. My recollection is the same as your Lordship's, that she said quite recently. My understanding is it was prior to the filing of the statement of claim. 30

MR. SLAGHT: Q. When did you first learn that your securities at the time you pledged them in November 1921 had been free just prior to your pledging them then? A. When I consulted with Mr. Ritchie and he investigated some time over three years ago.

Q. About the time you commenced this action? A. Yes.

Q. If you had known that- -

MR. HENDERSON: That was put before.

MR. SLAGHT: Q. - - when you were asked to sign that document, and when you signed any subsequent confirmations of that document. 40 would you have signed them? A. No.

--- BY MR. HENDERSON:

Q. I just want to call your attention to this, that the document which you did sign, Exhibit 2, says in plain English, "That the authorized Assignee will be at liberty to accept your valuation in which case as between the authorized assignee and the bank the bank's claim would be considered paid in full." You knew that part? A. Knew what?

Q. What you signed here. A. I didn't know what I signed in Mr. Beament's office.

10 Q. Are you trying to pose here as an ignoramus? You have shown yourself to be a very clever woman in answering questions. A. I didn't know what I signed in Mr. Beament's office.

Q. Nor at any other time? A. I am referring to that.

Q. Did you at any time know what you were signing? A. I didn't read the documents.

Q. Did you know what you were signing at any time? A. Put that again please.

Q. At any time did you know the importance of what you were signing? A. No.

20 Q. Not at any one stage of the proceedings? A. No. I knew I was signing my securities away at times.

Q. At this time? A. At that time.

Q. At this time didn't you know that the object of your signing at all was in order that your securities might remain pledged to the bank? A. Absolutely no.

Q. What did you think you were signing for? A. I was asked to come to Mr. Beament's office to sign a paper. I didn't read it.

Q. What for? A. I was not told what it was for.

30 Q. Didn't you know it had to do with these same securities? A. It might have had.

Q. Didn't you know it then? A. I didn't know.

Q. Didn't you know that was the reason that your signature was necessary, because your securities were there? A. No. I was told to go with my husband to Mr. Beament's office to sign a paper.

Q. Didn't you know it had to do with the fact that your securities were in the bank? A. No. I said that yesterday.

Q. I know, but I cannot follow you. You knew your securities were in the bank, didn't you? A. They were all of 1921 from June on.

40 Q. You heard what your husband said, that they had been in the bank practically always. A. I understand from his Lordship that my securities were freed in 1917 till 1920.

Q. His Lordship has not said so.

HIS LORDSHIP: I have not said that.

MR. HENDERSON: Q. As a matter of fact, your securities physically speaking were in the Bank of Ottawa?

HIS LORDSHIP: Q. That is, the documents, the papers, the certificate that you had so many shares, were they constantly in the bank? Did

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Plaintiff's Reply

No. 8

Jean Mackenzie
Cross-
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you never have them back in your possession? A. Yes, certainly.

Q. When had you had them back in your possession before 1921? A. They were pledged again in 1920. They had been in my possession I should say from 1917.

MR. HENDERSON: Q. I do not mean your legal possession. Had you actually had them? A. I had actually had them.

Q. Where did you keep them? A. I think in a safety- -

Q. Don't think please; answer. A. To the best of my recollection.

Q. I don't want the best of your recollection, if you had them, where did you have them? A. In a deposit box in the bank. 10

Q. Were they in a deposit box in the bank, or was the bank keeping them for you? A. Just for safe-keeping there.

Q. Was the bank keeping them for you? A. They were in the bank for safe keeping in a deposit box.

Q. Everything in the bank for safe-keeping is in a deposit box? A. But not there for security.

Q. I understand that, but they were in the bank, weren't they? A. Yes.

HIS LORDSHIP: Surely, it is a very different thing. If the woman is right, if she had a deposit box there, and it happened to be in that bank, it is just as good for her purpose as if it was in the Huron and Erie. 20

MR. HENDERSON: Precisely.

Q. Did you have a deposit box in the Royal Bank? A. Yes.

Q. Did you go to it? A. I hadn't anything else that mattered.

Q. Did you ever go to the deposit box in the Royal Bank and open it and take securities out, or put them in? A. No, I did not. If I wanted to look at them — I had no occasion to look at the Ottawa Dairy Stock. It was there safe.

Q. There was a period of time, as to which we quite agree that if you had gone to the bank and said, "I want to take my dairy stock out and put it somewhere else, or do anything I like with it," you would have been entitled to get it. 30

HIS LORDSHIP: Please let us get somewhere with this question. She said she had a deposit box. Now she says she did not go there herself. Suppose she sent somebody else? What do you mean by that? Did you give somebody else a key to go and take things? A. I had nothing else in there of value.

Q. Did you have a deposit box yourself in your own name? A. I understood I had. 40

MR. HENDERSON: Q. Do you know that you did have? A. Yes.

Q. Were you ever at it? A. I never went to it.

Q. Was it in your name, as his Lordship puts it to you? A. Yes, I should think so.

Q. Not that you think so; did you have it? A. (no response).

Q. A great many statements have been made here, Mrs. Mackenzie. I want to check you on just that one. Will you swear that you had a deposit box in your name in the Royal Bank? A. That is on oath?

Q. Yes, this is all on oath, Mrs. Mackenzie. Don't you realize that? A. Yes, I had a deposit box to keep my Ottawa Dairy stock in.

Q. In your name? A. After it had been returned to me. May I say that?

HIS LORDSHIP: Q. Of course, you may say that. Who returned it to you? A. Mr. W. J. Bell one of the members of the company came out and returned it to me, handed them to me in my house. He said, "Here are your securities. My advice is never put them up again, no matter if your husband - -"

Q. I do not think you ought to say that. A. They were in my possession for a short time.

Mr. HENDERSON: Q. Then they went back to the bank, did they? A. For safe-keeping. I didn't wish to keep them in the house.

HIS LORDSHIP: If that was in 1917, they could not be at the bank till the 13th of September, 1920.

Mr. HENDERSON: Q. Where were they at Christmas time of 1917? A. In the bank, I should say. They were in the deposit box.

Q. What had you done with them? To whom had you given them? A. In the deposit box.

Q. To whom had you given them? Had you put them in the box? You told me a while ago you did not. A. I did not walk into the box and open it with a key. I took them in to the bank.

Q. Every business man knows if you have a deposit box you are the only one who goes to it, unless somebody with your written authority. To whom did you give your securities? To whom did you give the papers representing these shares? A. I took them in to Mr. Gray in the bank.

Q. When? A. The date I couldn't say, Mr. Henderson. It was some time after they were returned to me.

Q. And you left them with Mr. Gray for safe-keeping by the bank, did you? A. Yes.

Q. Is that It? A. Yes.

Mr. SLAGHT: That is the reply, my Lord.

--- ARGUMENT:

--- EXHIBIT 25—Writ (put in during argument.)

--- Judgment Reserved.

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In the Supreme
Court of Ontario

Plaintiff's Reply

No. 8

Jean Mackenzie
Cross-
Examination
(Concluded)

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RECORD

In the Supreme Court of Ontario

No. 9

Reasons for Judgment of the Honourable Mr. Justice McEvoy after Trial.

Dated September 21st, 1931.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE McEVROY AFTER TRIAL.

S. C. O. JEAN MACKENZIE vs. THE ROYAL BANK OF CANADA

Copy of Reasons for Judgment of McVoy, J., delivered September 21st, 1931. ARTHUR SLAGHT, K.C., for Plaintiff. G. H. HENDERSON, K.C., for Defendant.

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In this case the plaintiff in her statement of claim sets up that she is the wife of John Angus MacKenzie; that in or about the year 1913 the husband organized a company known as MacKenzie's Limited, to manufacture lumberman's supplies; that MacKenzie's Limited through the husband transacted its banking business with the Royal Bank of Canada, at its Ottawa Branch; that some time prior to January, 1921, MacKenzie Limited and the husband arranged with the defendant Bank for a credit on account of MacKenzie Ltd.; that for the purpose of securing the credit the husband requested the plaintiff to hypothecate to the defendant Bank 100 common shares and 087 preferred shares of Ottawa Dairy Company Limited derived by the plaintiff from her father's estate; that the plaintiff without independent advice signed a letter of hypothecation of these shares and delivered the shares; that the business of MacKenzie Limited became heavily involved and executed an authorized assignment in Bankruptcy on June 14th, 1921; that on the 27th of June, 1921, the defendant Bank filed its claim in Bankruptcy for \$164,000.00 and valued under the Bankruptcy Act the securities held by the Bank against the indebtedness of MacKenzie Limited at \$265,000.00, without valuing or mentioning the securities of the plaintiff then in the bank's hands; that on the 13th of September, 1921, the defendant Bank filed in the Bankruptcy proceeding, another affidavit of claim setting up the amounts of its claim against MacKenzie Limited at \$121,372.94, and valuing under the Bankruptcy Act its securities held at \$125,000.00, without valuing or mentioning the plaintiff's securities; that without being independently advised she signed on the 13th of September, 1921, with the husband, a letter which is set out verbatim and which purports to approve of the filing of this \$125,000.00 valuation, and purports to agree that in so doing the Bank should not release the plaintiff and her husband from their respective guarantees until the bank had been actually paid; that on the 14th of November, 1921, the Trustee consenting, the Registrar in Bankruptcy issued an order confirming and ratifying two indentures of release, releasing to the defendant bank all the realty and personalty set out in the Declaration of Value which did not include the plaintiff's securities; that by the operation of the said claim and the subsequent Vesting Order the total indebtedness of MacKenzie Limited for which the plaintiff's securities were hypothecated was discharged and the plaintiff was

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entitled to a reconveyance of her securities since the 27th of June, 1921, and that the defendant Bank has wrongfully withheld them; that on the 25th day of November, 1921, the husband purchased from the defendant Bank the securities mentioned in the Vesting Order and, procured from the defendant Bank advances amounting to \$125,000.00 for the purpose of satisfying the purchase price of the said assets.

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10 On the 25th of November, 1921, the husband procured the incorporation of a company known as MacKenzie Manufacturing Co. Ltd., for the purpose of carrying on the business formerly carried on by MacKenzie Limited and assigned to MacKenzie Manufacturing Company Limited his interest in the assets purchased from the defendant Bank; that on November 25th, 1921, the husband represented to the wife that the indebtedness of MacKenzie Limited had not been paid or satisfied, but was being assumed by MacKenzie Manufacturing Company Limited and that the securities (Dairy shares) hypothecated by the plaintiff for the credit of MacKenzie Limited continued liable for the amount due, and the plaintiff, without independent advice, was induced to execute in favour of the defendant Bank a letter saying that an agreement with the MacKenzie Manufacturing Company Limited has been entered into upon the request of the husband and the plaintiff

20 and upon the understanding that the Bank is entitled to continue to hold all personal securities hypothecated by us (the husband and wife) to the Bank as collateral to the indebtedness of MacKenzie Limited until all money advanced to MacKenzie Manufacturing Co. Ltd. have been fully paid to the Bank; that on the 21st of November the husband induced the plaintiff, who had no independent advice, to execute a guarantee in favour of the defendant Bank in respect of the indebtedness of MacKenzie Manufacturing Company Limited; that in April, 1924, the defendant Bank forwarded to the Plaintiff a renewal of letter of guarantee in respect of this indebtedness of MacKenzie Manufacturing Company Limited; that in September, 1924, the

30 plaintiff consulted her solicitor and was advised to limit the period during which she would be liable under the guarantee to 1st October, 1925, and the plaintiff's solicitor advised the defendant Bank that the plaintiff would not continue the guarantee after October 1st, 1925, and requested the defendant Bank to make other arrangements so that the plaintiff's securities might be released; that the Manager of the defendant Bank sought an interview with the plaintiff and represented to her that there was no reasonable ground to apprehend any loss from the pledging of her securities and that to press for release in October, 1925, might seriously handicap MacKenzie Manufacturing Company Limited, without any benefit to the plaintiff, induced the plaintiff

40 to agree to instruct her solicitor to withdraw the letter as to the 1st October, 1925, withdrawal and without independent advice the plaintiff did so; that in April, 1926, the plaintiff was again requested to renew the guarantee of the MacKenzie Manufacturing Co. Ltd. but the plaintiff resisted all requests and declined further liability; and the plaintiff prays a declaration (a) that on the 14th of November, 1921, she was entitled to a return of her securities by the defendant Bank; (b) that the letter of hypothecation dated

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25th of November, 1921, was executed by the plaintiff under the misapprehension induced by the representations of the husband that the debt of MacKenzie Limited was not paid and by the form of such letter drawn up by the defendant's solicitor, that the plaintiff's securities hypothecated by her without independent advice, as securities for the indebtedness of MacKenzie Limited were still liable for such indebtedness whereas upon that date MacKenzie Limited was no longer indebted to the defendant Bank and the plaintiff was entitled to the return of her securities; (c) that the letter of guarantee dated November 21st, 1921, was executed by the plaintiff under misapprehension induced by the representation of the husband that the indebtedness of MacKenzie Limited had not been paid but was being assumed by MacKenzie Manufacturing Company Limited and that the securities hypothecated by the plaintiff without independent advice for the credit of MacKenzie Limited continued liable, as security for the indebtedness of MacKenzie's Limited whereas at the date of this letter MacKenzie Limited was no longer indebted to the defendant Bank and the plaintiff was then entitled to the return of her securities or in the alternative that her liability terminated on October 1st, 1925; (d) an order that the defendant bank execute and deliver a conveyance of the securities and consequential relief.

In its statement of defence the defendant Bank admits that the plaintiff and John Angus MacKenzie are husband and wife; that the husband organized the company MacKenzie Limited; that in connection with MacKenzie Limited the husband did his banking business with the defendant bank; and that prior to January, 1921, MacKenzie Limited and the husband arranged for a credit with the defendant on account of MacKenzie Limited all as alleged.

It says that the husband was the President and acted as general manager of MacKenzie Limited which did business with the defendant bank and that the plaintiff did hypothecate the shares with the defendant bank as collateral security to the indebtedness of MacKenzie Limited to the defendant Bank and that the first or original hypothecation was made on December 31st, 1920. That this hypothecation was made in support of a guarantee given by the plaintiff to the bank, of the account of this company, which guarantee was from time to time renewed and on each occasion the Plaintiff had competent independent legal advice.

It says that it is true that the company became insolvent in 1921; that the assets were acquired by a newly incorporated company, "MacKenzie Manufacturing Co. Ltd."; that the assets held by the defendant Bank as securities were relinquished by the trustee in Bankruptcy to the defendant Bank in manner as provided by the Bankruptcy Act; that they were subsequently sold to the husband who in turn resold them to the company then incorporated under the name of MacKenzie Manufacturing Company Limited.

It says too, that the husband, as president of the new company, arranged that it do its banking business with the defendant Bank and arranged a credit for it and for the giving to it of certain securities, including guarantees from himself and the plaintiff as collateral to which the plaintiff gave a

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further hypothecation of the shares of stock mentioned and that in this transaction the plaintiff had the benefit of independent legal advice as was certified to the defendant Bank by the plaintiff and her legal adviser under date of November 21st, 1921.

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10 It says, too, that during the negotiations with the Trustee in Bankruptcy of MacKenzie Limited the Bank took precaution and saw to it that the plaintiff and her husband were satisfied with the valuation put upon the securities referred to and that they were satisfied with the arrangements being made which included a stipulation that although the claims of the Bank would be considered paid in full as between the Bank and the Trustee that this would not in any way release the plaintiff and her husband from their guarantees to the Bank, nor should their personal securities be in any way affected until the amount due to the Bank would be actually paid. In this connection the defendant Bank says the plaintiff again had the benefit of competent legal advice as appears by letter of September 13th, 1921, which was, it is alleged, prepared by the independent legal adviser of the plaintiff and delivered by him for her to the defendant Bank.

20 It says, too, that anything done by the plaintiff in respect of the transactions in the month of November, 1921, having to do with the transfer of the assets hereinbefore referred to, to the new company, was done under competent legal advice, and no representations were made by the defendant in connection with the said transaction which were not true in substance and in fact.

It says, too, in reference to the letter of withdrawal from the suretyship of October 1st, 1925, that the plaintiff had the benefit of independent legal advice, and her legal adviser had interviews with the defendant's manager.

30 The defendant Bank, too, specifically denies that any representations were made by its manager or anybody on its behalf in connection with the matters set forth as to the forwarding of the letter of renewal by the defendant to the plaintiff in April, 1924, and as to the letter limiting the guarantee to October 1st, 1925, and says it was made clear to the plaintiff by her solicitor that if she withdrew from her guarantee it would probably result in the immediate winding up of the company and in loss to the plaintiff, and that then there was good reason to expect that the business operations of the Company would be successful.

Joinder of Issue was by effluxion of time and the setting down for trial was by consent of both parties.

40 Jean MacKenzie, the plaintiff, was Miss Andrews, an Ottawa girl by birth. She received a high school education in her natal city. She received a musical education but had no business education in any business school or academy.

In 1901 she was married to John Angus MacKenzie. He was then employed in the Woods concern in Ottawa. He then went into some coffee business, then into a commission business in partnership with Jno. Louis

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White. He had a good reputation for energy and power as a salesman. He later started a company in which he told his wife he had invested \$8,000.

Mr. Andrews, the plaintiff's father, died about April 20th, 1907. He left the plaintiff a comfortable residence on Cambridge Street, Ottawa, which was later sold for \$6,000, some mortgages, two thousand dollars in cash, and shares of the Ottawa Dairy Co. Ltd. These shares are, in the main, the subject matter in dispute in this action.

The company started by John Angus MacKenzie and known as MacKenzie's Limited seems, for a time, to have prospered. In 1913, it was indicated by Ex. 17, a sheet produced by the bank from its files, identified by the present local manager of the bank, at Ottawa, and marked as an exhibit without objection, that Mrs. MacKenzie, the plaintiff, pledged as collateral security on account of "J. A. MacKenzie, MacKenzie Limited, Ottawa, Account No. M. 11," on April 14th, 1913, two certificates, one No. 69, 87 shares Ottawa Dairy Co. Ltd. preferred face value \$50., actual value \$55 each and at the same time certificate No. 58 for 142 shares Ottawa Dairy Co. Ltd. common par value \$50. valued at \$60 each; and that on April 23rd, 1917, Jean MacKenzie purports to have signed the "Collateral Securities sheet, Ex. 17, showing a return, as of that date, to her of these securities.

There is a notation written under the entries extracted from Ex. 17, above, these words:

"Letter from Company"

"Letter from Mrs. MacKenzie re stock."

No such letters were produced or accounted for by the defendant Bank upon the oral evidence.

