

30,1941

In the Privy Council.

No. 75 of 1939.

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

BETWEEN

PORT ROYAL PULP AND PAPER COMPANY,
LIMITED - - - - - (Defendant) Appellant

AND

THE ROYAL BANK OF CANADA - - (Plaintiff) Respondent.

RECORD OF PROCEEDINGS.

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ON APPEAL FROM THE SUPREME COURT
OF CANADA.

BETWEEN

PORT ROYAL PULP AND PAPER COMPANY,
LIMITED - - - - - (Defendant) Appellant

AND

THE ROYAL BANK OF CANADA - - (Plaintiff) Respondent.

RECORD OF PROCEEDINGS.

No. 1.

Writ of Summons.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Between :

THE ROYAL BANK OF CANADA - - - - - Plaintiff

and

THE PORT ROYAL PULP & PAPER COMPANY, LIMITED - Defendant.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

No. 1.
Writ of
Summons,
22nd Febru-
ary, 1936.

(L.S.)

10 EDWARD THE EIGHTH, by the Grace of God of Great Britain, Ireland,
and the British Dominions beyond the Seas, KING, Defender of the Faith,
etc.

To Port Royal Pulp & Paper Company, Limited, a body corporate
under and by virtue of the laws of the Province of New Brunswick :

WE COMMAND YOU, that within ten days after the service of this
Writ on you, inclusive of the day of such service, you do cause an appearance
to be entered for you in an action at the suit of the Royal Bank of Canada,
a duly chartered bank ;

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

AND TAKE NOTICE that in default of your so doing, the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS the Honorable John B. M. Baxter, Chief Justice, this twenty-second day of February, in the year of our Lord one thousand nine hundred and thirty-six.

(Sgd) HANSON, DOUGHERTY & WEST.

Plaintiff's Solicitor.

(Sgd) SMITH

No. 1.
Writ of
Summons,
22nd Febru-
ary, 1936—
continued.

N.B. This Writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards. 10
Endorsement.

The Plaintiff's claim is for damages for wrongfully depriving the Plaintiff of certain pulpwood of the Plaintiff, which the Defendant converted to its own use.

The Plaintiff also claims against the Defendant for the price of certain goods and merchandise sold and delivered to the Defendant under a certain contract in writing, dated the twenty-sixth day of April, A.D. 1934, made between one Ewart C. Atkinson and the Defendant, and assigned by the said Ewart C. Atkinson to the Plaintiff.

No. 2.

Amendment to Endorsement of Writ of Summons.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Between :

THE ROYAL BANK OF CANADA - - - - - Plaintiff

and

THE PORT ROYAL PULP & PAPER COMPANY, LIMITED - Defendant.

By consent of Counsel for both parties hereto, IT IS AGREED that the endorsement on the Writ of Summons issued herein on the twenty-second day of February, A.D. 1936, be amended to read as follows :—

The Plaintiff's claim is for damages for wrongfully depriving the Plaintiff of certain pulpwood of the Plaintiff which the Defendant converted to its own use.

The Plaintiff also claims against the Defendant for the purchase price of certain goods and merchandise sold and delivered to the Defendant under two certain contracts in writing, one made between New Lepreau, Limited, and the Defendant, dated the thirty-first day of October, 1933, which with the consent of the Defendant was transferred by New Lepreau, Limited, to one Ewart C. Atkinson; the other dated the twenty-sixth day of April, 1934, made between the said Ewart C. Atkinson and the Defendant, and both assigned by the said Ewart C. Atkinson to the Plaintiff before action brought.

Dated this 27th day of February, A.D. 1936.

(Sgd) HANSON, DOUGHERTY & WEST.

Plaintiff's Solicitor.

(Sgd) SANFORD & TEED.

Defendant's Solicitor.

In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).

No. 2.
Amendment
to Endorse-
ment of
Writ of
Summons,
27th Febru-
ary, 1936.

In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).

No. 3.
Statement of Claim.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Between

THE ROYAL BANK OF CANADA - - - - - Plaintiff

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - - Defendant.

Venue York.

No. 3.
Statement
of Claim,
17th March,
1936.

STATEMENT OF CLAIM.

1. The Plaintiff alleges that on or about the thirty-first day of October, 10
A.D. 1933, the Defendant entered into an agreement in writing with New
Lepreau, Limited, a body corporate under the laws of the Province of New
Brunswick, for the purchase from said New Lepreau, Limited, of from one
thousand to four thousand cords of draw shaved or rossed spruce and fir
pulpwood, to be cut from certain lands owned or controlled by the said
New Lepreau, Limited, situate at New River in the Province of New
Brunswick, to be delivered to the said Defendant at Fairville, in the
Province of New Brunswick, at or for the price or sum of \$6.50 per cord
F. O. B. Fairville.

2. The Plaintiff says that subsequently, to wit, on or about the first 20
day of March, A.D., 1934, with the consent of the Defendant, one Ewart C.
Atkinson was substituted in the said Agreement for New Lepreau, Limited,
the said Ewart C. Atkinson being the President of New Lepreau, Limited,
and owner of a majority of the capital stock of said Company.

3. The Plaintiff further alleges that the said Ewart C. Atkinson, in
order to finance the pulpwood operation under the said agreement or con-
tract, applied to the Plaintiff on or about the twenty-fourth day of January,
A.D., 1934, for a revolving line of credit, notice of his intention so to do
having been given by the said Ewart C. Atkinson on or about the twentieth
day of January, A.D. 1934, and registered with the Assistant Receiver 30
General at St. John, N.B., on the twenty-second day of January, A.D., 1934,
and at the same time gave to the Plaintiff security on the said pulpwood
to be cut under the said agreement with the said defendant under the
provisions of Section 88 of The Bank Act, to secure the said Plaintiff against
any and all advances made or to be made by the Plaintiff to the said
Ewart C. Atkinson in connection with the operations under the said
agreement or contract.

4. That by assignment in writing bearing date the tenth day of March,
1934, the said Ewart C. Atkinson assigned and transferred to the Plaintiff
all moneys, claims, rights and demands that he, the said Ewart C. Atkinson 40
was entitled to under the said agreement or contract, for the purpose of
further securing the said Plaintiff against advances made or to be made
by the Plaintiff to the said Ewart C. Atkinson under the said agreement or

contract, and a copy of said assignment was delivered by the Plaintiff to the Defendant on or about the sixteenth day of March, 1934.

5. That on or about the twenty-sixth day of April, A.D., 1934, the said Defendant entered into another contract or agreement in writing with the said Ewart C. Atkinson, for the purchase by the Defendant of ten thousand cords of peeled spruce and fir pulpwood, to be cut from lands owned or controlled by said Ewart C. Atkinson in Charlotte County, in the Province of New Brunswick, to be delivered by the said Ewart C. Atkinson to the Defendant at Fairville, in the Province of New Brunswick, at or for the price or sum of \$7.25 per cord F. O. B. Fairville, N.B.

6. That by assignment in writing bearing date the twenty-sixth day of May, 1934, the said Ewart C. Atkinson assigned and transferred to the Plaintiff all moneys, claims, rights and demands that he, the said Ewart C. Atkinson, was entitled to under the said last-mentioned agreement or contract, for the purpose of further securing the said Plaintiff against advances made or to be made to the said Ewart C. Atkinson by the Plaintiff under the said agreement or contract, and a copy thereof was delivered by the Plaintiff to the Defendant on or about the seventeenth day of July, 1934.

7. That on or about the sixteenth day of July, A.D., 1934, the said Ewart C. Atkinson made a further application to the said Plaintiff for a revolving line of credit to assist him in his pulpwood operations under the said agreement or contract, and at the same time gave to the Plaintiff security under the provisions of Section 88 of The Bank Act, on the said pulpwood to be cut thereunder, to protect the said Plaintiff against any and all advances made or to be made to the said Ewart C. Atkinson by the said Plaintiff in connection with the said operations under the said contract or agreement.

8. That between the twenty-fourth day of January, A.D., 1934, and the eleventh day of January, A.D., 1935, the said Plaintiff advanced to the said Ewart C. Atkinson in connection with his said pulpwood operations under the said two contracts or agreements, the principal sum of \$8,000.00 at the times and in the manner as hereinafter set out, which said advances are represented by promissory notes of the said Ewart C. Atkinson made and given by the said Ewart C. Atkinson at the times and for the amounts of each advance, as and when the same were made, as aforesaid, each note being payable to the plaintiff on demand, and bearing interest at the rate of seven per centum per annum from the date thereof until paid, all of which said promissory notes are due and unpaid.

9. That the said Ewart C. Atkinson cut and delivered to the said Defendant under the said two agreements or contracts hereinbefore referred to, 6005.43 cords of pulpwood, but the Defendant did not pay the purchase price therefor or any part thereof to the Plaintiff, and there is due the Plaintiff thereon from the Defendant the sum of \$8,366.66, being the amount of the moneys advanced as aforesaid by the Plaintiff to the said Ewart C. Atkinson under the said agreements or contracts, together with interest thereon.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

No. 3.
Statement
of Claim,
17th March,
1936—con-
tinued.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

No. 3.
Statement
of Claim,
17th March,
1936—con-
tinued.

10. In the alternative the Plaintiff says that during the months of November and December, 1934, and between the first day of January and the last day of July, 1935, the Defendant wrongfully deprived the Plaintiff of 6005.43 cords of pulpwood cut by the said Ewart C. Atkinson under the said agreements on contracts hereinbefore referred to, by removing the same to the Defendant's Mill at Fairville in the Province of New Brunswick, and converting the same to its own use without the consent of the said Plaintiff, which said pulpwood was at the time of said taking and converting the property of the Plaintiff.

11. The Plaintiff claims damages against the Defendant for the said 10 wrongful taking and converting of the Plaintiff's pulpwood by the Defendant, as aforesaid, in the sum of \$8,366.66, being the principal amount and interest on the advances made by the Plaintiff to the said Ewart C. Atkinson under the said agreements or contracts hereinbefore referred to, and represented by promissory notes of the said Ewart C. Atkinson hereinbefore referred to.

Particulars

1934			
July	17	To amount of principal of promissory note	\$1,000.00
		To interest on do. to Feb. 24, 1936	41.03 20
	24	To amount of principal of promissory note	1,000.00
		To interest on do. to Feb. 24, 1936	111.24
	28	To amount of principal of promissory note	1,000.00
		To interest on do. to Feb. 24, 1936	110.46
Aug.	2	To amount of principal of promissory note	1,000.00
		To interest on do. to Feb. 24, 1936	109.50
Aug.	4	To amount of principal of promissory note	500.00
		To interest on do. to Feb. 24, 1936	54.56
	13	To amount of principal of promissory note	500.00
		To interest on do. to Feb. 24, 1936	53.69 30
	24	To amount of principal of promissory note	500.00
		To interest on do. to Feb. 24, 1935	52.64
	29	To amount of principal of promissory note	500.00
		To interest on do. to Feb. 24, 1936	52.16
	31	To amount of principal of promissory note	500.00
		To interest on do. to Feb. 24, 1936	51.97
Sept.	11	To amount of principal of promissory note	490.00
		To interest on do. to Feb. 24, 1936	49.90
	14	To amount of principal of promissory note	535.00
		To interest on do. to Feb. 24, 1936	54.17 40
	18	To amount of principal of promissory note	100.00
		To interest on do. to Feb. 24, 1936	10.04
Oct.	9	To amount of principal of promissory note	100.00
		To interest on do. to Feb. 24, 1936	9.64
	26	To amount of principal of promissory note	00.00
		To interest on do. to Feb. 24, 1936	9.34
	31	To amount of principal of promissory note	00.00
		To interest on do. to Feb. 24, 1936	9.22

Particulars

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).
—
No. 3.
Statement
of Claim,
17th March,
1936—con-
tinued.*

1934									
Nov.	17	To amount of principal of promissory note	-	-	-	-	-	100.00	
		To interest on do. to Feb. 24, 1936	-	-	-	-	-	8.89	
Dec.	7	To amount of principal of promissory note	-	-	-	-	-	200.00	
		To interest on do. to Feb. 24, 1936	-	-	-	-	-	17.03	
	13	To amount of principal of promissory note	-	-	-	-	-	250.00	
		To interest on do. to Feb. 24, 1936	-	-	-	-	-	21.00	
Dec.	27	To amount of principal of promissory note	-	-	-	-	-	200.00	
10		To interest on do. to Feb. 24, 1936	-	-	-	-	-	16.26	
1935.									
Jan.	11	To amount of principal of promissory note	-	-	-	-	-	69.45	
		To interest on do. to Feb. 24, 1936	-	-	-	-	-	5.34	
	29	To amount of principal of promissory note	-	-	-	-	-	170.00	
		To interest on do. to Feb. 24, 1936	-	-	-	-	-	12.75	
									\$9,775.28

CREDITS

1934									
July	30	By cash	-	-	-	-	-	4.59	
20 Aug.	31	By cash	-	-	-	-	-	28.55	
Sept.	30	By cash	-	-	-	-	-	43.18	
Oct.	31	By cash	-	-	-	-	-	46.95	
Nov.	17	By cash	-	-	-	-	-	25.00	
Nov.	30	By cash	-	-	-	-	-	45.75	
Dec.	7	By note	-	-	-	-	-	200.00	
Dec.	13	By note	-	-	-	-	-	250.00	
	27	By note	-	-	-	-	-	200.00	
	31	By note	-	-	-	-	-	47.68	
1935.									
30 Jan.	11	By note	-	-	-	-	-	69.45	
	29	By note	-	-	-	-	-	170.00	
	30	By cash	-	-	-	-	-	47.38	
Feb.	28	By cash	-	-	-	-	-	42.95	
March	31	By cash	-	-	-	-	-	47.56	
April	30	By cash	-	-	-	-	-	46.02	
May	31	By cash	-	-	-	-	-	47.56	
June	30	By cash	-	-	-	-	-	46.02	
									\$1,408.62
									\$8,366.66

40 The Plaintiff claims the sum of \$8,366.66.
Dated the 17th day of March, A.D., 1936.

(Sgd) HANSON, DOUGHERTY & WEST.
Plaintiff's Solicitor.
Defendant's Solicitor.

To Messrs. Sanford & Teed.

In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).

No. 4.
Statement
of Defence,
2nd April,
1936.

No. 4.
Statement of Defence.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Between

THE ROYAL BANK OF CANADA - - - - - Plaintiff

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - - Defendant.

STATEMENT OF DEFENCE.

1. The defendant admits the allegations contained in paragraph 1 of the Statement of Claim. 10

2. The defendant admits that on or about the 1st day of March 1934 the defendant consented to the substitution of Ewart C. Atkinson for New Lepreau Limited in the Agreement described in paragraph 1 of the Statement of Claim. The defendant admits that the said Ewart C. Atkinson was at all material times the President of New Lepreau Limited, but the defendant says that the defendant was at all material times the owner of two hundred and forty-one (241) shares of the capital stock of New Lepreau Limited and that while the said Ewart C. Atkinson was the registered holder of 241 shares of the capital stock of New Lepreau Limited at all material times, he, the said Ewart C. Atkinson, had pledged or hypothecated 20 the said shares to the plaintiff and that the plaintiff was at all material times the beneficial owner of the said 241 shares of registered stock in the name of the said Ewart C. Atkinson.

3. The defendant admits that the said Ewart C. Atkinson in order to finance the pulpwood operations in the said Agreement or Contract dated the 31st day of October 1933 applied to the plaintiff on or about the 24th day of January 1934 for loans or advances. The defendant admits that notice of intention to give security to the plaintiff under Section 88 of The Bank Act was given by the said Ewart C. Atkinson on or about the 20th day of January 1934 and registered with the Assistant General at 30 Saint John, New Brunswick, on the 22nd day of January 1934. The defendant denies that the said Ewart C. Atkinson gave to the plaintiff on or about the 22nd day of January 1934 security on the said pulpwood to be cut under the said Agreement under the provisions of Section 88 of The Bank Act, or otherwise.

4. The defendant admits that by Assignment in writing bearing date the 10th day of March 1934 the said Ewart C. Atkinson assigned and transferred to the plaintiff all moneys, claims, rights and demands that he the said Ewart C. Atkinson was entitled to under the said Contract dated the 31st day of October 1933 and that a copy of the said Assignment was 40 delivered by the plaintiff to the defendant on or about the 16th day of

March 1934. The defendant denies that the said Assignment of Contract was made for the purpose of further securing the said plaintiff against advances made or to be made by the plaintiff to the said Ewart C. Atkinson under the said Agreement or Contract.

5. The defendant admits the allegations set forth in paragraph 5 of the Statement of Claim.

6. The defendant admits that by Assignment in writing bearing date the 26th day of May 1934 the said Ewart C. Atkinson assigned to the plaintiff all moneys claims rights and demands that he the said Ewart C. Atkinson was entitled to under the said Contract dated the 26th day of April 1934, and that a copy of the said Assignment was delivered by the plaintiff to the defendant on or about the 17th day of July 1934. The defendant denies the allegations of the plaintiff that the said Assignment or Contract was made for the purpose of securing the plaintiff against the advances made or to be made to the said Ewart C. Atkinson by the plaintiff under the said Agreement or Contract. The defendant further says that it was not aware of the said Assignment dated the 26th day of May 1934 until the said copy thereof was delivered by the plaintiff to the defendant on or about the 17th day of July 1934.

7. The defendant admits that on or about the 16th day of July 1934 the said Ewart C. Atkinson made a further application to the plaintiff for credit for the purpose of financing him, the said Ewart C. Atkinson, in the pulpwood operations to be carried on under the Contract dated the 26th day of April 1934 as set forth in paragraph 5 of the Statement of Claim herein. The defendant denies that the said Ewart C. Atkinson on the 16th day of July 1934 gave to the plaintiff security under the provisions of Section 88 of The Bank Act on the said pulpwood to be cut under the said Contract for the purpose of protecting the plaintiff against any and all advances made or to be made to the said Ewart C. Atkinson by the plaintiff in connection with the said operations under the said Contract or Agreement dated the 26th day of April 1934.

8. The defendant does not admit that between the 24th day of January 1934 and the 11th day of January 1935 or at any other time the said plaintiff advanced the said Ewart C. Atkinson in connection with the said pulpwood operations the sum of Eight Thousand Dollars (\$8,000) or any other amount at the times mentioned or at any other times, or that any promissory notes were given as alleged, and the defendant puts the plaintiff to the proof of all the allegations contained in paragraph 8 of the Statement of Claim.

9. The defendant admits that the said Ewart C. Atkinson cut and delivered to the defendant a total of 6005.43 cords of pulpwood under the two said Contracts dated the 31st day of October 1933 and the 26th day of April 1934 respectively. The defendant says that of the said 6005.43 cords so delivered to it, the amount of 707.17 cords was cut and delivered under the Contract dated the 31st day of October 1933, and the balance amounting to 5297.26 cords was cut and delivered to the defendant under

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the Contract dated the 26th day of April 1934. The defendant denies that it did not pay the purchase price for the said wood or any part thereof to the plaintiff, or that there is due or owing to the plaintiff the sum of Eight thousand three hundred and sixty-six dollars and sixty-six Cents (\$8,366.66) or any other amount.

10. The defendant says that from and after the 16th day of March 1934, being the date on which the defendant first received notice that moneys payable to the said Ewart C. Atkinson under the Contract dated the 31st day of October 1933 had been assigned to the plaintiff, it the defendant did pay to the said plaintiff and the said Ewart C. Atkinson jointly all moneys thereafter accruing due to the said Ewart C. Atkinson under the terms and conditions of the said Contract dated the 31st day of October 1933, and the said moneys so paid to the plaintiff and the said Ewart C. Atkinson jointly were received by the plaintiff. The defendant says that no further or other moneys, other than those so paid as aforesaid, are now due and payable by the defendant to the plaintiff or to said Ewart C. Atkinson under the said Contract dated the 31st of October 1933. 10

11. The defendant says that from and after the 16th day of July 1934, being the date on which the defendant first received notice that the moneys payable to the said Ewart C. Atkinson under the said Contract dated the 26th day of April 1934 had been assigned to the plaintiff, it the defendant did pay to the said plaintiff and the said Ewart C. Atkinson jointly all moneys thereafter accruing due to the said Ewart C. Atkinson under the terms and conditions of the said Contract dated the 26th day of April 1934, and the said moneys so paid to the plaintiff and the said Ewart C. Atkinson jointly were received by the plaintiff. The defendant says that no further or other moneys, other than those so paid as aforesaid, are now due and payable by the defendant to the plaintiff or to the said Ewart C. Atkinson under the said contract dated the 26th day of April 1934. 20

12. The defendant denies the allegations set forth in paragraph 10 of the Statement of Claim. The defendant denies that at any time it, the defendant, removed the pulpwood referred to in paragraph 10 of the Statement of Claim to its Mill at Fairville in the Province of New Brunswick or to any other place. The defendant says that between the first of November 1934 and the last day of July 1935 the said Ewart C. Atkinson delivered and the defendant accepted at its Mill at Fairville aforesaid the said quantity of 6005.43 cords of pulpwood, but the defendant denies that at any time prior to the delivery thereof at its Mill it in any way took possession of or intermeddled with the said pulpwood. The defendant denies that the said pulpwood or any of it was the property of the plaintiff at any time. 30 40

13. In answer to the plaintiff's claims set forth in paragraphs 10 and 11 of the Statement of Claim, the defendant says that between the 24th day of January 1934 and the 17th day of July 1934 the plaintiff advanced to the said Ewart C. Atkinson the sum of Five Thousand Dollars (\$5,000) for the purpose of the operations of the said Ewart C. Atkinson under

the contract dated the 31st day of October, 1933, particulars of said advances being as follows :—

	1934.			<i>In the</i>
	Jan.	24	\$1,000	<i>Supreme</i>
	Feb.	15	500	<i>Court of</i>
		24	500	<i>New</i>
	Mar.	14	500	<i>Brunswick</i>
		19	500	<i>(King's</i>
	May	28	1,000	<i>Bench</i>
10	June	2	200	<i>Division).</i>
		8	200	—
		14	200	No. 4.
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			5,000	

The defendant says the advances above set forth are the only advances made by the plaintiff to the said Ewart C. Atkinson between the said 24th day of January 1934 and the 17th day of July 1934, which were available to the said Ewart C. Atkinson for the purpose of his pulpwood operations.

20 14. The defendant further says that at the time of each advance made by the plaintiff to the said Ewart C. Atkinson as set forth in paragraph 13 of this Statement of Defence, the said Ewart C. Atkinson purported to give to the plaintiff security under Section 88 of the Bank Act for the said sums or advances so made upon the pulpwood cut or to be cut under the provisions of the said contract dated the 31st day of October 1933.

30 15. The defendant further says that all securities under Section 88 of The Bank Act purported to be given by the said Ewart C. Atkinson to the Plaintiff upon the said pulpwood cut or to be cut under the provisions of the contract dated the 31st day of October 1934 have been cancelled and surrendered by the plaintiff. The defendant further says that none of the securities which the said Ewart C. Atkinson purported to give to the plaintiff upon the security of the said pulpwood cut or to be cut under the provisions of the Contract dated the 31st day of October 1933 were given in accordance with The Bank Act of Canada, and all such securities were and are invalid.

40 16. The defendant further says that subsequent to the 17th day of July 1934 the plaintiff purported to advance moneys to the said Ewart C. Atkinson upon the security of the pulpwood cut or to be cut under the provisions of the said Contract dated the 26th day of April 1934, but the defendant says that of the sum of Eight Thousand Dollars (\$8,000.00) claimed by the plaintiff to have been advanced to the said Ewart C. Atkinson upon the security of the said pulpwood cut or to be cut under the provisions of the Contract dated the 26th day of April 1934, the defendant

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applied the sum of Five Thousand Dollars (\$5,000.00) in the payment to the plaintiff of the moneys previously advanced by it, the plaintiff, to the said Ewart C. Atkinson upon the pulpwood cut or to be cut under the provisions of the Contract dated the 31st day of October 1933, and that the said purported advances totalling \$5,000.00 were not available to the said Ewart C. Atkinson for the purpose of carrying on his operation under the provisions of the said Contract dated the 26th day of April 1934 and that the securities claimed by the plaintiff on account of the said advances of \$5,000.00 are invalid in law, and the said securities if taken by the plaintiff were taken in contravention of the provisions of Sections 88 and 90 of The 10 Bank Act of Canada.

17. The defendant further says that the only bona fide advances, if any, made by the plaintiff to the said Ewart C. Atkinson upon the security of the said pulpwood cut or to be cut under the provisions of the Contract dated the 26th day of April 1934, and which were available to the said Ewart C. Atkinson for the purposes of the operations under the said contract amounted in all to the sum of Three Thousand Dollars (\$3,000.00) advanced as follows :

1934			
July	17	\$1,000	20
"	24	1,000	
"	28	1,000	

18. In the alternative and in further answer to the allegations set forth in paragraphs 10 and 11 of the Statement of Claim, the defendant says that subsequent to the 17th day of July 1934 the defendant advanced to the said Atkinson under the said Contract dated the 26th day of April 1934 the sum of Five Thousand Nine Hundred and Fourteen Dollars and Ten Cents (\$5914.10), which moneys were paid to the plaintiff and the said Atkinson jointly pursuant to the assignment by the said Atkinson to the plaintiff of the moneys due to him under the said Contract as alleged in paragraph 6 30 of the Statement of Claim herein, and the defendant says that all such moneys came into the possession of the plaintiff. The defendant says that the plaintiff well knew that the said moneys were advanced by the defendant for the express and sole purpose of financing the operations to be carried on under the said Contract dated the 26th day of April 1934 and were to be applied for the purposes of the said operation, but the plaintiff wrongfully and improperly applied Five Thousand Dollars (\$5,000.00) of the said moneys so advanced by the defendant in reduction of the indebtedness of the said Ewart C. Atkinson to the plaintiff for advances made in connection with the said Contract dated the 31st day of October 1933. 40

19. The defendant claims that accounts should be taken and that the plaintiff should be required to credit upon the claims of the plaintiff against the said Ewart C. Atkinson for advances made by it, the plaintiff, to the said Ewart C. Atkinson for which the plaintiff claims security upon pulpwood

cut or to be cut under the Contract dated the 26th day of April 1934 the said sum of Five Thousand Dollars (\$5,000) so advanced by the defendant and wrongfully and improperly applied by the plaintiff as aforesaid.

(Sgd) SANFORD & TEED.

Defendant's Solicitors.

Delivered the 2nd day of April 1936.

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No. 5.

Amended Statement of Claim.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Writ issued the 22nd day of February, A.D. 1936.

Between

THE ROYAL BANK OF CANADA - - - - - Plaintiff

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - - Defendant.

Venue York.

AMENDED STATEMENT OF CLAIM.

1. The Plaintiff alleges that on or about the thirty-first day of October, A.D., 1933, the Defendant entered into an agreement in writing with New Lepreau, Limited, a body corporate under the laws of the Province of New Brunswick, for the purchase from said New Lepreau, Limited, of from one thousand to four thousand cords of draw shaved or rossed spruce and fir pulpwood, to be cut from certain lands owned or controlled by the said New Lepreau, Limited, situate at New River, in the Province of New Brunswick, to be delivered to the said Defendant at Fairville, in the Province of New Brunswick, at or for the price or sum of \$6.50 per cord F. O. B. Fairville.

2. The Plaintiff says that subsequently, to wit, on or about the first day of March, A.D., 1934, with the consent of the Defendant, one Ewart C. Atkinson was substituted in the said agreement for New Lepreau, Limited, the said Ewart C. Atkinson being the President of New Lepreau, Limited.

3. The Plaintiff further alleges that the said Ewart C. Atkinson, in order to finance his pulpwood operation, applied to the Plaintiff on or about the twenty-fourth day of January, A.D., 1934, for a revolving line of credit for his pulpwood operation, and requested the said Plaintiff to make advances to him, the said Ewart C. Atkinson, on the security of all the rough or draw shaved or sap peeled spruce and fir pulpwood then owned or which may thereafter be owned by the said Ewart C. Atkinson

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from time to time while any advances made under the said application above referred to remain unpaid, which said pulpwood may then or thereafter be in the Lawrence Flowage on the New River Stream in the County of Charlotte or elsewhere, notice of his intention to give security under the authority of Section 88 of The Bank Act to the said Plaintiff having been given by the said Ewart C. Atkinson on the twentieth day of January, A.D., 1934, and registered with the Assistant Receiver General at the City of Saint John in the Province of New Brunswick, on the twenty-second day of January, A.D., 1934.

4. That by assignment in writing bearing date the tenth day of March, 1934, the said Ewart C. Atkinson assigned and transferred to the Plaintiff all moneys, claims, rights and demands that he, the said Ewart C. Atkinson was entitled to under the said agreement or contract. 10

5. That on or about the twenty-sixth day of April, A.D., 1934, the said Defendant entered into another contract or agreement in writing with the said Ewart C. Atkinson, for the purchase by the Defendant of ten thousand cords of peeled spruce and fir pulpwood, to be cut from lands owned or controlled by said Ewart C. Atkinson in Charlotte County, in the Province of New Brunswick, to be delivered by the said Ewart C. Atkinson to the Defendant at Fairville, in the Province of New Brunswick, at or for the price 20 or sum of \$7.25 per cord F. O. B. Fairville, N. B.

6. That by assignment in writing bearing date the twenty-seventh day of May, 1934, the said Ewart C. Atkinson assigned and transferred to the Plaintiff all moneys, claims, rights and demands that he, the said Ewart C. Atkinson, was entitled to under the said last mentioned agreement or contract.

7. That on or about the sixteenth day of July, A.D., 1934, the said Ewart C. Atkinson, in order to further assist him in financing his pulpwood operations, applied to the Plaintiff for a revolving line of credit for his pulpwood operations, and requested the Plaintiff to make further advances 30 to him, the said Ewart C. Atkinson, on the security of all the rough or draw shaved or sap peeled spruce and fir pulpwood then owned or which may be owned by the said Ewart C. Atkinson from time to time while any advances made under the said application above referred to remain unpaid, which said pulpwood may then or thereafter be in the Lawrence Flowage on the New River Stream in the County of Charlotte, or elsewhere, which said application is supplementary to the application and promise dated the twenty-fourth day of January, A.D., 1934, and hereinbefore referred to in paragraph 3 hereof.