The other bonds listed on this Ex. 17 seem to be bonds of John A. MacKenzie and seem to have no significance in this action beyond the fact that the entries indicate that they were sold by the Bank apparently on December 14th, 1920, and the proceeds credited, it would seem, to the account of MacKenzie Limited.

In the same manner and without objection, Ex. 16 was proven and filed. It reads, "Collateral securities held on account of Jean MacKenzie, wife of J. A. MacKenzie, 220 Clemow Ave. It indicates that on January 14th, 1914, Jean MacKenzie had with the Bank certificate No. 2238, 5 shares Ogilvie Flour Mills Ltd. Preferred par value \$500, and that on March 18th, 1914, she signed the sheet Ex. 16 after the words "Date Delivered", indicating the return of the Ogilvie shares on that date.

Then, under date June 6th, 1917 (less than two months after April 23rd 1917, the date at which she seems to have signed Ex. 17 to acknowledge the return to her on that date of the Dairy shares) this Ex. 16 indicates that the Bank held as collateral security on account of "Jean MacKenzie Account No. M.14, Certificate No. 180, 142 shares Ottawa Dairy Co. common, par value \$7100. and No. 271—87 shares Ottawa Dairy Co. preferred par value \$4350, and as of February 18th, 1918, appears her signature, and initial C. G. indicating an admission on her part that her Dairy shares were on that date released to her and ceased to be security to her account No. M.14. Two War

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Loan Bonds, a thousand dollars each, are listed on this Ex. 16, as to one of which she seems to have signed, as admitting its return to her on February 19th, 1918, and the other is noted as having been sold and proceeds credited to "Savings" on January 15th, 1918.

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Then, it appears on this Ex. 16 as of Oct. 13, 1920, that the bank held on account of Jean MacKenzie as collateral security to her account No. 14, Cert. 275, 87 shares Ottawa Dairy Ltd. Preferred, and as of date Oct. 17th, 1921, it is indicated in this Ex. 16 that Cert. 209, 100 shares Ottawa Dairy Co. Ltd. were held as collateral security to the account of Jean MacKenzie No. M.14.

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10 It would therefore appear from these two Exs. 16 and 17 that the plaintiff's shares are in the defendant bank as security to Jean MacKenzie Account No. M.14; and that they are not at this time and have not been in the defendant's bank as collateral security to MacKenzie Limited Account No. M.11, since the 23rd of April, 1917, and that there is no collateral security sheet produced, indicating that the plaintiff's shares were ever held by the bank as security to the MacKenzie Manufacturing Co. Ltd. account.

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There is produced and filed as Ex. 1 a document signed by the plaintiff which bears the date December 31st, 1920, whenever it was signed. It is upon the bank's usual form. "List No. Bills. shares of Corporations
20 lodged with or assigned to the Royal Bank of Canada in connection with the liabilities, however arising of MacKenzie Ltd. to the Royal Bank of Canada" and then follows a very ample and all encircling transfer to the bank of the securities named, viz: 87 Ottawa Dairy Stock Preferred;
100 Ottawa Dairy Stock Common.

There is some writing scrawled angling across this paper which was said by witnesses to be no part of the original document.

In connection with Ex. 1. must be examined the typewritten paper, Ex. 19. It is also dated December 31st, 1920, and purports to certify and declare
30 over the name "H. P. Hill with reference to the letter of Guarantee to the Royal Bank of Canada dated the 31st day of December, 1920, executed by Jean MacKenzie . . . wife of J. Angus MacKenzie, for the purpose of guaranteeing and securing the past or future indebtedness of her husband I hereby declare that Mrs. Jean MacKenzie has consulted me as to the liability which she incurs by executing the said guarantee . . . that I have advised her fully as to the effect . . . her liability thereunder . . . the manner in which the same can be enforced . . . that she understands the nature and effect of the said transaction, and I hereby declare that I have given this advice to Mrs. Jean MacKenzie as solicitor for her and in her interest only, and separately
40 and entirely apart from the interest of her husband or the said bank."

(Sgd.) "H. P. HILL"

and on the same paper and following the above are the words:

"I hereby admit and declare the above letter is true and correct" etc. and signed,

"JEAN MACKENZIE"

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It is unfortunate that the bank has lost the original of this paper. No witness is called to speak about this document who knows anything about its manner of creation, except Jean MacKenzie and her account of what occurred in connection with the document is if it ought to be accepted, an account that renders the document useless. If this certificate of Mr. Hill aided by the letter of the plaintiff is, by its mere production by the Bank, to be accepted as proof sufficient, that Mrs. MacKenzie had competent and independent advice, then it would seem that the protection that the law has, for more than a century, thrown about what is called a "protected class" will, in practice be obliterated and rendered ineffective by the procuring by the bank at the right time, and the filing away in a filing case for production at the critical moment, of a few extra pieces of paper, papers with written statements thereupon, which no witness, who knows whether the facts related therein are real or fictitious, is called upon to pledge his oath to swear of the statements that they are true and to swear so convincingly as to make it safe for the court to base a decision upon the reliability of such statements. 10

In connection with this paper attention ought to be directed to Ex. 18, a letter purporting to have been signed by the plaintiff Jean MacKenzie in reference to a pledging of these Dairy shares to the Royal Bank at a date of October 18th, 1915. I do not remember the production of any document indicating that there was a loan made by the bank to the MacKenzie Limited at about this date. There is, however, another Ex. No. 22, in form similar to Ex. 19. It was said to have been prepared by the Bank and to have been signed by H. P. Hill. It does not purport upon its face to have been signed by Mrs. MacKenzie but it, too, purports to declare that proper and sufficient independent advice was given to Mrs. MacKenzie under date of October 18th, 1915. This document is dated March 6th, 1916. Mr. Hill was not called to say that the matter spread upon this exhibit was true, nor to say that he was in possession of all the information that it now appears would be necessary for him to have in order to be able to advise her — or indeed as to what if any information he had as to the circumstances surrounding the situation then existent. 20 30

I think it is desirable, before considering more than incidentally — the oral evidence taken at the trial, to examine and set forth the substance of the remaining documentary evidence filed upon the trial. I do so in order of dates.

Ex. 4 is what purports to be a copy of a statutory declaration made by C. A. Gray, the local manager of the defendant Bank on the 22nd of June, 1921, in the Bankruptcy proceedings in the estate in Bankruptcy of MacKenzie Limited. He declares that the debtor was on the 14th day of June, the day of the assignment indebted to the creditor, the defendant Bank, in the sum of \$164,400.00 as shown by the account hereto annexed." (The account is not annexed to the copy filed). That the creditor has not to his knowledge or belief any security except: 40

Assignment of stock in trade, 88 of the Bank Act	\$117,500.00
Hypothecated book accounts	103,000.00
Second mortgage on real estate 139-40 Queen St. South, and first mortgage on Duke St. property ..	45,000.00
Together with certain other securities in aid of guarantees which I am advised the Bank is not legally obliged to specify.	

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10 Exhibit 2 is a copy of a letter dated September 13th, 1921, said to have been prepared at the Bank and signed by the MacKenzies, husband and wife. It purports to say that the MacKenzies know that the Bank are valuing "certain securities at \$125,000.00 and that the Trustee will be at liberty to accept the valuation and that the MacKenzie's "agree" that it will not in any way release us from our obligation under guarantees to the Bank, nor shall our personal securities be in any way affected until the amount due the Bank by MacKenzie Limited has been actually paid.

Ex. 5 is what purports to be a copy of a declaration made by the same Mr. Gray, the manager of the local branch of the Bank at Ottawa, on Sept. 13, 1921. In this he says that the debtor was on the 28th of June, 1921, the day of the assignment and still is indebted to the creditor in the sum of \$121,372.94 as shown by the annexed account marked "A". This shows demand

20 loans	120,000.00
Interest on same	303.35
Amount in liquidation	1,069.59
Proportion of taxes paid, add say	3,500.00

That the Royal Bank has no security to my knowledge or belief except valued as follows:

30 (1) Second mortgage on 139-40 Queen Street, Ottawa, Equity worth in my opinion	\$30,000.00
(2) Hypothecation of goods taken in manner provided by the Bankruptcy Act, also Book accounts for goods sold by the Trustee on behalf of the bank	50,000.00
Hypothecations are dated various dates from Dec. 13, 1920, to June 26th, 1921. Assignment dated 12th June, 1920, covering book accounts and other debts owing MacKenzie Ltd.	40,000.00
Securities assigned by John Angus MacKenzie personally to the bank on dates from June 12, 1920, to October 8, 1920.	5,000.00
40	\$125,000.00

On the 9th day of November, 1921, the manager of the local branch, Mr. Gray, made an affidavit in effect:

1. That the Bank is one of the secured creditors.
2. That MacKenzie Limited made an authorized assignment under the Bankruptcy Act to Arthur Cromby.

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3. That the Royal Bank did, under sect. 46 of the Bankruptcy Act on Sept. 12, 1921, require the Trustee to elect as to whether he would or would not redeem the securities set out in a certain declaration of value (i.e. the one made by manager Gray).

4. That at a meeting held on Sept. 13 and Oct. 5, 1921, upon instructions from the Inspectors, the Trustee determined not to redeem.

5. That at a meeting of Inspectors held Oct. 5, 1921, it was resolved that the Trustee should release all equity in the realty and personalty set out in the declaration of value and this was done by release attached.

Thereupon on the 14th of November, 1921, upon motion made on behalf of the Bank, the Bankruptcy Court made an order, Ex. 3, ordering and declaring that the releases be and they were thereby ratified. 10

Upon the oral evidence it is common ground that a movement was at this time on foot between John Angus MacKenzie and the Bank whereby a new company to be known as MacKenzie Manufacturing Co. Ltd. was to be and was organized.

On the 21st of November, the plaintiff Jean MacKenzie signed a paper copy of which is Ex. 7. This writing says: "In consideration of the Royal Bank agreeing or continuing to deal with MacKenzie Manufacturing Co. Ltd. —the customer—in the way of its business as a Bank, the undersigned hereby **jointly and severally** guarantee payment to the Bank of the **liabilities which the customer has incurred or is under** or may be under to the Bank, whether arising from dealings between the Bank and the customer or from other dealings by which the Bank may become in any way whatsoever a creditor to the customer; including interest, — charges for commission — other expenses — cost the joint and several liability of the undersigned hereunder being limited to the sum of \$200,000 with interest. 20

And the undersigned agrees that the Bank may refuse credit.....grant, release.....and otherwise deal with the customer and other parties and **securities** as the bank may see fit.....without prejudice to or in any way limiting or lessening the liability of the undersigned under this guarantee. 30

And this guarantee shall not be considered as wholly or partially satisfied by payment.....received by the Bank.....all payments shall be applied as payments in gross.....without any right of the undersigned to claim the benefit.....until payment to the Bank of the amount hereby guaranteed.....and this guarantee shall secure any ultimate balance.....and the Bank shall not be bound to exhaust.....before being entitled to payment from the undersigned.

And this shall be a continuing guarantee. 40

Accounts settled between the Bank and its customers.....be received as conclusive evidence against the undersigned.....and shall not be disputed or questioned by the undersigned.

And the undersigned specially waives and.....any benefits of discussion and division."

Bearing date this same 21st day of November, 1921, a further document is said to have been prepared for and signed by Jean MacKenzie. It is filed

as Ex. 23 and is in the same form as Ex. 1, only the "list of _____ shares in corporation" _____ is:

100 Com. Ottawa Dairy Co. Ltd. _____ 50.
 87 Ottawa Dairy Stock Preferred _____ 50.

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Exhibit 8 bearing the same date, November 21st, 1921, is a certificate of E. F. Burritt that he has advised Mrs. Jean MacKenzie — given her independent advice on this transaction of the 21st of November, 1921 — using the words as prepared, it is said and not denied, by the bank is substantially the same language as is used in 8 — and Mrs. MacKenzie signs a letter stating that Mr. Burritt's letter to the Bank is true. Mr. Burritt is not called to say that what is in the letter is true or as to what information he had before advising.

That seems to constitute the day's work for Nov. 21, 1921.

The next document executed was Ex. 10, dated Nov. 25, 1921. This is an agreement between the Royal Bank and John Angus MacKenzie. It recites: (1) the process whereby the Bank procured its supposed right to the equity of redemption as already indicated and recites the order "obtained from a judgment in Bankruptcy _____ confirming the release and _____ vesting in the bank the property comprised in the said securities." And (2) that John Angus MacKenzie has offered to purchase all the Bank's "right, title and interest" in the property described.

Witnesseth the bank agrees to sell and the purchaser, John Angus MacKenzie, agrees to buy all things in schedules "A" and "B" for \$117,150.12, with interest at 7% per annum till the day of actual payment upon the following terms and conditions:—

(1) The price shall be paid within thirty days, upon payment, possession and title shall be given.

(2) Upon MacKenzie making transfer of all the property to MacKenzie Manufacturing Co. Ltd. the bank agrees to give a line of credit not exceeding \$125,000. to the MacKenzie Manufacturing Co. Ltd., and to advance upon the following securities:

(a) Under Sect. 88 of the Bank Act against the goods and chattels in Schedule "A";

(b) An assignment by MacKenzie Manufacturing Co. Ltd. to the Bank of the book debts, etc., in Schedule "B".

(c) The execution and delivery to and in favour of the Bank of the personal securities, set forth in Schedule "D", i.e. **inter alia**, the 100 shares Ottawa Dairy (Common) and 87 Ottawa Dairy Co. Preferred.

At this date it would appear there was a document in existence unsigned mayhap, but signed after Ex. 10 was executed, though on the same day Ex. 9 was executed the date being left blank, is filled in with pen as of this "25th day of November, A.D. 1921". It states "The agreement under which the Bank has arranged to sell the assets of MacKenzie Limited which it held under hypothecation and which have now become its property to **Arthur Warwick Beament, Barrister** (the underlined words are stricken out and the

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words "John Angus MacKenzie, Manufacturer" are written in with a pen and initials put opposite the change) "of the City of Ottawa, taking securities from MacKenzie Manufacturing Co. Ltd., as set out in the document bearing even date herewith, **has been entered into at our request and with our concurrence and upon the understanding that the Bank is to be entitled to continue to hold all personal securities hypothecated by us to the Bank** as collateral to the indebtedness of MacKenzie Limited, until all moneys advanced by the Bank to MacKenzie Manufacturing Co. Ltd. have been fully paid and discharged, and that in event of default being made in such payment, the Bank is to be entitled to all the remedies in respect to the securities so hypothecated as by us and it would have been entitled to if the indebtedness had remained that of MacKenzie Limited and we hereby jointly and severally agree with the Bank to execute any and all such further or other documents and assurances for more fully protecting the Bank in respect of all such advances and indebtedness, and for securing repayment to it therefor as to the said Bank or its counsel may appear advisable." And this is signed by Jno. A. MacKenzie and Jean MacKenzie. This, no doubt, is the document and transaction indicated in paragraph 5 of the statement of defence.

Bearing date the same day, November 25th, 1921, there is filed another agreement, Ex. 10½, the execution of which is witnessed by Mr. Beament. It is between the Canada Realty Co. Ltd., Vendor, and John Angus MacKenzie, Purchaser. This agreement witnesseth that in consideration of the purchaser, i.e. John Angus MacKenzie, entering into a certain agreement with the Royal Bank for the purchase from it of certain assets formerly the property of MacKenzie Limited and one dollar now paid by the purchaser to the vendor, and as and when payment in full shall be made to the Bank of all moneys payable to it in respect of the indebtedness of MacKenzie Limited, and of all money which may be, or become payable to the Bank by MacKenzie Manufacturing Co. Ltd. under the terms, or as contemplated by the provisions of the said agreement, the vendors do hereby covenant and agree that it will thereupon assign and convey to the purchaser or his nominee all that certain parcel of land being the lands therefore owned and occupied by the MacKenzie Limited before their bankruptcy subject to the mortgage existing thereon in favour of Eliza Ann Pearson and subject to all other encumbrances thereon existing against the said property such conveyance to contain covenants against the acts of the grantors only.

Until default shall be made by the purchaser the purchaser to be at liberty to occupy and enjoy the said lands subject to the payment of the interest on the Pearson mortgage and taxes and other charges accruing against the said lands. In other words, MacKenzie is to be the owner subject to encumbrances his company had made before their bankruptcy. Everything MacKenzie Limited had was to become the property of MacKenzie Manufacturing Co. Ltd. irrespective of any rights of unsecured creditors.

This seems to close the work done on November 25th, 1921, so far as filed exhibits show.

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Exhibit 11 bears date the 20th day of March, ¹⁹²²1932. It is a tripartite agreement among the MacKenzie Manufacturing Co. Ltd. (the new company), the defendant bank, and the MacKenzies, husband and wife.

It recites: the indebtedness of the company to the bank, and that the "advances" have been secured by certain hypothecations of **assets of the company** in favour of the bank; that at the time of making the arrangements for the advances it was understood and agreed **by and between the parties hereto** that the bank receive additional security for such advances and **any future advances** which the bank might make to the company consisting in part of the assignment of certain life insurance upon the life of John Angus MacKenzie, then is described a block of nine policies; it recites further that these policies have been assigned to the Bank, that a premium on one of the policies fell due and was unpaid and that the Bank called upon the company to pay this premium and to undertake the payment of all future premiums "as a condition upon which the bank would be willing to continue its financial support to the company", and the company deem it necessary so to do, and some of the policies are payable to Jean MacKenzie who has joined to evidence "her consent to the terms of this **agreement.**"

In consideration of the premises and one dollar the company agrees to pay and empower the Bank to pay the premiums and charge them to the company account, and in consideration of one dollar to each, MacKenzie and his wife, that the company will get the advantage of any premiums paid subject to the lien of the bank and that the company may give good discharges to any insurance company for increased cash surrender values.

Upon the oral evidence it appeared that Mrs. MacKenzie was interested in only one or so of these policies, and I only mention this exhibit to point out that it does not effect this case except as what its presence at all may reveal as to the knowledge and motives of the signatories.

A copy of a document bearing date the 18th of April, 1923, was filed as Ex. 12. It purports to be addressed to the defendant Bank and purports to be signed by the plaintiff, Jean MacKenzie. It reads in part as follows: In consideration of the Royal Bank.....agreeing or continuing to deal with MacKenzie Manufacturing Co. Ltd., herein referred to as "the customer", in the way of its business as a Bank the undersigned hereby **jointly and severally** guarantee payment to the Bank of the liability which the customer **has incurred or is under or may incur or be under**, whether arising from dealings between the Bank and the customer or from other dealings, by which the Bank becomes in any manner whatever a creditor of the customer, including interest costs, commissions, charges, expenses, etc. **"The joint and several liability** of the undersigned being limited to \$200,000." "And the undersigned agrees that the Bank may refuse credit.....deal with the customer.....and securities as the Bank may see fit—may apply all money.....from any securities upon such part of the customer's indebtedness as it may think best without prejudice to.....or limiting.....liability of the undersigned under this guarantee."

RECORD

In the Supreme
Court of Ontario

No. 9

Reasons for
Judgment of the
Honourable Mr.
Justice McEvoy
after Trial.Dated September
21st, 1931.

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"And this guarantee shall not be considered as wholly or partially satisfied by the payment.....of sums of money for the time being due.....and all payments shall be applied in gross ... and this guarantee shall apply to and guarantee any ultimate balance. And this shall be a continuing guarantee and.....cover liabilities of the customer.....until undersigned notifies the bank to make no further advances."

"Any amount settled or stated by or between the Bank and the customer or admitted by the customer may be adduced by the Bank and received as conclusive evidence against the undersigned of the balance or amount thereby appearing due from the customer to the Bank and shall not be disputed or questioned by the undersigned." 10

"And the undersigned specially waives and renounces any benefits of discussion or division."

In connection with this document is filed as Ex. 13 and bearing the same date another document. It is directed to the Royal Bank and signed "Walter J. Gilhooly". An addition is appended to it and signed "Jean MacKenzie". It says: "With reference to the letters of guarantee" (identifying Ex. 12 I suppose) "for the purpose of guaranteeing and securing the **past, present or future indebtedness of her husband, J. Angus MacKenzie**", (not the MacKenzie Manufacturing Co. Ltd.) I hereby declare that Mrs. Jean MacKenzie has consulted me as to the liability which she incurs by executing the **said guarantee so given** (not to be given) as aforesaid; that I have advised her fully as to the effect of the same and her liability thereunder and the manner in which the same can be enforced; and that **she understands the nature and effect of the said transaction**, and.....I have given this advice to Mrs. Jean MacKenzie as solicitor for her and in **her interest** only and separately and entirely apart from the interest of her husband **or the Bank.**" He says nothing as to the MacKenzie Manufacturing Co. Ltd. 20

Appended to the copy of this document signed by Mrs. MacKenzie are 30 the words:

"I hereby admit and declare that the above letter is true.....that Mr. Walter J. Gilhooly the writer.....in advising me.....was consulted by me as my solicitor separately and distinctly from any legal advice which was given to my husband in connection with this matter, and in my interest only."

Under date of December 3rd, 192~~6~~, a document, Ex. 14, is filed, as being a copy of a letter of Redmond Code addressed to the manager of the defendant Bank. It says:

"I enclose herewith guarantee signed by Mrs. MacKenzie with reference to the liability of MacKenzie Manufacturing Co. Ltd., I also enclose my letter and certificate to the effect that this guarantee was signed by Mrs. MacKenzie upon my independent advice." 40

"Mrs. MacKenzie does not wish to continue on this guarantee indefinitely.....She will not continue this guarantee after 1st of October, 1925. I would suggest that you advise the Company that it will be necessary for them to make some other arrangements to continue on after the 1st of next October, so that Mrs. MacKenzie's securities may be released by that time."

A subsequent letter dated Dec. 17th, 1924, was filed as Ex. 15. It is addressed to the Bank manager and signed "Redmond Code". It says:

"Re MacKenzie Manufacturing Co. Ltd.

"I would be obliged if you would return to me the letter which I wrote you covering Mrs. J. Angus MacKenzie's guarantee."

These two exhibits last mentioned, no doubt, refer to the matters pleaded in paragraphs 16 and 17 of the statement of claim.

10 The substance of the plaintiff's complaint is: that her securities have been gotten away from her; and gotten away from her in a way that she did not in reality understand and that she did not appreciate what was being done, nor in what position she was being placed; that those who got them away from her stood in a relationship towards her that in law cast upon them a duty to see to it, before they could take away her securities and be entitled in law to keep them, that she really did understand what was involved in the various transactions whereby her securities were gotten away from her; that she was in law one of that class of persons who is "protected" unless it is made to appear that she did understand the true nature and effect of what was being done whereby the alienation of her securities was effected and is sought to be retained.

20 That she was one of the "protected class" under the authorities was not very strenuously denied at the trial and argument. The whole body of evidence and circumstances developed upon the trial would seem to indicate strongly that she was one of the class. Particularly, many of the documents filed show almost irresistibly that the defendant itself considered her one of the "protected class" and I hold that she was one of the protected class.

30 In that case the court must enquire into the question, as to what was the state of knowledge and understanding of the plaintiff from time to time concerning the various transactions involved. The defence in the case at bar is that the plaintiff was adequately and sufficiently informed and advised. Obviously the manner in which one approaches the task of coming to a conclusion upon the evidence adduced at the trial as to what are the facts in this case is of the gravest importance. I have read all the authorities cited by counsel and some others.

40 In *Nedby v. Nedby* (1852) 5 DeG. & S. 377 it is laid down in the head-note: "an appointment made in exercise of a power by a wife in favour of her husband is to be considered good, unless the wife shows that it was executed under circumstances sufficient to invalidate it. The onus probandi lies on the party impeaching the instrument." I refer to this at this stage because the Privy Council approves of it in the oft referred to case of *Bank of Montreal v. Stuart* (1911) A.C. at page 137.

In *Bank of Montreal v. Stuart* (1911) A.C. 137, Lord MacNaughten says:

"It may well be **argued** that when there is evidence of overpowering influence and the transaction brought about is immoderate and irrational, as

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it was in the present case, proof of undue influence is complete.”

and after stating the facts he says:

“No man in his senses with any regard to the interest of Mr. Stuart could have advised Mrs. Stuart to act as her husband told her to do. The bank left everything to Mr. Bruce (the bank’s solicitor) and the bank must be answerable for what he did”.

and he further says:—

“Now it has been laid down in the House of Lords that the husband’s solicitor owes a duty to the wife in transactions between the husband and wife when her interests are concerned,” I think”, said Lord Davey in *Wells v. Barron*, “it is a sound observation that a wife usually has no solicitor of her own apart from that of her husband, and I think she is prima facie entitled to look to her husband’s solicitor—the solicitor of her husband’s family for advice and assistance until that solicitor repudiates the obligation to give such advice and requires her to consult another gentleman.”

He says, Mr. Bruce “ought to have endeavoured to advise the wife and to place her position fully and plainly before her. Probably if not certainly, she would have rejected his intervention, and then he ought to have gone to the husband and insisted on the wife being separately advised, and if that was an impossibility owing to the implicit confidence which Mrs. Stuart reposed in her husband, he ought to have retired from the business altogether and told the bank why he did so.”

The Stuart case in so far as the judgment of the Supreme Court of Canada is concerned, is based upon the opinion of the majority of that Court as then constituted, that the Court ought to be and was bound by its own decision as laid down in *Cox v. Adams*, 35 S.C.R. 393, and while the Board of the Privy Council concur in the order made by the Supreme Court of Canada, “They are unable to concur in the reasons on which that order is founded.” Mr. Justice Davies and Mr. Justice Duff, however, thought the case ought to be disposed of in keeping with the opinion of Moss, C.J.O. as expressed in 17 O.L.R. at 454.

It would seem that the place where the members of the Board of the Privy Council in their opinion, part company with the opinions of the Supreme Court of Canada in the Stuart case is upon the question of the onus of proof in a husband and wife case. The Supreme Court in *Cox v. Adams* in the opinion of the majority of the judges taking part in the judgment in the Stuart case were of the opinion that the Supreme Court of Canada had laid it down in *Cox v. Adams* as the law that in a case where a husband procures benefits from the transaction attacked, from the wife’s separate estate “the law on grounds of public policy, presumes that the transaction was the effect of influence induced by these relations.”

The Privy Council in the Stuart case say:

“Their Lordships accept the law as laid down Parker, V.C. in *Nedby v. Nedby*, 1 DeG. & S. 377 to the effect that in the case of husband and wife the burden of proving undue influence lies upon those who allege it,” and they

find upon the evidence in the Stuart case that the plaintiff had overwhelmingly discharged that onus.

Notwithstanding the argument of counsel in the case at bar there is no reason that I can discover from a study of Cox v. Adams for thinking that the Lords of the Privy Council would not have supported the judgment in Adams v. Cox upon the ground that the evidence sustained the onus. Their Lordships were not agreed that the rule was as broad as stated by the Supreme Court, but not more than that.

10 Alcard v. Skinner (1887) 36 Ch. D. 145 was cited by Mrs. Stuart's counsel on the argument before the Privy Council. It was again cited before that Board in Inche Noriah v. Stark Allie Bin Omar (1929) A.C. 127.

After Alcard v. Skinner (1887) 36 Ch. D. 145 at 171; Morely v. Longman (1893) 1 Ch. 736; Powell v. Powell (1900) 1 Ch. 243; Adams v. Cox (1904) 35 S.C. Canada; re Comber (1911) 1 Ch. 723 and the Bank of Montreal v. Stuart (1911) A.C. 155 were decided, the Inch Noriah v. Stark Allie Bin Omar case was decided by the Privy Council (1929) A.C. 127. This case throws some light upon the law to be considered in solving the questions arising in the case at bar, Lord Chancellor Hailsham delivered the judgment. After referring to these and other cases involving the question of when independent advice is necessary and how the necessity may be supplied, he says:

20 "The decision in each of these cases seems to their Lordships to be entirely within the principle of law laid down in Alcard v. Skinner. But their Lordships are not prepared to accept the view that independent legal advice is the only way in which the presumption can be rebutted, nor are they prepared to affirm that independent legal advice when given does not rebut the presumption, unless it be shown that the advice was taken. It is necessary for the donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that

30 the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the court that the donor was acting independently of any influence from the donee and with the full appreciation of what he was doing; and in cases where there are no other circumstances this may be the only means by which the donee can rebut the presumption. **But the fact to be established is that stated in the judgment already cited of Cotton L. J., and if evidence is given of circumstances sufficient to establish this fact, their Lordships see no reason for disregarding them merely** because they do not include independent advice from a lawyer. Nor are their Lordships prepared to lay down what advice must be received in order to satisfy the rule in cases

40 where independent legal advice is relied upon, further than to say it must be given with a knowledge of all the relevant circumstances and must be such as a competent and honest adviser would give, acting solely in the interests of the donor."

Since the judgment in the Inch Noriah case the Supreme Court of Canada have had to consider and apply the principles of law involved in these cases in the case of Kryz v. Kryz (1929) Canada Law Reports, 152. I bor-

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row the language of the unanimous judgment of the Court as they appear at page 163:

"I am persuaded that the principles enunciated by the Lord Chancellor are not irrelevant to the determination of the present case."

The plaintiff in the case at bar is met with an array of documentary evidence as I have indicated which, at first blush at any rate, is almost overwhelming in its force and weight.

The plaintiff is a woman of above average intelligence but on account of her position as she was placed she was a person entitled under the authorities and upon the evidence to what has been called "the protection". The defendant Bank in its defence says she had that protection as to the signing of Exhibit 1 on December 31st, 1920, (in paragraph 2 of the defence) and they point to Exhibit 19, the certificate of Mr. Hill and her own letter of that date, appended thereto; and they point to every other document indicating independent advice. She swears she had no independent advice. I was favourably impressed with the plaintiff as a witness. Her evidence to me was convincing and I accept her evidence as being the evidence of an honest woman. No one has sworn that he had given her independent advice or any advice at all. She admits she had advice of a kind. But the kind of advice the laws says she must have to work a defence for the bank in this case she utterly denies having received. There is no evidence that any advice she received was given with a knowledge of all the relevant circumstances and is such as a competent and honest adviser would give if acting solely in the interest of the plaintiff and having in mind all the relevant circumstances. Assuming that the plaintiff's shares were once properly hypothecated for the support of the MacKenzie Company Limited account, there was a time when that hypothecation was exhausted. There is no evidence to satisfy the Court that any adviser with a full knowledge of all the circumstances ever advised the plaintiff of the results of further hypothecating her shares upon the basis that the shares were then freed from any claim of the bank and that she was again risking her property upon the belief that the husband's business was in a condition that afforded any sane or sound ground for expecting anything else than that the husband was bound to lose all, indeed had lost all and that anything she could do meant anything more than throwing her property into a vortex.

This case is of very great importance. If those whom the bank say advised the plaintiff did advise her with a full and adequate knowledge of all the circumstances necessary to know in order to advise the plaintiff effectively, they ought to have been called to swear to that. Most of them were easily available. To file as an exhibit a letter from a solicitor or solicitors stating that he or they advised the plaintiff, and using therein the language used in the exhibits filed in this case, even when a letter is obtained from the plaintiff saying that the solicitor's letter is true, is not enough to establish that the transaction was had after the nature and effect of the transaction had been fully explained to the plaintiff by some independent and qualified per-

son so completely as to satisfy the Court that the plaintiff was acting independently of any influence from the defendant and her husband with the full appreciation of what she was doing. Every case of this kind is a case by itself to be dealt with upon its own facts and circumstances. In this case I find as a fact upon the evidence that the relationship between the plaintiff and her husband and the bank have been such as to raise a presumption and that they do raise a presumption that the husband and the bank, through the husband, influenced the plaintiff to alienate her shares—practically all she had left, and I find as a fact upon the evidence that there is no evidence fit to establish that the plaintiff in alienating her shares did so with a proper understanding of the effect of her acts or of what her rights were either by the independent advice of a lawyer or by any other advice or knowledge at her command. Had she understood her rights one cannot conceive of her ever shouldering the liabilities of the MacKenzie Manufacturing Co. Ltd. But be that as it may, she never did understand her rights nor the effect of the transaction by which it is sought to establish that her shares became liable for the debts of the new company.

10

There will be judgment for the plaintiff declaring that the defendant bank has no lien or claim upon her shares and that the defendant Bank do reconvey and deliver the same up to the plaintiff.

20

The plaintiff should have her costs from the defendant.

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In the Supreme
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RECORD

No. 10

In the Supreme Court of Ontario

**JUDGMENT OF THE HONOURABLE MR. JUSTICE McEVOY
AT TRIAL**

No. 10

Judgment of the Honourable Mr. Justice McEvoY at Trial.

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE McEVOY

Dated September 21st, 1931.

Monday the 21st day of September, 1931.

BETWEEN:

JEAN MACKENZIE,

Plaintiff;

and

10

THE ROYAL BANK OF CANADA,

Defendant.

1. This action coming on for trial on the 19th and 20th days of May, 1931, before this Court, at the sittings holden at the City of Ottawa, for the trial of actions without a jury, in the presence of counsel for both parties, 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:

2. THIS COURT DOTH DECLARE that the Defendant Bank has no lien or claim upon the shares of the Plaintiff, being 294 Shares in the Borden Company Incorporated, representing 100 Common Shares and 87 Preferred Shares in the Ottawa Dairy Company Limited, and doth order and adjudge the same accordingly. 20

3. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant Bank do retransfer and deliver the said Shares to the Plaintiff.

4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant do pay to the Plaintiff her costs of this action forthwith after taxation thereof.

Judgment signed the 23rd day of October, 1931.

Entered 7 J. B.
No. 185, Folio 92
Oct. 23, 1931.
"C.C."

"F. A. MAGEE"

Local Registrar, S. C. O.
at Ottawa.

30

No. 11NOTICE OF APPEAL BY THE DEFENDANT TO THE
APPELLATE DIVISION

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

JEAN MACKENZIE

Plaintiff (Respondent)

— and —

THE ROYAL BANK OF CANADA,

Defendant (Appellant)

RECORD

In the Supreme
Court of Ontario

No. 11

Notice of Appeal
by the Defendant
to the Appellate
Division
Dated September
25th, 1931

10

NOTICE OF APPEAL

TAKE NOTICE that the Defendant appeals to a Divisional Court from the Judgment pronounced by the Honourable Mr. Justice McEvoy, on the 21st day of September, A.D. 1931, and asks that the said judgment be revised and judgment should be entered for the Defendant dismissing the action with costs upon the grounds following, that is to say:—

1. That the learned trial Judge erred in finding as a fact upon the evidence that the Defendant Bank through the Plaintiff's husband had influenced the Plaintiff to alienate or hypothecate the securities in question in this action.
2. That the learned Judge erred in finding as a fact upon the evidence that there was no evidence satisfactory to establish that the Plaintiff in alienating her said securities did so with a proper understanding of the effect of her acts or of what her rights were either by the independent advice of a lawyer or by any other advice or knowledge at her command.
3. That the learned trial Judge erred in holding as a matter of law that the burden was upon the Defendant of showing that the Plaintiff had such independent advice as enabled her to have a proper understanding of the effect of her acts and of what her legal rights were.
4. That the learned trial Judge should have held that any burden upon the Defendant was fully met by showing that upon each occasion when the Plaintiff hypothecated securities to the Bank she herself furnished the Bank with a certificate of a lawyer in good standing to the effect that he had given her independent advice.
5. That the learned trial Judge erred in law in holding that it was the duty of the Defendant to call the legal advisers of the Plaintiff and demonstrate by their viva voce evidence that in advising the Plaintiff they themselves had full and complete knowledge of all the circumstances and that their advice was such that a competent and honest adviser would give acting solely in the interests of the donor.

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Notice of Appeal
by the Defendant
to the Appellate
DivisionDated September
25th, 1931

6. That the learned trial Judge should have held that the Plaintiff had by her actions estopped herself from denying that the certificates of independent advice given by her to the Bank were given under such circumstances as to render them sufficient in law to protect the Bank.

7. That the learned trial Judge erred in law in applying the rule established as between the donor and donee of a voluntary gift to the case of a married woman hypothecating property to a Bank as collateral security for the indebtedness of her husband.

8. That the learned trial Judge should have found upon the evidence that the Plaintiff was herself an Officer of the incorporated Company, the indebtedness of which she guaranteed, and should have differentiated the case from the ordinary case of a wife giving security for the debt of a husband. 10

DATED at Ottawa this 25th day of September, A.D. 1931.

HENDERSON, HERRIDGE & GOWLING,
Solicitors for the Defendant.

TO—
MESSRS. CLUFFE & RICHARD,
Solicitors for the Plaintiff.

No. 12

NOTICE OF CROSS-APPEAL BY THE DEFENDANT TO THE
APPELLATE DIVISION

IN THE SUPREME COURT OF ONTARIO

BETWEEN:

JEAN MACKENZIE,

Plaintiff;

— and —

THE ROYAL BANK OF CANADA,

Defendant.