8. That between the twenty-fourth day of January, A.D., 1934, and 40 the eleventh day of January, A.D., 1935, the said Plaintiff made advances to the said Ewart C. Atkinson in connection with his pulpwood operations under the terms of the said two applications for credit hereinbefore referred to, and bearing date the twenty-fourth day of January, A.D., 1934, and the 16th day of July A.D. 1934 respectively, and the said Ewart C. Atkinson gave to the said Plaintiff his promissory notes payable to the said Plaintiff on demand, each bearing interest at the rate of seven per centum per

annum, at the times and for the respective amounts of such advances as and when the said advances were made by the said Plaintiff to the said Ewart C. Atkinson, and in addition thereto the said Ewart C. Atkinson gave to the said Plaintiff security under the provisions of Section 88 of The Bank Act on all the rough or draw shaved or sap peeled spruce and fir pulpwood then owned and in the possession of the said Ewart C. Atkinson, and situate in the Lawrence Flowage on New River Stream in the County of Charlotte, and elsewhere, as and when the said advances were made by the said Plaintiff to the said Ewart C. Atkinson as aforesaid, and there is now due and owing to the said Plaintiff on the said advances, for which the said Plaintiff holds security under Section 88 of The Bank Act on all the rough or draw shaved or sap peeled spruce and fir pulpwood of the said Ewart C. Atkinson situate in the Lawrence Flowage on the New River Stream, in the County of Charlotte, and elsewhere, the principal sum of \$8,000.00, together with interest thereon at the rate of seven per centum per annum, and represented by certain promissory notes of the said Ewart C. Atkinson payable to the said Plaintiff on demand, as hereinafter set out.

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9. That the said Ewart C. Atkinson cut and delivered to the said defendant under the said agreements hereinbefore referred to, which said agreements and all benefits thereunder had been assigned by the said Ewart C. Atkinson to the said Plaintiff, 6005.43 cords of pulpwood, the property of the said Plaintiff under and by virtue of the provisions of Section 88 of The Bank Act, but the Defendant did not pay the purchase price therefor, or any part thereof to the Plaintiff, and there is now due and owing thereon from the said Defendant to the said Plaintiff the sum of \$8,366.66 being the amount of the advances made by the said Plaintiff to the said Ewart C. Atkinson on his said pulpwood operations, together with interest thereon, and represented by certain promissory notes of the said Ewart C. Atkinson payable on demand to the said Plaintiff, all as shown in the particulars hereinafter set out.

10. In the alternative the Plaintiff says that during the months of November and December, 1934, and between the first day of January and the last day of July, 1935, the Defendant wrongfully deprived the Plaintiff of 6005.43 cords of pulpwood cut by the said Ewart C. Atkinson under the said agreements or contracts hereinbefore referred to, by removing the same to the Defendant's Mill at Fairville in the Province of New Brunswick, and converting the same to its own use without the consent of the said Plaintiff, which said pulpwood was at the time of said taking and converting the property of the Plaintiff.

11. The Plaintiff claims damages against the Defendant for the said wrongful taking and converting of the Plaintiff's pulpwood by the Defendant, as aforesaid, in the sum of \$8,366.66, being the principal amount and interest on the advances made by the Plaintiff to the said Ewart C. Atkinson in connection with his said pulpwood operations and represented by the promissory notes of the said Ewart C. Atkinson hereinbefore referred to, and as shown in the particulars hereof.

Particulars

<i>In the Supreme Court of New Brunswick (King's Bench Division). — No. 5. Amended Statement of Claim, 8th April, 1936—con- tinued.</i>	1934.						
	July	17	To amount of principal of promissory note	-	\$1,000.00		
			To interest on do. to Feb. 24, 1936	-	41.03		
			24	To amount of principal of promissory note	-	1,000.00	
				To interest on do. to Feb. 24, 1936	-	111.24	
			28	To amount of principal of promissory note	-	1,000.00	
				To interest on do. to Feb. 24, 1936	-	110.46	
		Aug.	2	To amount of principal of promissory note	-	1,000.00	
				To interest on do. to Feb. 24, 1936	-	109.50	10
			4	To amount of principal of promissory note	-	500.00	
				To interest on do. to Feb. 24, 1936	-	54.56	
			13	To amount of principal of promissory note	-	500.00	
				To interest on do. to Feb. 24, 1936	-	53.69	
			24	To amount of principal of promissory note	-	500.00	
				To interest on do. to Feb. 24, 1936	-	52.64	
			29	To amount of principal of promissory note	-	500.00	
				To interest on do. to Feb. 24, 1936	-	52.16	
			31	To amount of principal of promissory note	-	500.00	
				To interest on do. to Feb. 24, 1936	-	51.97	20
		Sept.	11	To amount of principal of promissory note	-	490.00	
				To interest on do. to Feb. 24, 1936	-	49.90	
			14	To amount of principal of promissory note	-	535.00	
				To interest on do. to Feb. 24, 1936	-	54.17	
		18	To amount of principal of promissory note	-	100.00		
			To interest on do. to Feb. 24, 1936	-	10.04		
	Oct.	9	To amount of principal of promissory note	-	100.00		
			To interest on do. to Feb. 24, 1936	-	9.64		
		26	To amount of principal of promissory note	-	100.00		
			To interest on do. to Feb. 24, 1936	-	9.34	30	
		31	To amount of principal of promissory note	-	100.00		
			To interest on do. to Feb. 24, 1936	-	9.22		
	Nov.	17	To amount of principal of promissory note	-	100.00		
			To interest on do. to Feb. 24, 1936	-	8.89		
	Dec.	7	To amount of principal of promissory note	-	200.00		
			To interest on do. to Feb. 24, 1936	-	17.03		
		13	To amount of principal of promissory note	-	250.00		
			To interest on do. to Feb. 24, 1936	-	21.00		
		27	To amount of principal of promissory note	-	200.00		
			To interest on do. to Feb. 24, 1936	-	16.26	40	
	1935.						
	Jan.	11	To amount of principal of promissory note	-	69.45		
			To interest on do. to Feb. 24, 1936	-	5.34		
		29	To amount of principal of promissory note	-	170.00		
			To interest on do. to Feb. 24, 1936	-	12.75		

 9775.28

CREDITS

1934									
July	30	By cash	-	-	-	-	-	\$ 4.59	
Aug.	31	By cash	-	-	-	-	-	28.55	
Sept.	30	By cash	-	-	-	-	-	43.18	
Oct.	31	By cash	-	-	-	-	-	46.95	
Nov.	17	By cash	-	-	-	-	-	25.00	
Nov.	30	By cash	-	-	-	-	-	45.73	
Dec.	7	By note	-	-	-	-	-	200.00	
10 Dec.	13	By note	-	-	-	-	-	250.00	
	27	By note	-	-	-	-	-	200.00	
	31	By note	-	-	-	-	-	47.68	
1935									
Jan.	11	By note	-	-	-	-	-	69.45	
	29	By note	-	-	-	-	-	170.00	
	30	By cash	-	-	-	-	-	47.38	
Feb.	28	By cash	-	-	-	-	-	42.95	
March	31	By cash	-	-	-	-	-	47.56	
April	30	By cash	-	-	-	-	-	46.02	
20 May	31	By cash	-	-	-	-	-	47.56	
June	30	By cash	-	-	-	-	-	46.02	
									\$1,408.62
									<u>\$8,366.66</u>

*In the
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Brunswick
(King's
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Division).
No. 5.
Amended
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8th April,
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The Plaintiff claims the sum of \$8,366.66.

Dated the Eighth day of April, A.D., 1936.

(Sgd) HANSON, DOUGHERTY & WEST,
Plaintiff's Solicitor.

To Messrs. Sanford & Teed,
Defendant's Solicitor.

In the
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Court of
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No. 6.

Defence to Amended Statement of Claim.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Between

THE ROYAL BANK OF CANADA - - - - - Plaintiff

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - - - Defendants.

No. 6.
Defence to
Amended
Statement
of Claim,
21st April,
1936.

DEFENCE TO AMENDED STATEMENT OF CLAIM.

1. The defendant admits the allegations contained in paragraph 1 of the Statement of Claim. 10

2. The defendant admits that on or about the 1st day of March 1934 the defendant consented to the substitution of Ewart C. Atkinson for New Lepreau Limited in the Agreement described in paragraph 1 of the Statement of Claim. The defendant admits that the said Ewart C. Atkinson was at all material times the President of New Lepreau Limited, but the defendant says that the defendant was at all material times the owner of two hundred and forty-one (241) shares of the capital stock of New Lepreau Limited and that while the said Ewart C. Atkinson was the registered holder of 241 shares of the capital stock of New Lepreau Limited at all material times, he, the said Ewart C. Atkinson, had pledged or hypothecated the said shares to the plaintiff and that the plaintiff was at all material times the beneficial owner of the said 241 shares registered in the name of the said Ewart C. Atkinson. The defendant says that the 241 shares owned by it, the defendant, and the 241 shares registered in the name of the said Ewart C. Atkinson, but at all material times beneficially owned by the plaintiff, was and is all the outstanding stock of New Lepreau Limited, except directors' qualifying shares. 20

3. The defendant admits that the said Ewart C. Atkinson applied to the plaintiff for loans or advances on security of the pulpwood cut or to be cut under the said Agreement or Contract dated the 31st day of October 1933. The plaintiff, however, denies that the said application for advances was made for the purpose of financing the said pulpwood operations. The defendant says that on the 24th day of January 1934 and previously the plaintiff well knew that under the said Contract or Agreement dated the 31st day of October 1933, the plaintiff had made and was then making advances for the purpose of carrying on the said operations. 30

4. The defendant admits that notice of intention to give security to the plaintiff under Section 88 of The Bank Act was given by the said Ewart C. Atkinson on or about the 20th day of January 1934 and registered with the Assistant Receiver-General at the City of Saint John in the Province of New Brunswick on the 22nd day of January 1934. 40

5. The defendant does not admit that the plaintiff was requested by the said Ewart C. Atkinson to make advances on the security of all the rough or draw shaved or sap peeled spruce or fir pulpwood then owned, or which might thereafter be owned, by the said Ewart C. Atkinson from time to time while any such advances were unpaid, which pulpwood was or might thereafter be in Lawrence Flowage on the New River Stream in the County of Charlotte or elsewhere, and puts the plaintiff to the proof thereof.

*In the
Supreme
Court of
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6. The defendant admits that by Assignment in writing bearing date the 10th day of March 1934 the said Ewart C. Atkinson assigned and transferred to the plaintiff all moneys, claims, rights and demands that he the said Ewart C. Atkinson was entitled to under the said Contract dated the 31st day of October 1933, and that a copy of the said Assignment was delivered by the plaintiff to the defendant on or about the 16th day of March 1934. The defendant does not admit that the said Assignment of Contract was made for the purpose of further securing the said plaintiff against advances made or to be made by the plaintiff to the said Ewart C. Atkinson under the said Agreement or Contract.

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7. The defendant admits the allegations set forth in paragraph 5 of the Statement of Claim.

8. The defendant admits that by Assignment in writing bearing date the 26th day of May 1934 the said Ewart C. Atkinson assigned to the plaintiff all moneys, claims, rights and demands that he the said Ewart C. Atkinson was entitled to under the said Contract dated the 26th day of April 1934, and that a copy of the said Assignment was delivered by the plaintiff to the defendant on or about the 17th day of July 1934. The defendant does not admit the allegations of the plaintiff that the said Assignment of Contract was made for the purpose of securing the plaintiff against the advances made or to be made to the said Ewart C. Atkinson by the Plaintiff under the said Agreement or Contract. The defendant further says that it was not aware of the said Assignment dated the 26th day of May, 1934 until the said copy thereof was delivered by the plaintiff to the defendant on or about the 17th day of July 1934.

9. The defendant admits that on or about the 16th day of July 1934 as alleged in the Statement of Claim the said Ewart C. Atkinson applied to the plaintiff for loans and advances on security of the pulpwood cut or to be cut under the Agreement or Contract dated the 26th day of April 1934 as set forth in paragraph 5 of the Statement of Claim. The defendant does not admit that the said security was to be on the rough or draw shaved or sap peeled spruce and fir pulpwood then owned or which may be owned by the said Ewart C. Atkinson from time to time while advances made under the said application remained unpaid, which said pulpwood was in the Lawrence Flowage on the New River Stream, nor does the defendant admit that the said application for credit dated the 16th day of July 1934 was supplementary to the application for credit dated the 24th day of January

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1934. The defendant says that at the time of the application for credit dated the 16th day of July 1934 it was understood and agreed between the plaintiff and the said Ewart C. Atkinson that any security to be taken for advances made under the said application for credit dated the 16th day of July 1934 would be taken on pulpwood cut or to be cut under the Contract dated the 26th day of April 1934 and not otherwise.

10. The defendant admits that between the 24th day of January 1934 and the 11th day of January 1935 the plaintiff made certain advances to the said Ewart C. Atkinson totalling in all the sum of Eight Thousand Dollars (\$8,000.00). The defendant does not admit, however, that the said advances were made in connection with the pulpwood operations of the said Ewart C. Atkinson. The defendant says that of the advances so made by the plaintiff to the said Ewart C. Atkinson the sum of Five Thousand Dollars (\$5,000.00) was advanced as follows:

1934		
January	24	\$1,000.00
February	15	500.00
February	24	500.00
March	14	500.00
March	19	500.00
May	28	1,000.00
June	2	200.00
June	8	200.00
June	14	200.00
June	15	200.00
June	30	500.00
		\$5,000.00

The defendant says that the advances above set forth are the only advances made by the plaintiff to the said Ewart C. Atkinson between the 24th day of January and the 17th day of July 1934 which were available to the said Ewart C. Atkinson. The defendant further says that if any security was taken by the plaintiff under the provisions of Section 88 of The Bank Act for such advances that the said security was taken upon pulpwood cut or to be cut under the terms of the said Contract for draw shaved pulpwood dated the 31st day of October 1933, and not otherwise, and were made under the application for credit dated the 24th day of January 1934 referred to in paragraph 3 of the Statement of Claim. The defendant says that if the said moneys were advanced by the plaintiff to the said Ewart C. Atkinson, that the plaintiff purported to take at the time of each advance security on the said pulpwood cut or to be cut under the provisions of the Contract dated the 31st day of October 1933.

11. The defendant says that if any further advances were made by the plaintiff to the said Ewart C. Atkinson other than those stated in paragraph

10 of this Statement of Defence, the said further advances totalled Three Thousand Dollars (\$3,000.00) and were made as follows :

1934		
July	17	\$1,000.00
	24	1,000.00
	28	1,000.00
		<hr/>
		\$3,000.00

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The defendant says that the above advances totalling Three Thousand Dollars were the only advances, if any, made by the plaintiff to the said Ewart C. Atkinson upon the security of the pulpwood cut or to be cut under the provisions of the Contract dated the 26th day of April 1934 which were available to the said Ewart C. Atkinson. The defendant denies that the plaintiff holds any security under Section 88 of The Bank Act on any rough or draw shaved or sap peeled spruce and fir pulpwood which was situate on the Lawrence Flowage in the New River Stream in the County of Charlotte in the sum of Eight Thousand Dollars (\$8,000) or in any other amount. The defendant says that if the plaintiff holds any purported security under Section 88 of The Bank Act on any of the said pulpwood, the said security is invalid as being taken in contravention of Sections 88 and 90 of The Bank Act, and for the following reasons :

(a) The said Ewart C. Atkinson was not at any time when the plaintiff claims that security was given to the plaintiff on the said pulpwood or at any other time the owner of the said quantity of 6005.43 cords of pulpwood or any part thereof. The defendant says that of the said 6005.43 cords of pulpwood cut and delivered by the said Ewart C. Atkinson to it the defendant under the said two Contracts dated the 31st of October 1933 and the 26th of April 1934, 5483.09 cords were cut upon Crown Lands within the limits of a license held by New Lepreau Limited and by virtue of the authority of such license, and the defendant says that the said quantity of pulpwood was at all material times owned by His Majesty the King in Right of the Province of New Brunswick under the provisions of Chapter 30 R S N B 1927 Section 19 as amended by Chapter 22 of the Acts of Assembly 1933, by reason of the fact that the stumpage thereon had not been paid and was not paid until after the said pulpwood had been delivered by said Ewart C. Atkinson to the defendant at its Mill at Fairville in the County of the City and County of Saint John, when such stumpage was paid by the defendant to the Provincial Secretary-Treasurer of New Brunswick.

(b) The defendant further says that the balance of the said quantity of 6005.43 cords of pulpwood so delivered by the said Ewart C. Atkinson to the defendant amounting to 522.34 cords was cut upon lands of Fraser Company Limited or the Restigouche Company Limited without the consent or license of the said Fraser Company Limited or the Restigouche Company Limited, and the said quantity of 522.34 cords of pulpwood at no time became the property of the said Ewart C. Atkinson. The defendant says that the title

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to the said quantity of 522.34 passed direct from the Fraser Company Limited and/or Restigouche Company Limited direct to the defendant upon the payment by the defendant to Fraser Company Limited and/or Restigouche Company Limited of the stumpage thereon, amounting to Ten Hundred and Forty-four Dollars and Sixty-eight Cents (\$1044.68) which stumpage was paid after the said pulpwood had been delivered to the defendant by the said Ewart C. Atkinson at its Mill at Fairville aforesaid.

(c) The defendant further says that the plaintiff having previous to the 17th day of July 1934 purported to take security on the said draw shaved pulpwood cut or to be cut under the provisions of the Contract dated the 31st day of October 1933 in the amount of Five Thousand Dollars (\$5,000), subsequent to the 17th day of July 1934 purported to make further advances to the said Ewart C. Atkinson upon the security of the pulpwood cut or to be cut under the Contract dated the 26th day of April 1934, but the defendant says that the sum of Eight Thousand Dollars (\$8,000) so claimed by the plaintiff to have been advanced by it to the said Ewart C. Atkinson upon security of the said pulpwood cut or to be cut under the provisions of the Contract dated the 26th day of April 1934, the defendant applied the sum of Five Thousand Dollars (\$5,000) in payment to the plaintiff of the monies claimed by it to have been previously advanced to the said Ewart C. Atkinson upon the draw shaved pulpwood cut under the provisions of the Contract dated the 31st day of October 1933, and that the said sum of Five Thousand Dollars (\$5,000) was not available to the said Ewart C. Atkinson, but was used by the said plaintiff in paying to itself previous advances claimed by it to have been made and secured upon the draw shaved pulpwood as aforesaid.

(d) The defendant further says that some or all of the moneys totalling Eight Thousand Dollars (\$8,000) claimed by the plaintiff to have been advanced to the said Ewart C. Atkinson were applied by the Plaintiff in payment to it the plaintiff of the principal of or interest on previous existing indebtedness to the plaintiff of New Lepreau Limited and the said Ewart C. Atkinson.

(e) The defendant further says that all securities or purported security which the defendant took between the 24th day of January 1934 and the 17th day of July 1934 upon the draw shaved wood cut or to be cut under the provisions of the Contract dated the 31st day of October 1933 and which was purported to be given by the said Ewart C. Atkinson have been cancelled and surrendered by the plaintiff.

(f) The defendant says that at the time or times when the plaintiff made advances to the said Ewart C. Atkinson as set forth in the Statement of Claim or took or purported to take security on the said pulpwood cut or to be cut under the said Contracts dated the 31st day of October 1933 and the 26th day of April 1934, the defendant well knew that the said Ewart C. Atkinson was engaged in cutting the said pulpwood under Contract with the Defendant for the delivery of the said pulpwood to the defendant at the prices named in the said Contracts and set forth in the Statement of Claim. The defendant says that the plaintiff also well knew at all

material times that under the said Contracts the defendant had made advances to the said Ewart C. Atkinson on account of the purchase price of the said pulpwood and was bound by the said Contracts to make further advances to the said Ewart C. Atkinson or for his account for the purposes of enabling the said Contracts to be completed and the pulpwood in question to be delivered to the defendant. The defendant also says that at all material times the plaintiff well knew the said pulpwood so cut by the said Ewart C. Atkinson was being cut by him on behalf of the defendant and that all rights of cutting the said pulpwood were being exercised by the said Ewart C. Atkinson on behalf of the defendant, and that any interest of the said Ewart C. Atkinson in the said pulpwood was held by him on behalf of the defendant and in trust for it.

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tinued.*

12. The defendant admits the allegation set forth in paragraph 9 of the Amended Statement of Claim, that the said Ewart C. Atkinson cut and delivered to the defendant under the said Agreements hereinbefore referred to the sum of 6005.43 cords of pulpwood. The defendant denies the allegations of the plaintiff that the said pulpwood was the property of the plaintiff under the provisions of Section 88 of The Bank Act and repeats paragraph 11 of the Statement of Defence, and sub-paragraphs thereof numbered (a) to (f). The defendant says that of the said quantity of 6005.43 cords of pulpwood delivered to it by the said Atkinson, the amount of 707.17 cords was wood cut and delivered under the Contract dated the 31st day of October 1933, and the balance amounting to 5297.26* cords so cut and delivered to the defendant under the Contract dated the 26th day of April 1934. The defendant denies that it did not pay the purchase price for the said wood or that there is due and owing to the plaintiff the sum of Eight Thousand Three Hundred and Sixty-six Dollars and Sixty-six Cents (\$8,366.66) or any other amount.

**(sic)*

13. The defendant says that from and after the 16th day of March 1934, being the date on which the defendant first received notice that moneys payable to the said Ewart C. Atkinson under the Contract dated the 31st day of October 1933 had been assigned to the plaintiff, it the defendant did pay to the said plaintiff and the said Ewart C. Atkinson jointly all moneys thereafter accruing due to the said Ewart C. Atkinson under the terms and conditions of the said Contract dated the 31st day of October 1933, and the said moneys so paid to the plaintiff and the said Ewart C. Atkinson jointly were received by the plaintiff. The defendant says that no further or other moneys, other than those so paid as aforesaid, are now due and payable by the defendant to the plaintiff or to said Ewart C. Atkinson under the said Contract dated the 31st of October 1933. The defendant says that all moneys payable by the defendant under the said Contract dated the thirty-first day of October 1933 as being the purchase price of the pulpwood delivered to the defendant thereunder which were not paid to the said Ewart C. Atkinson prior to the sixteenth day of March 1934 or paid to the said Ewart C. Atkinson and the plaintiff jointly after that date were applied by the defendant in payment for wages, supplies,

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tinued.*

stumpage, freight and other like charges of completing the said operation, as provided in the said Contract dated the thirty-first day of October 1933.

14. The defendant says that from and after the 16th day of July 1934, being the date on which the defendant first received notice that the moneys payable to the said Ewart C. Atkinson under the said Contract dated the 26th day of April 1934 had been assigned to the plaintiff, it the defendant did pay to the said plaintiff and the said Ewart C. Atkinson jointly all moneys thereafter accruing due to the said Ewart C. Atkinson under the terms and conditions of the said Contract dated the 26th day of April 1934, and the said moneys so paid to the plaintiff and the said Ewart C. Atkinson jointly were received by the plaintiff. The defendant says that no further or other moneys, other than those so paid as aforesaid, are now due and payable by the defendant to the plaintiff or to the said Ewart C. Atkinson under the said Contract dated the 26th day of April 1934. The defendant says that all moneys payable by the defendant under the said Contract dated the 26th day of April 1934 as being the purchase price of the pulpwood delivered to the defendant thereunder, which were not paid to the said Ewart C. Atkinson prior to the 16th day of July 1934 or paid to the said Ewart C. Atkinson and the plaintiff jointly after that date were applied by the defendant in payment for wages, supplies, stumpage, freight and other like charges of completing the said operation, all as provided in the said Contract dated the 26th day of April 1934.

15. In the alternative to sub-paragraph (c) of paragraph 11 of the Statement of Defence, and in further answer to the Statement of Claim, the defendant says that subsequent to the 17th day of July 1934 the defendant advanced to the said Atkinson under the said Contract dated the 26th day of April 1934 the sum of Five Thousand Nine Hundred and Fourteen Dollars and Ten Cents (\$5914.10), which moneys were paid to the plaintiff and the said Atkinson jointly pursuant to the assignment by the said Atkinson to the plaintiff of the moneys due to him under the said Contract as alleged in paragraph 6 of the Statement of Claim herein, and the defendant says that all such moneys came into the possession of the plaintiff. The defendant says that the plaintiff well knew that the said moneys were advanced by the defendant for the express and sole purpose of financing the operations to be carried on under the said Contract dated the 26th day of April 1934 and were to be applied for the purpose of the said operation, but the plaintiff wrongfully and improperly applied Five Thousand Dollars (\$5,000.00) of the said moneys so advanced by the defendant in reduction of the indebtedness of the said Ewart C. Atkinson to the plaintiff for advances made in connection with the said Contract dated the 31st day of October 1933.

16. The defendant claims that accounts should be taken and that the plaintiff should be required to credit upon the claims of the plaintiff against the said Ewart C. Atkinson for advances made by it, the plaintiff, to the said Ewart C. Atkinson for which the plaintiff claims security upon pulpwood cut or to be cut under the Contract dated the 26th day of April 1934 the said

sum of Five Thousand Dollars (\$5,000) so advanced by the defendant and wrongfully and improperly applied by the plaintiff as aforesaid.

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17. The defendant denies the allegations set forth in paragraph 10 of the Amended Statement of Claim. The defendant denies that at any time it, the defendant, removed the pulpwood referred to in paragraph 10 of the Statement of Claim to its Mill at Fairville in the Province of New Brunswick or to any other place. The defendant says that between the first of November 1934 and the last day of July 1935 the said Ewart C. Atkinson delivered and the defendant accepted at its Mill at Fairville aforesaid the said quantity of
10 6005.43 cords of pulpwood, but the defendant denies that at any time prior to delivery thereof at its Mill it in any way took possession of or intermeddled with the said pulpwood. The defendant denies that the said pulpwood or any of it was the property of the plaintiff at any time. The defendant further says that the plaintiff at no time was entitled to immediate possession of the said pulpwood or any part thereof.

No. 6.
Defence to
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21st April,
1936—*con-
tinued.*

(Sgd) SANFORD & TEED.

Defendant's Solicitors.

To—Messrs. Hanson, Dougherty & West
Plaintiff's Solicitors.

20 Delivered the 21st day of April
A.D. 1936.

No. 7.

Amendment to Defence to Amended Statement of Claim.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Between

THE ROYAL BANK OF CANADA - - - - - Plaintiff

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - - - Defendant.

No. 7.
Amendment
to Defence
to Amended
Statement
of Claim,
24th April,
1936.

30 AMENDMENT TO DEFENCE TO AMENDED STATEMENT OF
CLAIM.

Amend the Defence to the Amended Statement of Claim herein by striking out the word "defendant" where it appears as the third word in the third line on page 11, and substituting therefor the word "plaintiff."

Dated this twenty-third day of April, 1936.

(Sgd) SANFORD & TEED,

Defendant's Solicitors.

To Messrs. Hanson Dougherty & West
Plaintiff's Solicitors.

40 Delivered the 24th day of
April 1936

*In the
Supreme
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Brunswick
(King's
Bench
Division).*

No. 8.

Reply.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

Between

THE ROYAL BANK OF CANADA - - - - - *Plaintiff*

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - *Defendant.*

REPLY.

The Plaintiff joins issue with the Defendant on each and every of the allegations contained in the amended Statement of Defence, whereby the 10 said Defendant denies or does not admit the allegations contained in the amended Statement of Claim.

Dated this twenty-fifth day of April, A.D. 1936.

(Sgd) HANSON, DOUGHERTY & WEST,
Plaintiff's Solicitor.

To : Messrs. Sanford & Teed,
Defendant's Solicitor.

No. 9.
Amendment
to Defence
to Amended
Statement
of Claim,
19th Decem-
ber, 1936.

No. 9.

Amendment to Defence to Amended Statement of Claim.

IN THE SUPREME COURT, KING'S BENCH DIVISION.

20

Between

THE ROYAL BANK OF CANADA - - - - - *Plaintiff*

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - *Defendants.*

AMENDMENT TO DEFENCE TO AMENDED STATEMENT OF CLAIM

Amend the Defence by inserting therein after paragraph 14 on page 9, the following :

14.—(a). The defendant says that the said 6005.43 cords of pulpwood consisted of 707.17 cords of draw shaved wood, of which the purchase price was \$6.50 per cord, totalling \$4596.60, cut and delivered under the contract dated the 31st day of October 1933. The balance consisting of 5298.26 cords 30

was sap peeled wood of the value of \$7.25 per cord totalling \$38,412.37, cut and delivered under the contract dated the 26th day of April 1934, and the total value of said wood, 6005.43 cords of wood, amounted to \$43,008.97.

The defendant says that the price of the said wood was paid as follows :

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Division),

No. 9.
Amendment
to Defence
to Amended
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of Claim,
19th Decem-
ber 1936—
continued.*

	(1) Debit balance of New Lepreau Limited to the defendant on 1933 sap peeled contract carried forward and charged against the purchase price of the said wood cut under the contracts dated October 31st 1933 and April 26th, 1934	\$5,330.91
10	(2) Moneys paid to New Lepreau Limited and/or E. C. Atkinson under contract dated October 31st, 1933, prior to receipt by defendant of notice of assignment to the plaintiff of moneys payable under contract, and moneys subsequently paid to E. C. Atkinson and/or The Royal Bank which were received by the Bank	11,096.56
	(3) Moneys paid for wages for the operation	9,631.11
	(4) Moneys paid for supplies for the operation	4,482.31
20	(5) Moneys paid for stumpage, Crown Land Timber License fees, Workmen's Compensation Board Assessment	7,376.56
	(6) Moneys paid for rent, housing men for operation	26.00
	(7) Moneys paid for freight on wood received	5,607.81
	Total payments or damages - - - -	\$43,551.26

The defendant further says that after crediting against the said moneys so expended or charged against the operation the value of the said 6005.43 cords of wood received, there was and is still owing from the said E. C. Atkinson to the defendant the sum of \$542.29.

(Sgd) SANFORD & TEED

Defendant's Solicitors.

30

To Messrs Hanson, Dougherty & West
Plaintiff's Solicitors.

Delivered the 19th day of December
A.D. 1936.

In the
Supreme
Court of
New
Brunswick
(King's
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Division).
No. 10.
Opening
Proceedings
at Trial,
17th Novem-
ber, 1936.

No. 10.
Opening Proceedings at Trial.

IN THE SUPREME COURT, KING'S BENCH DIVISION,
York Circuit.

Before—CHIEF JUSTICE J. H. BARRY. Non-Jury.
Fredericton, N.B., Nov. 17th, 1936.
10.30 a.m.

THE ROYAL BANK OF CANADA - - - - - Plaintiff
vs.
PORT ROYAL PULP & PAPER COMPANY, LIMITED - - Defendants. 10

Appearances :

HON. R. B. HANSON, K.C. }
C. L. DOUGHERTY, ESQ. } - - - - - for Plaintiff
W. J. WEST, ESQ. }
M. G. TEED, ESQ. }
C. F. INCHES, K.C. } - - - - - for Defendant.

Mr. DOUGHERTY : I am appearing with Mr. Hanson for the plaintiff and move for trial.

Mr. INCHES : I am appearing with Mr. Teed for the defendant.

COURT : If I remember the pleadings, the statement of claim and defence were amended and we can throw the first ones aside. The amended statement of claim was a restatement of the whole claim ?

Mr. DOUGHERTY : Yes, and the amended defence is the same. Your Lordship has had the trial record for some time and I presume you are familiar with the nature of the case ?

COURT : I am not overly familiar with it.

Mr. DOUGHERTY : This is an action of the Royal Bank of Canada against the Port Royal Pulp and Paper Company Limited. It is a double-barrelled action. It is an action for goods sold, certain pulp wood sold and delivered and it is also an action for conversion of certain pulp wood by the defendant company which at the time of taking was the property of the plaintiff by reason of the assignment of certain contracts. It arises out of two pulp wood contracts between one Ewart C. Atkinson of this city and the Port Royal Pulp and Paper Company Limited,—the defendant. The first contract that Mr. Atkinson had was dated October 1933 for a certain quantity of pulp wood. The contract is admitted in the pleadings and we have the contract here. That contract at first was in the name of The New Lepreau Limited, a company owned and controlled by Mr. Ewart C. Atkinson. Subsequently, around the 20th. of January 1934

Mr. Atkinson applied to the Royal Bank of Canada for advances to assist in this pulp wood operation and made application for advances to the bank and went through the procedure of securing the bank for those advances under Section 88 of the Bank Act. Shortly after that by agreement between Mr. Atkinson and the Royal Bank and the defendant, Mr. Atkinson was substituted in this contract for The New Lepreau Limited because it was Mr. Atkinson who made the application to the bank for the advances and it was he who was receiving the advances from the bank in connection with this contract, and to make them all correspond it was agreed between

10 Mr. Atkinson and the bank and the defendant company, that Mr. Atkinson be substituted for The New Lepreau Limited. So we are dealing with Mr. Atkinson's contract as far as we are concerned here. Shortly after this contract was assigned by Mr. Atkinson to the bank, a notice of this assignment was given to the defendant company. Then about the 26th. of April 1934 Mr. Atkinson entered into another contract, which is the second contract referred to in the pleadings, for the supply of another quantity of pulp wood to the said defendant company. Application was made for further assistance to the bank and the contract was assigned by Mr. Atkinson to the bank and advances were made to him to assist him in connection

20 with the operation by the bank. There was some discussion during the summer between the defendant company and Atkinson and the bank which has no particular bearing on the statement of claim, but the Port Royal Pulp and Paper Company had we allege taken delivery of some 6005 cords of pulp wood from Mr. Atkinson, which pulp wood under the contracts had been assigned to the bank here. The quantity is in question here. They took some 1772 cords in the months of November and December 1934 and the balance amounting to 4200 cords in the months of May, June and July 1935. We allege in our statement of claim as to dealing with the conversion side that the Port Royal took some 4200 cords of the spring

30 shipment of 1935 when they had notice of the assignment. They took the whole thing after they had notice of the assignment. Under section 88 of the Bank Act they had notice of all that. But in addition to the constructive notice they had actual notice in May 1935 not to take any of that wood at all until the bank's claims for the advances under Section 88 of the Bank Act were settled. They took all the wood in the months of May, June and July and we have based our claim for conversion on that angle of it. What we are asking is the principal of the notes made by the bank as advances with interest. There is a great deal in the pleadings that is admitted. Our claim in this action is based on our security under Section 88

40 of the Bank Act and under the assignment of the contracts from Mr. Atkinson to the bank. That is one side of the case. The other side is the conversion under Section 88 and the assignment of the contract and the taking of the pulp wood by the defendant company supports our conversion claim.

*In the
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Brunswick
(King's
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Division).*

No. 10.
Opening
Proceedings
at Trial,
17th Novem-
ber, 1936—
continued.

*In the
Supreme
Court of
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(King's
Bench
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No. 11.

Hedley S. Murray, Examination.

HEDLEY S. MURRAY, called as a witness on behalf of the Plaintiff,
being duly sworn, testified as follows :

DIRECT EXAMINATION by Mr. DOUGHERTY.

Plaintiff's
Evidence.

No. 11.
Hedley S.
Murray,
Examina-
tion.

Mr. DOUGHERTY : There is one amendment I wish to make in the statement of claim—paragraph 8 of the amended statement of claim, second line, " 11th day of January " should read " 29th day of January." There is another amendment, in the particulars on page 7 of the amended statement of claim, " credits " starting " December 7th. by note—\$200.00." All of those down to January 29th six of them, that should be instead of " by note "—" by cash." 10

Q. Your name is Hedley S. Murray?—A. Yes.

Q. And you are the manager of the Royal Bank of Canada, Fredericton Branch?—A. Yes.

Q. And have been manager of the Fredericton Branch since when?—A. September 25th, 1925.

Q. And have been engaged in the banking business for how long?—A. Since April 18th, 1898.

Q. Are you acquainted with Mr. Ewart C. Atkinson of this city?—A. Yes. 20

Q. Starting in the winter of 1934 in January, did you have some dealings with Mr. Atkinson in connection with pulp wood operations that he was conducting?—A. Yes.

Q. What was the nature of your connection with Mr. Atkinson in these pulp wood operations?—A. He came to us and wanted advances for the purpose of carrying on his operation.

Q. And in due course were advances made to him?—A. Yes.

Mr. DOUGHERTY : I wish to offer in evidence contract between New Lepreau Limited and Port Royal Pulp and Paper Company dated October 31st, 1933.

Put in evidence as No. One.

Q. When did Mr. Atkinson make application for advances in connection with his pulp wood operation?—A. In January 1934.

Q. I show you this paper writing. Is that Mr. Atkinson's signature?—A. Yes.

Mr. DOUGHERTY : I offer a notice of intention of Mr. Ewart C. Atkinson to give security under the authority of Section 88 of the Bank Act, dated January 20th, 1934 and registered with the Assistant Receiver General at Saint John on the 22nd. of January 1934 as No. 911. 40

Put in evidence as No. 2.

Q. Are these notices of intention to give security under Section 88 of the Bank Act signed in duplicate and torn apart here at the perforated spot?—A. Yes.

Q. After this notice of intention was signed by Mr. Atkinson was any application for credit under the security of section 88 made to the bank by Mr. Atkinson?—A. Yes.

Q. I show this paper writing—Form 302?—A. Yes.

Q. What is that?—A. That is an application form required by section 88 regulations.

Q. And is Mr. Atkinson's signature to it?—A. Yes.

10 Mr. DOUGHERTY: I offer in evidence an application for credit from Mr. Ewart C. Atkinson to the Royal Bank of Canada under the provisions of section 88 of the Bank Act dated January 24th. 1934, bank's form 302.

Put in evidence as No. 3.

Mr. DOUGHERTY: I offer form 301 of the bank. It is an agreement as to the powers of the Royal Bank of Canada in relation to advances and the security held therefor, signed Ewart C. Atkinson and dated 24th January 1934.

Put in evidence as No. 4.

Mr. DOUGHERTY: I offer letter dated March 1st. 1934 from Port Royal Pulp and Paper Co. to E. C. Atkinson.

Put in evidence as No. 5.

20 Mr. DOUGHERTY: I offer assignment of contract from E. C. Atkinson to the Royal Bank of Canada dated March 10th. 1934. Assigning to the Royal Bank the contract dated October 31st. 1933 made between E. C. Atkinson and the Port Royal Pulp and Paper Company covering 1000 to 4000 cords of pulp wood.

Put in evidence as No. 6.

Mr. DOUGHERTY: By consent I am offering in evidence copy of letter from Mr. Murray, manager of the Royal Bank of Canada at Fredericton, to the Port Royal Pulp and Paper Company dated March 12th. 1934.

30 Mr. HANSON: The defendants have not produced the original letter or the original assignment. I want it clear on the record that there was a copy enclosed and they received it. It is admitted for the purpose of this trial that this letter was written on the 12th. of March 1934 and actually received and that it contained a duplicate of the assignment of the 10th. of March 1934, assigning the contract number one in evidence of the 31st. of October 1933.

Put in evidence as No. 7.

Mr. DOUGHERTY: I offer original letter from the Port Royal Pulp and Paper Company to the Royal Bank, Fredericton, dated March 16th. 1934.

40 Put in evidence as No. 8.

Q. I show you exhibit number eight. Reference is made in that letter to some \$4000 over-advanced on the other contract. Do you know what that contract would be, or not?—A. I don't know anything about it, no.

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Plaintiff's
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tinued.

Mr. DOUGHERTY: I offer original letter from H. S. Murray, manager of the Royal Bank of Canada at Fredericton, to Port Royal Pulp and Paper Company dated March 20th. 1934.

Put in evidence as No. 9.

Mr. DOUGHERTY: I offer original contract made between Ewart C. Atkinson and Port Royal Pulp and Paper Company dated April 16th. 1934.

Put in evidence as No. 10.

Mr. DOUGHERTY: That is for 10,000 cords of peeled spruce and fir pulp wood.

Mr. DOUGHERTY: I offer assignment from Ewart C. Atkinson to the 10
Royal Bank of Canada dated May 27th. 1934 of contract dated April 26th.
1934.

Put in evidence as No. 11.

Mr. DOUGHERTY: By consent I offer in evidence copy of letter dated
July 17th. 1934 from H. S. Murray, manager of the Royal Bank of Canada
at Fredericton to the Port Royal Pulp and Paper Company, St. John, N.B.

Put in evidence as No. 12.

Mr. DOUGHERTY: I offer original letter from Port Royal Pulp and
Paper Company Limited to E. C. Atkinson, Fredericton, dated July 14th.
1934.

20

Put in evidence as No. 13.

Mr. DOUGHERTY: This exhibit number 13 which is in evidence is
an agreement between Mr. Atkinson and the defendant company to change
the last contract so that the defendant company will take fall shipment up
to the quantity of three thousand cords instead of waiting until next spring.

Mr. DOUGHERTY: I offer application from E. C. Atkinson to the
Royal Bank of Canada for further credit under the provisions of section 88
of the Bank Act dated July 16th. 1934.

Put in evidence as No. 14.

Mr. DOUGHERTY: Exhibit No 14 is supplementary to application 20
and promise dated January 24th. 1934 for revolving line of credit on pulp
wood to the extent of ten thousand dollars on the security of all the rough
or draw shaved or sap peeled spruce and fir pulp wood in the Lawrence
flowage on the New River stream in the county of Charlotte or elsewhere.

Mr. DOUGHERTY: I offer another agreement as to the powers of the
Royal Bank of Canada under the provisions of the Bank Act dated July 16th.
1934 signed by E. C. Atkinson.

Put in evidence as No. 15.

Q. I show you exhibit number 12, which is a copy of letter from you
dated July 17th. 1934 to the Port Royal Pulp and Paper Company. (reads 40
letter)

" We enclose herewith our form Le 212, being an assignment of money
" due or becoming due under your contract with Mr. Atkinson, dated
" April 26th. 1934 for 10,000 cords of peeled spruce and fir pulp wood,
" of which you will take delivery of 3000 cords this summer as advised
" in your letter of the 14th. instant to Mr. Atkinson."

Would that be a copy or a duplicate?—A. It would be a duplicate of our form Le 212, which gave us an assignment of the moneys due under the contract mentioned therein dated April 26th. 1934.

Mr. DOUGHERTY: I offer original letter from the Port Royal Pulp and Paper Co. to the Royal Bank of Canada dated July 19th. 1934.

Put in evidence as No. 16.

Q. I show you that letter. Did that letter come to your attention at all?—A. I think Mr. Atkinson probably showed me that letter.

Mr. DOUGHERTY: Any objection?

10 Mr. INCHES: No.

Mr. DOUGHERTY: I offer letter from the Port Royal Pulp and Paper Company to E. C. Atkinson dated July 24th. 1934.

Put in evidence as No. 17.

Mr. DOUGHERTY: I offer original letter from H. S. Murray, Manager of the Royal Bank of Canada, Fredericton, to the Port Royal Pulp and Paper Company, St. John, dated December 13th. 1934.

Put in evidence as No. 18.

Mr. DOUGHERTY: I offer original letter from Port Royal Pulp and Paper Company to the Royal Bank of Canada dated December 21st. 1934.

20 Put in evidence as No. 19.

Mr. DOUGHERTY: I wish to offer in evidence a portion of the evidence of Ewart C. Atkinson taken on discovery.

COURT: You better read it into the record.

Mr. INCHES: Ewart C. Atkinson was examined by the defendant in the suit. The plaintiff, I submit, cannot use any of his evidence. The defendant examined one of their officials. That is evidence that we took on discovery. We can use parts of that examination if we want to, but I submit that the plaintiff cannot.

30 COURT: On that examination, although the order was taken out by your client, Mr. Inches, it will be open to you to introduce any parts of it you wish to into the record here. It will also be the right of the plaintiff to introduce into the record any other part of the examination which would modify or change or add to in any way.

Mr. INCHES: He has to wait until we introduce part of it first.

COURT: If the defendant does not put in part of that examination, I am not quite sure that you have any right. The evidence is sent to the clerk of the Court and he hands it to me and it is evidence per se. If you had a witness here to give viva voce evidence, it would be quite open to Mr. Hanson to call him if he wanted to.

40 Mr. HANSON: We won't press that now. We will have to call Mr. Atkinson. Mr. Atkinson is not a party to the action within the meaning of one of the rules under 31 and strictly speaking we cannot put in his examination unless the party calling him first puts in such portions of his examination.

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If they put part of his deposition in first, then we could put in the part we want to put in. We will call Mr. Atkinson. We will not press it at the moment.

Q. (By Mr. Dougherty) I show you a letter. Do you identify that letter?—A. Yes.

Q. Is that your signature?—A. Yes.

Q. That is a letter written by you?—A. Yes.

Q. Dated May 15th, 1935?—A. Yes.

Q. To E. C. Atkinson, Fredericton, N. B.?—A. Yes.

Mr. DOUGHERTY: I ask to have this letter marked for identification. 10
Letter marked for identification.

Mr. DOUGHERTY: It has been suggested by counsel that if we could adjourn now we might shorten up this case materially for this afternoon by agreement of what would be admissible in evidence by the parties.

COURT: This suit is I presume an honest dispute between two well known corporations—the Royal Bank of Canada and the Port Royal Pulp and Paper Company. The pleadings are somewhat voluminous and there has been admitted into the record here this morning quite a volume of correspondence. In order to make it easier for the Court to get at the merits of the case, the circumstances of which are somewhat involved, I 20
would like to have in short form a statement of the questions of fact that are in dispute, and then I would also like to have from Mr. Inches the reasons in law why you think the plaintiff is not entitled to recover. I do not think I would want any prolonged argument except you have some authorities.

Mr. HANSON: I had it in mind to suggest at the end of the evidence that we might submit briefs.

Recess.

Court resumes at 2.30 p.m. November 17th, 1936.

H. S. MURRAY, takes stand, direct examination continued by Mr. Dougherty. 30

Q. Mr. Murray, did you make advances to Mr. Atkinson on his pulp wood operations, and take notes and security therefor under the procedure under section 88 of the Bank Act?—A. Yes.

Q. Just what was your procedure and when did it start with reference to these two contracts that we are concerned with?—A. In January 1934 he applied to us for advances to carry on the pulp wood operations for wages mostly, and in accordance with the requirements of section 88 of the Bank Act we took form 399, which is a promise to give security. This was forwarded to the Receiver General, Saint John, registered.

Q. Is that not really a notice?—A. Yes, notice of intention to give 40
security—form 399. This was registered by the Receiver General and one of the duplicate forms returned to us with the date of registration on the back. Upon receipt we obtained the usual application forms.

Q. Application forms—I show you exhibit number three. Is that the first application form?—A. Yes.

Q. Of January 24th, 1934?—A. Yes.

Q. All right?—A. And also that next form 301.

Q. You took that at the same time?—A. Yes.

Q. "Agreement as to the powers of the Royal Bank of Canada in relation to all advances and securities held therefor"?—A. Yes.

Q. Exhibit number four?—A. Yes, we made that out for one thousand dollars and in that connection took form 303.

Q. And is that the form that you refer to?—A. Yes.

Q. That is the actual one you took dated January 24th, 1934?—A. Yes.

10 COURT: What quantity of pulp wood does the bank claim that the defendant pulp people got of theirs?

Mr. HANSON: 6005 cords.

COURT: Is it in the particulars?

Mr. HANSON: Yes.

COURT: What value are you putting on it?

Mr. HANSON: The value is stated in the contract itself. One contract at so much and the other contract at so much. The bank is claiming only the amount of its advances, to the extent of its title in the wood. All we are asking is for our advances and interest.

20 COURT: Can you differentiate between the two contracts?

Mr. HANSON: Yes. It is worth much more than the claim.

COURT: The pulp people have gotten enough of the plaintiff's pulp to more than liquidate the claim?

Mr. HANSON: Yes.

Q. I show you a number of forms 303, security taken by the bank from Mr. Atkinson under section 88—from one to 41 inclusive—A. These forms were taken separately with each note—each advance.

Q. The first one is dated January 24th, 1934?—A. That advance was the start—\$1000.

30 Q. And the last one is dated January 29th, 1935, for how much?—A. The advance on that date was \$170, being a renewal, but the form covers the whole indebtedness of eight thousand dollars, which is in accordance with the requirements of the act.

COURT: I suppose you don't deny that—that proposition is not denied that assuming for the moment that the pulp wood that the defendant company got and Atkinson cut, its value would be far more now than the value of the advances by the bank that they are now claiming for? You admit that?

Mr. INCHES: Yes.

40 COURT: The whole question turns on the ownership of the pulp.

Q. You take these forms 303 that we are referring to from one to forty one for a moment—will you just tell us with reference to which one of them—what was done by you in connection with the advances to

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Mr. Atkinson? Take number one first and so on? Do you understand what I mean?—*A.* Yes. It is a long proposition. I can stand here and do it.

Q. Start with number one dated January 24th, 1934. We want to get on the record just what these are?—*A.* That form was taken when the first advance of one thousand dollars was given on January 24th, 1934.

Q. That form was taken from whom?—*A.* Mr. Atkinson.

Q. What became of that note?—*A.* I have not got that note.

Q. Was there a note given with that form?—*A.* Yes.

Q. For how long?—*A.* Demand note.

Q. What became of that note?—*A.* That note of April 24th, 1934 for three hundred dollars was paid on account by a cheque deposited to the Sales Account.

Q. What is the Sales Account?—*A.* I might explain that in accordance with the requirements of Section 88 security, the act or the practice is to conduct two current accounts, one is a Sales Account in which are deposited all receipts and debits against this account, which are applied on the first note current or the oldest note current. If new advances are required it is necessary to take a note for the amount which is placed to the credit of a Disbursements Account against which cheques are paid. And I might mention before that this one thousand dollars first note was credited to the Disbursements Account against which cheques issued were paid. That is the general set up of operating under Section 88.

Q. And you say in April three hundred dollars was paid on that first one thousand dollars note?—*A.* Yes, on April 24th, there was three hundred dollars applied on account of that one thousand dollars note.

Q. Then was it renewed?—*A.* No. Then on May first two hundred dollars was applied on it, and again on May nineteenth, a further two hundred dollars. The balance was liquidated on June 5th.

Q. And it was all paid on June 5th.?—*A.* Yes, but in the meantime new advances had been given.

Q. And what happened to the first note after it was fully liquidated?—*A.* The first note was delivered to Mr. Atkinson.

Q. While that note was current were further advances given to Mr. Atkinson?—*A.* Yes.

Q. Give me them in their order?—*A.* February 15th, 1934 was the second advance—five hundred dollars.

Q. And was a demand note taken?—*A.* Yes, they are all demand notes.

Q. And with every one of these securities taken was there a corresponding note taken from Mr. Atkinson by the bank at the same time?—*A.* Yes.

Q. What happened then?—*A.* This note of June 5th, 1934 was reduced four hundred and fifty dollars by payment and the balance of Fifty Dollars was paid on June 23rd.

Q. And that also went in Mr. Atkinson's vouchers at the bank?—*A.* Yes.

Q. When was the next advance and the amount of it—number three?—*A.* February 24th.—five hundred dollars, demand note.

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Q. And is this number three security taken at that time?—A. Yes.

Q. And a corresponding note?—A. Yes.

Q. And that note has been paid and is not now current?—

Mr. INCHES : I think we can shorten it up by getting down to current notes?—A. There is a complete record of them here.

Q. Then the next advance was number four?—A. March 14th. 1934—\$500.

Q. And has that one been liquidated?—A. Liquidated in a similar manner.

10 Q. And the corresponding note would be with Mr. Atkinson's vouchers?—A. Yes.

Q. And number five was when?—A. March 19th. 1934—\$500.

Q. And the corresponding note was taken from Mr. Atkinson?—A. Yes.

Q. What became of that note?—A. That note was eventually paid and is in his vouchers.

Q. Number six—when was that made?—A. April 24th. 1934—\$300.00.

Q. And a note taken from Mr. Atkinson at the time?—A. Yes.

Q. And what happened?—A. Eventually paid and in his vouchers.

Q. Number seven?—A. May first 1934—\$200.00.

20 Q. Advanced to Mr. Atkinson?—A. Yes.

Q. And security taken?—A. Yes, and note paid and in his vouchers.

Q. Number eight?—A. May 19th. 1934—\$200.

Q. And a corresponding note taken?—A. Yes.

Q. And has since been liquidated to the bank?—A. Yes.

Q. Number nine?—A. May 28th. 1934—\$1000.

Q. And a corresponding note taken from Mr. Atkinson at the time?—A. Yes.

Q. Which note has been paid?—A. Yes, and in his vouchers.

Q. Number ten?—A. June 2nd. 1934—\$200.00.

30 Q. And was a note taken with that?—A. Yes.

Q. What became of that note?—A. Eventually paid and delivered to Mr. Atkinson.

Q. Did you do all this yourself?—A. Yes.

Q. Number eleven?—A. June 5th.—\$750.00.

Q. And a corresponding note taken from Mr. Atkinson payable on demand?—A. Yes.

Q. And that note I understand has been paid and liquidated to the bank and the voucher turned over to Mr. Atkinson?—A. Yes.

Q. And the twelfth advance?—A. June 8th. 1934—\$200.00.

40 Q. Was a note taken from Mr. Atkinson for that amount?—A. Yes.

Q. A demand note?—A. Yes.

Q. And was it subsequently paid?—A. Yes.

Q. And note itself delivered to Mr. Atkinson?—A. Yes.

Q. Number thirteen?—A. June 14th. 1934—\$700.00.

Q. And a note taken from Mr. Atkinson payable on demand?—A. Yes.

Q. What became of that note?—A. Eventually paid and delivered to Mr. Atkinson.

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tinued.

- Q. Number fourteen?—A. June 15th. 1934—\$200.00.
- Q. And a note taken at the time?—A. Yes.
- Q. What became of that note?—A. Eventually paid and turned over to Mr. Atkinson.
- Q. Was it paid in cash?—A. In cash by cheque deposited in the Sales Account.
- Q. And the fifteenth advance?—A. June 23rd. 1934—\$1200.00.
- Q. And was a note taken for that from Mr. Atkinson?—A. Yes.
- Q. And was that note paid off to the bank?—A. Yes, and note delivered to Mr. Atkinson. 10
- Q. And the sixteenth advance?—A. June 30th. 1934—\$200.00.
- Q. And a note also taken from Mr. Atkinson at the same time?—A. Yes.
- Q. And was that note paid?—A. Yes.
- Q. And delivered to Mr. Atkinson after payment?—A. Yes.
- Q. And the seventeenth advance?—A. July 4th. 1934—\$500.
- Q. And a corresponding note taken for that amount from Mr. Atkinson?—A. Yes.
- Q. And paid?—A. Yes, and delivered to him.
- Q. Eighteenth advance?—A. July 5th. 1934—five hundred dollars.
- Q. And a note taken from Mr. Atkinson at that time?—A. Yes. 20
- Q. And was that note paid?—A. Yes.
- Q. And delivered over to Mr. Atkinson after payment?—A. Yes.
- Q. The nineteenth advance?—A. July 9th. 1934—\$300.00.
- Q. And a corresponding note taken for that amount?—A. Yes.
- Q. And was it paid?—A. Yes.
- Q. And delivered over in Mr. Atkinson's vouchers by the bank?—A. Yes.
- Q. Twentieth advance?—A. July 12th. 1934—two hundred dollars.
- Q. And a note taken from Mr. Atkinson for same amount?—A. Yes.
- Q. And was that note paid?—A. Yes. 30
- Q. And paid note delivered to Mr. Atkinson?—A. Yes.
- Q. The twenty-first advance?—A. July 17th. 1934—\$1000.
- Q. I show you this note—is that the note?—A. Yes.
- Q. And there is due on that note now how much?—A. \$85.55 and interest.
- Mr. DOUGHERTY: We have run through the old ones and we have struck the first one of the current.
- Q. And you have certain endorsements on the face of it there. Are all these advances up to that date shown in the security taken?—A. Yes.
- Q. (By the Court) Is it correct that all these advances made from time to time under the two contracts were made to Mr. Atkinson?—A. Yes. 40
- Q. You never made any direct advances to the pulp company?—A. No.
- Q. But quite a number of the credits on the advances to Mr. Atkinson came to your office through the pulp people?—A. Yes.
- Q. They from time to time paid you money on those advances?—A. Yes.

Q. Were those payments made on account of Atkinson?—A. Yes, by cheques sent to the bank payable to the bank issued by the pulp company.

Q. (By Mr. Dougherty) And at the time this security number twenty-one was taken on the seventeenth of July 1934 what was Mr. Atkinson's current indebtedness then?—A. Six thousand dollars and interest.

Q. Then the next advance was made when—number twenty-two?—A. July 24th.—\$1000.

Q. I show you a note dated July 24th. Is that the note?—A. Yes.

10 Q. And is that note still current—unpaid?—A. Yes.

Q. All unpaid?—A. Yes, from now on.

Q. The next advance twenty-three, when was that made?—A. July 28th. 1934—\$1000.

Q. I show you this note of Mr. Atkinson's dated July 28th. 1934. Is that the note taken for that advance?—A. Yes.

Q. And is that note still unpaid with interest?—A. Yes.

Q. The twenty-fourth advance?—A. August 2nd. 1934—\$1000.

Q. And on August 2nd. there is a note of Mr. Atkinson's for one thousand dollars. Is that the note taken?—A. Yes.

20 Q. And you took number twenty-four security at that time?—A. Yes.

Q. And is that note still unpaid with interest?—A. Yes.

Q. The twenty-fifth advance made to Mr. Atkinson?—A. August 4th. 1934—\$500.

Q. I show you a note of Mr. Atkinson's dated August 4th. five hundred dollars payable to the bank. Is that the note you took at that time?—A. Yes.

Q. Is that note still unpaid with interest?—A. Yes.

Q. And you took security number twenty-five in this list at that time?—A. Yes.

30 Q. The twenty-sixth advance?—A. August 13th. 1934—\$500.

Q. And did you take a note from Mr. Atkinson?—A. Yes.

Q. I show you this note dated August 13th. 1934 for five hundred dollars signed by Mr. Atkinson. Is that the note?—A. Yes.

Q. And is that note unpaid with interest?—A. Yes.

Q. And you took security number twenty-six in the list at that time from Mr. Atkinson?—A. Yes.

Q. And the twenty-seventh advance?—A. August 24th. 1934—\$500.

Q. And you took a note from Mr. Atkinson?—A. Yes.

40 for Q. I show you this note dated August 24th. 1934 signed by Mr. Atkinson for five hundred dollars. Is that the note taken at that time?—A. Yes.

Q. Is that note unpaid both as to principal and interest?—A. Yes.

Q. And did you take number twenty-seven in the list of securities at that time?—A. Yes.

Q. And number twenty-eight advance to Mr. Atkinson?—A. August 29th. 1934—\$500.00.

Q. Did you take note and security at that time for the note?—A. Yes.

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tinued.

Q. I show you a note signed E. C. Atkinson dated August 29th, 1934. Is that the note you took at that time?—*A.* Yes.

Q. Is that note still outstanding?—*A.* Yes.

Q. And was there security taken at that time?—*A.* Yes.

Q. Number twenty-nine?—*A.* August 31st, 1934—\$500.

Q. And you took security at that time?—*A.* Yes.

Q. And you took a note from Mr. Atkinson at the same time?—*A.* Yes.

Q. I show you note dated August 31st, 1934 for five hundred dollars signed by Mr. Atkinson. Is that the note?—*A.* Yes.

Q. And is that note unpaid both as to principal and interest?—*A.* Yes. 10

Q. And the next advance to Mr. Atkinson?—*A.* September 11th, 1934—\$490.

Q. And did you take security number thirty in the list of securities from Mr. Atkinson at that time?—*A.* Yes.

Q. And did you take a note from Mr. Atkinson?—*A.* Yes.

Q. I show you note dated September 11th, 1934 for four hundred and ninety dollars signed by Mr. Atkinson payable to the bank?—*A.* Yes.

Q. Is that the note you took at that time?—*A.* Yes.

Q. And is that note unpaid?—*A.* Yes.

Q. Both as to principal and interest?—*A.* Yes. 20

Q. And the next advance that you made?—*A.* September 14th, 1934. \$535.00.

Q. At that time did you take this security number thirty-one in the list of securities?—*A.* Yes.

Q. And did you also take a note from Mr. Atkinson for the same amount?—*A.* Yes.

Q. I show you note dated September 14th, 1934 for five hundred and thirty-five dollars signed by Mr. Atkinson?—*A.* Yes.

Q. Is that the note you took at that time?—*A.* Yes.

Q. Is that note unpaid?—*A.* Yes. 30

Q. And the next advance to Mr. Atkinson was when, on these contracts?—*A.* September 18th, 1934—\$100.

Q. And did you take security number thirty-two in the list from Mr. Atkinson at that time?—*A.* Yes.

Q. And did you take a note from Mr. Atkinson at that time?—*A.* Yes.

Q. I show you note dated September 18th, 1934 for one hundred dollars signed by Mr. Atkinson. Is that the note you took from Mr. Atkinson at the time?—*A.* Yes.