10

NOTICE OF CROSS-APPEAL

TAKE NOTICE that the Plaintiff cross-appeals from the Judgment pronounced by the Honourable Mr. Justice McEvoy, on the 21st day of September, A.D. 1931, only in respect to two matters contained in the said Judgment, that is to say:—

1. The Plaintiff desires a Declaration and Finding in the Judgment that the Plaintiff is entitled to the market value of the securities in question in this action at the date when she demanded and the Defendant refused to deliver the same to her, and that the Judgment be amended accordingly for the value of the same at that date, or for a Reference to determine such value, and for payment of such value to the Plaintiff with interest to that date.
2. The Plaintiff desires a Declaration and Finding in the Judgment that the Plaintiff is entitled to the accrued dividends that have been payable on the securities in question in this action together with interest on the same, and that the Judgment be amended accordingly for the value of such accrued dividends and interest, or for a Reference to determine such value, and for payment of such value to the Plaintiff.

DATED at Ottawa, this 26th day of October, A.D. 1931.

30

TO:

Messrs. HENDERSON, HERRIDGE
& GOWLING,56 Sparks Street,
Ottawa, Ontario,
Solicitors for Defendant.CLUFFE & RICHARD,
48 Sparks Street,
Ottawa, Ontario,
Solicitors for Plaintiff.

RECORD

In the Supreme
Court of Ontario

No. 12

Notice of Cross-
Appeal by the
Plaintiff to the
Appellate
DivisionDated October
26th, 1931.

RECORD

No. 13

In the Supreme
Court of Ontario

No. 13

Reasons for
Judgment of the
Appellate
Division
Dated June
23rd, 1932

REASONS FOR JUDGMENT OF THE APPELLATE DIVISION

APP. DIV.
MACKENZIE
v.
ROYAL BANK

Copy of Reasons for Judgment of
Appellate Division (Mulock, C.J.O.
Latchford, C.J., Magee, Orde and
Fisher, J.J.A.), delivered June 23,
1932.
G. F. HENDERSON, K.C. and J. D.
WATT for Defendant
A. G. SLAGHT, K.C., and A. E. 10
CLUFFE for Plaintiff.

FISHER, J. A.:—Appeal by the defendants from the judgment of the Honourable Mr. Justice McEvoy.

The two questions for determination are: Was the learned Judge on the evidence justified in holding that the plaintiff was in the “protected class” and, if so, did she as such receive proper independent advice?

The learned Judge found that the plaintiff was a woman above average intelligence and an honest witness.

Before the plaintiff was called upon to sign the hypothecation papers in question in this action the evidence is clear that she had had considerable experience in the hypothecation of her securities to the bank, on her husband’s behalf and on her own personal account and that on these occasions she had the advice of independent solicitors. The plaintiff hypothecated her Dairy shares to the bank in the years 1913 and 1917 to secure loans to her husband and also an hypothecation to secure a personal loan to herself. Excerpts from her evidence during this period show that in the year 1913 when the MacKenzie Co. Limited—the husband’s business in which she was a director — made application for a loan of \$10,000: at page 104, line 3:

“Q. Starting in 1913 I see you did hypothecate this stock at the very beginning and did that under Mr. Hill’s advice? A. I did not do it under his advice. I went with Mr. MacKenzie to Mr. Finney (Manager of the Bank of Ottawa) and from his office walked upstairs to have the thing completed after it was arranged I should get this loan”.

Line 15: “Q. What has that got to do with Mr. Hill? A. The same as usual, a lawyer must sign it afterwards. I went up with Mr. MacKenzie to Mr. Hill’s office after we had arranged about the loan.”

Line 26: “Q. Did Mr. Hill give you what we call independent advice at that time? A. Before I signed the papers, the hypothecation?

“Q. Yes? A. And go into it fully, no.

“Q. I say, did not Mr. Hill advise you, did not Mr. Hill give you a certificate as to that? A. After I had signed and agreed to let Mr. MacKen-

zie—after I had promised—after considerable argument, as usual, argument; I went down and these hypothecation were signed, but Mr. Hill did not go into the business and advise me fully and tell me what I was liable for until after.

“Q. I will take you at your word. In 1913 your husband overpersuaded you to pledge your stock? A. To start this company.”

Page 107, line 9: “Q. Starting in 1913 and carrying on until 1920 you were dealing with Mr. Hill from time to time on this subject? A. What do you mean, from time to time, how many times?

10 “Q. I am asking you how many. You ought to know better than I how many times did you put this stock up? A. You have it 1913. It went up again, I don't know if all the stock went up, but sufficient for Mr. MacKenzie to realize \$15,000 to buy out these two American friends of his during the war.”

Page 108: “Q. Mr. Hill gave certificates of independent advice for you on at least three occasions didn't he? A. What are the three occasions?

“Q. There was 1913 time, 1917 and 1920. A. I have no recollection of seeing Mr. Hill in 1917. I have a clear recollection of 1913 and 1920.”

20 Line 22: “Q. Did he (Mr. Hill) give you a certificate with the substance of what I have said in it? A. As I said this morning Mr. Henderson, this form must be signed by a lawyer in order to make it legal with the bank. My recollection of Mr. Hill is he signed once in my room when I was ill in 1920 and once in 1913.

“Q. I realize that you say now that you treated these as merely chits, that is the phrase you used, that is the sort of thing you sign at a Club? A. Yes.”

30 Page 111, line 3: “Q. I call it this certificate, the certificate of which Mr. Hill gave you at least three. Mr. Burritt gave you one, Mr. Gilhooly gave you one and Mr. Code gave you one; always in the same words, but of course dated on different dates. Didn't you know they were always the same? A. I fancy so.

“Q. You think they were? A. Yes, they had to be signed as a matter of form for the bank.”

Page 112: “Q. You have been liable on different occasions. You had got your stock and you had pledged it again on different occasions A. Under pressure.”

40 As to the 1920 transaction, question 123, page 114: “Q. This is a matter of considerable importance, Mrs. MacKenzie, your recollection. I would ask you to look at a document dated December 31st, 1920, in which Mr. Hill certifies that he has advised you with regard to a transaction at the bank. That is your signature at the bottom? A. Yes.”

At line 21 she admits “that this was signed in my bedroom.”

Mr. Hill's certificate dated 31st December was put in as Exhibit 19.

References are then made to certificates given by Mr. Burritt, Mr. Gilhooly and Mr. Code and she is asked at line 17: “Q. They are all lawyers of high standing are they? A. Yes.

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No. 13

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Appellate
Division
Dated June
23rd, 1932

RECORD
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"Q. Are you suggesting that they signed these solemn documents as a mere matter of form? A. As a matter of form. I went to them and asked them as a matter of form because the bank demanded it, to sign this that a lawyer must sign this as a matter of form, that the bank demanded it.

"Q. You were giving these securities for, we will say, your husband, practically his business. You knew that didn't you? A. Yes.

"Q. Didn't you know that in a case of that kind the law did not permit a bank to take the securities of a married woman unless she had independent advice? A. No. I do not think I was told that before I signed them."

Line 16: "Q. We will take the particular case we are concerned with, Mr. Hill, Mr. Burrirt, Mr. Gilhooly and Mr. Code. If they had made proper enquiry you would have been quite content to follow their advice? A. If they had told me not to sign the thing and gone into the matter thoroughly and advised me not to sign as to what was likely to happen to me, I certainly would not have signed. 10

"Q. And similarly if they had gone into the matter thoroughly and said it was all right to sign you would have signed? A. If they could prove to me everything was quite all right, my securities were perfectly safe.

"Q. If they had made proper enquiry into the matter and advised you it was all right to sign you would have been quite content to sign? A. I think I will object to that Mr. Henderson. I never really wanted advice or otherwise to put up my stock at any time for Mr. Mackenzie." 20

His Lordship: "Q. You did put it up without even going into it according to your story? A. Yes."

After the Bankruptcy of the husband's company this witness admits that she asked Mr. Fripp, a partner of Mr. Burrirt's to attend the creditors' meetings (page 123); that Mr. Fripp attended three meetings; that she wanted to know what was going on and that she knew nothing about the re-organization of the new company. 30

At page 125, line 9: "Q. Mr. Fripp attended meetings and Mr. Burrirt looked into details of things? A. There was no details to look into that I know of."

At page 127, line 9: "Q. What did he (Mr. Burrirt) say, that you were going to be liable for? A. My husband's debts in this new company, I suppose.

"Q. You meant to give security against your husband's debts in this new company? A. I said that this morning, your Honour. I did not wish to do it.

"Q. You did not wish to do it but you finally came to the point where you did do it, knowing what would be the result? A. Finally I wore down. I did sign these things believing there was no other chance at all." 40

At page 128, this witness admitted that her husband had been discussing with her that he was starting in business again and she was of the opinion that he had better let that business go and go back into the Commission business.

She also admitted, at page 130, that when the business was reorganized it was for a time apparently successful.

At page 132 she admitted that Mr. Code for many months took a very great interest in her affairs and I told Mr. Code that I was worried about the business and wished to withdraw my guaranty.

At page 135. I took my husband's word that things were going to be all right and that they did look better for a while.

At page 136, line 2: "Q. You were very anxious the business should go along because it was your bread and butter practically? A. Yes."

10 Because the result of this case will be of much importance to the banking community and to wives who sign documents on behalf of their husbands, I thought it wise to make extensive references to the evidence having relation to the many experiences of the plaintiff in connection with hypothecations and independent advice given thereon, (and particularly to the one about which we are concerned on this appeal down to December, 1920) when it appears that owing to deflation in prices the company was in need of financial assistance from the bank, and that the plaintiff was again asked by her husband to pledge her securities, which she did in December, 1920, and before doing so she had an interview with the manager of the bank, Mr. Gray, and discussed with him the future outlook of the business and in effect was 20 told by him that whilst the business of the company had suffered he was hopeful for the future. It was because they were branching out into new lines of trade that he was hopeful for the future. It appears that the business did not improve and the company, instead of succeeding, became generally worse and on the 26th of June, 1921, was obliged to go into bankruptcy.

30 After the bankruptcy the husband started negotiations for a re-organization of the business under a new company and discussed the matter with Mr. Gray, the manager of the bank. Re-organization was decided upon, but before it could be consummated proceedings had to be taken through the medium of the trustee to obtain title so that the assets of the old company could be transferred to the new company. It is unnecessary to refer to all the details other than to state that the bank in order to protect the plaintiff's securities which they then held, took from the plaintiff a letter dated the 13th of September, 1921 (Ex. 2) which reads as follows:—

"The Royal Bank of Canada,
Ottawa, Ont.

"September 13th, 1921.

Dear Sirs:

40 We understand that you are filing with the authorized assignee of MacKenzie, Limited, an affidavit valuing certain securities held by you at the sum of \$125,000 and that the authorized assignee will be at liberty to accept your valuation, in which case as between the authorized assignee and the Bank, the Bank's claim would be considered paid in full. It is our desire that you should file the affidavit in question and we hereby agree that your so doing shall not in any way release us from our obligation under guarantees to the

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No. 9

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Bank, nor shall our personal securities be in any way affected until the amount due to the Bank by MacKenzie Limited has been actually paid.

Yours truly,
(Sgd.) John A. MacKenzie,
Jean MacKenzie."

Mr. Gray swore that when this letter was obtained (p. 183): I didn't insist on Mrs. MacKenzie giving a separate letter of independent legal advice with each step that was taken. We were leading up to the step which finally transpired when Mr. Burritt advised her on the 14th November, 1921." 10

The trustee did not redeem any of the securities or require them to be realized, and on November 14, 1921, released to the defendants all the property real and personal, and on the 21st November, 1921 the securities in question were by the husband with the consent of the Bank vested in the new company and it was after that, that the hypothecation attacked in this action, was taken from the plaintiff by the defendants on November 25th, 1921.

During the period of bankruptcy the plaintiff admits that she asked her solicitor, Mr. Fripp, partner of Mr. Burritt, to attend meetings of the creditors on her behalf, and he or Mr. Burritt did attend. 20

Prior to November 21st, 1921, she also admits that she attended the bank with her husband in connection with a re-hypothecation of securities for the new company, and that her husband approached her and asked her to again hypothecate her securities.

Page 62, line 22: "Q. With a view to putting them up again for this new company? A. Yes. I had not a chance in the world of recovering them unless I put them up for this new company.

"Q. Who said that? A. My husband."

She said she wanted to hang on to the securities and had first refused to do so, and "my advice to my husband was when he was talking of a new company to sell everything and for him to go back into the commission business. 30

Line 31, page 63: "Q. You say you wanted him to do that? Was he willing to do that? A. No he said he did not wish to be declared a bankrupt because if he was declared a bankrupt he could never start in business again.

"Q. Finally did you go into Mr. Gray's office with your husband on 21st November? A. Yes.

"Q. What occurred on that occasion? A. My remembrance Mr. Gray was there, Mr. MacKenzie and myself and I take it the papers were all ready to be signed on Mr. Gray's desk. I said I did not wish to sign these things but that Jack tells me I will have to sign them for this new company." 40

To the best of her recollection Mr. Gray said her securities were never free, they were always the bank's property from the time of the failure.

"After that I signed the hypothecation and the manager gave me a letter to take to my solicitor" and to be advised by him.

She then went to see Mr. Burritt, handed him the letter (Ex. 8), and said to him, it was a mere matter of form and that he signed it for the reason, that she had already committed herself by signing the hypothecation at the bank and that she received no other advice whatever from Mr. Burritt.

10 It may be true that the plaintiff thought that to some extent it was a formal matter, but whether she read the letter or not she had on this, as on four or five previous occasions, every opportunity of reading this and similar letters. The letter was a short typewritten one easily read and its contents plainly understood, and the plaintiff knew that if Burritt signed the letter he would be declaring to the bank, that she had consulted him and that the plaintiff understood, "the liability she was incurring in executing the guarantee, and also that she understood the nature and effect of the transaction." After obtaining Mr. Burritt's signature, the plaintiff subscribed her name to the following footnote:

"I hereby admit and declare that the above letter is true and correct and that Mr. E. F. Burritt the writer of the above letter in advising me of the legal effect of the above mentioned transaction was consulted by me as my solicitor separately and distinctly from any legal advice which was given to my husband in connection with this matter and in my interests only."

20 The new company continued in business until October 21, 1926, when it was then compelled to go into the hands of a liquidator, and subsequently this action was commenced in which the plaintiff is asking the Court for a declaration that:

(1) She was on the 14th of November, 1921, entitled to the return by the bank of her securities hypothecated.

(2) That the hypothecation dated 25th November, 1921, was executed under the misapprehension induced by the representations of her husband and that she received no independent advice.

30 (3) That the letter of guarantee dated 21st November, 1921, executed by the plaintiff was executed by her under the misapprehension induced by the representation of her husband and that the form of such letter was drawn by the defendants' solicitors, that the plaintiff's securities hypothecated by her without independent advice as security for the indebtedness of MacKenzie, Limited, to the defendant were still liable for such indebtedness whereas at the date of the letter the MacKenzie Limited was no longer indebted to the defendant and the plaintiff was then entitled to the return of her securities, or alternatively that the plaintiff's liability thereunder terminated on the first October 1925, and

40 (4) For an order that the defendant execute and deliver to the plaintiff valid transfers or conveyances of such securities as may now represent the securities originally hypothecated to the defendant.

The learned trial Judge relying on *Nedby v. Nedby* (1852), 5 DeG. & S. 377; *Bank of Montreal v. Stuart*, (1911) A.C. 120; *Cox v. Adams* (1904), 35 S.C.R. 393; *Alcard v. Skinner* (1887), 36 Ch. D. 145, and the other cases referred to in his reasons—amongst others—stated that,

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"There is no evidence to satisfy the Court that any adviser with a full knowledge of all the circumstances ever advised the plaintiff of the results of further hypothecating her shares upon the basis that the shares were then freed from any claim of the Bank, and that she was again risking her property upon the belief that the husband's business was in a condition that afforded any sane or sound ground for expecting anything else than that the husband was bound to lose all. Indeed had lost all and that anything she could do meant anything more than throwing her property into a vortex."

Also that

"If those whom the Bank say advised the plaintiff did advise her with a full and adequate knowledge of all the circumstances necessary to know in order to advise the plaintiff effectively they ought to have been called to swear to that." 10

And also:

"I find as a fact upon the evidence that the relationship between the plaintiff and her husband and the Bank have been such as to raise a presumption and that they did raise a presumption that the husband and the bank through the husband influenced the plaintiff to alienate her shares—practically all she had left—that there is no evidence to establish that the plaintiff in alienating her shares did so with a proper understanding of the effects of her acts, or what her rights were either by the independent advice of a lawyer or by any other advice or knowledge at her command." 20

In dealing with the reasons of the trial Judge, in my view an important question to be asked is: Whose fault was it that the plaintiff's adviser did not have full knowledge of "all the circumstances and the risks and that anything she could do meant nothing more than throwing her property into the vortex?" The only possible answer must be that it was not the fault of the Bank because the Bank had nothing to do with the selection of the independent adviser. It would have been most improper for the manager or any official of the Bank—especially without any request from the plaintiff—to have gone with the plaintiff to the office of the independent solicitor when she was being advised, or to have gone to the independent solicitor without the knowledge of the plaintiff. How, therefore, is it possible to hold that the Bank must lose its securities because of the plaintiff's neglect to inform her own solicitor of all the facts and circumstances connected with the matter upon which she was asking advice? If the plaintiff did not know all the circumstances connected with the transactions about which she was being advised, and if the legal adviser did not know anything about them, it would have been his duty before giving any advice to have said to his client, "If you do not know I will have to obtain the information;" and if, between the solicitor and client, nothing is done in the way of securing information and the letter is signed why blame the Bank? The Bank not being called upon to make inquiry as to what took place between the plaintiff and Burrill I am at an utter loss to know what more the manager of the Bank could have done or was called upon to do, than to advise the plaintiff to go to her solicitor. The plaintiff now says that "if they (her solicitors) had told me not to sign a 30 40

thing and gone into the matter thoroughly and advised me not to sign as to what was likely to happen to me I would not have signed." And "if they could prove to me everything was all right and my securities were perfectly safe" I would have been satisfied.

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10 It is plain from these statements that under no circumstances were the plaintiff's securities to suffer if her husband's business failed, or in other words, she was to be guaranteed against loss. And, again, if her solicitor was to be placed in a position to advise her "as to what was likely to happen" to the business in the future, he would have had to employ an auditor to go through the books and find out all the details of the old and new business; employ a valuator to value the assets, and an expert to say in his opinion whether the company would in the future succeed or fail.

Now assuming, on the findings of the trial Judge, that the plaintiff was an intelligent woman, and there was duress and coercion on the part of the husband—and I can find no evidence proving either—why did she not say something to her solicitor about it?

At page 135 of the evidence she swore: "I took my husband's word that things were going to be all right, and that they did look better for a while."

20 And at page 136 she was asked this question: "You were very anxious the business should go along because it was your bread and butter practically," and her answer was "Yes." Why did the plaintiff remain silent in everything simply that "It was a matter of form?"