Q. And is that note unpaid as well?—*A.* Yes.

Q. The next advance?—*A.* October 9th, 1934—\$100. 40

Q. Did you take security from Mr. Atkinson at that time?—*A.* Yes.

Q. Number thirty-three in the list of securities, is that the one you took on that occasion?—*A.* Yes.

Q. Did you take a note from Mr. Atkinson?—*A.* Yes.

Q. I show you note dated October 9th, 1934 for one hundred dollars signed by Mr. Atkinson. Is that the note you took on that occasion?—*A.* Yes.

- Q. Is that note paid?—A. No.
- Q. And the next advance?—A. October 26th. 1934—\$100.
- Q. I show you number thirty-four in the list of securities, is that the one you took on that occasion from Mr. Atkinson?—A. Yes.
- Q. Did you take a note at the same time?—A. Yes.
- Q. Note dated October 26th. 1934—one hundred dollars signed by Mr. Atkinson. Is that the note you took at that time?—A. Yes.
- Q. Is that note still unpaid?—A. Yes, with interest.
- Q. The next advance?—A. October 31st. 1934—one hundred dollars.
- 10 Q. Number thirty-five in the list of securities, is that the security you took at that time from Mr. Atkinson?—A. Yes.
- Q. Did you take a note from him too?—A. Yes.
- Q. This note dated October 31st. 1934 for one hundred dollars signed by Mr. Atkinson. Is that the note you took then?—A. Yes.
- Q. Is that note still unpaid?—A. Yes, with interest.
- Q. The next advance to Mr. Atkinson?—A. November 17th. 1934—\$100.
- Q. I show you security form number thirty-six. Is that the form of security you took at that time from Mr. Atkinson?—A. Yes.
- 20 Q. Did you take a note from him then?—A. Yes.
- Q. Here is a note dated November 17th/1934 for one hundred dollars signed by Mr. Atkinson. Is that the note you refer to?—A. Yes.
- Q. And is that note unpaid?—A. Yes.
- Q. The next advance to Mr. Atkinson?—A. December 7th. 1934—\$200.
- Q. And did you take security at that time?—A. Yes.
- Q. Here is number thirty-seven in the list of securities. Is that the form you took from Mr. Atkinson on that occasion?—A. Yes.
- Q. Did you take a note at that time?—A. Yes.
- 30 Q. I show you note dated December 7th. 1934 for two hundred dollars signed by Mr. Atkinson. Is that the note you took then?—A. Yes.
- Q. And is that note unpaid both as to principal and interest.—A. Yes.
- Q. The next advance was made when?—A. December 13th. 1934—\$250.00.
- Q. And did you take security from Mr. Atkinson at that time?—A. Yes.
- Q. Number thirty-eight is that the actual security you took at that time?—A. Yes.
- Q. And note?—A. Yes.
- Q. I show you note dated December 13th. 1934 for two hundred and
- 40 fifty dollars signed by Mr. Atkinson. Is that the note referred to?—A. Yes.
- Q. Is that note unpaid?—A. Yes.
- Q. Your next advance?—A. December 27th. 1934—\$200.
- Q. Did you take a formal security from Mr. Atkinson for that advance?—A. Yes.
- Q. Number thirty-nine is that the form you took from him on that occasion?—A. Yes.
- Q. Was a corresponding note taken?—A. Yes.

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Q. I show you note dated December 27th. 1934 for two hundred dollars signed by Mr. Atkinson. Is that the note referred to?—A. Yes.

Q. Is that note unpaid?—A. Yes, and interest.

Q. The next advance?—A. January 11th. 1935.

Q. What was the amount of the advance?—A. \$69.45.

Q. Did you take form of security from Mr. Atkinson then?—A. Yes.

Q. I show you number forty in the list of securities we have here, is that the one you actually took on that occasion?—A. Yes.

Q. Did you take a corresponding note from Mr. Atkinson?—A. Yes.

Q. I show you note dated January 11th. 1935 for \$69.45 signed by 10 Mr. Atkinson. Is that the note you refer to?—A. Yes.

Q. Has that note been paid?—A. No.

Q. And it is still unpaid?—A. Yes, with interest.

Q. And the last advance was made when?—A. January 29th. 1935—\$170.00.

Q. And number forty-one in the list, is that the form of security you took from him at that time?—A. Yes.

Q. And did you take a corresponding note?—A. Yes.

Q. I show you note dated January 29th. 1935 for one hundred and seventy dollars signed by Ewart C. Atkinson. Is that the note you refer to? 20 —A. Yes.

Q. Is that note unpaid?—A. Yes.

Q. Both as to principal and interest?—A. Yes. Total \$8,000.

Q. With interest?—A. Yes.

Q. Is eight thousand dollars the total indebtedness at the present time? —A. Yes.

Q. Under these advances?—A. Yes.

Q. Dealing with renewals—when did the renewals in this start?—A. I would say that the renewals started in July 1934.

Q. On July 28th. 1934 what were the advances to Mr. Atkinson at that 30 time?—A. Eight thousand dollars—that was the maximum advances.

Q. After that all subsequent advances made, would they be renewals? —A. After July 28th. 1934 when we received a cheque from say the Port Royal Company, for example—two hundred dollars—this amount was credited to the sales Account, debited to that account and applied on the oldest note. But in order that Mr. Atkinson could use the funds a new note was made out. The maximum amount was eight thousand dollars. This is a routine that we follow in carrying out Section 88 securities.

Q. So that his advances did not go above eight thousand dollars?—A. No. It is just a routine matter. We could have handed him over the 40 cheque and he could have used that, but in order to carry out the regulations under section 88 we took the money we received and applied it on the oldest note and in order to give him the benefit of some new money, we put through another note for the same amount.

Mr. DOUGHERTY: I offer in evidence all the securities taken by the bank from Mr. Atkinson for advances under these two contracts. They are fastened together and numbered on the corner one to forty-one.

Put in evidence as No. 20.

COURT: A group of securities taken by the bank from Mr. Atkinson and numbered one to forty-one are put in evidence under the general mark of exhibit number twenty.

Mr. DOUGHERTY: I offer the current notes, dated from July 17th. 1934 to January 24th. 1935, numbered in the same numbers twenty-one to forty-one as the corresponding securities.

Put in evidence as No. 21.

COURT: I would like to have made up—I am supposed to find the facts and I would like to have what the interest would be.

Mr. DOUGHERTY: We will have that all figured out. We have it up to the time of issuing the writ, but not since that. In the statement of claim we have the interest reckoned up to the 24th. of February, 1934.

COURT: Do those notes read from date until paid?

Mr. DOUGHERTY: Yes.

Q. The amount that is due, Mr. Murray, to the Royal Bank for these advances at the present time, is how much?—A. Eight thousand dollars principal and interest up to the end of October last.

Q. On which particular note is the interest?—A. The interest in arrears to the end of October this year was seven hundred and fifty dollars and some cents.

Q. You claim interest on each note that is still due and unpaid from the date of that note? Is that it?—A. We claim interest on each note that is unpaid—I presume it is from the date of the note, but I cannot say definitely until I see our records. I know the interest in arrears to the end of October was seven hundred and fifty dollars and some cents.

Q. As we were going over the various notes that were current on which we are claiming, I think you said that each one of these notes started —, the note dated July 17th. 1934 that there was a balance on that note of \$85.55?—A. Yes.

Q. With interest to the present time. Is that correct?—A. Yes.

Q. And then each succeeding note, that is the current note, has anything been paid on account at all on those notes?—A. No, I don't think so.

Q. Well, do you know?—A. I could tell definitely if I had the record here.

Q. Have you got that record?—A. Yes, accrued interest account.

Q. I would like to have that. Could you get it today?—A. I have the record here. I think I can clear this up for you right here.

Q. (By Mr. Inches) Are these statements you are looking at in your own writing?—A. They are all initialled by me.

Q. But not in your own writing?—A. These figures in here are not all in my own writing.

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Mr. INCHES : I ask that you do not look at them. We have expedited this trial this afternoon in an amazing way to your convenience. We met at lunch time to see what each one would admit. I am willing to allow in all these documents if you will do the same with us.

Mr. HANSON : Mr. McMackin's evidence is only hearsay. We cannot accept that unless we have some check on it. I cannot take Mr. McMackin's statement and say it is correct.

Q. Have you any record showing the accumulated interest on these notes that are still current and unpaid?—A. Yes.

Q. Have you it with you?—A. Yes.

Q. Has it been checked by you as manager of the bank?—A. Yes.

Q. As to correctness?—A. Yes.

Q. Then can you tell us from your bank records—

Mr. INCHES : What records are you looking at?—A. The records of these demand notes.

Q. Is that your writing?—A. There are my initials verifying each entry.

Q. When you initial each entry what does that mean?—A. That means I verify the entry.

Q. And did you reckon the interest yourself?—A. The interest is 20 reckoned by me personally?

Q. Yes?—A. I checked the interest.

Q. Did you reckon the interest personally yourself?—A. On these particular notes?

Q. Yes?—A. The interest is unpaid on the notes.

Q. Did you reckon the interest out yourself and put that entry in there?—A. No, there is no entry here of the actual interest due to date.

Mr. INCHES : I object to him looking at these documents.

Mr. DOUGHERTY : These records that Mr. Inches was asking you about when you told him it was not in your own handwriting, was it all 30 done under your direction as manager of the bank?—A. Yes.

Q. And did you check it yourself as you said you initialled all those entries? (*Sic?*—A. Yes.)

Q. And checked it as to correctness?—A. Yes.

Q. And you have the custody of these notes?—A. Yes. The interest on these notes is unpaid and has not been paid.

Mr. HANSON : I submit the witness has shown a sufficient background on which he can refer to these for the items.

COURT : What is your objection?

Mr. INCHES : My objection is that the witness has some bank records 40 that he did not prepare himself, and, therefore, he cannot look at them and put them in evidence in that way.

COURT : You don't expect the manager of the bank to do all the work of fourteen or fifteen clerks.

Mr. INCHES : I object on the ground that the records were not made by him.

COURT : Your objection is noted, but overruled.

Q. Tell us about the interest on these notes?—A. The interest has not been paid on the notes now current amounting to eight thousand dollars.

Q. And runs from when?—A. From the date of the notes.

Q. Each separate note?—A. Yes.

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CROSS-EXAMINATION BY MR. INCHES.

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10 Q. The bank having made a loan, what account was it that Mr. Atkinson would cheque against?—A. His personal account.

Q. And you would honour any cheques drawn by Mr. Atkinson against that account as long as there were funds there to meet them?—A. Yes.

Q. And you would have no check at all as to what moneys were used for that were drawn out by cheque?—A. I would see the cheques.

Q. You would see the name of the payee of the cheque?—A. Yes.

Q. But you would not know who the payee was?—A. I might.

Q. Did you have any check as to whether this money went into the pulp operations or not?—A. Yes.

20 Q. What check did you have on it?—A. I would know pretty well by the payee of the cheque what the money was for.

Q. How would you know that?—A. By the names.

Q. There would be many cheques would there not?—A. Several, yes.

Q. Tell me one name that you remember that one of these cheques was made payable to?—A. Kitchen Brothers.

Q. And he was paying money to Kitchen Brothers. Do you know what the money was for?—A. Supplies.

Q. Supplies for what?—A. Camp.

Q. How did you know it was for supplies for the camp?—A. I understood that was what it was for.

30 Q. You only understood that. You did not check up to see these moneys were used in the pulp wood operations?—A. Yes.

Q. What check did you make?—A. Inquiries.

Q. Inquiries from whom?—A. Mr. Atkinson.

Q. From anybody else?—A. No, some of the cheques were payable to firms like Kitchen Brothers and I had a good idea what they were for—supplies.

Q. It was only supposition on your part, was it not?—A. Not altogether.

40 Q. You don't know whether any goods that he bought from Kitchen Brothers went down there to the camp, do you?—A. I didn't ship them.

Q. You are not able to say whether a dollar of this eight thousand dollars went into the pulp wood operation or not, are you?—A. I know some of the cheques were payable to men that came up and got them cashed—laborers.

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Q. You had no personal knowledge that these men whom you suggest were laborers, worked on the job down there?—*A.* Most of them, we would ask them what they were doing and they would say they were cutting pulp for Mr. Atkinson.

Q. You don't know whether a dollar of that eight thousand dollars actually went into that pulp wood operation or not do you?—*A.* Yes.

Q. Will you swear to that?—*A.* Yes, these men came up and said they were cutting pulp for Mr. Atkinson and naturally—

Q. You personally don't know whether a dollar of that went into the pulp wood operation, do you?—*A.* I am quite sure that it did. I am quite sure that the money went for that purpose.

Q. Have you any proof at all that the money went for that purpose?—*A.* I was quite satisfied the money did go into that operation.

Q. That answer is not responsive to my question. Have you any proof whatever that a dollar of this money went into the pulp wood operation?—*A.* Well, as I said before, I cashed a great many cheques payable to laborers who said they were working on that contract down there for Mr. Atkinson cutting pulp.

Q. Is that all you can answer to that question?—*A.* At the present moment.

Q. I am showing you exhibit number fourteen, application for credit dated July 16th. 1934. In whose writing is that?—*A.* Mine.

Q. This is all your writing?—*A.* Yes.

Q. And is this your writing at the top?—*A.* Yes.

Q. When were those words "supplementary to application and promise dated Jan. 24/34" written there?—*A.* July 16th. 1934.

Q. Were those written there before Mr. Atkinson signed the document?—*A.* Yes.

Q. In Mr. Dougherty's opening he referred to the New Lepreau Limited as a company owned and controlled by E. C. Atkinson. Were you familiar with the corporate structure of the New Lepreau Limited at the time that you made the first loan in January 1934?—*A.* To a certain degree, yes.

Q. How many shares of the capital stock of the company had been issued to that date?—*A.* I think 489 shares.

Q. How were those 489 shares held?—*A.* All except two shares in the name of E. C. Atkinson. That is registration. All except two shares were registered in the name of E. C. Atkinson.

Q. In January 1934?—*A.* To the best of my knowledge.

Q. And who held the other two shares?—*A.* Officers of the company.

Q. Who were they?—*A.* I don't know just now. I cannot say at present.

Q. Where were the stock certificates representing these shares, do you know?—*A.* The Port Royal Pulp and Paper Company held a portion and we held some.

Q. How many did you hold, that is The Royal Bank of Canada?—*A.* If I remember correctly we had two hundred and forty-seven shares

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and the Port Royal Pulp and Paper Company had two hundred and forty-one shares.

Q. And you had those shares in your custody and endorsed to you in blank were they?—A. Yes.

Q. That you refer to?—A. Yes.

Q. How long did the bank hold those two hundred and forty-seven shares?—A. For some time.

Q. A period of years?—A. Not a period of years. Do you mean previous to 1934?

10 Q. Yes?—A. We held them for a few years, yes.

Q. And for what purpose were you holding them?—A. We were holding them as general collateral security for old advances.

Q. To whom?—A. Mr. Atkinson.

Q. And what sum did these advances amount to approximately in January 1934?—A. You are referring to Mr. Atkinson's old personal advances?

Q. Yes? Whatever advances you held those stock certificates as security for?—A. Approximately twenty-eight thousand dollars that is the old advances, the old personal advances.

20 Q. And is that indebtedness still outstanding?—A. Yes.

Q. And those shares are still held as security for that indebtedness?—A. We are holding them as general security.

Q. You said you were holding them as security for the old debt?—A. That is what we took them for.

Q. Then they were the majority shares in the company were they not?—A. Yes.

Q. Is it not a fact that the bank had control of that company?—A. I won't say that.

30 Mr. HANSON: That is a question of law and he should not be asked that.

COURT: It is a hypothetical question of law which I don't think has anything to do with this case. I would very much rather admit evidence if I had any doubt about it, but if it is objected to, I will have to rule it out.

Q. But you had the power at any time to become registered shareholders in this company had you not?

Mr. HANSON: That is another question of law and I object to it.

COURT: I think that is immaterial to me sitting here as a jury. I do not see how it affects the parties in the least and I will rule it out.

40 Q. Mr. Dougherty stated in his opening that the substitution of Mr. Atkinson's name for New Lepreau Limited's name in the contract of October 1933 was made because Mr. Atkinson had made an application for the loan in his own name. Do you agree with that?—A. I don't know why it was made. It was made before I received the assignment of the contract—the contract and the assignment.

Q. You had seen the contract in January when you made the first loan had you not?—A. I don't remember of seeing it.

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mination—
continued.*

Q. Do you remember what date it was that you first saw the contract?—
A. I cannot remember now the exact date.

Q. How long before you made the loan was it?—*A.* I don't know.

Q. Did you see it before you made the loan?—*A.* No.

Q. Did you know of it before you made the loan?—*A.* I knew he was entering into a contract with them for the cutting of pulp.

Q. You knew he had made one the previous October did you not?—
A. He told me he had made a contract with the New Lepreau to cut pulp for them.

Q. And just exactly what did he tell you about this contract?—*A.* He 10
said from one to four thousand cords.

Q. Of what kind of pulp wood?—*A.* I don't remember if he told me at that time what kind it would be.

Q. And did he tell you the price per cord?—*A.* Yes, he mentioned the price.

Q. And did he tell you the terms of payment?—*A.* I don't remember.

Q. Did you tell him to bring the contract in?—*A.* I probably did, yes.

Q. For the purpose of taking an assignment of it, is that it?—*A.* Yes.

Q. But you don't remember what date it was that he did bring the contract in pursuant to your request?—*A.* The date he brought it in was 20
the date of the assignment.

Q. When you told him to bring the contract in, did he agree to assign it to you at that time?—*A.* That is the customary procedure in handling transactions of that sort.

Q. When you told him to bring the contract in, it was for the purpose of making a formal assignment of it to the bank, was it not?—*A.* Yes.

Q. And you knew where this pulp wood was to be cut, did you not?—
A. I presumed it was to be cut down on his property.

Q. And your presumption that it was to be cut there was probably drawn from something that he said to you at the time, was it not?—*A.* 30
Probably.

Q. You were not going to loan money to get out pulp wood unless you knew where the pulp wood was coming from?—*A.* I would ask him where he was going to cut it.

Q. And therefore, you knew that he was going to get it from the New Lepreau Limited limits did you not?—*A.* I cannot say definitely whether he told me it was coming off the New Lepreau Limited limits or somebody else at that time. He told me he had a contract to cut from one to four thousand cords.

Q. You knew it was coming off the New Lepreau Limited limits?— 40
A. No, I did not know before I saw the contract.

Q. Will you swear you did not know that his intention was to cut it off the New Lepreau limits when he came in and told you that he had a contract to cut one to four thousand cords?—*A.* I do not know definitely whether he told me it was coming off the New Lepreau limits.

Q. But you assumed that it was —?—*A.* I cannot say that at the moment.

Q. Where did you think then it was coming from?—A. I presumed it was coming off their limits, but I didn't know definitely.

Q. Why did you presume it was coming off their limits?—A. He had a contract with the Port Royal and he had one the year before.

Q. Will you go over again and tell me what it was that Mr. Atkinson said to you when he came in in January and told you he had this contract of October?—A. As far as I know he told me he had a contract with the Port Royal Pulp and Paper Company to cut from one to four thousand cords of pulp.

10 Q. From where?—A. I don't remember exactly.

Q. But you say you assumed it was from the New Lepreau limits?—A. Well, probably I assumed that because he had a contract with the same company to cut wood the year before on those limits. I don't think the place was mentioned in our conversation, where the pulp wood was coming from.

Q. But you assumed where it was coming from?—A. It would not make any difference where he was getting it, as long as he was getting it.

Q. And at that time did you have in your possession the Crown Land lumber licences on that property?—A. No.

20 Q. When did you get them?—A. It was in the past year.

Q. When?—A. I don't remember definitely.

Q. The past year—that is 1935?—A. Some time during 1935.

Q. For what reason did you take over these licenses?—A. We did not take them over.

Q. Have you got them in your possession?—A. We are holding them there.

Q. What for?—A. They are just left with us.

Q. With whom?—A. Mr. Atkinson left them there.

Q. Did you look at them?—A. Yes.

30 Q. For what purpose?—A. Just to see what the mileage is—to check up on the mileage.

Q. Why did you want to do that?—A. No particular reason. I never looked at them very carefully. They are not hypothecated to us they are just left there.

Q. You want that answer to stand—"for no particular reason"?—A. Yes.

Q. Then he did you say bring this contract in to you eventually? That is the contract of October 1933. I take it you read it through didn't you?—A. I read it, yes.

40 Q. In his presence?—A. Yes.

Q. Did you discuss it with him?—A. Not to any length.

Q. You saw the terms of payment set forth therein?—A. I read it through.

Q. I take it you saw everything in it, when you read it through. Is that right?—A. Yes.

Q. And at that time at any rate you knew where the lumber was coming from, didn't you?—A. I don't remember whether the contract

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read where the pulp wood was coming from or not, off what ground. I don't remember.

Q. I am showing you exhibit number three—application for credit dated January 24th. 1934. This is your writing you said?—*A.* Yes.

Q. The location of the goods is stated to be "the Lawrence flowage on New River stream in the county of Charlotte"?—*A.* Yes.

Q. That would be an indication to you that it would be the New Lepreau Limited limits they were cutting off of, would it not?—*A.* (Not answered).

Q. Where would you get that language—"Lawrence flowage on New River stream in the county of Charlotte"?—*A.* Mr. Atkinson would give it to me. 10

Q. You would identify that district—"Lawrence flowage on New River stream in the county of Charlotte" as part of the New Lepreau Limited limits? Would you not?—*A.* I would be satisfied that it would be in the New Lepreau district.

Q. I suppose you would know that the title to this property would be in New Lepreau Limited?—*A.* Yes, at least I knew the New Lepreau Limited had limits down in Charlotte County.

Q. Did you see any agreement that Mr. Atkinson had with New Lepreau Limited giving him the right to cut timber from their limits?—*A.* No. 20

Q. Did you ask him if he had an agreement with them?—*A.* I don't remember of asking him.

Q. I am showing you this letter exhibit number five—Port Royal Pulp and Paper Co. Limited to E. C. Atkinson dated March 1st. 1934. How did that letter come in your possession?—*A.* It is addressed to Mr. Atkinson?

Q. Yes?—*A.* I don't know unless he handed it to us. If it ever was in our possession. I cannot say definitely that we ever had it. I cannot say we ever had that letter in our possession.

Q. At any rate the Port Royal Pulp and Paper Company on March 1st. 1934 advised Mr. Atkinson that they will agree to the change of name in the contract?—*A.* According to that. 30

Q. And they stated "We are charging against that contract the advances already made on this particular contract." Did Mr. Atkinson come in and tell you about receiving this letter?—*A.* I don't remember.

Q. The letter was put in evidence through you, while you were on the stand?—*A.* Through me?

Mr. HANSON: It was put in by consent.

Q. You cannot remember whether Mr. Atkinson discussed the contents of this letter with you or not?—*A.* I cannot remember definitely, no.

Q. On March twelfth according to exhibit number seven, you sent copy of the assignment of the contract of October 31st. 1933 to the Port Royal Pulp and Paper Company, and asked them in future to send all cheques direct to the bank. And you asked them to kindly advise you what payments they have made to date on the contract. Why did you want that information?—*A.* What payments or advances. 40

Q. "Kindly advise us what payments you have made to date on this contract"?—A. I would want to know what their advances were under the contract up to that time.

Q. For what purpose?—A. Just as a matter of record.

Q. Why would you want that as a record, if you say it is immaterial in this case whether they had made advances or not?—A. Things of that—

Q. What had you in mind in having that information as a matter of record in your bank?—A. I wanted to know if they had made any advances under the contract or not.

10 Q. You wanted to find out how much would be coming to you under the contract in the way of future payments, did you not?—A. Future payments?

Q. Yes?—A. Well, we wanted to know what they had advanced—if they advanced anything under it.

Q. You asked them to send cheques in future direct to your bank. Was not your reason for writing that to find out how much you could expect to get from the Port Royal in the future?—A. We wanted to know if they had made any advances on the contract up to that time.

20 Q. Why did you want to know that, and you said "just as a matter of record." I ask you now why you wanted it as a matter of record and I suggest to you it was because you wanted to know how much money would be coming to you in the future from the Port Royal. I ask you again—is that not so?—A. Not altogether no.

Q. Not altogether?—A. No.

Q. What do you mean by "not altogether"?—A. If we made advances before—not altogether—because—well, we wanted the information as a matter of record.

Q. And why as a matter of record?—A. I cannot give you any definite reason now.

30 Q. But you did have some reason in your mind at that time?—A. Not any definite reason, no.

Q. Do you mean to tell me you don't have definite reasons for writing letters?—A. I would not say that. We have reasons for writing letters, yes.

Q. But you cannot remember what your definite reason for writing that letter was, then?—A. Any more than I wanted to have the information how much they had advanced, if any.

Q. Why did you want to know that?—A. To see if they were interested in the contract by making advances on it.

40 Q. Do you mean advances in the future?—A. No, in the past. Up to that time.

Q. Do I understand that you are suggesting that your reason was to find out whether the Port Royal Pulp and Paper Company really considered there was a contract in existence?—A. No.

Q. Then what was the reason?—A. Whether the Port Royal Pulp and Paper Company had given Mr. Atkinson any advances.

Q. And again, why did you want to know that?—A. I cannot explain it.

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continued.

Q. There must have been some matter of real import to the bank in finding out or you would not have asked the question would you?—A. To find out if they had made any advances to Mr. Atkinson.

Q. Why did you want to know that?—A. I cannot say at present.

Q. You are on your oath now and you cannot say why you wanted that information, is that right?—A. I cannot explain it. As I said before—I wanted to know if they had made any advances to Mr. Atkinson.

Q. I suggest to you that your reason was to find out what prior claim they had to this wood. Was that not the reason?—A. No.

Q. You saw the contract in which they agreed to sell the wood?— 10

A. Yes.

Q. To the Port Royal Pulp and Paper Company?—A. Yes.

Q. And you wanted to find out how much they had paid on account?—

A. Yes, if they had paid anything on account.

Q. And why would it interest you to find out what they had paid on account?—A. I wanted to find out if they had made any advances or not.

Q. Why?—A. I wanted to find out if they had made any advances.

Q. I ask you why did you want to find out if they had made any advances?—A. We made advances in January and I wanted to find out if they had made any advances and see where the total advances stood. 20

Q. Why didn't you find out in January before you made any advances whether they had any advances or not?—A. I didn't know anything about the particulars of the contract then.

Q. You knew the quantities. Did Mr. Atkinson tell you at that time how much wood they had cut under that contract?—A. I don't remember definitely.

Q. In his evidence on discovery Mr. Atkinson stated they cut during October, November and December and had done all their cutting. Did he tell you that?—A. All the cutting of the four thousand cords?

Q. All the cutting under that contract?—A. I don't remember. 30

Q. But you do remember that he told you he had done some cutting?—

A. They did some cutting, yes.

Q. And what did he say to you which gave you the knowledge that they had done some cutting?—A. There was wages to be paid.

Q. He told you that there were some wages to be paid on this cutting?—A. Yes.

Q. Where did he tell you that he had been doing the cutting?—A. I don't remember whether we mentioned that particular point at the time.

Q. But you knew it was done on the New Lepreau limits, did you not?—A. I assumed it was down there. 40

Q. Then on March 16th. 1934 (exhibit number eight) the Port Royal Pulp and Paper Company replied to you and told you that they "advanced during the winter \$484.90 plus an amount of about four thousand dollars over-advanced on the other contract, which we have with him, and which he has asked us to charge against this new contract." Having received that letter did you discuss the situation with Mr. Atkinson?—A. I probably did.

Q. What discussion did you have with him?—A. I cannot remember.
Q. But with the knowledge of those two charges against that contract, you kept on loaning Mr. Atkinson—

Mr. DOUGHERTY : I object to the question.

Q. With the knowledge that you received in exhibit number eight—I show you exhibit number eight. (witness looks at exhibit) Having that letter with you and having had a discussion with Mr. Atkinson, the details of which you say you cannot remember, you kept on loaning Mr. Atkinson money against this contract, did you not?—A. Yes.

10 Q. And took an assignment of these two contracts, did you not?

Mr. HANSON : I say they are not assignments of the contract, they are assignments of the moneys coming under the contracts, and I object to the question. There is a difference between assignment of the contract and assignment of the moneys coming under the contract.

COURT : The assignment is there to speak for itself.

Mr. INCHES : I am going to read part of it—exhibit number eleven—

20 “ (1) FOR VALUABLE CONSIDERATION, receipt whereof is hereby
“ acknowledged, the undersigned hereby assigns, transfers and sets
“ over unto THE ROYAL BANK OF CANADA (hereinafter called the
“ “Bank”) all moneys, claims, rights and demands, whatsoever
“ which the undersigned may now, or at any time hereafter, have
“ or be entitled to under or by virtue of or in respect of or incidental
“ to a certain (a) contract (hereinafter called the “instrument”)
“ dated the 26th. day of April 1934, made between the undersigned
“ and Port Royal Pulp and Paper Co., Ltd. (hereinafter called the
“ “Debter”) securing and/or covering (b) 10,000 cords of peeled
“ spruce and fir pulp wood ”.

My submission is that having assigned all moneys, claims, rights and demands under the contract, you could not—

30 COURT : You say it is an assignment of the contract and Mr. Hanson says it is the moneys under the contract. We have the document and you can call it anything you like, as long as the witness knows what you are talking about.

Q. Having taken an assignment of all moneys, claims, rights and demands whatsoever under this contract, you say that you advanced moneys against this contract. Am I right?

COURT : You cannot ask the witness to interpret the instrument—that is for the Court. I am not bound by any construction he puts upon it. You should not ask him—that is a question of law.

40 Q. What is your answer? You said that you loaned money against this contract. Is that correct?

Mr. DOUGHERTY : That question was struck out by His Lordship.

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continued.

COURT: I think there is no doubt that the bank wanted to get everything that was coming to Mr. Atkinson under the contract. That is what it was for.

Q. You would not have loaned the moneys at all unless you got an assignment of the rights under this contract?—A. We loaned the money under Section 88 of the Bank Act and took an assignment of the moneys due and coming due under the contract.

Q. You loaned the money on security under rights you obtained under this contract?—A. No.

Q. Under Clause 2 of your assignment I note it states—“(2) The undersigned agrees that the debt shall be held by the Bank as general and continuing collateral security for the fulfilment of all obligations, present or future, of the undersigned to the Bank.”

Having heard that again, I ask you, if you had not obtained an assignment of this contract or the rights thereunder, would you have loaned the money?

Mr. DOUGHERTY: Your Lordship has already ruled on the same question and it has been stricken out.

COURT: That is none of our business.

Mr. INCHES: Do you rule that question out?

COURT: I don't think it is admissible. I think it is an improper question and I will rule it out.

COURT ADJOURNED.

Court resumed at 10.30 a.m. November 18th. 1936.

H. S. MURRAY, takes stand, CROSS-EXAMINATION continued by Mr. INCHES.

Mr. DOUGHERTY: MAY IT PLEASE YOUR LORDSHIP—Mr. West is appearing with me this morning in the absence of Mr. Hanson.

Q. Mr. Murray, would it be difficult for you to just run off in detail the moneys that you received on account of these loans on these two contracts?—A. Moneys we received from the Port Royal?

Q. Yes, and Atkinson?—A. No sir, I can give you those.

Q. Will you just start. What is the date of the first receipt?—A. April 24th. 1934—\$300.00.

Q. Does your ledger sheet there indicate from whom that came—whether it came from Atkinson or from the Port Royal?—A. No sir, I am quite sure all these came from the Port Royal.

	Q. The next one ?		
	A. May 1st. 1934	\$200	<i>In the Supreme Court of New Brunswick (King's Bench Division). — Plaintiff's Evidence. — No. 11. Hedley S. Murray, Cross-exa- mination— continued.</i>
	May 19th. 1934	200	
	June 5th. 1934	750	
	June 14th. 1934	500	
	June 23rd. 1934	1200	
	July 4th. 1934	1000	
	July 6th. 1934	500	
	Aug. 2nd. 1934	1000	
10	Aug. 13th. 1934	500	
	Aug. 24th. 1934	500	
	Aug. 29th. 1934	500	
	Aug. 29th. 1934	500	
	Aug. 31st. 1934	500	
	Sept. 11th. 1934	500	
	Sept. 14th. 1934	530	
	Sept. 18th. 1934	100	
	Oct. 9th. 1934	100	
	Oct. 26th. 1934	100	
20	Oct. 31st. 1934	100.02	
	Nov. 17th. 1934	100	
	Dec. 7th. 1934	200	
	Dec. 14th. 1934	250	
	Dec. 27th. 1934	201.70	
	Jan. 11th. 1935	69.45	
	Jan. 29th. 1935	170.00	

Q. Did you receive that letter (shows letter to witness)?—A. Yes, I believe I received that.

Mr. INCHES : I would like to put that letter in evidence as part of my
30 case. I offer letter dated March 26th. 1934 from Port Royal to the Royal Bank, produced from the custody of the plaintiff.

Put in evidence as " A ".

Q. This letter from H. S. Murray, Manager, The Royal Bank of Canada to the Port Royal Pulp and Paper Co., Ltd. dated December 27th. 1934, did you write that letter?—A. Yes.

Mr. INCHES : I offer letter dated December 27th. 1934 from Royal Bank to Port Royal.

Put in evidence as " B ".

Q. I am showing you a letter from The Port Royal Pulp and Paper Co.
40 Limited to Royal Bank of Canada, Fredericton, N .B. dated December 28th. 1934 produced from your custody. Do you remember receiving that letter?—A. I probably received it.

Mr. INCHES : I offer letter from Port Royal Pulp and Paper Co. Limited to Royal Bank of Canada dated December 28th. 1934.

Put in evidence as " C ".

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continued.*

Q. Have you attempted to collect this sum from Mr. Atkinson?—*A.* We demanded payment of the debt, yes.

Q. Is he able to pay it?—*A.* I cannot say.

Q. Had you any particular reason for waiting from I think it was January 24th, 1934 when you arranged this loan, until March, 10th. before taking an assignment of the contract?—*A.* We did not have the contract, if I remember correctly. We may have had it a day or so.

Q. I think you said yesterday that at the meeting in January with Mr. Atkinson when these bank papers were signed, it was the understanding he was to bring the contract in to you for assignment, all the rights under it to the bank?—*A.* The matter was probably discussed. 10

Q. Was there any reason for waiting until March 10th. before it was actually brought in?—*A.* We could not take the assignment until we received the document.

Q. Did you ask him from time to time to bring it in?—*A.* Probably did.

Q. Around July 28th, 1934 we have a record I think from your books of five hundred dollars received from the Port Royal which went into the Pulp wood account. It is an amount which you did not read out?—*A.* July 6th, 1934—\$500.

Q. Is there one around July 28th, 1934? This is a document your bank furnished to the Port Royal and there is a deposit on July 30th?—*A.* I don't know, that is not in our records. This was not that account, it is in the Disbursements Account, July 30th, 1934—\$500. 20

Q. And you just overlooked reading it?—*A.* I read you the Sales Account and this is in the Disbursements Account.

Q. Is this Five hundred dollars something more, an additional amount?—*A.* That is an amount deposited. It looks to me as if it was made by Mr. Atkinson himself in this account. I don't think it came from the Port Royal people.

Q. There is a cheque dated July 28th, 1934 payable to Mr. Atkinson and yourself?—*A.* That would be the deposit. 30

Q. That is additional to the amounts you called off a few minutes ago?—*A.* Yes, it is an additional payment from the Port Royal Pulp and Paper Co. Ltd.

Q. You got no written progress reports from Mr. Atkinson from time to time as to the progress of the work?—*A.* No written reports—verbal reports.

Q. You sent no one down at any time from the bank to see what wood was there?—*A.* No.

Q. As a matter of fact the only knowledge you had as to whether there was any pulp wood there or not, is what Mr. Atkinson would report to you verbally. Is that correct?—*A.* Yes. 40

Q. Mr. Murray, I am instructed by Mr. Atkinson that during 1933, 1934 and running on to 1935, the Port Royal and the bank contributed jointly for the payment of the actual Government charges against these New Lepreau lands. Is that so?—*A.* The Port Royal and the Bank?

Q. My instructions are that the Bank and the Port Royal each paid half of the mileage. Mr. Atkinson was asked this question on examination for discovery—

“*Q.* During 1933 and 1934 and running on to 1935 and up to the present time for all I know, the Port Royal and the Royal Bank contributed jointly for the payment of the actual government charges?—*A.* In 1935 the bank and the Port Royal each paid half of the mileage, and this year (1936) the Port Royal paid four hundred dollars and I paid the balance.”

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10 *Q.* Was the bank contributing to the payment of this mileage?—*A.* For the period previous to this year, the bank made Mr. Atkinson loans under his old borrowing account for the purpose of paying the amount over and above what the Port Royal did not pay.

Q. Do you know whether or not the pulp wood as it was prepared for delivery was stamped with the Port Royal's mark or not?—*A.* I don't know.

Q. You were in close touch with Mr. Atkinson all the time over these operations were you not?—*A.* Yes.

Q. You would see him quite frequently?—*A.* Yes.

20 *Q.* The money that the bank loaned in January 1934 was to go into the October 1933 contract was it not?—*A.* To pay wages and supplies.

Q. For that October contract?—*A.* Yes.

Q. I am reading from your evidence on discovery page 16 one-third of the way down the page—

“*Q.* In your conversation with him on January 24th. of that year, you must have discussed his indebtedness to the Port Royal at that time?—*A.* Yes, no doubt we did—that would be the natural thing for us to do.”

30 *Q.* Did he tell you at that time the actual amount of his indebtedness?—*A.* I cannot remember. I presume he gave us the approximate amount.

Q. On page 25 I interrogated you on discovery with reference to what would happen to the money if a profit was made on this contract and you stated—“It would all go to the lessening of the old indebtedness.” That would be the natural thing for you to do?—*A.* It would be the natural thing we would expect.

40 *Q.* I take it you had in view in loaning him this money in January and then again on the April contract, that if a profit was made it would be a good thing for the bank in that their old indebtedness would be reduced. That would all run through your mind would it not?—*A.* He applied to us for the original advance stating he had to have some money to pay for wages. We did not want to make the advance, but he was in a predicament and these men had to be paid and he could not get the money elsewhere so we came to his assistance.

Q. That is the first time you told us that?—*A.* That was the circumstances. He applied to us for a loan and that is why the loan was needed.

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RE-DIRECT-EXAMINATION BY MR. DOUGHERTY.

Mr. DOUGHERTY : I offer in evidence original letter from Port Royal Pulp and Paper Co. Ltd. to E. C. Atkinson, dated Sept. 13th. 1934.

Put in evidence as No. 22.

Mr. DOUGHERTY : I offer original letter from Port Royal Pulp and Paper Co. Ltd. to Mr. Murray, Manager, Royal Bank of Canada, Fredericton, N. B. dated Sept. 13th 1934.

Put in evidence as No. 23.

Mr. DOUGHERTY : I offer in evidence original letter from Port Royal Pulp and Paper Co. to H. S. Murray, Manager, Royal Bank of Canada, 10 Fredericton, N. B. dated September 15th. 1934.

Put in evidence as No. 24.

Mr. DOUGHERTY : I offer in evidence original letter from H. S. Murray, Manager, Royal Bank of Canada, to Port Royal Pulp and Paper Co. Ltd. dated September 14th. 1934.

Put in evidence as No. 25.

Q. I show you this letter dated August 31st 1934. Is that a letter written by you to Mr. Atkinson?—A. Yes.

Mr. DOUGHERTY : I wish to have letter from Royal Bank to Mr. Atkinson dated August 31st. 1934 marked for identification. 20

Letter marked for identification.

Q. Mr. Murray, yesterday in your direct examination in connection with the interest payments on these notes that are now due and which we are suing, I think you told the Court it was interest from July 1st. 1934. Did you check that?—A. Yes, last night.

Q. And would you give the Court when the interest on these notes is all paid up to?—A. Up to June 30th. 1935.

Q. On all the notes that are being sued on now and are past due?—A. Yes.

Q. And what interest would there be on these notes now due? Have 30 you figured it up to a certain date?—A. As I told you yesterday the interest in arrears up to the end of October this year was seven hundred and fifty dollars and some cents. The actual amount to October 31st. 1936 is \$750.19.

Q. What rate of interest?—A. Seven per cent.

Q. Then on how much principal would there be interest due from the 30th. of June 1935?—A. On eight thousand dollars.

Q. Did the Royal Bank receive any of this pulp wood from Mr. Atkinson?—A. No.

Q. Did the Royal Bank give any instructions for the shipment of this 40 pulp wood?—A. No.

Q. Did the Royal Bank give any consent to the Port Royal taking over this operation itself?—A. No.

Q. When did you ascertain that the pulp wood of Mr. Atkinson had been shipped or taken delivery of by the Port Royal Pulp and Paper Company?—A. In the fall of 1935.

Q. You detailed to my learned friend this morning a series of payments that the bank received in connection with these two contracts?—A. Yes.

Q. How were those moneys applied when received?—A. They were applied on the notes that were current, the oldest one first.

Q. And all these moneys that were so received were applied on the old notes?—A. The oldest note first.

Q. And new notes in place of these would be taken out by Mr. Atkinson at that time?—A. Yes.

10 Q. These payments which you received, you say they were all applied on the notes that were current?—A. But on the oldest note first.

Q. Retiring them in the order of their date?—A. Yes.

By Mr. INCHES.

Q. With the consent of my learned friend there is one question arising out of some new matter. You stated that the Royal Bank gave no consent to the Port Royal taking over the operation. On the other hand you did not make any protest?—A. I didnt know actually they took it over.

Q. Do you mean to tell me that Mr. Atkinson did not tell you what was going on down there?—A. I don't remember him telling me that he actually took over the operation.

20 Q. What did he tell you?—A. I don't remember what he told me in that connection. I don't think he ever told me the circumstances.

Q. Did you not know that the Port Royal Pulp and Paper Company Limited was paying the bills down there for wages and supplies?—A. Towards the end he told me they were paying all bills.

Q. I ask you if Mr. Atkinson did not tell you that the Port Royal Pulp and Paper Company Limited would pay all outstanding accounts?—A. He told me at one period that they were paying the outstanding bills for wages and so forth.

Q. You knew they were doing that?—A. Yes, towards the end.

30 Q. In September 1934?—A. I cannot remember what date, but I know he told me at one time that they were going to pay all bills, but the date I cannot remember.

By Mr. DOUGHERTY.

Q. You got that information from Mr. Atkinson?—A. Yes.

Q. That would be what Mr. Atkinson told you?—A. Yes. Mr. Atkinson told me.

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No. 12.

Hazen Grass.

HAZEN GRASS, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. DOUGHERTY.

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Hazen
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tion.

Q. What is your name?—A. Hazen Grass.

Q. And you reside at the city of Fredericton now?—A. Yes.

Q. Formerly resided at Waasis?—A. Yes.

Q. And were you employed with Mr. Ewart C. Atkinson at one time?
A. Yes. 10

Q. As foreman with him?—A. Yes.

Q. Were you employed at the pulp wood operation down at the New River district in the years 1934 and 1935 and I presume some time in 1933?—A. Yes.

Q. We will take in the period of 1934 after the first of October or thereabouts. Were you in charge of the operation at that time?—A. Yes.

Q. And did you ship in all the pulp wood that fall of 1934 to the Port Royal Pulp and Paper Co. Limited?—A. Yes.

Q. Do you know the amount?—A. No.

Q. The correspondence in evidence shows there was 1772 cords shipped 20 in the months of November and December. That was the time it was shipped was it?—A. Yes.

Q. As to the quantity you would not say?—A. No.

Q. And when did the operation get completed as far as the shipping of the pulp wood was concerned?—A. You mean when did we finish?

Q. Yes?—A. In 1935.

Q. What month?—A. The latter part of June or first of July.

Q. And from the first of October 1934 until the operation was completed who did you take your instructions from in connection with the shipment of the pulp wood?—A. The Port Royal Pulp and Paper Company 30 or their scalers there.

Q. Who was that?—A. Mr. Vanderhagan and Mr. Moran.

Q. Was Mr. Atkinson there?—A. Not after October.

Q. Can you tell me when the spring shipments were made, what months?—A. They started some time in May and finished some time the latter part of June or first of July.

Q. And those spring shipments, was Mr. Vanderhagan or Mr. Moran there in charge?—A. No.

Q. Who was in charge then?—A. They were there a few times and Mr. Lacroix was there a couple of times himself. 40

Q. Who did you get your shipping instructions from?—A. From the mill.

Q. The Port Royal mill?—A. Yes.

Q. Did you ever receive any shipping instructions from the Royal Bank?—A. No sir.

Q. During these shipping operations from October 1934 till the end, who paid you?—A. I presume the Port Royal Pulp and Paper Company.

Q. Who did you get your cheque from?—A. Mostly from the Port Royal Pulp and Paper Company.

Q. And in the spring of 1935 who paid you at that time?—A. The Port Royal Pulp and Paper Company.

10 Q. That is for all your work in the spring and early summer of 1935 the Port Royal paid you?—A. Yes.

Q. Did you make up the time for the men?—A. Yes.

Q. Your time bills, where did you send them?—A. Gave them an order on the Port Royal Pulp and Paper Company.

Q. For their wages?—A. Yes.

Q. When a car of pulp wood was shipped to the Port Royal Pulp and Paper Company did you make up the bill of lading?—A. Yes.

Q. Where did you send the bills of lading?—A. To the Port Royal Pulp and Paper Company at Fairville.

20 Q. And that would apply to all shipments in the fall of 1934 and in the spring and summer of 1935?—A. Yes.

CROSS-EXAMINATION BY MR. INCHES.

Q. You say you made out the bills of lading?—A. Yes.

Q. And you have been making them out, I take it, all the time you were there in charge of that work?—A. Yes.

Q. That is away back in 1933?—A. Yes.

Q. In making out the bills of lading you were not doing anything different after October 31st, 1934 than you had been doing before that?—A. No.

30 Q. And in making out the time bills for the men you had been carrying on just as you had in the past?—A. Yes, in that winter the orders went to the Port Royal Pulp and Paper Company.

Q. Do you mean the time bills?—A. Yes.

Q. And before that they went to Mr. Atkinson?—A. Yes, or they were paid at the office—at the camp.

Q. But they came from the Port Royal—the moneys?—A. I presume so.

Q. Starting in 1933, what was the name of this gentleman?—A. Mr. Vanderhagan.

Q. And Mr. Moran, did you say?—A. Yes.

40 Q. You said they would come down there?—A. Yes.

Q. And scaled the wood, or saw it was scaled?—A. Yes.

Q. And they had been doing that since 1933 had they not?—A. Yes.

Q. And they were not down any more after October 1934 than they had been before on the operations?—A. Perhaps so in the winter of 1934 and spring of 1935.

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Examina-
tion—con-
tinued.*

*Cross-exa-
mination.*

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mination—
continued.*

Q. That would be quite natural if you had all that pulp wood on hand?
—A. Perhaps.

Q. They had been accustomed to going down there since the start of the first contract in 1933, had they not?—*A.* Yes.

Q. And you knew them all?—*A.* Yes.

Q. And you would talk to them in those days about shipping the lumber—the wood?—*A.* Yes.

Q. And you kept on talking to them right down to 1935 when all the wood was shipped?—*A.* Yes.

Q. There was no difference in your method of procedure in any way?—*A.* No. 10

Q. Mr. Atkinson would come down from time to time, would he not?—

A. Yes.

Q. And he employed you?—*A.* Yes.

Q. And you were his foreman right down to the time you were discharged at the end of the work?—*A.* Yes.

Q. And how often would he come down there?—*A.* I don't know, perhaps once a week.

Q. And he would be down there to see that all the pulpwood was cleaned up right down to the last?—*A.* Yes. 20

Q. And you talked to him about shipping the wood?—*A.* Not the fall of 1934 because that fall he was not there from October.

Q. That was the time of the election, was it not?—*A.* I don't think there was an election that year.

Q. You say Mr. Atkinson was not down there at all in 1935?—*A.* Not until the spring when we were done.

Q. In the spring—I thought you said you finished the work the end of June or first of July 1935?—*A.* Yes, that is when we did.

Q. What was your last conversation with Mr. Atkinson about shipping the wood?—*A.* I don't know now. That would be in the fall of 1934 I suppose. 30

Q. When did you have your last conversation with Mr. Atkinson about shipping the wood?—*A.* I don't know whether I talked to him about shipping the wood.

Q. You were there under Mr. Atkinson from early in 1933 down to the end of 1935 or the middle of 1935?—*A.* Yes.

Q. And you tell me you never had any talk with him about shipping pulp wood?—*A.* I did the first year perhaps, but the year 1934 and the spring of 1935 Mr. Atkinson was not there.

Q. Did Mr. Atkinson tell you that any orders— 40

MR. DOUGHERTY: I think my learned friend if he is going to ask about a certain conversation, he should give the witness the time and place so he would know what my learned friend is referring to.

COURT: I will not exclude it.

Q. I am reading you a statement that Mr. Atkinson made to me and I want you to tell me whether or not it is correct.

Mr. DOUGHERTY : My learned friend is putting in an alleged conversation between the witness and Mr. Atkinson.

COURT : That is not evidence.

Mr. INCHES : I am reading him a statement that Mr. Atkinson made to me and I want to ask him if that statement is right or wrong in any particular.

COURT : That will be all right.

Mr. INCHES : Page 34 of Mr. Atkinson's examination for discovery.

10 Mr. DOUGHERTY : That is not in evidence. If my learned friend is going to put this in evidence, then I would have no objection to him interrogating this witness, but if he does not propose to do so, then I think he will have to state the time and place as to the conversation.

COURT : Allowed, subject to objection.

Q. I asked Mr. Atkinson this question at page 34 of his examination for discovery—

20 " Q. On whose instructions was the delivery made in the spring of 1935?—A. Well I presume perhaps it would be on my instructions to the foreman to carry on the operation until completed. But from January of that year until the close of the operation in 1935, I was there very little, because everything was handled through the office and the Port Royal and I told the foreman any orders given by the surveyor or from the office, I wanted them carried out. The operation was carried on by our men and Mr. Grass informed me they carried the operation right on until it was finished."

Having heard that statement read that Mr. Atkinson made to me, do you say that Mr. Atkinson is not telling the truth when he said that it was on his instructions to you to carry on the operation until completed, that you carried on?

30 Mr. DOUGHERTY : This question—the way my learned friend puts it to this witness. The instructions that Mr. Atkinson may have given his foreman in 1933 to carry on and ship does not necessarily follow that it was in 1935 when this witness says Mr. Atkinson was not there at all.

Mr. INCHES : I asked Mr. Atkinson on whose instructions the shipments were made in the spring of 1935, and he said " well, I presume perhaps it would be on my instructions to the foreman to carry on the operation until completed."

Q. Did you receive instructions from Mr. Atkinson to carry on until completed?—A. I could not say I did.

Q. Did you have any conversation with Mr. Atkinson about it at all?—

40 A. Not in the winter, no sir.

Q. I am not asking you about the winter, did you have any instructions from Mr. Atkinson in October to carry on until completed?—A. No sir, I was there and I done the work while I was there.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

Plaintiff's
Evidence.

No. 12.
Hazen
Grass,
Cross-examination—
continued.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

Plaintiff's
Evidence.

No. 12.
Hazen
Grass,
Cross-exa-
mination—
continued.

Q. Did you receive any instructions from anybody to carry on until the work was completed or just carry on the way you had been doing?—A. I just carried on.

Q. Did or did not Mr. Atkinson tell you that any orders given by the surveyor or from the office he wanted carried out?

MR. DOUGHERTY: That is a question that should be some specific time.

COURT: Can you fix the time?

MR. INCHES: Yes, from September first 1934 until June 30th. 1935?—
A. (Not answered).

Q. Did you receive any instructions from Mr. Atkinson at any time to carry out orders given by the surveyor?—A. In the fall of 1934. 10

Q. At any time during the operation of that work did you receive instructions from Mr. Atkinson that any orders given by the surveyor were to be carried out?—A. Yes, perhaps I did.

Q. And what language would he use when he would tell you that?

MR. DOUGHERTY: I object—that is a hypothetical question.

Q. What language did he use when he told you that?—A. I could not say right now.

Q. And who was the surveyor?—A. Mr. Vanderhagan mostly.

Q. This wood was marked, was it not?—A. Yes. 20

Q. Marked how?—A. I think with an X.

Q. And whose mark was that?—A. Port Royal Pulp and Paper Company.

MR. DOUGHERTY: I don't think that is evidence, he can tell what he saw. There must be hundreds of people who put Xs. on wood.

COURT: I don't think it would be evidence.

Q. Was this wood marked with an X?—A. I could not say it was all marked with an X.

Q. How much was not marked with an X?—A. That is pretty hard to say. 30

Q. You had charge of that work?—A. Yes.

Q. And you were the man who was supposed to mark it?—A. Yes.

Q. And as far as you know it was all marked?—A. All the wood?

Q. Yes?—A. That is a hard question to answer.

Q. Your instructions were to mark it all?—A. I marked all mine.

Q. And you were the foreman in charge?—A. Yes.

Q. Are you trying to tell me that you don't know whether that wood was marked with an X or not?—A. When the Port Royal Pulp and Paper Company's scalers marked it, they marked it themselves with an X.

Q. And did you do some scaling?—A. Yes. 40

Q. And what did you mark what you scaled?—A. With my initials.

Q. But before it left for the mill it was all marked with an X?—
A. When the Port Royal Pulp and Paper Company's scaler scaled the wood he marked the wood.

Q. And he marked it with an X?—A. Yes.

Q. And would not the Port Royal Pulp and Paper Company's scaler scale all the wood before taking it over?—A. Yes.

Q. You were down there on the ground in charge of all the work and know the way they carried on?—Yes.

Q. You have no doubt that the wood was marked before it left for mill?—A. Yes, it was marked.

Q. And was it not marked before it was driven?—A. Yes.

By Mr. Dougherty.

10 Q. Between the first day of October 1934 and the completion of the work, did you receive any shipping instructions from Mr. Atkinson?—
A. No sir.

No. 13.

Ewart C. Atkinson.

EWART C. ATKINSON, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. DOUGHERTY.

Q. Your name is Ewart C. Atkinson?—A. Yes.

20 Q. I show you a letter dated May 15th. 1935 that was marked for identification yesterday. Did you receive that letter, Mr. Atkinson?—
A. Yes, I received that letter.

Q. And after you received that letter did you show that letter to any person?—A. I think that afternoon or the next day I took the letter with me down to the Port Royal and showed it to Mr. Lacroix.

Q. And did he read the letter?—A. I handed it to him and we discussed it.

Q. You discussed it after he looked at it?—A. Yes.

30 Q. When did you take it down to the Port Royal Pulp and Paper Company and discuss it with Mr. Lacroix?—A. It was either that day or the next day, I don't remember which.

Mr. DOUGHERTY : I offer that letter in evidence.

Mr. INCHES : I object to the admission of a letter from the Bank to Mr. Atkinson even though he says he did show the letter to the Port Royal. He is not a party to the suit.

40 Mr. DOUGHERTY : This is a letter marked for identification yesterday dated May 15th. 1935 from the manager of the Royal Bank to Mr. Atkinson, who is the party who had the advances from the bank and who was selling the pulp wood to the Port Royal. Mr. Atkinson says after he received this letter, either the same afternoon or the next morning he went to Saint John with this letter with him and handed this letter to Mr. Lacroix who read the letter and then they discussed this letter, and I submit it is evidence.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division.)*

Plaintiff's
Evidence.

No. 12.
Hazen
Grass,
Cross-exa-
mination—
continued.

No. 13.
Ewart C.
Atkinson,
Examina-
tion.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division.)*

Plaintiff's
Evidence.

No. 13.
Ewart C.
Atkinson,
Examina-
tion—con-
tinued.

Q. The Mr. Lacroix you referred to is Mr. Antoine J. Lacroix the manager of the Port Royal Pulp and Paper Company?—A. Yes.

Q. The defendant in this suit?—A. Yes.

Q. And the Mr. Lacroix who is in Court here?—A. Yes.

COURT: I think it is admissible—I will allow it subject to objection. Letter put in evidence as No. 26.

COURT: This is based upon a letter from the Port Royal Pulp and Paper Company?

Mr. DOUGHERTY: Yes.

Q. Mr. Atkinson, you say that you and Mr. Antoine J. Lacroix, who is the manager of the Port Royal Pulp and Paper Company, had a discussion or conversation when you presented this letter to him?—A. We talked it over. 10

Q. Concerning this letter?—A. Yes.

Q. And the contents of that letter?—A. Yes.

Q. Can you tell us what that conversation was?—A. The conversation related to if the wood was seized by the bank and held there and a dispute arose and held over till Fall and frozen in and matters in connection with it, I don't recall it word for word, but it was a general discussion in connection with the wood, but it related to these things—if the wood was frozen in and all went out in the ice and the difficulties that would ensue if action resulted between the Port Royal and the bank in connection with it. 20

Q. Anything else that may have been said by Mr. Lacroix in connection with it?—A. It is hard for me to say all the various angles. I know we discussed it for half an hour or may be longer, but I don't remember all the various angles that may have come up in connection with it.

Q. Do you recall any—

Mr. INCHES: I think this is a witness that should not be led.

Q. You told me that you could not recall all, and I ask you if you can recall any of the things said by Mr. Lacroix during that conversation?—A. That is a hard question to answer.—it is some time ago. It is pretty difficult to remember. Conversations took place about it, but to give the words that were spoken between Mr. Lacroix and myself, it is pretty difficult to recall what took place then. 30

Q. What was the purport if you cannot give me the exact words?—A. The trouble that would arise between the bank and the Port Royal in connection with this wood and the payments. I was trying to get the Port Royal to pay the amount of the indebtedness to the bank to avoid any dispute.

Q. Did you hand the letter to Mr. Lacroix for him to read?—A. I think I said to him "I have a letter here from the Royal Bank that is not so hot" or something like that.—words to that effect. 40

Q. And you gave it to him?—A. Yes, and he read it.

Q. And then the discussion was after that?—A. Yes.

Q. I think it is admitted in the pleadings, Mr. Atkinson, that the quantity of pulp wood received by the defendant company was 6005.43

cords. Did you receive a statement from the Port Royal Pulp and Paper Company of the pulp wood received by them?—*A.* They sent in periodical statements. I received statements from them.

Q. I show you these paper writings here. Are those statements received by you?—*A.* I received that one. Yes, I received these.

Q. Could you tell me the exact amount of pulp wood that the defendant company received in the fall of 1934 and the price and the time?—

A. In the month of November 1934 there were 63 cars shipped containing 1065.73 cords at the price of seven dollars and twenty-five cents
10 a cord, F.O.B. mill.

Q. Amounting to how much in dollars and cents?—*A.* \$7726.54 less the freight.

Q. How much was the freight?—*A.* \$1036.34, leaving a credit for the shipment of \$6690.20. That is the November shipment. In December 42 cars were shipped containing 707-17 cords at six dollars and fifty cents. That made \$4596.60.

Q. Less freight?—*A.* Less freight of \$672.02, leaving a credit of \$3924.58. I said the month of December, that is the month of November. All these shipments were made in the month of November. 707.17 cords was
20 the allocation of the draw shaved wood, was the amount agreed on between the Port Royal and myself as to the quantity. Although the quantity of draw shaved wood exceeded this, they agreed to give the extra quantity in on the sap-peeled price amounting to seven dollars and a quarter.

Q. And how much was the total shipment for the fall of 1934?—*A.* Total shipment in the fall of 1934 amounting to 1772.90 cords.

Q. Did you receive a statement from the Port Royal Pulp and Paper Company of the shipments the following spring and summer of 1935?—*A.* Yes.

Q. Could you tell us what was shipped in the summer and spring
30 of 1935 and the quantities and the times?—*A.* In the month of May 1935—2004.88 cords were shipped at the price of seven dollars and twenty-five cents F. O. B. mill, giving gross returns of \$14535.38, less freight amounting to \$1818.30, giving a net return of \$12717.08. In the month of June 1935—2217.70 cords were shipped at the price of seven dollars and twenty-five cents, giving gross return of \$16078.32, less freight of \$2066.15, making net of \$14012.17. In July apparently half a cord was shipped containing 9.95 cords at seven dollars and twenty-five cents making gross \$72.13, less freight Fifteen dollars, leaving a net credit of 57.13.