A solicitor of Mr. Burritt's standing well knew it was not a matter of form, and he knew, and the plaintiff knew, that the Bank was relying on that letter, to make further advances.

How was the Bank to know that the plaintiff remained silent, wilfully or otherwise, when she was before her solicitor?

30 If the plaintiff can now escape by saying it was all a matter of form, the Bank would have no protection whatever, and the procedure adopted in order to comply with the decisions in having a wife independently advised, so that the banks could advance money with safety, would be meaningless. Mr. Burritt is a solicitor of the highest standing, and was not a stranger to the plaintiff. She had consulted him before on matters pertaining to her husband's business. He knew of the bankruptcy of the company and, as stated, had been asked to attend, and he, or some member of his firm to the knowledge of the plaintiff, did attend at least three meetings of creditors and as such must have gained some knowledge of what was going on and that a re-organization was on foot. I am satisfied that a solicitor of Mr. Burritt's standing in the profession (and this applies to Mr. Hill, Mr. Code and Mr. Gil-
40 hooly, all independent legal advisers of the plaintiff) would not for one moment attach his name to such a letter—which would not be short of rank dishonesty on his and their part and by inference in league with the bank, when all the time they knew that the bank was relying on the letters, without first being satisfied that the plaintiff fully understood what she was doing and the liability she was incurring.

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The only evidence to support the contention of duress was that the husband "would cut off the plaintiff's allowance" and therefore she would have less money to spend, but detention of an allowance is not unlawful and duress in law, and even if there was duress there is not the slightest evidence that the bank knew anything about it, and also there must be found that there is no evidence to support the contention that the husband was in this transaction the agent of the bank.

The plaintiff's attitude and conduct I find a most inconsistent one; she claimed in November 1921, because married, the right to have independent advice and upon being given that opportunity, she took advantage of it, and then, when she consulted her solicitor, she declined to ask his advice but at the same time delivered to the bank a document declaring that she had been advised and that she understood the nature and effect of her obligations. Then, after allowing the bank to act for a period of about five years as the company's banker upon the supposition that she was independently advised — upon the company becoming bankrupt in 1926—she instituted this action and asks the court for a declaration that she received no independent advice and for return of her securities. 10

To grant the plaintiff the relief she now asks, or any relief on these facts, would, in my opinion, so disturb a bank's relations with its customers in like transactions as to make it unsafe for a bank to make any advances on hypothecations made by married women as security for their husband's business. 20

I am also at a loss to understand how the facts in this case can have any application to the facts and principles governing the *Stuart and Bank of Montreal* and all the other cases relied on by the learned trial Judge and all those cited by plaintiff's counsel. The facts in the case before us are so far removed from all the authorities referred to that I deem it unnecessary to make any specific reference to them.

The latest case in our own Court of Appeal is that of *Bradley v. Imperial Bank of Canada* (1926), 58 O.L.R. 650. In that case a document was signed by the wives of two members of a partnership guaranteeing the account of the partnership with the bank. The majority of the court held "that the onus being on the wives who attacked the transaction to prove affirmatively undue influence by the husbands and knowledge thereof by the bank, and there being no evidence that the husbands were employed or used by the bank as its agents to get the guarantee signed and the wives having received independent advice from the solicitor, the bank was not chargeable for any inadequacy in the advice or for any misapprehension on the part of the solicitor or that of the wives." 30

My conclusions are, and I find: (a) that the plaintiff understood the transaction and in support of that finding I refer to *Bischoff's Trustee v. Frank* (1903), 89 L.T. 188, and on appeal, cited in *Talbot v. Von Boris*, (1911) 1 K.B. 863. 40

(b) That the onus is on the plaintiff to prove knowledge of duress, and even assuming that there was duress—and I find there was not—that is no defence unless there is proof by the plaintiff that the defendants had know

ledge of the duress, and this I find the plaintiff did not do. See *Talbot v. Von Boris*, (1911) 1 K.B., at 864; *Bank of Montreal v. Stuart*, (1911) A.C. 120, at 137, approving *Nedby v. Nedby* (1852), 5 DeG. & S. 377; *Bradley v. Imperial Bank* (1926), 58 O.L.R. 651.

10 (c) That the plaintiff did receive independent advice from Mr. Burritt, but even assuming that she was not fully advised, she was given that opportunity by the bank and when she brought back the letter signed by Mr. Burritt as against the plaintiff that letter was (1) notice to the bank that she had obtained advice; (2) that there was no duress or undue influence, and (3) that she understood the transaction and the bank, having acted on that letter and altered its position, the plaintiff is estopped, and I refer to the very recent case of *Greenwood v. Martins Bank*, (1932) 1 K.B. 371.

(d) It having been proved that the plaintiff had extensive knowledge of previous like transactions in hypothecations and receiving independent advice thereon and particularly of the transactions attacked, and in view of plaintiff's counsel admission that the plaintiff understood the nature and effect of hypothecation, she was, when this transaction was entered into, out of the protection class.

20

Appeal allowed.

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RECORD

In the Supreme
Court of Ontario

No. 14

Judgment of the
Appellate Division
dated June 23rd,
1932.

No. 14

**JUDGMENT OF THE APPELLATE DIVISION
IN THE SUPREME COURT OF ONTARIO**

The Honourable The Chief Justice of Ontario The Honourable The Chief Justice in Appeal The Honourable Mr. Justice Magee The Honourable Mr. Justice Orde The Honourable Mr. Justice Fisher	}	Thursday, the 23rd day of June, 1932.
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BETWEEN:

JEAN MACKENZIE,

Plaintiff

— and —

THE ROYAL BANK OF CANADA,

Defendant.

UPON motion made to this Court on Wednesday, the 2nd day of March, 1932, and continued on the 3rd and 4th days of March, 1932, by counsel for the defendant by way of appeal from the Judgment pronounced in this action by the Honourable Mr. Justice McEvoy on the 21st day of September, 1931, in the presence of counsel for the plaintiff and upon motion by counsel for the plaintiff by way of cross-appeal from the said judgment and upon hearing read the pleadings, the said judgment and the evidence adduced at the trial and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said motion should stand over for judgment and the same having come on this day for Judgment. 20

1. THIS COURT DOTH ORDER that this appeal be and the same is hereby allowed and that this cross-appeal be and the same is hereby dismissed and that the said Judgment be varied and as varied be as follows:

1. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is dismissed. 30

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendant do recover from the plaintiff its costs of this action forthwith after taxation thereof to be levied out of the separate property of the said plaintiff which she is now or may hereafter be possessed of or entitled to, and any property which she may hereafter while discoverd be possessed of, or entitled to and not

otherwise; but this Judgment shall not render available to satisfy the same any separate property which the plaintiff was or may be restrained from anticipating unless by reason of section 11 of The Married Women's Property Act, such property shall be available to satisfy the Judgment notwithstanding such restriction.

RECORD
In the Supreme
Court of Ontario
No. 14

Judgment of the
Appellate Division
dated June 23rd,
1932.

10 2. AND THIS COURT DOTH FURTHER ORDER that the defendant do recover from the Plaintiff its costs of this appeal and cross-appeal forthwith after taxation thereof to be levied out of the separate property of the said plaintiff which she is now or may hereafter be possessed of or entitled to, and any property which she may hereafter while discoverd be possessed of, or entitled to and not otherwise; but this judgment shall not render available to satisfy the same any separate property which the plaintiff was or may be restrained from anticipating unless by reason of section 11 of The Married Women's Property Act, such property shall be available to satisfy the Judgment notwithstanding such restriction.

Entered O.B. 129 pages 77-8
Oct. 11, 1932.

"E. HARLEY"

Senior Registrar
S.C.O.

"H. F."

20

RECORD

In the Supreme
Court of Ontario

No. 15

His Majesty's
Order in Council
granting special
leave to Appeal
in forma pauperis
dated May 25th,
1933.

No. 15

HIS MAJESTY'S ORDER IN COUNCIL GRANTING SPECIAL
LEAVE TO APPEAL IN FORMA PAUPERIS

AT THE COURT AT BUCKINGHAM PALACE

(L.S.)

The 25th day of May, 1933.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
EARL OF ONSLOW

SECRETARY SIR PHILIP CUNLIFFE LISTER
MAJOR ORMSBY-GORE

WHEREAS there was this day read at the Board a Report from the
Judicial Committee of the Privy Council dated the 18th day of May 1933 in
the words following, viz:—

“WHEREAS by virtue of His late Majesty King Edward the Se-
venth's Order in Council of the 18th day of October 1909 there was re-
ferred unto this Committee a humble Petition of Jean MacKenzie in the
matter of an Appeal from the Supreme Court of Ontario (Appellate
Division) between the Petitioner Appellant and the Royal Bank of Can-
ada Respondents setting forth (amongst other things) that the Petition-
er the wife of John Angus MacKenzie is desirous of obtaining special
leave to appeal in forma pauperis from the Judgment of the Supreme
Court of Ontario (Appellate Division) given on the 23rd June 1932 that
unanimously allowed the Respondents' Appeal and reversed the Judg-
ment of the Trial Judge McEvoy J. in the Petitioner's favour: that the
Petitioner is not worth £25 in the world excepting her wearing apparel
and her interest in the subject matter of the intended Appeal: that the
Action was brought for the return of the Petitioner's securities the shares
in Borden Company Inc. held by the Respondents as collateral security
for the indebtedness of MacKenzie Manufacturing Company Limited
the business of the Petitioner's husband: that the Company in the year
1921 acquired the assets of MacKenzie Limited the business of the Pe-
titioner's husband under the circumstances thereafter appearing: that
the shares in Borden Company Inc. were the separate property of
the Petitioner acquired by inheritance from the Petitioner's father

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10 together with other property: that the shares were formerly shares in Ottawa Dairy Company but by amalgamation became shares in Borden Company Inc. while in the possession of the Respondents: that the Petitioner's case is that the Petitioner's husband and the Respondents by their Bank Manager and through the Petitioner's husband exercised undue influence over the Petitioner and caused her against her will to hypothecate her shares to the Respondents and also with her husband to enter into continuing guarantees of the past present and future indebtedness first of MacKenzie Limited and then of MacKenzie Manufacturing Company Limited in an amount not exceeding \$200,000 with interest thereon at 6 per cent. per annum: that the Petitioner instituted this Action against the Respondents on the 9th February 1928 in the Supreme Court claiming the return of her securities: that the Action was tried by McEvoy J. and on the 21st September 1931 he delivered judgment in favour of the Petitioner and declared that the Respondents had no lien or claim upon the Petitioner's shares and ordered the Respondents to deliver the same to the Petitioner: that the Respondents appealed to the Appellate Division: that the Appeal was heard by Mulock C.J.O. Latchford C.J. Magee Orde and Fisher J.J.A.: that Fisher J.A. on the 23rd June 1932 gave the reasons for judgment allowing the Appeal and the other Judges concurred therein: that the Petitioner humbly submits that the Judgment of the Trial Judge was right in law on the evidence that in view of the fact that an Appeal lies as of right from the Judgment of the Supreme Court and that the case involves important questions of law and of the Petitioner's inability to provide the necessary security she should have special leave to appeal in forma pauperis: And humbly praying Your Majesty in Council to grant her special leave to appeal in forma pauperis from the Judgment of the Appellate Division of the Supreme Court dated the 23rd June 1932 or for such other Order as to Your Majesty in Council seems fit:

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30

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute her Appeal in forma pauperis against the Judgment of the Appellate Division of the Supreme Court of Ontario dated the 23rd day of June 1932.

40 “And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

RECORD

In the Supreme
Court of Ontario

No. 15

His Majesty's
Order in Council
granting special
leave to Appeal
in forma pauperis
dated May 25th,
1933.

RECORD

In the Supreme
Court of Ontario

No. 15

His Majesty's
Order in Council
granting special
leave to Appeal
in forma pauperis
dated May 25th,
1933.

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Lieutenant-Governor or Officer administering the Government of the Province of Ontario for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

No 1

RECORD
Exhibits
No. 1

--- EXHIBIT 1.

Form No. 110
6-19

Hypothecation
dated December
31st, 1920.

IN THE SUPREME COURT OF ONTARIO.

MacKenzie vs. Royal Bank

This is Exhibit No. 1, the property of Plaintiff, produced by the Plaintiff, on the above trial on the 19 May, 1921—F. A. Magee, Local Registrar.

General Hypothecation

10

List No.

Bills, Notes, Liens, Charges, Shares in Corporation, Bonds, Obligations for the payment of money and other Securities lodged with or assigned to The Royal Bank of Canada in connection with the **liabilities, however arising**, of

MacKenzie Ltd.

to The Royal Bank of Canada.

Date	No.	Name	Amount	Information
	87	Ottawa Dairy Stock Pref.		exchanged for
	100	do do do Common		Borden Co. com.
Jan. 24/30		4 sh. Borden Co. Com. rec'd as Stock Bonus		
Jan. 27/30		3 sh. Borden Co. Common rec'd as Stock Bonus		
Feb. 15/30		1 sh. Borden Co. rec'd as Stock Bonus		

30

The above mentioned securities and any renewals thereof and substitutions therefor and proceeds thereof and all revenues, incomes, interests and dividends due or payable or accruing due or payable or which shall hereafter become due or accruing due or payable in respect of such securities, renewals or substitutions, all of which securities, renewals, substitutions, proceeds, revenues, incomes, interests and dividends are hereinafter called "the securities" are hereby assigned to and are to be held by The Royal Bank of Canada as a general and continuing collateral security for payment of the present and future indebtedness and liability of the above named customer at this and at any other branch of the Bank, and any ultimate unpaid balance thereof,

RECORD

Exhibits

No. 1

Hypothecation
dated December
31st, 1920.

and the same may be realized by the Bank in such manner as may seem to it advisable, and without notice to the undersigned, in the event of any default in such payment. The said proceeds may be held in lieu of the securities realized and may as and when the Bank thinks fit be appropriated on account of such parts of said indebtedness and liability as to the Bank seems best. The undersigned agree that the Bank may grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the customer and with other parties and securities as the Bank may see fit without prejudice to the liability of the undersigned. The claims of the undersigned against any party on whom any of the foregoing unaccepted bills are drawn are hereby assigned to the Bank in the event of non-acceptance. This agreement shall be binding on my heirs and representatives. 10

The Bank and its nominee or nominees shall be entitled at any time to have any of the securities registered in the name or names of itself or its nominee or nominees, and I hereby appoint the Bank and its nominee or nominees with full powers of substitution my proxy and proxies to represent the securities at any and all meetings of the Company or Companies which issued the same. These powers are irrevocable whilst I shall be indebted to the Bank.

Dated at Ottawa, this 31st day of December, 1920.

20

(Sgd) Jean MacKenzie"

N.B.—If any bill or note lodged has been given for the accommodation of the customer, the accommodation maker or endorser must sign this document, and if any bill or note payable on demand is included, on which there is an endorser other than the customer, such endorser must sign also.

All shares in companies should be assigned in blank by the holder, by endorsement or by writing attached to the scrip and signed by the holder thereof. 30

If the securities lodged are owned by some one other than the customer, this document is to be signed by such owner as well as by the customer.

No. 2

--- EXHIBIT 2---

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs The Royal Bank of Canada

This is Exhibit No. 2, the property of the Plaintiff, produced by the Plaintiff on the above trial on the 19 May, 1931.

F. A. MAGEE, Local Registrar.

BEAMENT & BEAMENT

Ottawa, Sept. 13, 1921.

10 The Royal Bank of Canada,
Ottawa, Ont.

Dear Sirs:—

We understand that you are filing with the Authorized Assignee of MacKenzie Limited, an affidavit valuing certain securities held by you at the sum of \$125,000.00 and that the Authorized Assignee will be at liberty to accept your valuation in which case as between the Authorized Assignee and the bank the bank's claim would be considered paid in full.

20 It is our desire that you should file the affidavit in question and we hereby agree that your so doing shall not in any way release us from our obligation under guarantees to the Bank nor shall our personal securities be in any way affected until the amount due to the bank by MacKenzie Limited has been actually paid.

Yours truly,
(Sgd) John A. MacKenzie,
(Sgd) Jean MacKenzie.

YAB/MD

RECORD
Exhibits
No. 2
Plaintiff's
Exhibit

Letter to Bank
dated Sept. 13th,
1921.

No. 3

RECORD

Exhibits

No. 3

Plaintiff's Exhibit

Vesting Order dated Nov. 14th 1921.

--- EXHIBIT 3---

File 1365

IN THE SUPREME COURT OF ONTARIO.

MacKenzie vs. Royal Bank

This is Exhibit No. 3, the property of Defendant, produced by Plaintiff on the above trial on the 19 May, 1931—F. A. Magee, Local Registrar.

Registrar
in Chambers

}

MONDAY the Fourteenth day
of November A.D. 1921.

10

IN BANKRUPTCY,

In the Matter of The Authorized Assignment of
MacKenzie Limited,

Debtor.

Upon the application of the Royal Bank of Canada, the authorized trustee of the estate of MacKenzie Limited, consenting thereto, upon it appearing that the said the Royal Bank of Canada did upon the 12th day of September, A.D. 1921, file with the said Trustee a Statutory Declaration stating therein full particulars of its securities; that upon the 12th day of September A.D. 1921 the said The Royal Bank of Canada, did by notice in writing, require the trustee to elect whether he would or would not exercise his power of redeeming the said securities set out in the said Statutory Declaration; that the trustee did elect not to exercise his power to redeem any of the said securities or require them to be realized; that the said trustee and the said Inspectors have executed two certain Indentures of Release, releasing to the said The Royal Bank of Canada, respectively, all the realty and personalty set out in the said Declaration of Value, filed with the said Authorized Trustee. 20

It is Ordered and Declared that the said two Indentures of Release be and the same are hereby confirmed and ratified.

By the Court.
Geo. S. Holmsted.
Registrar in Bankruptcy.

30

No. 4

--- EXHIBIT 4:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. The Royal Bank

RECORD
Exhibits
No. 4
Plaintiff's
Exhibit

This is Exhibit No. 4, the property of the Defendant, produced by the plaintiff on the above trial on the 19 May, 1931—F.A. Magee, Local Registrar at Ottawa.

Declaration of
C. A. Gray, dated
22 June, 1921

THE BANKRUPTCY ACT

10 IN THE MATTER of the Estate of MacKenzie Limited, of Ottawa, Debtor,
AND in the matter of the claim of Royal Bank of Canada, Creditor;

I, C. A. GRAY, of the City of Ottawa, Manager, in the Province of Ontario, DO SOLEMNLY DECLARE and say:—

1. THAT I am the duly authorized agent of the above Creditor and have knowledge of all circumstances connected with the debt hereinafter referred to.

2. THAT the said Debtor, was at the date of the assignment namely the 14th day of June, 1921, and still is justly and truly indebted to the said Creditor in the sum of \$168,400.00 as shown by the account hereto annexed and marked "A".

20 3. THAT the said Creditor has not, nor has any person by his order to my knowledge or belief for his use, had or received any manner of satisfaction or security whatsoever save and except the following. Assignment of all stock in

trade, Under Section 88 of the Bank Act.	\$117,500.00
Hypothecation of all book accounts, collateral collections, bills, notes	103,000.00
Second mortgage on Real Estate 138-140 Queen St., Ottawa, First mortgage Duke Street property, Ottawa	45,000.00

30 Together with certain other securities in aid of guarantees which I am advised the Bank is not legally obliged to specify.

AND I MAKE this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED before me at the City of Ottawa, in the Province of Ontario, this 22nd day of June, A.D. 1921.
(Sgd) A. C. FLEMING,
A Commissioner.

(Sgd) C. A. GRAY

RECORD

Exhibits

No. 5

Plaintiff's Exhibit

Declaration of C. A. Gray, dated Sept. 13th, 1921.

No. 5

--- EXHIBIT 5:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs Royal Bank

This is Exhibit No. 5, the property of Defendant, produced by the plaintiff on the above trial on the 19 May, 1931—F. A. Magee, Local Registrar.

THE BANKRUPTCY ACT
IN THE MATTER OF THE ESTATE OF MACKENZIE LIMITED,
OF THE CITY OF OTTAWA IN THE COUNTY OF
CARLETON, MANUFACTURERS,

10

I, CHARLES ALBERT GRAY, of the City of Ottawa, in the County of Carleton, in the Province of Ontario, Manager, DO SOLEMNLY DECLARE AND SAY:—

1. THAT I am the Manager at Ottawa of THE ROYAL BANK OF CANADA, the under-mentioned creditor, and have knowledge of all circumstances connected with the debt hereinafter referred to.

2. THAT the said MacKenzie Limited, was at the date of the authorized assignment, namely the 28th day of June, 1921, and still is, justly and truly indebted to The Royal Bank of Canada in the sum of \$121,372.94 as shown by the account hereto annexed and marked "A".

20

3. THAT the said The Royal Bank of Canada has not nor has any person by the order of the said bank, to my knowledge or belief for itself used had or received from the said MacKenzie, Limited, any manner of satisfaction or security whatsoever save and except the following:

- (1) A second mortgage on certain Real Estate known as Nos. 139 and 140 on the South side of Queen Street, in the city of Ottawa, the value of the equity in which is in my opinion the sum of \$30,000.00
- (2) Hypothecations of goods, taken in manner as provided by the Bankruptcy Act, also Book Accounts for goods sold by the Trustee on behalf of the Bank 50,000.00

30

The said Hypothecations are dated as follows:— various dates from Dec. 13th, 1920 to June 25th, 1921.

- (3) Assignment dated 12th of June, 1920 covering all book accounts and other debts owing to the said MacKenzie Limited, as will more fully appear by reference to the books of account of the said Company; and certain bills of exchange and commercial paper taken from time to time in aid of the said assignment, the value of these securities, being the sum of 40,000.00

40

- (4) Securities assigned by John Angus MacKenzie personally to the said Bank by way of collateral security, under assignments bearing date as hereinafter set forth; his equity in which has subsequently been transferred by him to MacKenzie Limited:—the said securities being:
- (a) An interest in certain real estate in Longe Pointe, assignments dated Oct. 8th, 1920.
 - (b) As assignment of a mortgage on property known as Eastern Handle & Dowel Coy at Farm Point, Que. dated Oct. 8th, 1920.
 - (c) Certain stock in Southern Canada Power Company, assignment dated June 12th, 1920.
 - (d) Certain Stock in the Rivermeade Golf Club, Assignment dated June 12th, 1920.
 - (e) Certain stock in Idaho Carbonate Mining Co., Assignment dated June 12th, 1920.

10

All of which are valued at the sum of 5,000.00
 Making the total valuation securities held by the said
 20 Bank to the amount of \$125,000.00

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED before me at the City of
 Ottawa, in the County of Carleton,
 this 13th day of Sept. 1921.
 (Sgd) T. A. BEAMENT
 A Commissioner, &c.

30

(Sgd) "Charles Albert Gray"

RECORD
Exhibits
 —
No. 5
Plaintiff's
Exhibit
 Declaration of
 C. A. Gray, dated
 Sept. 13th, 1921.

RECORD

Exhibits

No. 5

Plaintiff's
Exhibit

THE BANKRUPTCY ACT

IN THE MATTER OF THE ESTATE OF MacKENZIE LIMITED
OF THE CITY OF OTTAWA, IN THE COUNTY OF
CARLETON, MANUFACTURERS,Declaration of
C. A. Gray, dated
Sept. 13th, 1921.This is Schedule "A" referred to in the declaration of Charles Albert
Gray, hereunto annexed.

Demand Loans	\$120,000.00
Interest on Demand Loans	303.35
Account in Liquidation.....	1,069.59
	<hr/>
	\$121,372.94

10

To which may be added proportion of taxes, etc. paid by the Royal Bank
to protect its security under terms of Agreement with Authorized Trustee
dated August 1st, 1921.

Approximately	\$ 3,500.00
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No. 6

--- EXHIBIT 6:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs Royal Bank

This is Exhibit No. 6, the property of Defendant, produced by plaintiff on the above trial on the 19 May, 1931.—F. A. Magee, Local Registrar.

RECORD

Exhibits

No. 6

Plaintiff's Exhibit

Affidavit
C. A. Gray, dated
Nov. 9th, 1921.

IN THE MATTER of the Bankruptcy of **MacKenzie Limited.**

I, Charles Albert Gray, of the City of Ottawa, in the County of Carleton, Bank Manager, Make oath and say:—

- 1. I am the Manager at Ottawa for the Royal Bank of Canada, one of the secured creditors of MacKenzie Limited.
- 2. The said MacKenzie Limited did on the 28th day of June, A.D. 1921, make an authorized assignment under the Bankruptcy Act to Arthur A. Crawley of the said City of Ottawa.
- 3. The said The Royal Bank of Canada did, under Section 46 of the said Bankruptcy Act, by notice in writing, upon the 12th day of September A.D. 1921, require the said trustee to elect whether he would or would not exercise his power of redeeming the securities set out in a certain Declaration of Value filed by the said The Royal Bank of Canada with the said Arthur A. Crawley, Trustee, under Section 46 (3) of the Bankruptcy Act.
- 4. At two several meetings of the duly appointed Inspectors of the estate of the said MacKenzie Limited, held respectively on the 13th day of September A.D. 1921, and the 5th day of October A.D. 1921, the said Trustee, Arthur A. Crawley was instructed by a majority of the said Inspectors, and did determine, not to exercise his power of redeeming any securities or require them to be realized.
- 5. At a duly called meeting of the said Inspectors held on the 5th day of October A.D. 1921 it was resolved by a majority of the said Inspectors that the said trustee, Arthur A. Crawley, should release all equity in the realty and personalty set out in the hereinbefore mentioned Declaration of Value and in pursuance of this said resolution, the said trustee, Arthur A. Crawley, was instructed to release to the said Royal Bank of Canada the equity in the said realty and personalty, and for that purpose to have executed by himself, the said Trustee, and the said Inspectors a Release of all equity of the said realty and personalty.
- 6. Attached to this my affidavit and marked respectively "A" and "B" are two several Indentures of Release purporting to Release to the said The Royal Bank of Canada, respectively the realty and personalty set out in the said Declaration of Value, filed.

40 SWORN BEFORE me at the City of Ottawa in the County of Carleton this 9th day of November A.D. 1921.
(Sgd) F. D. HOGG,
A Commissioner.

} (Sgd) "Charles A. Gray"

RECORD

Exhibits

No. 7

Plaintiff's
Exhibit

No. 7

--- EXHIBIT 7:.

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs Royal Bank.

Guarantee dated
Nov. 21st, 1921.

This is Exhibit No. 7, property of Defendant, produced by plaintiff on the above trial on 19 May, 1931.—F. A. Magee, Local Registrar.

To
THE ROYAL BANK OF CANADA
Ottawa.

In consideration of The Royal Bank of Canada agreeing or continuing 10
to deal with MacKenzie Manufacturing Company, Limited, herein referred to
as "the customer", in the way of its business as a Bank, the undersigned
hereby jointly and severally guarantee payment to the Bank of the liabilities
which the customer has incurred or is under or may incur or be under to the
Bank, whether arising from dealings between the Bank and the customer or
from other dealings by which the Bank may become in any manner whatso-
ever a creditor of the customer; including in such liabilities all interest, com-
puted with quarterly, or other rests according to the Bank's usual custom,
charges for commission and other expenses, and all costs, charges and ex-
penses which the Bank may incur in enforcing or obtaining payment of any
such liabilities (the joint and several liability of the undersigned hereunder 20
being limited to the sum of Two hundred thousand Dollars, with interest at
the rate of ~~six~~ ^{seven} per cent per annum from the date of demand for payment of
the same).

AND the undersigned agree that the Bank may refuse credit, ^{grant} ~~grant~~ ^{grant extensions take and give of securities accept} ~~grant~~ re-
leases and discharges, and otherwise deal with the customer and with other
parties and securities as the Bank may see fit, and may apply all moneys re-
ceived from the customer or others, or from any securities upon such part
of the customer's indebtedness as it may think best, without prejudice to or
in any way limiting or lessening the liability of the undersigned under this
guarantee.

AND this guarantee shall not be considered as wholly or partially satis- 30
fied by the payment or liquidation at any time or times of any sum or sums
of money for the time being due to the Bank, and all dividends, compositions
and payments received by the Bank from the customer or any other person
or estate shall be applied as payments in gross without any right on the
part of the undersigned to claim the benefit of any such dividends, compos-
itions or payments or any securities held by the Bank until payment to the
Bank of the amount hereby guaranteed, and this guarantee shall apply to and
secure any ultimate balance due to the Bank, and the Bank shall not be
bound to exhaust its recourse against the customer or other parties or the
securities it may hold before being entitled to payment from the undersigned
of the amount hereby guaranteed.

AND this shall be a continuing guarantee and shall cover all the liabilities which the customer may incur or come under until the undersigned, or the executors or administrators of the undersigned shall have given the Bank notice in writing to make no further advances on the security of this guarantee.

RECORD
 Exhibits
 No. 7
 Plaintiff's
 Exhibit

Guarantee dated
 Nov. 21st, 1921.

AND it is agreed that this guarantee shall not be affected by the death of the undersigned or any of them or any change or changes in the name of the customer or any change or changes in the membership of the customer's firm by death or by the retirement of one or more of the partners, or by the
 10 introduction of one or more other partners or otherwise.

ANY account settled or stated by or between the Bank and its customer or admitted by the customer may be adduced by the Bank and received as conclusive evidence against the undersigned of the balance or amount thereby appearing due from the customer to the Bank and shall not be disputed or questioned by the undersigned.

Demand of payment hereunder may be made by mailing a notice to the undersigned or his or their representatives (without the necessity of naming them) addressed to the last known place of abode or business or postal address of the undersigned.

20 AND the undersigned specially waive and renounce any benefits of discussion and division.

Signed, sealed and delivered this 21st day of November, A.D. 1921.

Ottawa Ontario

WITNESS:

"C. A. Gray"

"R. J. Teddance"

"Jean MacKenzie" (Seal)

RECORD

Exhibits

No. 8

Certificate of
E. F. Burritt,
dated Nov. 21st,
1921.

No. 8

--- EXHIBIT 8:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs Royal Bank

This is Exhibit No. 8, the property of Defendant, produced by Plaintiff on the above trial on the 19th May, 1931.—F. A. Magee, Local Registrar.

S. C. O.

MacKenzie vs. Royal Bank

This is **Exhibit No. 5** the property of the Defendant marked at the request 10 of the Defendant on the Examination of Plaintiff herein this 14 day of Sept. 1928.

“F. A. MAGEE”

Master at Ottawa.

TO

The Royal Bank of Canada,
Ottawa.

~~November 21, 1921.~~

Sirs:

With reference to the Letter of Guarantee to The Royal Bank of Canada 20 dated the 21st day of November, 1921, executed by Mrs. Jean MacKenzie, the wife of J. Angus MacKenzie, for the purpose of guaranteeing and securing the past, present or future indebtedness of her husband, J. Angus MacKenzie, I hereby declare that Mrs. Jean MacKenzie has consulted me as to the liability which she incurs by executing the said guarantee so given as aforesaid; that I have advised her fully as to the effect of the same and her liability thereunder and the manner in which the same can be enforced; and that she understands the nature and effect of the said transaction; and I hereby declare that I have given this advice to Mrs. Jean MacKenzie as solicitor for her and in her interest only and separately, and entirely apart 30 from the interests of her husband or the said Bank.

A Manufacturing Co Ltd.

Yours truly,

“E. F. Burritt”

I hereby admit and declare that the above letter is true and correct, and that Mr. E. F. Burritt, the writer of the above letter, in advising me of the legal effect of the above-mentioned transaction, was consulted by me as my solicitor separately and distinctly from any legal advice which was given to my husband in connection with this matter, and in my interests only.

“Jean MacKenzie”

No. 9

--- EXHIBIT 9:

IN THE SUPREME COURT OF ONTARIO.

MacKenzie vs. Royal Bank

RECORD

Exhibits

No. 9

Agreement dated
Nov. 25th, 1921.

This is Exhibit No. 9, the property of Defendant, produced by the Plaintiff,
on the above trial on the 19th May 1931,—F. A. Magee, Local Registrar.

To
THE ROYAL BANK OF CANADA
OTTAWA.

10 The Agreement under which the Bank has arranged to sell the assets of
MacKenzie Limited, which it held under hypothecation and which have now
become its property, to John Angus MacKenzie, Manufacturer, of the City of
Ottawa, taking securities from MacKenzie Manufacturing Company, Limited
as set out in the document bearing even date herewith, has been entered in-
to at our request and with our concurrence, and upon the understanding that
the Bank is to be entitled to continue to hold all personal securities hypothec-
ated by us to the Bank as collateral to the indebtedness of MacKenzie Lim-
ited, until all moneys advanced by the Bank to MacKenzie Manufacturing
Company, Limited, have been fully paid and discharged, and that in the event
20 of default being made in such payment, the Bank is to be entitled to all rem-
edies in respect of the securities so hypothecated by us as it would have been
entitled to if the indebtedness had remained that of MacKenzie Limited, and
we hereby jointly and severally agree with the Bank, to execute any and all
such further or other documents and assurances for more fully protecting
the Bank in respect of all such advances and indebtedness, and for securing
repayment to it thereof, as to the said Bank, or its Counsel, may appear nec-
essary or advisable.

DATED at Ottawa this 25 day of November A.D. 1921.

(Sgd) Jno. A. MacKenzie

(Sgd) Jean MacKenzie

30

RECORD

Exhibits

No. 10

Agreement and
schedules, dated
Nov. 25th, 1921.

No. 10

--- EXHIBIT 10:

IN THE SUPREME COURT OF ONTARIO.

MacKenzie vs. Royal Bank

This is Exhibit No. 10, the property of Defendant, produced by the Plaintiff, on the above trial on the 19th May 1931,—F. A. Magee, Local Registrar.

THIS AGREEMENT made in (triplicate) this Twenty-fifth day of November, One thousand nine hundred and twenty-one.

B E T W E E N

THE ROYAL BANK OF CANADA,
hereinafter called the "Bank",

OF THE FIRST PART:

AND

JOHN ANGUS MacKENZIE,
of the City of Ottawa, in the County of Carleton, Manufacturer; hereinafter called the "Purchaser"

OF THE SECOND PART:

WHEREAS MacKenzie Limited, of the City of Ottawa, having made an assignment in Bankruptcy, the said Bank being a creditor of the Company; the Bank valued its securities pursuant to the provisions of The Bankruptcy Act and having given to the Authorized Trustee notice requiring him to elect under Section 46, sub-section 6, of the said Act, the said Authorized trustee did not exercise his power of redeeming the securities or requiring them to be realized as provided for therein; and the Authorized trustee having released to the Bank all his estate, rights and interest in the said securities and in the equity of redemption therein, and an Order having been obtained from a Judge in Bankruptcy confirming the release given by the Authorized Trustee and vesting in the Bank the property comprised in the said securities;

AND WHEREAS the purchaser has offered to purchase from the Bank all the Bank's estate, right, title and interest in and to the goods, chattels, book debts, bills of exchange and premises, etc., more particularly described in schedules "A" and "B" hereto annexed, and the Bank has agreed to transfer and convey to the purchaser all its estate, right, title and interest in and to the same for the consideration and upon the terms and subject to the conditions hereinafter set forth.

NOW THEREFORE THIS INDENTURE WITNESSETH that the Bank agrees to sell and the purchaser agrees to purchase all the estate, right, title and interest of the Bank in and to the goods and chattels, book

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debts, bills of exchange, more particularly set forth and described in schedules "A" and "B" hereto annexed, at and for the price or sum of One Hundred and seventeen thousand, one hundred and fifty Dollars and twelve cents (\$117,150.12), with interest thereon at seven per cent per annum from the date hereof till the day of actual payment, upon and subject to the following terms and conditions,—

RECORD

Exhibits

No. 10

Agreement and
schedules, dated
Nov. 25th, 1921.

10 (1) The purchase price shall be paid by the purchaser to the Bank within thirty days from the date hereof, and upon such payment being made, delivery of the property of the Bank in the said goods and chattels and assignment of the Bank's property and rights in respect of the book debts, bills of exchange, etc. shall be given.

20 (2) Upon a transfer being made by the purchaser to the Mackenzie Manufacturing Company, Limited, of all the goods, chattels, book debts, mentioned and described in the said schedules hereto annexed, the vendor agrees to give to Mackenzie Manufacturing Company, Limited, a line of credit not exceeding \$125,000.00, and to advance to the Mackenzie Manufacturing Co. Limited, upon the following securities in all the sum of \$125,000.00, repayable on demand, and to pay the said sum to the said Mackenzie Manufacturing Company, Limited, upon the proper execution of the securities hereinafter described, namely,—

(a) Security against the goods and chattels mentioned in schedule "A" hereto, to be given under the provisions of section 88 of the Bank Act;

(b) An assignment from Mackenzie Manufacturing Company, Ltd., to the Bank of the book debts, bills of exchange, etc. mentioned in schedule "B" hereto;

(c) The execution and delivery to and in favour of the Bank of the personal securities set forth and enumerated in schedule "D" hereto annexed;

30 all of which securities are to be given to the satisfaction of the solicitors for the said vendor.