Q. Mr. Murray in his evidence testified about certain advances that were made to you commencing on or about the twenty-fourth of January 1934, and the last one was the twenty-ninth of January 1935. Did you receive these advances from the Royal Bank?—*A.* Yes.

Q. And what were these advances used for by you?—*A.* The carrying on of the pulp operation on New River, Charlotte County.

Q. The pulp wood operations that have been referred to in this suit?—*A.* Yes.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division.)*

*Plaintiff's
Evidence.*

*No. 13.
Ewart C.
Atkinson,
Examina-
tion—con-
tinued.*

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division.)*

Plaintiff's
Evidence.

No. 13.
Ewart C.
Atkinson,
Examina-
tion—con-
tinued.

Q. Under the two contracts—one dated October 31st. 1933 and the other dated April 26th. 1934?—*A.* I don't remember the dates of the contracts, but one was draw shaved wood and the other was a sap peeled contract. I don't remember the dates.

Q. I show you the contracts—I show you exhibits one and ten? (shows to witness)—*A.* Yes, that is the one dated 31st. of October 1933, that is the draw shaved contract from one to four thousand cords, and the other contract is the one dated April 26th. 1934 for ten thousand cords, sap peeled contract.

Q. And the operation then that you referred to, refers to the pulp wood gotten out under those two contracts, is that what you referred to when you said it went into the pulp wood operation?—*A.* Yes, certainly, that is the only pulp wood operation I was carrying on.

Q. All these advances went into your pulp wood operations under these contracts?—*A.* Yes.

Q. And obtained from the bank for that purpose?—*A.* Yes, for the carrying on of the operation.

Q. And I understand that according to the books, these advances amount to the total of eight thousand dollars principal. Is that correct? At the present time?—*A.* Eight thousand dollars is the amount of principal amount of the notes at the present time.

Q. Of these advances?—*A.* Yes.

Q. Which is still unpaid to the bank?—*A.* Yes.

Q. Now the evidence here of Mr. Grass and I think there is some evidence from Mr. Murray, about the defendant company somewhere about the first of October 1934 taking over and paying the bills. Prior to that time who paid the bills?—*A.* I paid them by issuing cheques on the Royal Bank.

Q. And after the first of October 1934 down to the completion of the contract, did you pay any bills during that period?—*A.* There might have been some small amounts—cheques for small amounts might have been sent to me to pay some small bills, but practically all the bills were paid by cheques direct from the Port Royal.

Q. Did you pay any yourself outside of that—after everything was over did you have to pay some bills?—*A.* After the operation was completed in July or August of that year I had to pay around eleven or twelve hundred dollars, or the total amount was around thirteen hundred dollars.

Q. Yourself?—*A.* Yes.

Q. What year?—*A.* 1935.

Q. On or about the first of October 1934 to the end or completion of the work, did you give any shipping instructions to Mr. Grass at all during that period?—*A.* I told Mr. Grass to carry out whatever orders were given from the mill office, from Mr. Lacroix or his office.

Q. Were you near the job at all from October to the end of it?—*A.* From October until the time that Joe Green was drowned in the month of April, from October till April I was not on the operation at all. When Joe Green

was drowned I went down on that occasion and I was not there again until after the election was over that summer and then some.

Q. Not until after the operation was all completed?—*A.* No.

Q. Prior to October 1934 you paid the bills you said?—*A.* Well, the Port Royal Pulp and Paper Company would send the cheques up payable to the Royal Bank and myself and they would be deposited and I would issue cheques to pay the bills.

Q. When you went down at the time Joe Green was drowned in April did you give any shipping instructions at that time when you were down there at that time?—*A.* No, I was not thinking about shipping at that time, or about any instructions to anybody.

I did not give any instructions to anybody at that time.

A. And at any time after that did you give any instructions?—*A.* No, I didn't see Mr. Grass until after the operation had been all completed later.

Q. Have you any knowledge of your own, Mr. Atkinson, as to the shipping of the pulp wood or the taking of the pulp from October 1934 to July of the following year?—*A.* Well, I was aware of all the material shipped in the Fall, I was aware of all that. In the spring I knew all about it when it was over.

Q. That is, you found out that the shipment had been completed in the Spring after it was over?—*A.* Yes, Mr. Grass carried on the operation until it was completed.

Q. You assume that was done, you were not there?—*A.* No, I was not there.

Q. Did you ship this pulp wood then to the Port Royal Pulp and Paper Company in the fall of 1934 and 1935, you yourself?—*A.* Well now, that is a pretty hard question to answer. It was done through my foreman and the operation carried on. I would not be shipping it myself, do you see. If I remember correctly on that—that wood which was shipped in the Fall was supposed to be under an arrangement, but the arrangement was not carried out. It fell through.

Q. (By the Court) Were these pulp wood operations of yours from a financial point of view successful, or did you lose on them?—*A.* Didn't make any money. That is, we had too large expenditures to open up the country.

Q. The expenses were not at all relative to the amount of lumber?—*A.* No.

Q. Did all the moneys you got from the bank, advances from the Royal Bank, go into the operation?—*A.* Every dollar.

Q. You did not divert any of it to any other purpose?—*A.* No.

Q. Is it not true that where advances are made to an operator, that the man who gets the lumber is expected to recoup those advances?—*A.* I don't think I am supposed to—

Q. I am speaking generally?—*A.* Put that question to me again?

COURT: I will withdraw it.

A. My answer to that might have a bearing, and, therefore, I think it is a matter for you to decide.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division.)*

Plaintiff's
Evidence.

No. 13.
Ewart C.
Atkinson,
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

Plaintiff's
Evidence.

No. 13.
Ewart C.
Atkinson,
Cross-exa-
mination.

Q. Did the pulp wood market price drop during your operation?—
A. Yes, during this operation the price was always low.

Q. If you were able to go on there three or four more seasons at a profit, the price of opening up the country could have been distributed, and the operation made successful?—A. Yes, would have been.

Q. And it was the break in the market that precipitated this situation?—A. Yes.

CROSS EXAMINATION BY MR. INCHES.

Q. Mr. Atkinson, what was the nature of the wages that the men got? They got paid money and got their food in addition?—A. Yes. 10

Q. What is that called in the operation?—A. So much a day and board, or so much a day and found.

Q. And these bills are mostly supplies for the men?—A. Yes, supplies for food and clothing or tobacco,—whatever they might require for carrying on a general operation.

Q. You were not able to pay these notes yourself, were you?—A. I have not—I am not able to. If I was, they would be paid.

Recess.

Court resumes at 2.30 p.m. November 18th. 1936.

Mr. DOUGHERTY: The plaintiff's case is closed with the exception 20 that my learned friend may offer in evidence some of the evidence taken on discovery, in which event I may want to put in some of that as part of my case.

COURT: I have been thinking that over. The evidence taken on discovery at the instance of the defendant is not available to you here.

Mr. DOUGHERTY: Only so far as a portion of that can be explained. If it is agreed that anything of an explanatory nature that I want to put in out of the discovery evidence, that I can put it in, that is agreed?

Mr. INCHES: Yes. I will dispense with an opening with Your Lordship's permission. 30

No. 14.

Antoine J. Lacroix, Examination.

ANTOINE J. LACROIX, called as witness on behalf of the Defendant, being duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. INCHES.

Q. What is your name?—A. Antoine J. Lacroix.

Q. Mr. Lacroix, you live in Saint John?—A. Yes.

Q. And what is your occupation there?—A. Manager of the mill of the Port Royal Pulp and Paper Company.

10 Q. I am showing you exhibits one and ten, the contract of 31st. October 1933 and that of April 26th. 1934 respectively and I am showing you the signature of the Port Royal Pulp and Paper Company. Is that your signature?—A. That is mine, sir.

Q. On Exhibit number one?—A. Yes.

Q. And whose signature is that on exhibit number ten?—A. My brother, Edward Lacroix.

Q. And you are quite familiar with both these contracts, are you not?—A. I am, sir.

20 Q. Well now, you had charge of the Port Royal end of these pulp wood operations did you not?—A. I did, sir.

Q. And you have a record of payments that were made upon these two contracts to the bank and to Mr. Atkinson and the work itself?—A. Yes.

Q. What are these sheets I am showing you, Mr. Lacroix?—A. Part of our ledger.

Q. These are the ledger sheets of the Port Royal Pulp and Paper Company?—A. Yes.

Q. Covering the transactions under both these contracts?—A. Yes.

Q. Under whose directions are these ledger sheets prepared?—A. Under mine.

30 Q. Under your supervision also?—A. Yes.

COURT : How does the matter stand on those sheets ?

MR. INCHES : There was a loss of \$542.29. Before these two contracts there was a contract early in 1933 between the New Lepreau Limited and the Port Royal and under that contract the Port Royal suffered a loss of \$5330.91.

COURT : That does not affect this transaction.

MR. INCHES : In these two contracts the Port Royal have charged up against Mr. Atkinson this indebtedness on the first contract. So on the whole three contracts, the ledger sheets show there was a net loss of \$542.29.

40 COURT : But they charge in on the two subsequent contracts, the loss they made on the first ?

MR. INCHES : Yes.

*In the
Supreme
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New
Brunswick
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Bench
Division.)*

Defendant's
Evidence.

No. 14.
Antoine J.
Lacroix,
Examina-
tion.

*In the
Supreme
Court of
New
Brunswick
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Bench
Division.)*

Defendant's
Evidence.

No. 14.
Antoine J.
Lacroix,
Examina-
tion—con-
tinued.

COURT: It was really the same concern and the individual afterwards. The stock was owned by Mr. Atkinson, in the company?

Mr. INCHES: Yes.

COURT: When you say they suffered a loss of over five thousand dollars in the earliest contract, that was all recouped to them except five hundred dollars?

Mr. INCHES: Yes. Of course if they pay the bank eight thousand dollars, there is that additional loss to suffer.

Q. With the exception of the first page of a few items here, these sheets are apparently all in one person's handwriting. Whose handwriting would that be?—A. The bookkeeper—Mr. Moron. 10

Q. Is he in Court here?—A. Yes.

Q. Did you check over yourself personally all these items referring to the two contracts in question?—A. I did, sir.

Q. Have you vouchers in Court here for all these items?—A. We have.

COURT: Mr. Atkinson does not question it, does he?

Mr. INCHES: I am not sure, yet.

Mr. INCHES: I am going to offer these in evidence, with the exception of page thirteen and page 21 which—

COURT: How many pages are there? 20

Mr. INCHES: About 18.

COURT: I will put them all in under the alphabetical list of "D".

Mr. INCHES: I wish to amend my defence.

COURT: Are you claiming as a setoff this amount of \$5330.91. Are you setting up this claim in your defence to this amount in your pleadings.

Mr. INCHES: No, we don't put it that way. We say that the bank has not got a lien ahead of us. That is what our defence is.

COURT: We have it on the record that the loss that the pulp people incurred under the earlier contract (the first contract) was taken into account in the second and third amounts and paid, all but five hundred 30 dollars, or whatever it was.

Mr. DOUGHERTY: It is not testimony from Mr. Lacroix—it was my learned friend's method of explanation.

Mr. INCHES: MAY IT PLEASE YOUR LORDSHIP—if my learned friend does not object, I ask for permission to amend the defence to make it clear what we have done with the moneys—the purchase price of these two contracts.

COURT: There will be no objection to that. You can amend your pleadings to meet the evidence.

Mr. INCHES: The defendant's counsel admits that wherever in the 40 ledger sheets offered in evidence by the defendant the sum of \$5330.91

appears, it represents the deficit so called on the first contract in the spring of 1933 which the defendant has charged up against the two contracts in this suit.

COURT: What is the present amount?

MR. INCHES: \$542.29.

Q. (By the Court) Is that correct, Mr. Lacroix, having charged him up with the loss under the first contract he owes you today \$542.29 according to your books?—A. Yes.

Q. And that is all?—A. Yes.

10 MR. INCHES: These accounts are very intricate. If we could have an adjournment for half an hour, we could put it in very summarized form—satisfactory to both parties.

Recess

Court resumes at 4.30 p.m. November 18th. 1936.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

Defendant's
Evidence.

No. 14.
Antoine J.
Lacroix,
Examina-
tion—con-
tinued.

No. 15.

Extracts from Examination of Hedley S. Murray on Discovery.

Mr. Inches: There are a few extracts from the evidence on discovery that I want to read into the record and I thought I might do it now.

"Evidence of HEDLEY S. MURRAY taken on discovery.

No. 15.
Extracts
from
Examina-
tion of
Hedley S.
Murray on
Discovery.

20 Page 16 starting about ten lines down—

"Q. In your conversation with him on January 24th. of that year, you must have discussed his indebtedness to the Port Royal at that time?—A. Yes no doubt we did—that would be the natural thing for us to do."

At the bottom of the page

"Q. When you discussed with him on January 24th. that he did owe the Port Royal something on the first contract, surely you would get an approximate idea of the amount at that time?—"A. No doubt I discussed it with him—that would be the ordinary course—but I think, if I remember right, the amount would be this \$4000 mentioned here."

30 Page 17

"Q. At that time you had the hypothecation of the New Lepreau Limited?—A. No—I must make sure before I say that.

Q. You want to clear up this shares situation?—A. Yes.

Q. Go on?—A. According to my record here the first certificate I received was February 21st. 1930, No. 9, for 120 shares, and again on October 29th. 1932 Certificate No. 7 for 121 shares and Certificate No. 10 for 120 shares."

Page 26

40 "Q. Can you swear to that? I put it straight to you—wasn't your whole object in making this loan the hope that there would be some surplus

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that would go on the old indebtedness?—*A.* The whole object? Naturally when a man owes me a debt and then he can enter into a contract and perhaps make a little money, and he proposes to make that money to help pay his other liabilities, why what would he do, that is what you expect him to do—wouldn't that be the regular course. If I owed you some money and I couldn't pay you unless I went into some contract, you will say "well, I will help you out." With a view to getting the old matter reduced. I think that is what anyone would expect you to do."

Page 48.

No. 15.
Extracts
from
Examina-
tion of
Hedley S.
Murray on
Discovery—
continued.

" Mr. MURRAY, recalled.

" Q. Then on the ninth of July there was apparently a further credit in the sales account. I see the total liability is reduced to \$4900. What happened there?—*A.* On July 6th. \$500.00 was received and credited to Sales Account and applied on the liability reducing it to \$4500.00. On July 9th. a new note was put through for \$300.00, increasing the indebtedness to \$4800.00. On July 12th. a new note was discounted, or put through, of \$200.00, bringing the liability up to \$5000.00."

Q. Now, then, down to this date, the 12th. of July, you have been operating under the application for credit, dated January?—*A.* Yes.

Q. And the security was taken on the wood he had put under the first contract, the contract of 1933?—*A.* Yes."

Bottom of page 51.

" Q. As a result of the whole transaction the loan stood at \$7500?—*A.* Yes, because we paid—the cheque received went toward making payment on old notes and the new note brought the liability back to \$7500.00.

August 6th. the next one is a new loan of \$500.00.

Q. August 4th. isn't it?—*A.* It may be August 4th. in this liability. It is a new loan anyway. The loan would be dated the same as that application. Loan of \$500.00. The difference does not signify.

Q. There was another transaction then?—*A.* The 4th. Yes, \$500.00. 30

Q. Which took the liability back to \$8000?—*A.* Yes.

Q. What was the next?—*A.* On the 13th.

Q. What happened then?—*A.* There was a credit here of \$500.00 and \$495.00 of that was applied on two notes, one amount was \$400, to liquidate a note and another \$95.00 on account of another note, making \$495.00. That is where this liability increased to \$8005.00.

Q. Then the next transaction was? If I might interject here—from this date on the bank put no fresh money of its own in this?—*A.* No.

Q. Then you reached \$8000.00?—*A.* Yes, that is where we quit."

Page 59—middle of page.

" Q. Mr. Murray, that letter from the Port Royal of Sept. 13th. 1934, referring to a conversation that Mr. Lacroix had with you in your office on September 10th.—*A.* Yes.

Q. What was that conversation, please?—*A.* Well as far as I can remember they wanted to take some security on the pulpwood in the form of a bill of sale or chattel mortgage, and he wanted us to come in on a pro

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rata basis, and I told him that the Bank wouldn't consider it at all, because we had security under Sec. 88 covering the pulpwood which gave us first lien."

Page 63 bottom of page.

"Q. I don't quite see the reason you both came to the conclusion that both parties should not be making advances, that it should be either one or the other.—A. Mr. Lacroix is the man who said that.

Q. Did you agree with him?—A. I intimated to him that we had gone as far as we thought we could."

10 Page 64.

"Q. In the meantime, for two months you knew this, that he was, advancing something to carry on this work?—A. The sales account shows that he sent up cheques. I assume they are his cheques.

Q. Were you seeing Atkinson during that time?—A. Probably I saw Atkinson during those periods.

Q. And would you know whether the work was going on or not?—A. Well from the reports I would get."

Page 65—in the middle.

20 "Q. On December 1934, you wrote the Port Royal (reads) According to your agreement . . . at the rate of \$2.00 per cord, and we must now ask you to forward the amount by return mail." Where was that agreement?—A. That was a conversation.

Q. In what conversation?—A. Well, it may have been the September one, or the July one, I cannot say, but one of the conversations we had.

Q. What was it then? What was the agreement to which you refer—how did he say it?—A. I cannot recollect it. Where he spoke about reducing the bank's advances.

Q. He spoke about it?—A. In our conversation the matter of reducing the bank's advances was discussed.

30 Q. At that time it was \$8000.00?—A. Yes, and my recollection is that we suggested that when the pulpwood was delivered—if I am not mistaken he might give us \$2.00 a cord. I am not sure that that is the exact particulars of the conversation, but something to that effect."

Bottom of Page 66.

"Q. Now as I understand it, in that discussion of September 10th. he put up to you that he wouldn't make any more advances unless he got a chattel mortgage?—A. He didn't at that time, but he put it in his letter a day or two after apparently.

40 Q. He draws up a chattel mortgage and sends it up to you and you return it to him?—A. Yes, I didn't see at the time that he could execute a chattel mortgage.

Q. And do you still say in the light of that that he agreed to pay you \$2.00 a cord for the pulpwood when it was delivered?—A. Well, I am not so sure that that \$2.00 was in the discussion of September or July."

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No. 15.

Extracts
from
Examina-
tion of
Hedley S.
Murray on
Discovery—
continued.

No. 16.

Extracts from Examination of Ewart C. Atkinson on Discovery.

In the
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Court of
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Division).
—
Defendant's
Evidence.
—
No. 16.
Extracts
from
Examina-
tion of
Ewart C.
Atkinson
on Dis-
covery.

Mr. INCHES : I now wish to put in evidence some extracts from the examination on discovery of Ewart C. Atkinson. Page 5.

"Q. What is the difference between draw shaved wood and sap peeled?
—A. Sap peeled, you peel that when the bark will slip during the months of May, June, July and till the full Moon of August. Draw shaved wood is wood that the bark and bast is removed with a drawing knife.

Q. And what is rossed wood?—A. You use a machine to take the bark and bast off.

Q. You get the same finished result as a draw shaved operation?
—A. Yes."

Page 12—8 lines from bottom.

"Q. Then the change was made so that the contract would be in the same name as the person making the application?—A. I think that letter that was written at that time must have been at the request of the bank to make it conform with the advances. I think that is what it must have been, as I recall the situation."

Page 16—12 lines from bottom.

"Q. And it was quite satisfactory to you as a matter of fact that the Port Royal charged up against the later contracts the discrepancies on the first one?—A. The Port Royal and I never had a dispute about anything. Our relations have been very friendly.

Q. And that was quite in order?—A. Yes. We never objected."

Page 15—12 lines down.

"Q. Then along in September things seemed to come to a bad pass—some real dispute arose between the Port Royal and the bank?—A. I think that it was in July of that year, when the conference took place. It might have been September. I don't recall. I know there was a conference between Mr. Murray, Mr. Lacroix and myself in the bank at Fredericton.

Q. And as a result of the parties being unable to get together, the Port Royal stopped making advances to you except for a few accounts and started paying the bills of the operation itself, is that correct?—A. From September on. Anyway from after that, from that till the end of that operation, the Port Royal paid the wage bill and the supplies bill and no more money was advanced by the bank to me at all.

Q. There was some small items went through?—A. Yes, they were to pay some bills in Fredericton in connection with the operation—just small amounts.

Q. You had no objection to that course of procedure at all?—A. No, it was satisfactory because I did not have to keep the books in connection with it."

Page 24 at the bottom.

"Q. You say you were cutting on the second contract, that is the October 1933 one, during November and December. You said you got all your wood cut then?—A. I think we cut that fall—the fall of 1933 we cut rough wood up to the time we had sufficient snow for hauling. Whether that came up to Christmas I cannot tell you."

Page 26.

10 "Q. Where did all the money come from to pay the accounts during those three months? You only got two very small loans from the bank up to the first of the year under that second contract?—A. I don't know whether it was that part of the year—I don't know whether it was that Fall or not—that I borrowed two thousand dollars and surrendered one of my insurance policies for two thousand dollars in connection with that operation. I think it was a policy I had with the Crown Life Insurance Company."

Page 28.

"Q. When you saw the bank manager with reference to this loan, on January 1934, you showed him this contract, I take it, that you had of October?—A. I presume I would take the contract in and show it.

20 Q. And he would see it?—A. Yes, I think they have it. I have not got it."

Page 30—8 lines down.

30 "Q. They notified the Port Royal they had an assignment of this contract and the moneys were to be paid to the bank?—A. That was a matter between the bank and the Port Royal. That had nothing to do with me. If I signed a contract and the assignment, whatever was done was between the Port Royal and the bank. I never saw the correspondence and I don't know what they did. Nobody raised any objection until August 1934 when Mr. Murray, and Mr. Lacroix and myself had a conference and we had an advance of eight thousand dollars and it was understood that no further advances were to be made to me. After that all money to complete the operation came from the Port Royal."

Page 34—7th. line down.

40 "Q. Mr. Inches asked you something about the delivery in the spring of 1935 and you said that you were not there for a couple of months at all. On whose instructions was the delivery made in the spring of 1935?—A. Well, I presume perhaps it would be on my instructions to the foreman to carry on the operation until completed; but from January of that year until the close of the operation in 1935 I was there very little because everything was handled through the office and the Port Royal and I told the foreman any orders given by the surveyor or from the office, I wanted them carried out. The operation was carried on by our men and Mr. Grass informed me they carried the operation right on until it was finished."

Top of page 31.

"Q. Are these licenses all in the name of the New Lepreau Limited?—A. Yes.

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No. 16.
Extracts
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tion of
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Defendant's
Evidence.

No. 16.
Extracts
from
Examina-
tion of
Ewart C.
Atkinson
on Dis-
covery—
continued.

Page 30—9th line from bottom.

"Q. You operated all these lands under timber licenses from the Crown?—A. Except the five hundred and twenty-two cords that were cut off the Frasers on the Lawrence flowage.

Q. Do you know whether that was shaved wood or sap peeled that you took off the Frasers?—A. That was all sap peeled because the river ran right through it and it was handy to bring it in quickly.

Q. And was that part of the third contract?—A. Yes.

Q. Are these licenses all in the name of the New Lepreau Limited?
—A. Yes.

Q. Have you any agreement with the New Lepreau Limited that you could cut the wood?—A. Why should I?

Q. Have you?—A. I don't think so. I don't know whether there is any agreement or not. I am the New Lepreau Limited."

Mr. DOUGHERTY : I cannot tell without perusing the transcript whether I will want to put in any of the evidence taken on discovery or not. I could not tell until my learned friend read his portions of the evidence in to the record whether I wanted any put in or not. I will have to read it to see whether I want any in to modify or change the effect of it. I had not the privilege to put any of that in until my learned friend read what he wanted
in. 20

COURT : You don't know if you want to put any in or not?

Mr. DOUGHERTY : No.

Court Adjourned.

Court resumed at 10.30 a.m. November 19th. 1936.

No. 17.
Further
Extracts
from
Examina-
tion of
Hedley S.
Murray on
Discovery.

No. 17.

Further Extracts from Examination of Hedley S. Murray on Discovery.

Mr. DOUGHERTY : MAY IT PLEASE YOUR LORDSHIP—while they are completing the figures they were working on last night, Mr. Inches and I thought I could read the portions of the evidence taken on discovery
that the plaintiff wishes to put in, and it could be done now. 30

Mr. Murray's examination for discovery page 17.

"Q. But you knew on January 24th. that he was going to charge Atkinson's indebtedness to the new contract?—A. No sir, I did not.

Q. But you discussed that indebtedness with him?—A. No, because I thought that that \$4000 was capital expenditure—was going to run on indefinitely same as he paid the stampage to the Government.

Q. You will admit now that you knew it was approximately \$4000?—
A. It is a capital expenditure. I have no record of it."

Page 25.

"Q. Now, Mr. Murray, why did you make those advances to Mr. Atkinson? You said you didn't want to. Why did you?
40

A. Well, the man came in and he wanted the money to get the business started, or get ready for it. And like in every application, you wanted to give him fair consideration, the same as any individual who asked for a loan, and we often do things when we don't want to.

Q. You say you didn't want to, but your object would be that he would make some profit on the transaction which would come to the bank?—A. No, not at all; What do you mean?

Q. Was not that the objective?—A. No, the object was just like any merchant or individual coming into the office and wanting a loan and on a strict business basis to help him out. That is what we are there for, to make advances.

Q. If he did make any profit on the transaction?—A. If he did make any profit on the transaction it would all go to the lessening of the indebtedness, I suppose that would be done certainly.

Q. On the old indebtedness?—A. It would all go to the lessening of the old indebtedness, I suppose—certainly, if he had \$5000 when he finished his contract certainly we would put it on the old debt. What would we do with it? Would we let him take it out and spend it?

Q. I ask you is not this the reason you entered into this contract?—
20 A. No, not more than to help him out like I would help any other individual out.

Q. That did go through your mind at that time?—A. I couldn't say now.

Q. I say, did that go through your mind at the time?—A. I couldn't say at this date whether it did nor not."

Bottom of page 26.

"Q. Mr. TEED. Continuing on that line, wasn't that one of the reasons why Atkinson was substituted for the New Lepreau in the contract of October 31st. so that if there was any surplus it would be available to
30 Atkinson personally, and therefore apply on his old—

A. No, no, not as far as I was concerned. Why would it be necessary because Atkinson owned the New Lepreau.

Q. Not at that time?—A. He owned the machinery of it.

Q. But any profit doesn't go necessarily to the President?—A. If he owns practically all the stock—

Q. The Port Royal at that time—in January, 1934, they had stock in New Lepreau, they had practically a half interest, and I put it to you if that wasn't the reason that the contract was changed to Atkinson?—A. You will have to ask the two of them, I don't know.

40 Q. You didn't suggest the change?—A. No.

Q. By the way, is that stock worth anything?—A. That is another question—I don't know.

Q. Is there any market for it?—A. It should be worth something, why shouldn't it? Isn't the Government going to take it over?"

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No. 17.

Further
Extracts
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Examina-
tion of
Hedley S.
Murray on
Discovery—
continued.

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—
No. 17.
Further
Extracts
from
Examina-
tion of
Hedley S.
Murray on
Discovery—
continued.

Page 29.

"Q. You have no record whatever which you received, assigning the amount of pulpwood there had been cut from time to time?—A. I cannot say now—I don't remember.

Q. Would you make a note and look that up. The New Lepreau, or Atkinson, reporting to the bank how many cords had been cut.—A. We wouldn't be interested because the New Lepreau advances had been paid up, and we were giving them no new advances to cut pulpwood.

Q. Progress Reports, showing how many cords they had cut and manufactured for shipment down to the date of report?—A. I wasn't interested enough to enquire because the old indebtedness was wiped out and we were giving a new advance. Before—or in January, before we made this advance, we had this cheque of the Port Royal for this old debt and we were starting off new."

Page 49.

"Q. Now then, from that date on—say on the 17th of July—there was another application for credit?—A. Yes, the first application called for \$5000, and he wanted a new application, so we took a new application for credit, marked "supplementary" to application and promise dated January 24th. 1934.

Q. And at the same time you took an assignment of the contract, calling for?—A. 10,000 cords—yes.

Q. That contract was dated?—A. April 26, 1934."

Page 59.

"Q. You are going to look up your records to see if you had a memo of what pulpwood was there at that time. Did you discuss at that time the amount of pulpwood on hand?—A. With Mr. Lacroix? Mr. Lacroix gave me to understand that there was enough pulpwood to pay all his debts."

Page 61.

"Q. We are talking about September 10th. and this security?—A. I told you he spoke of it, that he felt that his company should have some security on the pulpwood.

Q. Did you say you would put it up to head office?—A. I don't think I did—no."

Page 62.

"Q. What took place that time?—A. We discussed our advances—the bank's advances—and he mentioned that two of us, the Port Royal and the Bank, should not be making advances. I told him we didn't want to make advances in the first place—I did it to help out all parties concerned—and of course we mentioned these figures in advances from three thousand dollars to eight thousand dollars and all appertaining thereto. As I mentioned a moment ago, I told him we were not going to grant any further advances and that seemed to satisfy him."

Page 64.

"Q. By the way, after he came in to see you in July, the middle of July, do you know whether or not there was sufficient pulpwood on hand

in a salable condition to pay your lien?—A. I was of the opinion that there was sufficient pulp wood on hand.”

Mr. INCHES : Kindly read the next question and answer at my request.

“Q. Did you know?—A. I did not know personally exactly what pulpwood was on hand.”

Page 66.

“Mr. DOUGHERTY. One of the letters we have agrees to take summer delivery of 3000.

10 Q. When you got that 3M you thought——A. We thought they should pay us at the rate of \$2.00 or \$3.00 a cord.

Q. And what did he say to that?—A. I cannot tell you definitely what his reply was. But in my opinion, he thought it was reasonable.

Q. Well that is something more you remember that took place in these two conversations. Did you ask him to pay you \$2.00 a cord?—A. I cannot say definitely.

20 Q. Was this \$2.00 a cord that you suggested he agreed to pay and thought it reasonable to pay, in addition to the balance due under the contract?—A. No, I think it had reference to the 3000 cords they were cutting—the 3000 cords they were going to take delivery of in the summer and give at least \$2.00 a cord.

Q. Irrespective of whether there was anything owing to Atkinson from the Port Royal. You say Lacroix agreed to give \$2.00?—A. I wouldnt say definitely, but that was in the discussion.”

Page 67.