(3) In the event of the said purchase being carried out and the said assets transferred to MacKenzie Manufacturing Company Limited, in pursuance of this Agreement, the bank agrees that it will cause the owner for the time being of the property described in schedule "C" hereto to enter into an agreement with Mackenzie Manufacturing Company Limited, in the form set forth in schedule "E" hereto.

40 (4) In the event of the purchaser failing to effect a sale of the said goods, chattels, book debts, bills of exchange, etc. to Mackenzie Manufacturing Company, Limited, or in the event of the vendor failing to make the said advance of the sum of \$125,000.00 to the said Company within thirty days from the date hereof, then this agreement shall become void and of no effect.

RECORD

Exhibits

No. 10

Agreement and
schedules, dated
Nov. 25th, 1921.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

SIGNED, SEALED and DELIVERED)

in the presence of
(Sgd) H. A. Mortimer

) for The Royal Bank of Canada

) (Sgd) H. S. Holt (Seal)
President

) (Sgd) W. W. Wilson
Supt. of Branches

)
(Sgd) T. A. Beament
as to execution by
J. A. MacKenzie

) (Sgd) Jno. A. MacKenzie (Seal)

10

SCHEDULE "A".

All stock manufactured, in process of manufacture or unmanufactured; all goods in the bale or piece; all canvas, linen; cotton, woolen, flannel; mackinaw; serge; bunting; corduroy; duck; sateen; silk; yarn; thread; rope; buttons; labels; buckles; leather; rivets; caps; mitts; socks; overalls; shirts; pants; coats; trunks; travellers' samples; in premises 138-140 Queen Street, Ottawa, or elsewhere.

SCHEDULE "B"

Book debts and bills of exchange of Mackenzie Limited now in possession of Bank on assignment from Mackenzie Limited, or the proceeds of such which may be received by the Bank after the date of this Agreement, and also cash, book debts and bills of exchange arising out of the sale by the Bank of goods covered by Hypothecation Agreements made by MacKenzie Limited, after deducting therefrom collection and commission charges.

20

SCHEDULE "C"

Property Nos. 138 - 140 Queen Street, Ottawa, Ont., more particularly described in a certain Agreement between Canada Realty Company, Limited, and John Angus MacKenzie, bearing date the 25th day of November, A.D. 1921, and annexed hereto as schedule "E".

SCHEDULE "D"

RECORD

Exhibits

No. 10

Agreement and
schedules, dated
Nov. 25th, 1921.

	Policy No. 55641	— Federal	\$ 5,000.00
	Policy No. 408231	— Sun	5,000.00
	Policy No. 108617	— Great West	5,000.00
	Policy No. 48912	— Great West	10,000.00
	Policy No. 33450	— Imperial	5,000.00
	Policy No. 50032	— Imperial	5,000.00
	Policy No. 319	— Ont. Equitable	10,000.00
	Policy No. 290	— Ont. Equitable	5,000.00
10	100 shares Ottawa Dairy Company (Common)		5,000.00
	87 shares Ottawa Dairy Company (Preferred)		4,350.00
	10 shares Eastern Canada Motor Truck (Preferred)		1,000.00
	5 shares Eastern Canada Motor Truck (Common)		500.00
	20 shares Ottawa Uplands Limited,		2,000.00
	1 share Rivermead Golf Club		100.00
	10 000 shares Idaho Carbonate Hill Mining		2,500.00
	10,000 shares Idaho Carbonate Hill Mining		2,500.00
	25 shares Southern Canada Power		2,500.00

20 ALL THAT PROPERTY being composed of part of lot twenty-five "A" and twenty-five "C" (25a and 25c) in the sixteenth range of the township of Hull, in the County of Ottawa, presently Hull, in the Province of Quebec, containing seventy-one thousand six hundred feet (71,600) in superficies.

AN UNDIVIDED ONE-THIRD INTEREST in and to immovable property known and designated as lot number twenty-two (22) on the official plan and book of Reference of the Parish of Longue Pointe, in the District of Montreal, in the Province of Quebec.

30 MORTGAGE - dated 12th September, 1918, Walter S. Ault, et ux. to John Angus Mackenzie, of that parcel or tract of land and premises situate, lying and being in the township of Nepean, in the Province of Ontario, and being composed of the south half of lot twenty-three (23) from front to rear, on the east side of Cole Avenue, as shown and laid down on a plan of a subdivision of part of lot number thirty, in the first Concession, Ottawa Front, of the said Township of Nepean, which said Mortgage was registered in the Registry Office for the Registry Division of the County of Carleton as Number 32188.

40 MORTGAGE - 34421, from Eaton Toy Company Limited to John Angus Mackenzie, dated 29th June, 1920, of part of lot twenty-four "C" (24c) in the sixteenth range of the township of Hull, together with buildings erected thereon and all and singular the moveables, machinery, including tools, equipment, paints, hardware, stock-in-trade, lumber in yard and all other goods and chattels and moveables on the said land.

SCHEDULE "E" to the annexed Agreement dated the 25th day of November, A.D. 1921, between The Royal Bank of Canada and John Angus Mackenzie.

RECORD

Exhibits

No. 10

Agreement and
schedules, dated
Nov. 25th, 1921.

MEMORANDUM OF AGREEMENT made the Twenty-fifth day of November, One thousand nine hundred and twenty-one.

BETWEEN /

CANADA REALTY COMPANY, LIMITED,
hereinafter called the "Vendors"

OF THE FIRST PART:

AND

JOHN ANGUS MACKENZIE
of the City of Ottawa, in the County of Carleton, Manufacturer, hereinafter called the "Purchaser",

10

OF THE SECOND PART:

WITNESSETH that in consideration of the purchaser entering into a certain Agreement with The Royal Bank of Canada, bearing date the 25th day of November, A.D. 1921, for the purchase from them of certain assets formerly the property of Mackenzie Limited, and in consideration of the sum of One Dollar, now paid by the Purchaser to the Vendors (the receipt whereof is hereby acknowledged), and as and when payment in full shall be made to the said Bank of all moneys payable to it in respect of the indebtedness of Mackenzie Limited, and of all the moneys which may be or become payable to the said Bank by Mackenzie Manufacturing Company, Limited, under the terms, or as contemplated by the provisions of the said Agreement, the vendors do hereby covenant and agree that it will thereupon assign and convey to the purchaser, or his nominee, all that certain parcel or tract of land situate, lying and being in the City of Ottawa, in the County of Carleton, in the Province of Ontario and Dominion of Canada, BEING COMPOSED of Firstly: Lot number fifteen (15) on the south side of Queen Street in the City of Ottawa, said lot numbering eastward according to a plan of the Sparks Estate, prepared by J. D. Slater, P.L.S., and dated March 20th, 1863, and registered in the Registry Office for the City of Ottawa on March 24th, 1869, together with the right of way, in, upon, over, through or across lot number fifteen on the North side of Albert Street in the said City of Ottawa, said lot numbering eastward according to a registered plan prepared by James D. Slater, P.L.S., dated 20th March, 1863, which said right of way may be described as follows, that is to say,—

20

30

Commencing at a point in the southerly limit of the said lot number fifteen on the north side of Albert Street thirty feet in a westerly direction from the southeast angle of the lastly mentioned lot, thence northerly and parallel with the westerly limit of the said lot ninety-nine feet more or less to the northerly limit of the said lot thirty-six feet more or less to the northwest angle of the said lot, thence southerly along the said westerly limit of the said lot seven feet, thence easterly and parallel with the southerly limit of the said lot twenty-six feet, thence southerly parallel with the said Westerly limit of

40

No. 11

RECORD

Exhibits

No. 11

Agreement dated
March 20th, 1922.

--- EXHIBIT 11:

IN THE SUPREME COURT OF ONTARIO.

MacKenzie vs. Royal Bank

This is Exhibit No. 11, the property of Defendant, produced by the Plaintiff, on the above trial on the 19th May 1931,—F. A. Magee, Local Registrar.

MEMORANDUM OF AGREEMENT made (in triplicate) this 20th day of March, One thousand nine hundred and twenty-two.

BETWEEN/

MackENZIE MANUFACTURING COMPANY (LIMITED)

with Head Office in the City of Ottawa,
hereinafter called the "Company"

10

OF THE FIRST PART:

THE ROYAL BANK OF CANADA, hereinafter
called the "Bank"

OF THE SECOND PART

AND

JOHN ANGUS MACKENZIE, Company Manager,
and JEAN MACKENZIE, wife of the said

John Angus MacKenzie, hereinafter called the "parties"

20

OF THE THIRD PART:

WHEREAS the Company is largely indebted to the Bank for advances made from time to time, which advances have been secured by certain hypothecations of assets of the company in favour of the Bank.

AND WHEREAS at the time of making arrangements for such advances, it was understood and agreed by and between the parties hereto that the Bank should receive additional security for such advances and for any future advances which the said Bank might make to the Company, such additional security in part consisting of the Assignment to the Bank of policies of life insurance on the life of the said John Angue MacKenzie, as follows,—

30

No. 319	Ontario Equitable Life—Amount	\$10,000.
No. 290	Ontario Equitable Life—	" 5,000.
No. 33450	Imperial Life —	" 5,000.
No. 58912	Great West Life —	" 10,000.
No. 55641	Federal Life —	" 5,000.
No. 408231	Sun Life Insurance —	" 5,000.
No. P108617	Great West Life —	" 5,000.
No. 50032	Imperial Life —	" 5,000.
No. 320/A	Ontario Equitable Life —	" 5,000.

AND WHEREAS in pursuance of the said arrangement, the policies of life insurance referred to have been assigned to the Bank.

40

AND WHEREAS a premium of one of the said policies had become due and remains unpaid and the Bank has called upon and required the Company to pay the said premium and to undertake payment of all premiums that may in future become payable on any of the said policies as a condition upon which the said Bank would be willing to continue its financial support to the Company.

AND WHEREAS the Company deeming it necessary in the operation of its business to continue the said financial arrangement, has agreed to enter into these presents.

RECORD
Exhibits
No. 11

AND WHEREAS some of the policies are made payable to the said Jean MacKenzie, one of the parties of the Third Part, who has been joined for the purpose of evidencing her consent to the terms of this Agreement.

Agreement dated
March 20th, 1922.

10 NOW THEREFORE in consideration of the premises and of the sum of One Dollar paid by the Bank to the Company, the Company doth hereby covenant, promise and agree with the Bank that it will pay or cause to be paid all the premiums on the above mentioned insurance policies on the life of the said John Angus MacKenzie, so long as the said policies or any of them may be held by the Bank for any liability of the Company to the Bank. And the said Company hereby authorizes and empowers the Bank from time to time, in case the assured fails to pay any of the premiums falling due on any of the said policies, to apply such premiums from time to time and to charge such payments to the account of the Company in the said Bank.

20 THIS AGREEMENT FURTHER WITNESSETH THAT in consideration of the premises and of the sum of One Dollar, now paid by the Company to each of the parties hereto of the Third Part, the said parties of the Third Part do hereby agree with the Company that in the event of the Company paying any of the premiums that may be now due or which may hereafter become due on any of the said policies of insurance, that then and in every case the Company shall thereupon be and become entitled to a lien (subject only to the rights, if any, of the Bank) upon the said policies to the extent of the increased cash surrender value of any policy caused or created by reason of the premium or premiums so paid by the Company, and the said Parties of the Third Part do hereby authorize and empower the Company to give good and sufficient receipts and discharge to any of the said Insurance Companies issuing any of the above policies for any such increase to the cash
30 surrender value created by the payment of such premium as aforesaid.

IN WITNESS WHEREOF the Company and the Bank have affixed their Corporate seals attested by the hands of their proper officers and the parties hereto of the Third Part have hereunto set their hands and seals at the City of Ottawa.

	)	MacKenzie Manufacturing Co. Ltd.
Signed, Sealed and Delivered	)	(Sgd) P. Morse (Seal)
in the presence of	)	(President)
	)	(Sgd) A. H. Ridge (Seal)
	)	(Secretary)
40	)	for The Royal Bank of Canada
	)	(Sgd) H. S. Holt (Seal)
	)	(President)
(Sgd.) H. E. Sterns	)	(Sgd) M. W. Wilson (Seal)
	)	(Supt. of Branches)
(Sgd.) A. H. Ridge	)	(Sgd) Jno. A. MacKenzie (Seal)
	)	(Sgd) Jean MacKenzie (Seal)

RECORD

Exhibits

No. 12

Guarantee, dated
April 18th, 1923.

No. 12

--- EXHIBIT 12:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 12, the property of Defendant, produced by the Plaintiff, on the above trial on the 19th May 1931,—F. A. Magee, Local Registrar.

S. C. O.

MacKenzie vs. Royal Bank

This is Exhibit No. 7 the property of the Defendant marked at the request of the Defendant on the Examination of Plaintiff herein this 14 day of Sept. 1928. 10

"F. A. MAGEE"

Master at Ottawa.

TO THE ROYAL BANK OF CANADA,

In consideration of The Royal Bank of Canada agreeing or continuing to deal with MacKenzie Manufacturing Company Ltd. herein referred to as "the customer", in the way of its business as a Bank, the undersigned hereby jointly and severally guarantee payment to the Bank of the liabilities which the customer has incurred or is under or may incur or be under to the Bank, whether arising from dealings between the Bank and the customer or from other dealings by which the Bank may become in any manner whatsoever a creditor of the customer; including in such liabilities all interest, computed with quarterly, or other rests according to the Bank's usual custom, charges for commission and other expenses, and all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of any such liabilities (the joint and several liability of the undersigned hereunder being limited to the sum of Two Hundred thousand dollars, with interest at the rate of ~~six~~ ^{seven} per cent per annum from the date of demand for payment of the same). 20

AND the undersigned agree that the Bank may refuse credit, grant releases and discharges, and otherwise deal with the customer and with other parties and securities as the Bank may see fit, and may apply all moneys received from the customer or others, or from any securities upon such part of the customer's indebtedness as it may think best, without prejudice to or in any way limiting or lessening the liability of the undersigned under this guarantee. *grant extensions take and give up securities accept Comp. 30*

AND this guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money for the time being due to the Bank, and all dividends, compositions and payments received by the Bank from the customer or any other 40

(a) Or by any change in the objects capital stock or constitution of the customer and the said Bank shall not be concerned to see or enquire into the powers of the customer or any of its directors or other agents acting or purporting to act on its behalf and moneys, advances, renewals or credits in fact borrowed or obtained from said Bank in professed exercise of such powers shall be deemed to form part of the debts and liabilities hereby guaranteed notwithstanding that such borrowing or obtaining of moneys, advances, renewals or credits shall be in excess of the powers of the customer or of its directors or other agents aforesaid or be in any way irregular, defective or informal. And this Guarantee is in addition to and not in substitution for any other guarantee which may have been given in connection with the liability of the customer unless such guarantee shall have been surrendered on delivery of this instrument. And this instrument covers all agreements between the parties hereto relative to this guarantee and none of the parties shall be bound by any representation or promise made by any person relative to this guarantee which is embodied herein.

(b) And this Guarantee shall be operative and binding upon every person signing the same notwithstanding the non-execution thereof by any other proposed guarantor or guarantors and it is hereby agreed that the delivery of this instrument to the Bank by any borrower thereof shall operate as an absolute unconditional delivery and this guarantee shall thereupon take immediate effect.

person or estate shall be applied as payments in gross without any right on the part of the undersigned to claim the benefit of any such dividends, compositions or payments or any securities held by the Bank until payment to the Bank of the amount hereby guaranteed, and this guarantee shall apply to and secure any ultimate balance due to the Bank, and the Bank shall not be bound to exhaust its recourse against the customer or other parties or the securities it may hold before being entitled to payment from the undersigned of the amount hereby guaranteed.

RECORD

Exhibits

No. 12

Guarantee, dated
April 18th, 1923.

10 AND this shall be a continuing guarantee and shall cover all the liabilities which the customer may incur or come under until the undersigned, or the executors or administrators of the undersigned shall have given the Bank notice in writing to make no further advances on the security of this guarantee.

AND it is agreed that this guarantee shall not be affected by the death of the undersigned or any of them or any change or changes in the name of the customer or any change or changes in the membership of the customer's firm by death or by the retirement of one or more of the partners, or by the introduction of one or more other partners or otherwise, [*Take in (a)*]

20 ANY account settled or stated by or between the Bank and its customer or admitted by the customer may be adduced by the Bank and received as conclusive evidence against the undersigned of the balance or amount thereby appearing due from the customer to the Bank and shall not be disputed or questioned by the undersigned.

Demand of payment hereunder may be made by mailing a notice to the undersigned or his or their representatives (without the necessity of naming them) addressed to the last known place of abode or business or postal address of the undersigned. [*Take in (b)*]

AND the undersigned specially waive and renounce any benefits of discussion and division.

30 Signed, sealed and delivered this 18th day of April, A.D., 1923.

Witness: "Walter J. Gilhooly" "Jean MacKenzie" (Seal)

RECORD

Exhibits

No. 13

Certificate of
W. J. Gilhooly,
dated April 18,
1923.

No. 13

--- EXHIBIT 13:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 13, the property of Defendant, produced by the Plaintiff, on the above trial on the 19th May, 1931—F. A. Magee, Local Registrar.

S. C. O.

MacKenzie vs. Royal Bank

This is Exhibit No. 6 the property of the Defendant marked at the request of the Defendant on the Examination of Plaintiff herein this 14 day of Sept. 1928. 10

"F. A. MAGEE"

Master at Ottawa.

TO:

The Royal Bank of Canada,
Ottawa.

~~18th April, 1923.~~

Sirs:

With reference to the Letter of Guarantee to The Royal Bank of Canada dated the 18th day of April, 1923, executed by Mrs. Jean MacKenzie, the wife of J. Angus MacKenzie, for the purpose of guaranteeing and securing the past, present or future indebtedness of her husband J. Angus MacKenzie, I hereby declare that Mrs. Jean MacKenzie has consulted me as to the liability which she incurs by executing the said guarantee so given as aforesaid; that I have advised her fully as to the effect of the same and her liability thereunder and the manner in which the same can be enforced; and that she understands the nature and effect of the said transaction; and I hereby declare that I have given this advice to Mrs. Jean MacKenzie as solicitor for her and in her interest only and separately, and entirely apart from the interests of her husband or the said Bank. 20 30

Yours truly,

"Walter J. Gilhooly"

I hereby admit and declare that the above letter is true and correct, and that Mr. Walter J. Gilhooly, the writer of the above letter, in advising me of the legal effect of the above-mentioned transaction, was consulted by me as my solicitor separately and distinctly from any legal advice which was given to my husband in connection with this matter, and in my interests only.

"Jean MacKenzie".

No. 14

--- EXHIBIT 14:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

RECORD

Exhibits

No. 14

Letter of R. Code
dated Dec. 3rd,
1924.

This is Exhibit No. 14, the property of Defendant, produced by the Plaintiff,
on the above trial on the 19th May, 1931—F. A. Magee, Local Registrar.

Dec. 3, 1924.

10 The Manager,
The Royal Bank of Canada,
Ottawa, Ont.

Dear Sir:

I enclose herewith guarantee signed by Mrs. J. Angus MacKenzie with
reference to the liability of MacKenzie Manufacturing Co. Limited, I also en-
close my letter and certificate to the effect that this guarantee was signed by
Mrs. MacKenzie upon my independent advice.

20 Mrs. MacKenzie does not wish to continue on this guarantee indefin-
itely and has accordingly instructed me to advise you that she will not con-
tinue this guarantee after the first of October 1925. I would suggest that you
advise the Company that it will be necessary for them to make some other
arrangements to continue on after the first of next October so that Mrs.
MacKenzie's securities may be released by that time.

Yours truly,

RC/HG
Encs.

(Sgd) REDMOND CODE.

RECORD

Exhibits

No. 15

Letter of R. Code
dated Dec. 17th,
1924.

No.15

--- EXHIBIT 15:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 15, the property of Defendant, produced by the Plaintiff,
on the above trial on the 19th May, 1931—F. A. Magee, Local Registrar.

COPY REDMOND CODE.

Ottawa, Ont. Dec. 17, 1924.

C. A. Gray, Esq.,
Manager, The Royal Bank of Canada,
Sparks St., Ottawa, Ont.

10

Dear Sir:—

Re MacKenzie Manufacturing Company Limited

I would be obliged if you would return to me the letter which I wrote
you covering Mrs. J. Angus MacKenzie's guarantee.

Yours very truly,
(Sgd) Redmond Code.

No.16

--- EXHIBIT 16:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 16, the property of Defendant, produced by the Defendant on the above trial on the 19th May 1931—F.A. Magee, Local Registrar.

Form No. L21

Sheet No.

Account No. M14

Collateral Securities Held on Account of "Jean MacKenzie"
Exception to Rule 213(b) Autho
re 187 shares Ottawa Dairy

Wife J. A. MacKenzie, 229 Clemow Ave.

G.M. Letter M.505 Jan. 19-21 GRDW

Date Rec.	Particulars	Par Value	Initials	Date Delivered	Signature
1914				1914	
Jan. 14	Cert#2238 5 shares—			Mch 18	Jean MacKenzie
Mch	Ogilvie Flour Mills Ltd.	500	CG VH		
1917	Pfd.			1918	
Jan. 6	#180 (142) Shares Ottawa Dairy Co.			Feb. 18	Jean MacKenzie
	Common	7100	CG C		
1918	#271 (87) Shares Ottawa Dairy Co.			Feb. 18	Jean MacKenzie
	Pfd.	4350	CG C		
Oct. 4	XX038116M War Loan Bond 1927	1000	CG C	Feb. 26	Jean MacKenzie
1920	038114 do do	1000	CG C	1918	
Oct. 13	Cert#275 87 shares			Jan. 15	Sold and credited to Savings.
	Ottawa Dairy Limited Pfd.		CG A	M C OD	JM W W C
1921					
Oct. 17	Cert#209 100 shs. Ottawa Dairy Ltd. Com.		MC CAG	D JM W W C	

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RECORD
Exhibits
No. 16
Bank form of
Collateral
Securities held
on account of
Jean MacKenzie

No. 17

--- EXHIBIT 17:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 17, the property of Defendant, produced by the
Defendant on the above trial on the 19th May 1931—F.A. Magee,
Local Registrar.

Form No. L21
Account No.M11

Sheet No. 1

Collateral Securities Held on Account of "J. A. MacKenzie"
229 Clemow Ave. MacKenzie Ltd. Ottawa.

Date Rec.	Particulars	Par Value	Actual Value	Initials	Date Del.	Signature
1913					1917	
CAG Apr. 14	Cert.#69 (87 sh.) Ottawa Dairy Co. Ltd. Pfd. 50		55.00	L VW J	Apr. 23--WW	Jean MacKenzie
CAG Apr. 14	Cert.#58 (142 sh.) Ottawa Dairy Co. Ltd. Comm 50		60.00	L VW J	Mch 23--WW	Jean MacKenzie
	Letter from Company					
1919	Letter from Mrs. MacKenzie re stock			C		
Oct. 1	Bonds C 0186 Southern Can.					
	Power	1000		CG C A	1920	
	794 do	1000		CG C A	Dec. 14	Sold and credited to Acct.
	5 do	1000		CG C A		
	6 do	1000		CG C A		
	7 do	1000		CG C A		Jno. A. MacKenzie

No. 18

--- EXHIBIT 18:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 18, the property of Defendant, produced by the Defendant on the above trial on the 19th May 1931—F. A. Magee, L. Registrar

Ottawa, Oct. 18, 1915.

RECORD

Exhibits

No. 18

Certificate of
Jean MacKenzie
dated Oct. 18th,
1915.

10 The Manager,
Royal Bank of Canada,
Ottawa,

Dear Sir;

This is to certify that I have sought and obtained advice from my solicitor Mr. H. P. Hill with reference to the hypothecation to the Royal Bank of Canada of 87 shares preferred and 142 shares common stock, Ottawa Dairy Co. Ltd. standing in my name, which shares I have hypothecated to the Bank as security for the indebtedness of MacKenzie Ltd., to the Royal Bank of Canada until such indebtedness shall be retired in full.

20 I am advised by my solicitor that it is quite in order and quite proper for me to make this hypothecation and I do so with full knowledge of the responsibility involved, which I freely undertake of my own free will without any compulsion.

Yours truly,
(Sgd) Jean MacKenzie

RECORD

Exhibits

No. 19

Certificate of
H. P. Hill, dated
Dec. 31st, 1920.

No. 19

--- EXHIBIT 19:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 19, the property of Defendant, produced by the Defendant on the above trial on the 19th May 1931—F. A. Magee, L. Registrar

S. C. O.

MacKenzie vs. Royal Bank

This is Exhibit No. 1 the property of the Defendant marked at the request of the Defendant on the Examination of Plaintiff herein this 14 day of Sept. 1928. 10

“F. A. MAGEE”,
Master at Ottawa.

To

The Royal Bank of Canada,
Ottawa.

31st December 1920.

Sirs:

With reference to the Letter of Guarantee to The Royal Bank of Canada dated the 31st day of December 1920, executed by Mrs. Jean MacKenzie, the wife of J. Angus MacKenzie for the purpose of guaranteeing and securing the past, present or future indebtedness of her husband J. Angus MacKenzie, I hereby declare that Mrs. Jean MacKenzie has consulted me as to the liability which she incurs by executing the said guarantee so given as aforesaid; that I have advised her fully as to the effect of the same and her liability thereunder and the manner in which the same can be enforced; and that she understands the nature and effect of the said transaction; and I hereby declare that I have given this advice to Mrs. Jean MacKenzie as solicitor for her and in her interest only and separately, and entirely apart from the interests of her husband or the said Bank. 20 30

Yours truly,

“H. P. Hill”

I hereby admit and declare that the above letter is true and correct, and that Mr. H. P. Hill, the writer of the above letter, in advising me of the legal effect of the above-mentioned transaction, was consulted by me as my solicitor separately and distinctly from any legal advice which was given to my husband in connection with this matter, and in my interests only.

“Jean MacKenzie”

No. 20

--- EXHIBIT 20:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

RECORD

Exhibits

No. 20

Letter of R. Code,
dated December
18th, 1924.

This is Exhibit No. 20, the property of Defendant, produced by the Defendant on the above trial on the 19th May 1931—F. A. Magee, L. Registrar

COPY

REDMOND CODE

Ottawa, Dec. 18th, 1924.

10 C. A. Gray, Esq.,
Manager, The Royal Bank of Canada,
Sparks St., Ottawa, Ont.

Dear Sir:—

Re MacKenzie Manufacturing Co. Ltd.

In reply to your letter of the 17th inst. I may say that your understanding is correct and that my letter of the 3rd instant has been withdrawn and cancelled without reservation.

RC/HG.

Yours truly,
(Sgd) Redmond Code.

RECORD

ExhibitsNo. 21List of Plaintiff's
shares**No. 21**

--- EXHIBIT 21:

This is Exhibit No. 21, the property of Plaintiff, produced by the Plaintiff,
on the above trial on the 19th May, 1931—F. A. Magee, Local Registrar.

S.-C.-O.

Jean MacKenzie vs. Royal Bank of Canada

Shares of The Borden Co. Inc. which the Defendants now hold in place of
the Ottawa Dairy Co. shares lodged with the Defendants by the Plaintiff.

Certificate No.	No. of Shares	
F 18019	44	10
NYF 124366	1	
NYF 123224	1	
NYF 104771	4	
NYF 100878	4	
NYF 56026	1	
NYF 48100	3	
NYF 45244	4	
F 18020	32	
G 23375	100	
G 23374	100	20
	<hr/> 294	

No. 22

--- EXHIBIT 22:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

RECORD

Exhibits

No. 22

Certificate of
H. P. Hill, dated
March 6, 1916.

This is Exhibit No. 22, the property of Defendant, produced by the Defendant on the above trial on the 19th May 1931—F. A. Magee, L. Registrar

March 6, 1916:

10 The Manager,
Royal Bank of Canada,
Ottawa, Ont.

Dear Sir:—

20 With reference to the hypothecation of stock of the Ottawa Dairy Co. Ltd. consisting of 87 shares preferred, and 142 shares common, hypothecated to the Royal Bank of Canada under date of Oct. 18, 1915, by Mrs. Jean MacKenzie as security for all past, present, or future indebtedness of her husband, J. A. MacKenzie to the Royal Bank of Canada, and or as security for all past, present or future advances to MacKenzie Ltd. I hereby declare that Mrs. Jean MacKenzie has consulted me as to the liability incurred by her in hypothecating the said shares as security to the Royal Bank of Canada, for all or any advances made by the Royal Bank of Canada to J. A. MacKenzie or MacKenzie Ltd.; that I have advised her fully as to the effect of the said hypothecation and her liability thereunder, and the manner in which the same can be enforced, and that she understands the nature and effect of the said transaction. I hereby declare that I have given this advice to Mrs. Jean MacKenzie as solicitor for her and in her interests only, and separately and entirely apart from the interest of her husband to the said bank.

Yours truly,
(Sgd) H. P. Hill.

30 I hereby admit and declare that the above letter is true and correct and that Mr. H. P. Hill, the writer of the above letter in advising me of the legal effect of the above transaction was consulted by me as my solicitor separately and distinctly from any legal advice which was given to my husband in connection with this matter, and in my interests only.

RECORD

Exhibits

No. 23

Hypothecation
dated November
21st, 1921.

No. 23

--- EXHIBIT 23:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 23, the property of Defendant, produced by the Defendant on the above trial on the 19th May 1931—F. A. Magee, L. Registrar

S. C. O.

MacKenzie v. Royal Bank

This is Exhibit No. 23 the property of Defendant, produced by the Defendant, on the above trial on the 20 May. 1931. 10

“F. A. MAGEE”,
Local Registrar.

Form No. 110—7-24

GENERAL HYPOTHECATION

List No.

Bills, Notes, Liens, Charges, Shares in Corporations, Bonds, Obligations for the payment of money and other securities lodged with or assigned to

THE ROYAL BANK OF CANADA in connection with the ^{accounts of} liabilities, how-
ever arising of 20

MacKenzie Mfg. Co. Ltd. ^{Customer of} to “The Royal Bank of Canada”.

Date	No.	Name	Amount	Information
100	Com. 545	Ottawa Dairy Co. Ltd.	Com. 50. 5,000	
87	Pfd.	Ottawa Dairy Co. Ltd.	Pfd. 50. 4,350	

The above mentioned securities and any renewals thereof and substitutions therefor and proceeds thereof and all revenues, incomes, interests and dividends due or payable or accruing due or payable or which shall hereafter become due or accruing due or payable in respect of such securities, renewals or substitutions, all of which securities, renewals, substitutions, proceeds, revenues, incomes, interests and dividends are hereinafter called ‘the securities’ are hereby assigned to and are to be held by *The Royal Bank of Canada* as a general and continuing collateral security for payment of the present and future indebtedness and liability of the above named customer at this and any other branch of the Bank, and any ultimate unpaid balance thereof, and the same may be realized by the Bank in such manner as may seem to it advisable, and without notice to the undersigned, in the event of any default in such 30

RECORD

Exhibits

No. 23

Hypothecation
dated November
21st, 1921.

payment. The said proceeds may be held in lieu of the securities realized and may as and when the Bank thinks fit be appropriated on account of such parts of said indebtedness and liability as to the Bank seems best. The undersigned agree that the Bank may grant extensions, take and give up securities, accept compositions, grant releases and discharges, and otherwise deal with the customer and with other parties and securities as the Bank may see fit without prejudice to the liability of the undersigned. ~~⊗~~The claims of the undersigned against any party on whom any of the foregoing unaccepted bills are drawn are hereby assigned to the Bank in the event of non-acceptance. This Agreement shall be binding on my heirs and representatives.

The Bank and its nominee or nominees shall be entitled at any time to have any of the securities registered in the name or names of itself or its nominee or nominees, and I hereby appoint the Bank and its nominee or nominees with full powers of substitution my proxy and proxies to represent the securities at any and all meetings of the Company or Companies which issued the same. These powers are irrevocable whilst I shall be indebted to the Bank.

Dated at.....Ottawa, Ont.....this.....21st day of Nov. 1921.

N.B.—If any bill or note lodged has been given for the accommodation of the customer, the accommodation maker or endorser must sign this document and if any bill or note payable on demand is included on which there is an endorser, other than the customer, such endorser must sign also.

All shares in companies should be assigned in blank by the holder, by endorsement or by writing attached to the scrip and signed by the holder thereof.

If the securities lodged are owned by some one other than the customer, this document is to be signed by such owner.

(Sgd) Jean MacKenzie

~~⊗~~ The undersigned further agrees that the Bank shall not be obliged to protest any of the securities nor to take any steps or proceedings to interrupt prescription or prevent outlawry nor to protect the securities from depreciating or becoming worthless and generally the Bank is released from any obligations to protect the undersigned from loss in respect of any of the securities.

No. 24

RECORD

Exhibits

No. 24

Statement of securities held by Defendant.

--- EXHIBIT 24:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

This is Exhibit No. 24, the property of Defendant, produced by the Plaintiff on the above trial on the 19th May, 1931—F. A. Magee, Local Registrar.

M E M O

MacKenzie Manufacturing Co. Ltd.

J. A. MacKenzie Personally

Indebtedness MacKenzie Manufacturing Co.	\$106,160.	10
No interest charged since Oct. 31, 1926.		
Personal liability of J. A. MacKenzie	3,000.	
	<u>\$109,160.</u>	

The following securities are held

J. A. MacKenzie (Personal)		
Hypothecation property Farm Point	\$	
Hypothecation property Longue Pointe	\$	
Assignment Life Ins. fully paid Cash Surrender Value	\$8,800.	
Assignment three policies Ontario Equitable		
Expiring		20
1933	\$5,000.	
1935	5,000.	
1939	10,000.	
Premiums have not been paid for some years and the policies are being continued under the non-forfeiture clause, will expire during the years mentioned. There is at present a Cash Surrender Value of about	\$3,000.	
20 shares Uplands Ltd.	\$	
20,000 Shares Coeur d'Alenes Lead Co.	\$	
1 Shares Rivermead Golf Club	\$	30
\$700. Bonds Hunt and Motor Club	\$	
Securities lodged by Mrs. Jean MacKenzie		
276 shares Borden Company Stock	\$	
Balance in Collateral Cash Account, consisting of proceeds of sale of Clemow Avenue house and accumulated dividends on Borden Shares	\$6,833.	

Other Securities

The Queen Street property, which formerly belonged to the Company is also embodied in the security held, although this property was sold by the liquidators some years ago; then the equity was bought in by the Bank who were the holders of the second mortgage. The first mortgage on the property is to the Huron & Erie Mortgage Corp. of London, Ont. amounting to \$58,000.00

No. 25

--- EXHIBIT 25:

IN THE SUPREME COURT OF ONTARIO

MacKenzie vs. Royal Bank

RECORD

Exhibits

No. 25

Writ of Summons
dated February
9th, 1928.

This is Exhibit No. 25, the property of Plaintiff, produced by the Plaintiff, on the above trial on the 19th May, 1931—F. A. Magee, Local Registrar.

Writ of Summons—General S.C.O.
No. 34 A.D. 1928.

IN THE SUPREME COURT OF ONTARIO

10 BETWEEN

JEAN MACKENZIE

(Seal)

PLAINTIFF

And

THE ROYAL BANK OF CANADA

DEFENDANT

George the Fifth, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

TO

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THE ROYAL BANK OF CANADA,

WE COMMAND YOU, that within ten days after the service of this Writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in this action, and take notice, that in default of your so doing, the plaintiff may proceed therein and judgment may be given in your absence on the plaintiff's own shewing, and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings herein.

30 WITNESS, The Right Honourable Sir William Mulock, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Chief Justice of Ontario, at Ottawa, the 9th day of February, in the year of our Lord 1928.

(Sgd) F. A. MAGEE
Local Registrar at Ottawa.

N.B.—This Writ is to be served within 12 calendar months from the date thereof, or, if renewed, within 12 calendar months from the date of such renewal, including the day of such date, and not afterwards.

RECORD

Exhibits

—
No. 25Writ of Summons
dated February
9th, 1928.

Appearance may be entered at the Local Registrar's Office at the Court House, Nicholas Street, Ottawa, Ont.
Issued from the Local Registrar's Office at the City of Ottawa, in the County of Carleton

(Sgd) F. A. MAGEE
Local Registrar at Ottawa

The plaintiff's claim is for an order that the defendant convey and assign to the plaintiff one hundred (100) shares of common stock and eighty-seven (87) shares of preferred stock of Ottawa Dairy Company Limited hypothecated by the plaintiff in or about the month of January 1919 as security for the indebtedness of MacKenzie Limited, or such securities as may now represent the securities originally hypothecated as aforesaid; and for a declaration that a certain letter or document of hypothecation dated 25th November 1921 is invalid and ineffectual insofar as it purports to be a conveyance or hypothecation of the plaintiff's securities for the indebtedness of MacKenzie Manufacturing Company Limited; and that a certain letter of guarantee executed by the plaintiff was executed under misrepresentation of the true facts regarding the state of her said securities or alternatively that the plaintiff's liability thereunder terminated on the 1st of November 1925 and that the operations of MacKenzie Manufacturing Company Limited have since paid and satisfied the amount due to the defendant. 10 20

Certified,

H. O. TAYLOR,
Official Reporter, S. C. O.