“Q. The letter that refers to the summer delivery was a letter from Port Royal to Atkinson, dated July 24th, regarding advances on your contract “for this year’s contract of pulpwood we are going to make all the effort possible to provide further advances of \$3000 for August.”

Mr. DOUGHERTY : That refers to \$3000, not cords.

30 Q. Where is the letter with reference to 3000 cords?—A. July 14th.

Q. The information about the 3000 was explained to Atkinson and he probably showed you this letter he got from Port Royal?—A. I am not sure whether there is not some memo in the contract to that effect.

Q. Did this \$2.00 that you refer to refer to the 3000 cords or all the pulpwood?—A. All the pulpwood.”

Page 68.

40 “Mr. DOUGHERTY : We didn’t enter into this thing at all until——A. I think in July when we were talking about these advances this 3000 was brought up, and Mr. Lacroix mentioned paying this at the rate of \$2.00 a cord as it was delivered. He said he wanted to get the indebtedness cleaned up, and we were also anxious to get it cleaned up. We were talking about our advances of \$8000, and I think that was the time that this matter of \$2.00 a cord was brought up, either in July or September, it is pretty hard to remember all these things.”

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No. 17.
Further
Extracts
from
Examina-
tion of
Hedley S.
Murray on
Discovery.
—continued.

No. 18.

Further Extracts from Examination of Ewart C. Atkinson on Discovery.

Evidence of E. C. ATKINSON, taken on discovery.

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Evidence.

No. 18.
Further
Extracts
from
Examina-
tion of
Ewart C.
Atkinson
on Dis-
covery.

Bottom of page 12.

"Q. Why did you take out your advances in your own name rather than the company's name in 1934?—A. A matter of convenience, that is all.

Q. Not done at the bank's suggestion?—A. No, because I don't think it made any difference to the bank whether I borrowed in the name of the New Lepreau Limited or Ewart C. Atkinson because it is all one and the same thing. I always considered that I owned the New Lepreau Limited and it does not make any difference." 10

Bottom of Page 16.

"Q. There is a very vexed question—a serious misunderstanding—about the matter of your old debt to the Royal Bank. Certainly the impression we received was that you had in your mind a feeling that the bank had been using some of the money for which they made advances in repayment of their old debt. Is that correct in any way?—A. From checking it up I find there was nothing ever paid on the old debt. I thought when we were carrying on these advances that the bank interest payments were charged up, but I find that they were interest payments just for the current loan on the pulp wood operations. 20

Q. You have gone into that and are satisfied?—A. Yes, I had the impression that the interest payments were being charged up in the account, but after I checked it carefully I found that only the current interest was paid and the other interest has accumulated at the bank."

Page 28.

"Q. And he understood from you that all payments coming from the Port Royal would go to the bank?—A. Well, the cheques all came up—Royal Bank of Canada and New Lepreau Limited or Royal Bank of Canada and Ewart C. Atkinson, whatever way they happened to be sent in. 30

Q. Did you have an arrangement with the bank that any profit you made on these three contracts would go on account of the old loan?—A. No.

Q. Was that discussed at all?—A. No. If we had any profits out of it, I would be glad to pay back the bank.

Q. You made the contract with Mr. Lacroix in October and you told him that all his payments would be made to the bank?—A. I don't think there was any misunderstanding about it. I think most of the cheques were sent to me and payable to the Royal Bank and taken down and put in the account. 40

Q. And it was not until the following January that you gave the bank security under section 88?—A. I never took anything down to the bank and gave it to them until it was necessary to get money.

Q. It was not done until January 1934?—A. That is when it was done.

Q. And didn't you tell the bank manager at that time that this pulp wood belonged to the Port Royal and that you could not give security on it?—A. I never told the bank anything.

Q. You didn't tell them that?—A. No.

Q. You knew you had sold the wood to the Port Royal?—A. There was a contract showing the sale of the wood to the Port Royal."

Bottom of page 29.

10 "Q. Did you have any discussion with the bank manager in October 1933 that there might be a shortage on the first contract?—A. No, I did not. There was never any discussion with the bank until I think it was July or August 1934, when it got down to a discussion of serious business."

Page 32.

"Q. That would be Hazen Grass your foreman?—A. Yes.

Q. He would have charge of the shipping of the lumber?—A. Yes, and carried out whatever instructions were given.

Q. Did you have any instructions from the bank not to ship it?—A. No, we had instructions from the bank that none of the wood should be moved until this thing was straightened out."

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Division).*

Defendant's
Evidence.

No. 18.
Further
Extracts
from
Examina-
tion of
Ewart C.
Atkinson
on Dis-
covery—
continued.

20

No. 19.

Antoine J. Lacroix, Examination continued.

ANTOINE J. LACROIX, takes stand, direct examination continued by Mr. Inches.

Mr. INCHES: My Lord, I think you assigned "D" as the exhibit number of these ledger sheets. We are not putting them in.

COURT: "C" is the last exhibit then.

30 Q. Yesterday, Mr. Lacroix, we were discussing the ledger sheets which you produced and by agreement between counsel you were asked to make a summary of the ledger sheets. Have you had prepared that summary?
—A. Yes, we did.

Q. And is this it?—A. Yes.

Q. From your knowledge of the ledger sheets, are you satisfied that is a correct statement of the expenditures on the two contracts in question?
—A. Yes.

Mr. DOUGHERTY: That is not quite right.

Q. With the offset of the purchase price of the pulp received and also included is a charge or disbursement of \$5330.91, the deficit of the first contract in the spring of 1933 to which reference has been made?—A. Yes.

40 Q. Sheet number one is a general recapitulation showing a charge of \$542.29 against Mr. Atkinson, which constitutes a loss on the three contracts?—A. Yes.

No. 19.
Antoine J.
Lacroix,
Examina-
tion (con-
tinued).

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No. 19.
Antoine J.
Lacroix,
Examina-
tion—con-
tinued.

Q. You were asked by Mr. Dougherty to make a detailed statement of the supply item—\$4482.31. Is this sheet I am showing you, which will be marked number two, the general break down?—A. Yes.

Q. And you were also asked to give details of the stumpage, taxes, etc. explaining the item of \$7376.56 on sheet number one. Is sheet number three a detailed statement of that amount?—A. Yes.

Mr. INCHES: I am offering these sheets, one, two and three in evidence.

COURT: Three pages put in evidence as "D", numbered, one, two and three. 10

Mr. INCHES: Each sheet is initialled "D."

Q. Mr. Lacroix, I am showing you sheet number two, which is details of supplies. You have a copy there?—A. Yes.

Q. Of what nature were those supplies?—A. They were food stuff for feeding the men at the camps, and some other material—operation material.

Q. Now, Mr. Lacroix, you were financing the New Lepreau Company Limited on a contract in the spring of 1933. That was for sap peeled wood?—A. It was, sir.

Q. When was that wood finally delivered to you?—A. The spring of 1934. I want to correct that. The spring and summer of 1934. 20

Q. While that operation was going on, you entered into this October contract of 1933 for this draw shaved wood?—A. We did.

Q. At that time, I take it, you would not know what the final result of the spring contract for sap peeled wood would be?—A. No, not before the last shipment would be in.

Q. But in the summer of 1934 when the final delivery was made of this sap peeled wood, the result was there was a deficit of \$5331.91?—A. Yes.

Q. That is the spring contract of 1933?—A. Yes.

Q. As a matter of fact these contracts the way you ran them on your books, were one continuous operation, were they not? 30

Mr. DOUGHERTY: I don't think that is a proper question.

Q. While the men were working on the spring contract of 1933 they were also working on the October contract of 1933 were they not?—A. They were, sir.

Q. Did you have any communication with the bank with reference to the October contract of 1933 until you received the notice of assignment in March?—A. Do you mean the draw shaved contract?

Q. Yes, of 1933 until you received notice of the assignment in March 1934?—A. No, I don't think we did.

Q. You have stated that this sap peeled wood under the spring contract of 1933 was finally cleaned up in the summer of 1934?—A. Yes. 40

Q. When did you receive the draw shaved wood under the October contract?—A. We received some in the Fall of 1934.

Q. And the balance?—A. And the balance in the spring of 1935.

Q. Well now, reference was made during the examination of Mr. Grass yesterday to the marking or stamping of this pulpwood. Was all

this pulpwood stamped and marked?—*A.* All that pulpwood was supposed to be hammer marked.

Q. When you say "supposed to be," did you have any arrangement with reference to stamping it?—*A.* Yes.

Q. What were those arrangements?—*A.* To have this pulpwood hammer marked with an X.

Q. That is your company's mark?—*A.* Yes.

Q. And who does that marking?—*A.* The scalers.

10 *Q.* And whose employees are the scalers?—*A.* Port Royal Pulp and Paper Company.

Q. And when is that stamping done?

Mr. DOUGHERTY: I think that is a hypothetical question you are asking.

Q. You got this first contract in the spring of 1933 for the sap peeled wood. From that time on did you visit the scene of the operations?—*A.* Not at all.

Q. Did any one of your employees or agents visit the scene of the operations?—*A.* They did.

Q. Who would they be?—*A.* The head scaler.

20 *Q.* And would he be the only one?—*A.* No, there have been two scalers on that operation.

Q. Can you remember their names?—*A.* Yes, Ernest Vanderhagan—

Q. That is the name Mr. Grass mentioned?—*A.* Yes, and Adrian Morin for the second.

Q. They were your representatives who would do this scaling during 1933, 1934 and 1935?—*A.* Yes.

Q. Well now, after the middle of September 1934 did these scalers of yours visit the scene of the operation more frequently than they would do on the former operations?—*A.* Not at all.

30 *Q.* I mean as far as your scalers were concerned, the work they did down to the final delivery of all the wood, was what they had been doing continuously since the first contract started in 1933?—*A.* Yes.

Q. After September 1934 was there any difference in your method of carrying on than there had been prior to that?—*A.* Yes.

Q. And what was that difference?—*A.* We made the payments for labor and supplies—

COURT. The bank knew of course that this pulpwood that Mr. Atkinson was getting out was contracted for with the pulp people?

Mr. INCHES: They took assignments of the rights under the contracts.

40 *COURT:* When the pulp people were notified by the bank that they were to make advances to Mr. Atkinson in order to carry on the operations, did the pulp people raise any objection to that. They were notified under the Bank Act of the hypothecation of the cut in order to cover advances. Did the pulp people order the bank to make advances on the wood which according to the bank belonged to them?

*In the
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Bench
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Evidence.

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Lacroix,
Examina-
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tinued.*

*In the
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tion—con-
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Mr. INCHES : I call Your Lordship's attention to exhibit number eight. In March 1934 the bank took an assignment of the first contract and sent a copy of that assignment to the Port Royal and told them in future the payments were to be made to the bank. When they sent this assignment they asked the Port Royal what their advances were to date to Mr. Atkinson.

COURT : I understand the position now.

Mr. INCHES : The Port Royal wrote back and told them what these advances were.

I ask the reporter to read the last question and answer.

"Q. After September 1934 was there any difference in your method of carrying on than there had been prior to that?—A. Yes. 10

"Q. What was that difference?—A. We made the payments for labor and supplies."—A. We made the payments of the labor wages and supplies directly from the office at Saint John.

Q. In what way would you make them direct—suppose the men for instance were to be paid, what method or procedure did you go through to make that payment?—A. On the time book of the foreman of the operation or Mr. Atkinson.

Q. By the way—after September 1934 were you in touch at all with Mr. Atkinson with reference to this operation?—A. As usual, yes. 20

Q. When you say "as usual", in 1933 and 1934 would he come to your office from time to time?—A. Yes, he did.

Q. Well—how often would he come?—A. I would say three or four times a month.

Q. And after September 1934 did he come to your office in the same way?—A. Yes.

Q. Have you any record there of his attendance at your office, say in the year 1935?—A. Yes, we have.

Q. What are you referring to? What did you make that memorandum from?—A. From cheques we have. 30

Q. Have you any way of knowing any attendances that he made at your office in the year 1935?—A. Yes.

Q. And what record would that be?—A. By cheques he got from us at the office to bring cash to his camp.

Mr. DOUGHERTY : He cannot go that far. I don't think the last part of that answer should be in the record.

Mr. INCHES : I am trying to give definite dates when Mr. Atkinson was in the Port Royal office in Saint John in the year 1935 over this contract, and the witness states that Mr. Atkinson would come in and get cheques from him personally. He would see him himself and give him these cheques. 40 I am asking the witness to refer to the dates of these cheques which he gave to Mr. Atkinson to prove the dates in which Mr. Atkinson was in the witness's office. Surely that must be evidence.

Mr. DOUGHERTY : I object to that because there is no evidence that the witness made a memorandum of those visits at that time. He is not

speaking from memory—he is speaking from a memorandum he has prepared now.

COURT: Cannot he speak from memory?

Mr. INCHES: We have the cheques which I will show to the witness for the purpose of refreshing his recollection then.

COURT: You leave the memorandum out of the question and you can ask him from the cheques.

Q. Looking at these cheques which are seven in number, do you say that Mr. Atkinson came to your office and got those from you personally?—

10 A. He did, sir.

Q. Well then, what dates was he in your office?—A. Cheque \$97—

Q. Don't give the amount of the cheque, give the dates?—A. May 3rd.

Mr. DOUGHERTY: I object.

Q. You say you gave these cheques personally to Mr. Atkinson?—

A. Yes.

Q. In your office?—A. Yes.

Q. And they were dated the day he was in there?—A. Yes, May 3rd, May 13th, May 16th, May 20th, June 11th, and July 3rd.

Q. That is all 1935?—A. Yes.

20 Q. I notice that the first cheque is on May 3rd, 1935?—A. Yes.

Q. Was there any pulp wood being delivered at that time?—A. The first pulp wood in 1935 was received at the mill on May 13th.

Q. And from that time on it kept coming in?—A. Yes.

Q. When Mr. Atkinson was in your office on those occasions, what would be the purport of the—

Mr. DOUGHERTY: That is a hypothetical question.

Q. Coming down to more detail—did he discuss the operation with you?

Mr. DOUGHERTY: That is a leading question.

30 Q. He was in there on all these occasions?—A. Yes.

Q. In what connection was he in there?

Mr. DOUGHERTY: I object. That is a hypothetical question the way it is put.

COURT: I would not press that. I do not think it is wrong, but there is no use taking any chance with evidence about which there is any doubt.

Q. What did he discuss with you when he was in there?

Mr. DOUGHERTY: I don't think it is evidence against the plaintiff.

40 Mr. INCHES: There was evidence given by Mr. Grass and Mr. Atkinson yesterday which I inferred from the way it was given or put in, so that inference might be drawn that Mr. Atkinson had nothing whatever to do with this operation after September 1934.

COURT: He was the whole operator, was he not?

Mr. INCHES: That is our contention and we have proof of these facts in May and June 1935.

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tion—con-
tinued.

COURT: I will allow the question subject to your objection.

Q. Was the contract discussed on those occasions—the pulp wood operation?—A. Yes.

Q. And you recognized that he was still the operator?—A. We did.

Mr. DOUGHERTY: I ask to have that question and answer struck out.

Mr. INCHES: I will strike it out then.

Q. Was he the operator under the contract at that time?

Mr. DOUGHERTY: The contract speaks for itself.

COURT: Didn't Mr. Atkinson continue the managing of the operation until the end? 10

Mr. DOUGHERTY: They took it over themselves.

A. We never did.

Mr. INCHES: All we did was pay the wages direct.

Q. Was he the operator at that time?—A. Yes.

Q. Was there any agreement between you and Mr. Atkinson in any way that you would take over the operation of the contract?—A. No.

Q. (By the Court): Did you take the operation out of his hands?—A. No sir, we never did.

Q. Who did you put in charge?—A. Nobody.

Q. Who assumed charge after Mr. Atkinson ceased to be the manager? 20

Mr. INCHES: He never ceased to be the manager.

Q. (By Mr. Inches): Down to September 18th, 1934 have you any record there to show the amount that you had paid out on these contracts?—A. Yes.

Mr. DOUGHERTY: What is he referring to?

Mr. INCHES: This is the document we showed you yesterday, which you asked to have broken down.

Mr. DOUGHERTY: I will take the broken down one, but not that one.

A. That is only information I took there for my own information.

Q. What are you going to refer to, is this the document?—A. Yes. 30

Mr. DOUGHERTY: If that is the figure he is going to say, then I have no objection.

Q. Down to September 18th, 1934 what was the amount of your payments out on these two contracts?—A. \$10,564.90.

Q. And then after that, down to the completion—

Mr. DOUGHERTY: Why can't he refer to the document that is in evidence.

Q. Then after that, down to the completion of the contract, how much?—A. \$23,369 and some cents in addition to the ten thousand dollars.

Q. Well now, did the figures of \$10,564.90 include the \$5330 deficit on the spring contract of 1933?—A. No sir. 40

Q. Well now, some of this pulp wood I am instructed came off some land of the Fraser Company?—A. Yes.

Q. Are you familiar with that?—A. Yes.

Q. Was there a settlement with the Fraser Company for that trespass?
—A. There was a settlement with their attorneys at law.

Q. And who paid the damages under that settlement?—A. We paid the stumpage.

Q. The Port Royal paid the stumpage?—A. Yes.

Q. I am referring to exhibit number eight—a letter which you wrote to the Royal Bank of Canada on March 16th. 1934, in which you tell them that “the advances on this contract during the winter were \$484.90 plus an amount of about four thousand dollars over-advanced on the other
10 contract which we have with him.”

Q. Was that the spring contract of 1933?—A. That is correct, yes.

Q. And those figures of four thousand dollars eventually turned out to be the \$5330.91?—A. Yes.

Q. On that first contract?—A. Yes.

Q. In Mr. Murray’s letter to you exhibit number nine of March 20th. 1934 he states “we have advanced him three thousand dollars on the contract dated October 21st. under section 88 security.” Up to that time had you received any notice whatever that the bank held section 88?
—A. No. sir.

20 COURT: In their accounting today the three contracts between the operations are treated by the pulp company as one transaction, that is as to their accounting?

Mr. INCHES: Yes.

COURT: I think someone said yesterday that the amount of the pulp which they took and which the bank claims they had a lien on, would far more than pay the difference now owing to the bank?

Mr. INCHES: They got six thousand cords altogether and the purchase price was six dollars and a half on part and over seven dollars a cord on the other.

30 COURT: The whole question is this—if this pulp wood belongs to the bank, the bank is entitled to be paid their eight thousand dollars.

Mr. INCHES: In your reply to the Royal Bank exhibit number “A” dated March 26th. 1934 you said “We are quite willing to agree to protect your advances as much as possible after our amount has been taken care of.” Did you have any reply from the bank to that letter, that you know of?
—A. Not that I remember.

Q. In exhibit number sixteen, letter from yourself to the Royal Bank dated July 19th. 1934 you stated that “the amount of advances to Mr. Atkinson on pulpwood from our company is \$10,975.62.” That amount,
40 I take it, included the deficit on the spring contract of 1933?—A. Yes.

Q. Of \$5330.91?—A. Yes.

Q. It is in evidence either verbally or by document that there came a time in the summer of 1934 when you had some discussions with Mr. Murray over this contract. At that time he was claiming he had section 88 security, was he not?—A. I believe so, yes.

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Q. And you were claiming that he had not, is that not so?—A. Yes.

Mr. DOUGHERTY: I don't think that is proper.

Q. But you did have discussions with him over the situation, did you not?—A. We did.

Q. And you did not come to any agreement with him?—A. No, sir.

Q. I am referring you to exhibit number twenty-four letter dated September 15th, 1934 from yourself to Mr. Murray, in which you stated "If you decide not to give us the security we are asking for, you had better make arrangements to finish the operations." Did the bank make any arrangements to finish the operations?—A. No.

Q. But you did?—A. Yes.

Q. Mr. Murray testified on discovery that you gave him to understand during those parlays that there was enough pulpwood to pay all his debts. Did you make any such statement to Mr. Murray?—A. I think I did believe at that time that there was enough pulpwood to pay all debts.

Q. And for all purposes you wanted to make some arrangements with him?—A. Yes.

Mr. DOUGHERTY: I object to the question. I don't think it should be asked. It is leading.

Q. I am showing you sheet number two of exhibit "D." The first item is "Kitchen Bros. Ltd.—\$1966.21." What would be the nature of the goods covered by that item?—A. Supplies—flour, food for the laborers, groceries.

Q. "Budovitch Bros.—\$987.71." What would be the nature of the goods covered by that item?—A. Meat.

Q. "W. H. Thorne & Co.—\$90.64." What would be the nature of the goods covered by that item?—A. Hardware.

Q. "Vassie, Brock, Manchester, Ltd.—\$180.30." What would be the nature of the goods covered by that item?—A. Dry goods.

Q. "Imperial Oil Ltd.—\$27.08." What does that cover?—A. Oil. 30

Q. "J. S. Neill & Son, Ltd.—\$94.75." What does that cover?—A. Hardware.

Q. "John Palmer Co.—\$94.62." What does that cover?—A. Boots.

Q. "John Gibson & Son Ltd.—\$401.46." What does that cover?—A. Hay or oats.

Q. "Jones, Schofield, Hatheway Ltd.—\$630.26." What does that cover?—A. Groceries.

Q. "A. E. Williams—\$100.00." What does that cover?—A. Horses, or something of that kind.

Q. "W. W. Boyce—\$228.20." What does that cover?—A. Feed stuff for horses. 40

Q. "H. Disston & Sons, Ltd.—\$164.29." What does that cover?—A. Saw files or saws.

Q. "Jos. Fletcher—\$97.00." What does that cover?—A. I don't remember him.

Q. "Dominion Rubber Co. Ltd.—\$19.60." What does that cover?—
A. Some rubbers or boots.

Q. "Canadian Fairbanks Morse Ltd.—\$56.10." What does that
cover?—A. Magneto for gasoline engine.

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CROSS EXAMINATION BY MR. DOUGHERTY.

Q. Mr. Lacroix, you just told my learned friend that in these discussions
that you had with Mr. Murray the bank manager that he was claiming that
he had section 88 security and you maintained that he didn't. You recall
that question and answer?—A. Yes.

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mination.

10 Q. I call your attention to this exhibit number twenty-four, a letter
from you to Mr. Murray, dated September 15th. 1934. That is your
signature—Antoine J. Lacroix?—A. Yes.

Q. Second paragraph—"On the paper which we sent you to be signed,
you will find reference permitting you to hold present guarantee under
Section 88, which you now have, until full paid." You wrote those words
in this letter?—A. Yes.

20 Q. In exhibit number nine which is a letter from Mr. Murray to the Port
Royal dated March 20th. 1934, you were advised at that time by the bank
that the Royal Bank held Section 88 security from Mr. Atkinson, were you
not?—A. I don't know.

Q. Just look at that exhibit. You were advised at that time by the
bank that the Royal Bank held Section 88 security from Mr. Atkinson,
were you not?—A. We were advised of their claim.

Q. You were advised by the bank that they had that?—A. We received
that letter.

Q. And at that time you had only advanced to Mr. Atkinson under the
contract dated October 31st. 1933 \$484.90, had you not. That is correct?
—A. Yes.

30 Q. And on the 16th of March 1934, exhibit number eight, you acknow-
ledged receipt of assignment of contract dated October 31st 1933. (shows
exhibit number eight to witness)?—A. Subject to our first claim of advances.

Q. You received the assignment of the contract?—A. Yes, the first
part of that letter reads that way.

Q. And no wood was shipped under either of the contracts that are in
question in this suit until the twelfth day of November 1934?—A. You
mean the draw shaved contract?

Q. I am talking about the contracts in question in this suit. Nothing
was shipped until the 12th. of November 1934?—A. No.

40 Q. And all the pulpwood that you received under these two contracts
amounting to 6005.43 cords, you received between the twelfth of November
1934 and early in July 1935?—A. That is quite correct.

Q. I show you exhibit number sixteen from Port Royal to Royal Bank
of Canada, dated July 19th, 1934, the second paragraph of which reads as
follows—"The amount of advances to Mr. Atkinson on pulpwood from our
company is \$10,975.62." As far as the contracts that are dealt with in this

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suit, we would have to deduct the sum of \$5330.91 from those figures?—
A. Yes.

Q. To represent the advances under the contracts in question in this
suit?—*A.* Yes.

Q. It is the two contracts that we are setting up in this action?—*A.* Yes.

Q. Before any advances were made by the bank to Mr. Atkinson, which
form part of the subject matter of this suit, the Port Royal paid the Royal
Bank \$5330.91 and settled up their advances on the contract of the spring
of 1933 that you had with New Lepreau Limited. That is correct is it not?

Mr. INCHES: I think the evidence shows \$484. was advanced. 10

Mr. DOUGHERTY: I am talking about the old contract.

Q. You remember sending a cheque to the Royal Bank in January
1934 for \$5330?—*A.* I think Mr. Atkinson came for the cheque.

Q. At any rate you did give that cheque the middle of January 1934?—
A. What is the amount?

Q. \$5330?—*A.* Yes.

Q. And that cleaned up the advances that the Royal Bank had made
to the New Lepreau Limited?—*A.* I cannot tell that, I don't know.

Q. At any rate you paid that cheque?—*A.* Yes.

Q. At any rate you were given to understand that that cleaned up the 20
old contract with the bank, were you not, by Atkinson?—*A.* I don't know,
I don't remember.

Q. That would be the most natural thing for you to be told, what
that cheque for \$5330 represented?—*A.* Very likely he told me it was for
the bank, but I don't know if it cleaned up his advances with the bank.

Q. You would naturally have some knowledge of what it was for?—
A. I was not acquainted with Mr. Atkinson's banking business.

Q. You did know that he had entered into a new contract dated
October 31st. 1933 with New Lepreau Limited at that time?—*A.* You
mean on the new contract for draw shaved wood? 30

Q. I don't know what it was, I go by dates, not by the kind of wood.
October 31st. 1933. In January 1934 when you paid \$5330 to the Royal
Bank you had a contract then existing and current with the New Lepreau
Limited?—*A.* Yes.

Q. And would it not be natural for Mr. Atkinson to say "this cleans
up my advances on the old contract"?—*A.* I don't know if he did, I don't
remember.

Q. Would it not be the most natural thing for you to go and be told
that by Mr. Atkinson?—*A.* I cannot say, sir.

Q. It was an odd figure—\$5330?—*A.* Yes. 40

Q. Were you not given to understand that that cleaned up all the
advances on the old contract?—*A.* Mr. Atkinson asked me for a cheque—

Q. Were you not given to understand that that cleaned up all the
bank's advances?—*A.* I don't remember.

Q. This is the cheque is it not, that I am referring to?—*A.* Yes.

Q. It is post-dated or dated February 15th. 1934 and has your initials opposite the change in the date?—A. Yes.

Q. As a matter of fact it was sent up to the bank in January 1934 was it not?—A. Yes.

Q. And eventually went through, the bank at Saint John not knowing it was post-dated. Is that not right?—A. Yes.

Q. And you have signed the cheque here—Antoine J. Lacroix?—A. I did, sir.

10 Q. And it says “payment in full of advances to New Lepreau Limited for operation of pulpwood 1933.”?—A. It said that, but we—

Mr. DOUGHERTY: I offer this cheque in evidence.

Put in evidence as No. 27.

Q. Then Mr. Lacroix, I repeat my question to you—when you received the notice in March 1934—two different letters—from the Royal Bank of Canada, you knew that the old loans that New Lepreau had received from the Royal Bank of Canada had been paid in full according to that cheque?—

A. I cannot say that because we never had an accounting from the Royal Bank of the indebtedness of Mr. Atkinson with the bank, but this cheque has been made at Mr. Atkinson’s request for the amount.

20 Q. And on your instructions to your stenographer it was made—“payment in full of advances to New Lepreau Limited for operation of pulpwood 1933”?—A. Yes.

Q. I refer again to exhibit number twenty-four. This is a letter from you to H. S. Murray manager of Royal Bank at Fredericton, dated September 15th. 1934?—A. Yes.

30 Q. You write to the bank and say in part—“Unless a prompt decision is arrived at, we are going to drop out of the picture all together and take our own chances regarding the advances we have made.” On the second page—“The operations are at a stage at the present time where it is time for us to come to a decision of discontinuing advances or not, and we do not want to go any farther.....If you decide not to give us the security we are asking for, you had better make arrangements to finish the operations. The market on pulpwood has dropped enough to enable us to turn around and purchase wood to make up for the loss we may have to stand on this contract with E. C. Atkinson.” You wrote that of course in that letter?—A. I wrote that letter.

Q. The bank did not make any new arrangements with you did they? You did not drop out of the picture did you?—A. What do you mean?

40 Q. I don’t know, I am using your own language. You say “we are going to drop out of the picture.” You didn’t drop out of the picture did you?—A. No sir.

Q. As a matter of fact you went deeper into the picture didn’t you?—A. I don’t know what you mean by deeper.

Q. You made no more advances to the bank or Mr. Atkinson after that time, did you, September 15th. 1934?—A. Yes, there was a cheque after that that went into Atkinson in the bank.

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Q. Then some time around the first of October you ceased making any advances and took over the operation yourself for the payment of all bills and everything?—A. We never took over the operation.

Q. For the payment of all bills?—A. No sir, we just changed the way of paying the bills.

Q. You paid wages and supplies and everything yourself?—A. What do you mean by paid?

Q. You paid for supplies and wages and everything, according to the statement you put in evidence?—A. Mr. Atkinson brought to the office a statement—

Q. Didn't you pay these items yourself?—A. It was paid by cheque of the Port Royal. 10

Q. And under the terms of these two contracts delivery of your pulpwood was to be F.O.B. cars Fairville?—A. F.O.B. cars at the mill at Fairville.

Q. And as I understand it the first delivery was made on November 12th.?—A. Yes.

Q. And of course you knew during the whole summer of 1934 that the bank had reached advances totalling eight thousand dollars around the first of August?—A. I did not. 20

Q. You went and discussed that with Mr. Murray and Mr. Atkinson regarding their advances didn't you?—A. Yes.

Q. And the value of the pulpwood, net value of the fall shipment of some 1772 cords according to your own figures was \$10,614.78?—A. There was only 700 and some cords in the Fall.

Q. I am not trying to mislead you. This is one of your own statements?—A. Yes.

Q. And you will find there is 707.17 cords at \$6.50 and 1065.73 cords at \$7.25 a cord. That would be correct?—A. You mean the two contracts together? 30

Q. I am talking about the shipment of pulp wood?—A. Yes, on the two contracts.

Q. And those net figures amount to \$10,614.78. I have worked that out here?—A. Yes.

Q. So that in November and December 1934 you did receive that much pulpwood valued at \$10,614.78?—A. Yes.

Q. Under these contracts?—A. Yes.

Q. And nothing was paid to the Royal Bank for any part of that pulpwood you received in those two months, was there?—A. I don't know.

Q. Did you pay any part of that amount of money to the Royal Bank in the months of November and December 1934?—A. I will have to check the books to see if anything was paid. 40

Q. At any rate you took delivery in your mill at Fairville starting on the 13th. day of May 1935—in May, June and July 1935 you took delivery of 4332.53 cords?—A. Yes.

Q. And the value of that according to your own figure is \$26,786.38?—A. Yes.

Q. None of that was paid to the Royal Bank, was it?—A. I don't know. I have no way to know.

Q. The last payment that you sent to the Royal Bank was on January 29th, 1935—\$170?—A. I believe so.

Q. When I say to you that no part of this \$26,786.38 was paid to the Royal Bank, that is correct is it not?

Mr. INCHES: I object to the question.

COURT: Question allowed.

10 A. I don't believe so, because on that figure you have the fall shipments.

Q. I am just dealing with the spring shipment. I will take your own figures. I am not trying to mislead you. I am taking them from your own sheets. Take that \$12,717.08. Is that correct?—A. Yes.

Q. That represents the value of the May shipments of 1935?—A. Yes.

Q. That is the net value after freight is deducted?—A. Yes.

Q. And June shipments \$14,012.17?—A. That is correct.

Q. That is net after freight is deducted?—A. Yes.

Q. And July shipments—net \$57.13?—A. Yes.

Q. Then will you answer my question now?—A. Repeat the question.

20 Q. When I say to you that no part of this \$26,786.38 was paid to the Royal Bank, that is correct, is it not?—A. I don't know if I can say that. Mr. Atkinson may have had some money deposited in the bank.

Q. I am talking about the Royal Bank of Canada. You can answer that yes or no?—A. I say I don't know.

Q. If it will ease your mind so you won't affect your conscience too unduly, you may be referring to the payment of interest amounting to about \$120?—A. Yes, three cheques.

Q. That is the only payments that were made to the Royal Bank after the 29th. day of January 1935?—A. That I have knowledge of, yes.

30 Mr. INCHES: That is the case for the defence.

COURT: Any rebuttal?

Mr. DOUGHERTY: No.

Mr. INCHES: Will Your Lordship set a date for the time the briefs are to be filed?

COURT: It will be about ten days after receiving the transcript from the reporter.

Mr. DOUGHERTY: In connection with these exhibits. I would like to have my own exhibits as I need them in the preparation of the brief.

40 COURT: We will leave them with the clerk of the court and you can get them when you need them.

I hereby certify the above to be a true transcript of my shorthand notes taken in the above case to the best of my knowledge and belief.

G. P. LEONARD,
Official Court Reporter.

*In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).*

Defendant's
Evidence.

No. 19.
Antoine J.
Lacroix,
Cross-examination—
continued.

In the
Supreme
Court of
New
Brunswick
(King's
Bench
Division).

No. 20.

Certificate of Clerk of York Nisi Prius Court as to Judgment of Barry C.J.
delivered 5th February, 1937.

IN THE SUPREME COURT KING'S BENCH DIVISION.

BETWEEN

ROYAL BANK OF CANADA - - - - - Plaintiff
and
PORT ROYAL PULP & PAPER Co., LTD. - - - - - Defendant.

No. 20.
Certificate
of Clerk of
York Nisi
Prius Court
as to
Judgment of
Barry C.J.
delivered
5th Febru-
ary, 1937.

I certify that this action was tried before the Honourable Mr. Justice J. H. Barry, Chief Justice of the King's Bench Division on the Seventeenth, 10
Eighteenth and Nineteenth days of November, A. D. 1936.

The Judge directed, by written Judgment delivered the fifth day of February, A. D. 1937, that Judgment be entered for the Plaintiff for Eight Thousand Dollars (\$8,000.00) with interest thereon at the rate of seven per cent. (7%) per annum up to the eighth of April, A. D. 1936 (date of particulars delivered) Three hundred Sixty-six Dollars and Sixty-six cents (\$366.66) to which is to be added the accrued interest on the principal sum from that date to Judgment five hundred Thirty Dollars and Eighty-seven cents (\$530.87), amounting in the aggregate to Eight thousand Eight hundred Ninety-seven Dollars and Fifty-three cents (\$8,897.53) with costs 20 of the action against the defendant.

The Thirteenth day of October, A. D. 1937.

(Sgd) ALBERT R. MURRAY
Clerk, Nisi Prius Circuit Court
York County

No. 21.
Reasons for
Judgment of
Barry C.J.

No. 21.

Reasons for Judgment of Barry, C.J.

This action was tried before me, without a jury at the York Nisi Prius Sittings, on the 17th, 18th and 19th days of November last, and entry of Judgment has been deferred pending the filing of briefs by counsel upon 30 the questions of both law and fact involved, and consideration of the verdict. The plaintiff's brief was filed on the 17th of December last and the defendant's on the 6th of January last. The facts of the case though somewhat involved are not in the main disputed.

The action is brought by the plaintiff bank against the defendant company to recover the sum of eight thousand dollars with interest thereon at seven per cent per annum from the 30th day of June, A. D. 1935, alleged to be the unpaid balance of monies advanced by the bank to one Ewart C.

Atkinson to assist him in getting out a quantity of pulpwood upon two contracts between him and the defendant company. The plaintiff's claim is two fold. First, it is in form *ex delicto* for the conversion by the defendant of certain pulpwood which the bank claims to have belonged to it under the security given to it upon the products of the two contracts mentioned: Secondly, the bank is suing *ex contractu* for the purchase price of the same pulpwood delivered to the defendant company under the contracts (Exhibits Nos. 1 and 10) the bank claiming ownership as assignee of Atkinson of all the said pulpwood under and by virtue of the security given by Atkinson to the bank under the provisions of section 88 of the Bank Act, and that as such assignee it is entitled to receive the moneys due and payable by the company under the terms of the contracts by reason of the assignment of all monies due thereunder from Atkinson to the bank. In both claims, however, the bank is seeking to recover from the company only the amount of its advances to Atkinson still outstanding and unpaid as shown by the particulars of the plaintiff's claim.

The defences which the defendant company has set up against the plaintiff's claim may be thus summarized :

Atkinson had no legal or equitable interest in the pulpwood whereon he gave security to the plaintiff, and therefore the plaintiff has no title whatever on which it can successfully maintain an action for conversion.

The security in the form in which it was taken, was in part, at least, invalid under section 88 of the Bank Act.

By the Bank Act the option is given to the bank of either taking security at the time of the advance, or taking at that time a promise, subsequently to give security, which promise must be in writing; there is no provision in the Act permitting the bank to do both.

At the time of the various advances made by the bank, while it did actually take security, such security was taken on rough or draw shaved wood; and it was not until September, when all advances by the plaintiff had been made, and they were simply renewal notes going through Atkinson's account with the bank, that the bank attempted to take security on the sap peeled wood, which the defendant maintains is an entirely different commodity. All the security which the plaintiff claims on the sap peeled wood is invalid, as being in contravention of sections 88 and 90 of the Bank Act.

The defendant had an equitable right in the wood as soon as it was cut and marked, of which the plaintiff had actual knowledge or notice, and that it took the wood, if at all, subject to this equitable right of the defendant.

The foregoing summary fairly represents, I think, the substantial defences set up by the defendant. Besides the two contracts referred to, there is a third one, the earliest of the three to which—although the plaintiff's submission is that it has nothing whatever to do with the matters in controversy in this action—I think it expedient to refer, because it plays a part, though, perhaps but a minor one, in the dispute which has arisen between the parties in respect of the two later contracts. It appears by this contract, the earliest of the three, which has not been produced, that

*In the
Supreme
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Division.)*

No. 21.
Reasons for
Judgment of
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—continued.

*In the
Supreme
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(King's
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Division.)*

No. 21.
Reasons for
Judgment of
Barry C.J.
—continued.

in the spring of 1933 the defendant entered into an agreement with New Lepreau Limited, for the purchase of a quantity of pulpwood. The plaintiff bank made advances to New Lepreau Limited on the contract and in January, 1934, the defendant sent the plaintiff a cheque for \$5,350.00 in full settlement of those advances. This was done, not on the demand of the plaintiff, but at the request of Ewart C. Atkinson, the president and proprietor of 247 of the 489 shares of the capital stock of New Lepreau Limited. The cheque is marked by the Defendant, "Payment in full of advances to New Lepreau Limited for operation of pulpwood, 1933." This, so far as the plaintiff bank is concerned would seem to be the end of the 1933 pulp contract, but the defendant company evidently does not so regard it. It appears that on the 1933 contract with New Lepreau Limited, the defendant company sustained a loss of \$5,330.91, and this loss the defendant now seeks to recoup by charging or setting it off against the contract price of the pulpwood delivered under the two contracts of 31st of October, 1933 (Exhibit No. 1) and 26th of April, 1934 (Exhibit No. 10). The plaintiff objects, and in my opinion with reason objects, to its security being impaired by the withdrawal, without its consent, of the sum of \$5,330.91 from the price of the pulpwood delivered under the two later contracts, to which, under the Bank Act it has a right to look for repayment of its advances for the carrying on of the contracts between Atkinson and the defendant company. It is to be borne in mind that the first contract was with a corporation, the New Lepreau Limited, and that the two succeeding contracts were with Ewart C. Atkinson individually, who would not be personally liable for the debts of the corporation of which he was president. It is familiar law that a director or other chief officer of a corporation is not ordinarily individually responsible for the corporate defaults. It is in evidence and appears to be the fact that this, the earlier deficit, was charged against the two succeeding contracts at Atkinson's own instance, but there is no evidence that this was acquiesced in by the plaintiff, and without its consent it is obvious that this transaction between contractor and contractee could not prejudicially affect the rights of the bank in its financing of the later operations.

In the meantime and while the contract of which I have been speaking was still running, on October 31st, 1933, New Lepreau Limited entered into a second contract with the defendant company for the sale of 1,000 to 4,000 cords of draw shaved or rossed spruce & fir pulpwood. On March 1st, 1934, by an agreement between Ewart C. Atkinson and the defendant company, the former's name was substituted in the contract for that of New Lepreau Limited, and because after the change was made the bank continued to treat Atkinson as the real contractor and to make to him advances on the security of the output of the pulpwood produced under the contract, we may safely assume, I think, that the bank had no objection to the change which had been made in the name, from New Lepreau Limited to Ewart C. Atkinson. By this, the second contract "the seller agrees to sell and deliver," and "the company agrees to purchase and accept," 1,000 to 4,000 of draw shaved or rossed pulpwood, with detailed particulars

of its size, how it was to be shipped, quality, etc. It was to be loaded on cars by the seller, shipped from New River and consigned to the company at Fairville, N.B. and the bills of lading forwarded to the company. The defendant agreed to make advances to New Lepreau Limited (changed to Ewart C. Atkinson) as follows \$1.25 per cord when cut rough; \$2.00 per cord when draw shaved or rossed in the woods; and \$1.00 per cord when piled on the bank of the river ready to be driven; shipments to be complete by June 1st, 1934.

10 On the 26th of April, 1934, Ewart C. Atkinson, personally, entered into what may be called the third contract with the company, whereby the seller agreed to sell and deliver to the pulp company, and the company agreed to purchase and accept 10,000 cords of "peeled Spruce & Fir Pulpwood". With the exception of some difference in the prices to be paid, and the advances to be made, this contract does not differ materially from the immediately preceding one, that is the second contract. It may be worthy of observation that in both these contracts, the operative words are not "sold and delivered" and "have purchased" but "agrees to sell and deliver" and "agrees to purchase", words which seem to me to carry with them the implication that at the time of the making of the contracts
20 it was not in the minds of the parties themselves that there should be an immediate delivery to the purchaser of the pulpwood as soon as cut. Until the loading, shipping, and consigning was consummated in accordance with the terms of the contracts, the defendant company, in my opinion, acquired no legal title to the pulpwood. What its equities, if any, may have been, is another matter. The first advance of \$1,000 to Atkinson was made on the 17th of July, 1934; the first pulpwood shipped and delivered under the contract was not shipped to the defendant until the 12th of the following November. And the question is, in whom, during the interim, rested the legal title to the pulpwood?

30 Before the banks were authorized to loan money on such operations as those with which we are now dealing, it was the common practice of purchasers under a contract to cut lumber, to make it a term of the written contract with the operator that the property in the lumber cut would be in the contractee from the stump. This would be a protection to the party who was advancing the money to the operator to carry on the operation. But no such stipulation, I venture to think, will be found in the contracts of the present day, in cases at any rate where the operator has to go to a bank for assistance, for the very obvious reason that such a stipulation would deprive the operator of the very assistance which he wanted, in the event
40 of neither the operator nor the purchaser of the output being able to finance the operation. No bank would loan to a pulpwood operator, were the product of the operation as soon as cut, to become the property of the purchaser of the output. So, also, I think it would be true to say, that no bank would be willing to advance money to a woods-operator of any kind, to enable him to carry on an operation, unless he could satisfy the bank that he had a contract with some responsible party, to take at a commercially attractive price, the output of the operation. If that be

*In the
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No. 21.
Reasons for
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Barry C.J.
—continued.

*In the
Supreme
Court of
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Brunswick
(King's
Bench
Division.)*

No. 21.

Reasons for
Judgment of
Barry C.J.
—continued.

sound doctrine then we are met here with the paradoxical contention of the defendant, which advances the proposition, and one which I think untenable, that because Ewart C. Atkinson had contracted to sell his pulpwood cut to the defendant company and the plaintiff bank was aware of the fact, it could not under the Bank Act take security for advances on the pulpwood, the subject matter of the contract between Atkinson and the defendant company. There is nothing in the Bank Act that I can see to prevent the bank from doing so.

To cover the first advance made to New Lepreau Limited (Atkinson) and secure the repayment of the same, Mr. Atkinson gave to the bank 10 the following demand note, with the promise to give security thereunder written:—

“ \$1,000.00

Fredericton, N.B. July 17th, 1934

“ On demand, I promise to pay to the Royal Bank of Canada,
“ at its office in Fredericton, the sum of one thousand dollars,
“ with interest at the rate of seven per cent. per annum from date
“ until paid, for value received.

Ewart C. Atkinson

“ The foregoing note is given to the Royal Bank of Canada for
“ an advance to the undersigned under the terms of the application 20
“ for credit and promise to give bills of lading warehouse receipts
“ or security under section 88 made by the undersigned to the
“ bank and dated Jany 24th and July 16th, day of 1934, and the
“ undersigned hereby promises to give the said Bank from time
“ to time as required by the Bank, security and further security
“ for the foregoing note by way of assignments and further assign-
“ ments under section 88 of the Bank Act upon the “ goods ”
“ mentioned in the said application and promise, or by way of
“ Warehouse Receipts or Bills of Lading for the same or part thereof,
“ and no security taken hereunder shall be merged in any subsequent 30
“ or taken to be substituted for any prior security, and the Manager
“ of the said Bank, or the Acting Manager for the time being is
“ hereby appointed the Attorney of the undersigned to give from
“ time to time to the Bank the security or further security above
“ mentioned and to sign the same on behalf of the undersigned.

“ Dated at Fredericton, N.B. this 17th day of July, 1934.

Ewart C. Atkinson ”

In all, the bank made some forty one advances to the said Ewart C. Atkinson in connection with the pulpwood contracts with the defendant bank, in the years 1934 and 1935, and took from him 41 separate demand 40 notes to all of which were attached promises to give security in form similar to the form just set out. The first twenty of these promissory notes have been paid and retired and are off the record; the latter twenty one of them, the first of which is the promissory note of July 17th 1934 above set out, run from that date to January 29th, 1935, remain unpaid and are produced

here in Exhibit No. 21, represent the amount of the banks claim against the defendant company, to which has been added in the plaintiff's particulars, interest up to the 8th of April 1936—in all \$8,366.66; to that there is to be added interest from that date to the present time.

Of the 41 securities taken by the plaintiff to cover the advances made to Atkinson from time to time, the first 29 of them (24 Jan, 1934 to 31 Aug., 1934 both inclusive) were taken upon "all the rough or draw (drawn) shaved spruce and fir pulpwood in the Lawrence flowage on New River stream in the County of Charlotte or elsewhere" In the last 12 of the securities (11th Sept., 1934 to 29th January, 1935, both inclusive) the description of the pulpwood covered by the securities is enlarged by the addition of the words "sap peeled" wood. It is argued by the defendant that upon this state of facts, the plaintiff held its security upon the rough or draw shaved pulpwood only, but not upon the sap peeled wood. The total of the Bank's advances to Atkinson had reached on 31st of Aug. 1934 \$8,000., and has since remained at that figure. For those advances the plaintiff held security on rough or draw shaved wood. The twelve transactions of 11th September, 1934, and subsequently were, it is true, simply renewals of this indebtedness, and included no new advances. It is therefore contended by the defendant that the plaintiff was without authority in law to take security for the renewals on the sap peeled wood in the same manner as if they were original transactions involving the advance of additional capital. If this reasoning be sound, then it is obvious that its effect upon the plaintiff's claim would be most serious. According to the defendant company, it received under the two contracts with which we are dealing 6015.43 cords of pulpwood. Of this quantity 717.17 cords was draw shaved wood, which, at the contract price of \$6.50 per cord, was valued at \$4,596.60; and the balance of the wood consisting of 5,298.26 cords was sap peeled wood, which, at the contract price of \$7.25 per cord made a gross value of \$38,412.37. To put the matter shortly the contention of the defendant is that the plaintiff, if entitled at all, can look only to the value of the draw shaved wood for payment of its present claim.

It is set out in the defendant's factum that: "In the summer of 1934, the defendant's manager, Mr. Lacroix becoming aware that the plaintiff's advances had reached \$8,000, endeavoured to negotiate some compromise between the parties in a settlement of their conflicting claims, and believing that there would be sufficient wood to meet the claims of both parties, endeavoured to reach an arrangement whereby the wood would be conveyed to the defendant by Bill of Sale, and the plaintiff would receive \$2.00 a cord as the wood was delivered at the mill. This offer, however, was refused."

Although this offer was refused, it shows at least one thing, that is that the defendant at that time had little faith and did not think itself secure in the title which it now asserts, but was anxious to have the wood conveyed to it by Bill of Sale from the plaintiff so as to put its title to the wood upon a sounder basis and beyond further question.

*In the
Supreme
Court of
New
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Bench
Division).*

No. 21.
Reasons for
Judgment of
Barry C.J.
—continued.

In the
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No. 21.
Reasons for
Judgment of
Barry C. J.
—continued.

Pulpwood is pulpwood whether draw shaved, rossed or sap peeled. The particular designations, if I understand the matter, only serve to indicate the season of the year in which the wood is cut; nothing more. If cut in the spring while the sap is running freely, and the bark can be easily removed, it is sap peeled wood. If cut in the fall and winter, when the sap has stopped running, the bark is more firmly attached to the tree trunk, and another method of removing it has to be resorted to; it is then called rough draw shaved or rossed, but to say that it is an entirely different commodity from the sap peeled wood is, I think, a fallacy.

The title to all of the spruce and fir pulpwood gotten out by Ewart C. Atkinson during the two seasons and put into the Lawrence flowage on New River Stream in the County of Charlotte, no matter of what particular description it may be called, was in my opinion pledged to the plaintiff bank upon the taking of the securities referred to. 10

There is authority for saying that the best description is often a general one, such as "all the pulpwood now in the following places, namely—" Such a description would be suitable, even if it occurs in a security which is additional to one previously taken, and would, if it were valid, in other respects, transfer the goods mentioned in the previous security, subject to the previous pledge, and in addition, any goods added since such previous security was taken or not covered thereby. 20

A description of goods as being "now in and upon a certain locality" limits the goods to which the pledge refers to those goods only that were at the time of the execution of the security "now in and upon" the *locus in quo*, although goods upon other premises were intended to be covered by the security taken. The description need not be such a one as that, with the document in hand, without other inquiry, the property could be identified but there must be such material on the face of the security as would indicate how the property may be identified if proper inquiries are instituted. It is not necessary that the property pledged should be so described as to enable a person to distinguish the same without having recourse to extrinsic evidence, and merely by casting his eye over it. Written descriptions are to be interpreted in the light of the facts known to, and in the minds of the parties at the time; they are not prepared for strangers, but for those they are to affect—the parties and their privies. 30

There is no evidence that there was any other operator simultaneously cutting pulpwood on the ground operated by Atkinson, or that there was any other operator putting wood into the Lawrence flowage on New River Stream in the County of Charlotte. There was no danger of Atkinson's cut becoming intermingled or mixed up with the cut of any other operator. There was not the slightest danger of failure in identification. Extrinsic evidence, could, as we have seen, have been resorted to if necessary. Therefore it is that I say that in my opinion the description of the pulpwood pledged by Atkinson to the bank, anterior to the 11th of September, 1934, was broad enough in its terms to include "sap peeled" wood, although that term was not used in the securities taken. 40

Aside from all that, however, I can see no objection to the bank taking additional security upon the sap peeled pulpwood at the time of the renewals of the \$8,000 note. If the bank holding pledged pulpwood as security for the notes, substitutes for these notes renewals from time to time, without, however, receiving actual payment, the whole series of notes and renewals form links in the chain of liability, which is secured by the pledged pulpwood. Although as a matter of book-keeping the bank may have treated the first notes, and the subsequent substituted notes, as paid by the application of the proceeds from time to time of the renewals, there is no
 10 payment in fact of the notes for which the security was given.

The facts of the transaction between Atkinson and the bank are not really in dispute here; it is the legal effect of those transactions that is *the* question. The bank had before it the contracts between Atkinson and the defendant company, and therefore knew that the company as purchaser of the pulpwood under the contracts, would, when the liens and charges against it were discharged, become its owner. In its negotiations with Atkinson the bank was not acting in the dark or behind closed doors, but on the contrary kept the defendant fully informed of every step in the negotiations. I think one would be justified in saying that the company
 20 knew as much of what was going on between the bank and Atkinson as did the bank itself. That I think is so fully demonstrated by the mass of documentary evidence which was introduced at the trial, that I see no reason for further referring to this phase of the case.

Under the facts as disclosed by the evidence, and according to the law as I understand it, I have had no difficulty whatever in arriving at the conclusion that the plaintiff is entitled to recover. The plaintiff is entitled to recover \$8,000 with interest thereon at the rate of seven per cent. per annum up to the 8th of April, 1936 (date of particulars delivered) \$366.66, to which is to be added the accrued interest on the principal sum from
 30 that date to judgment \$530.87, amounting in the aggregate to \$8,897.53, and for that amount there will be a verdict entered in favour of the plaintiff and against the defendant. And the defendant must pay the cost of the action. Judgment accordingly.

.....

The pleadings in this case are quite voluminous. The able and exhaustive briefs of counsel on both sides filed with the Court, obviously have been prepared with care and doubtless with accuracy. It may be that in the judgment which I have just read, some of the claims advanced by the plaintiff or some of the defence set up by the defendant have been
 40 either overlooked or but casually referred to. In order, therefore, that neither party may suffer from any delinquency in this respect on the part of the trial Court, I am filing with this judgment, as an appendix thereto, the briefs filed with the Court, which will show with precision and in detail, the contentions of the respective parties, and the authorities upon which each relies.

*In the
 Supreme
 Court of
 New
 Brunswick
 (King's
 Bench
 Division).*

No. 21.
 Reasons for
 Judgment of
 Barry C.J.
 —continued.

In the
Supreme
Court of
New
Brunswick
(Appeal
Division).

No. 22.
Notice of Appeal.

IN THE SUPREME COURT APPEAL DIVISION.
ON APPEAL FROM THE KING'S BENCH DIVISION.

No. 22.
Notice of
Appeal,
15th Febru-
ary, 1937.

Between
THE ROYAL BANK OF CANADA - - - - - Plaintiff
and
PORT ROYAL PULP & PAPER COMPANY LIMITED - - - Defendant.

TAKE NOTICE that the Defendant intends to appeal and does hereby appeal to the Supreme Court, Appeal Division from a verdict given and judgment directed on the trial of this action before the Honourable Chief Justice Barry, sitting without a jury on the fifth day of February A.D. 1937, and that the Court of Appeal will be moved on Tuesday the thirteenth day of April or as soon thereafter as Counsel may be heard by Counsel on behalf of the Defendant for an Order that the said verdict given and the said judgment directed be set aside and that a verdict be entered in favor of the Defendant, or failing that, for a new trial or for reduction of damages.

Dated this fifteenth day of February A.D. 1937.

(Sgd) SANFORD & TEED.

Defendant's Solicitors 20

To : Messrs. Hanson, Dougherty & West
Plaintiff's Solicitors

No. 23.

Formal Judgment.

June Session, 1 George VI.
Friday, June 11th, 1937.

*In the
Supreme
Court of
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Division).*

IN THE SUPREME COURT APPEAL DIVISION.
ON APPEAL FROM THE KING'S BENCH DIVISION

No. 23.
Formal
Judgment,
11th June,
1937.

Between

ROYAL BANK OF CANADA - - - - - Plaintiff

and

10 PORT ROYAL PULP & PAPER COMPANY, LIMITED - - Defendant.

Upon hearing, in April Session last, Mr. C. F. Inches, one of His Majesty's Counsel of counsel for the defendant, appellant herein, in support of an appeal from the judgment of the Chief Justice of the King's Bench Division, and upon hearing Mr. C. L. Dougherty, of counsel for the plaintiff, respondent herein, contra, the Court, having taken time to consider, DO TH NOW ORDER that the judgment in favour of the plaintiff be reduced to the sum of one hundred and ninety-two dollars and two cents (\$192.02), with costs of the action, and that the appellant have the costs of the appeal.

By the Court,

(Sgd) H. LESTER SMITH
Registrar.

20

No. 24.

Reasons for Judgment of Baxter C.J. for the Court.

No. 24.
Reasons for
Judgment of
Baxter C.J.

Before BAXTER, C.J., GRIMMER and FAIRWEATHER, JJ.

BAXTER, C.J. :

The Statement of Claim alleges the making of a contract on 31st October, 1933 between the defendant and New Lepreau, Limited for one to four thousand cords of pulpwood, in which contract on or about the 1st March, 1934, with the defendant's consent, one Ewart C. Atkinson was substituted for New Lepreau, Limited. It further alleges that Atkinson in order to finance his pulpwood operation applied to the plaintiff in 30 January, 1934 for a revolving line of credit for that operation and gave security under section 88 of The Bank Act for advances which were subsequently made. Also that he assigned to the plaintiff all moneys and claims to which he was entitled under the agreement. There is also set forth another contract of 26th April, 1934 between Atkinson and the defendant for

*In the
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No. 24.
Reasons for
Judgment of
Baxter C.J.
—continued.

the purchase by the latter of ten thousand cords of pulpwood, the right to any moneys or claims thereunder being assigned by Atkinson to the plaintiff as before. The plaintiff also alleges that Atkinson delivered to the defendant under these agreements 6,055.43 cords of pulpwood which it claims was its property under Section 88; that the defendant did not pay the purchase price therefor or any part thereof to the plaintiff and that there is now due and owing thereon from the defendant to the plaintiff \$8,366.66 "being the amount of the advances made by the plaintiff to Atkinson on his said pulpwood operations, together with interest thereon." In the alternative, the plaintiff claims for conversion of the quantity of pulpwood above mentioned. 10

The matter was tried before the learned Chief Justice of the King's Bench Division, who gave judgment for the plaintiff for the full amount claimed.

Early in the year 1933 there was a contract between the New Lepreau, Limited, an incorporated company, and the defendant for the supply of a quantity of pulpwood to the latter. This contract was not put in evidence. It is not denied that under this contract the defendant suffered a loss of \$5,330.91 by reason of its advances being greater than the value of the wood delivered. As I understand it, this figure is not contested but the Bank contends that it has a superior claim. 20

At 31st October, 1933, the date of the first contract in evidence, the New Lepreau, Limited was the holder of several timber licenses from the Government of New Brunswick in what is commonly called the Lawrence flowage in Charlotte County. These licenses were and still are in the name of that company but they have since been deposited, not hypothecated, to the Bank. Mr. Murray, the Bank manager, says that he got them some time in 1935; that he did not take them over; that he is holding them in the Bank's possession; that they were left with him by Mr. Ewart C. Atkinson (President of the New Lepreau, Limited) but that they were not hypothecated. 30

At the first mentioned date the New Lepreau, Limited was a company organized under the Companies' Act of New Brunswick and in January, 1934, when the Bank made its first loan to Atkinson, 489 shares of capital stock had been issued, of which all but two shares were in Atkinson's name. Eventually the Bank held 247 shares and the defendant 241. The shares the Bank held were endorsed in blank and were held as collateral security for old advances to Atkinson totalling approximately \$28,000.00.

By the contract of 31st October, 1933, the New Lepreau, Limited agreed to sell to the defendant from one thousand to four thousand cords of draw shaved or rossed spruce and fir pulpwood to be cut from lands owned and controlled by the seller and situated at New Lepreau, N. B. The contract was to be completed by 1st June, 1934 and the price was \$6.50 per cord with \$1.25 per cord advance when the wood was cut rough, \$2.00 per cord when draw shaved or rossed in the woods and \$1.00 per cord when piled on the bank of the river ready to drive. The place of delivery was Fairville, N. B., near which the defendant's mill is situated though the 40

defendant might require delivery elsewhere upon making freight adjustments. On or about 10th January, 1934—as appears from an endorsement upon it—the defendant gave the plaintiff a cheque, postdated 15th February, 1934, for \$5,350.00 as payment in full of advances to New Lepreau, Limited for operation of pulpwood, 1933. This refers to this contract which is not in evidence and the figure is not to be confounded with the \$5,330.91 which was owing by the New Lepreau, Limited to the defendant after payment of the cheque.

*In the
Supreme
Court of
New
Brunswick
(Appeal
Division).*

No. 24.
Reasons for
Judgment of
Baxter C.J.
—continued.

10 On 20th January, 1934, Ewart C. Atkinson signed a notice of intention to give security under the Bank Act which was registered on 22nd January. On 24th January, Atkinson applied to the Bank for an advance of \$5,000.00 and executed an agreement to give security under Section 88 on “all the rough or draw shaved or sap peeled spruce and fir pulpwood (hereinafter referred to as ‘goods’) which are now owned or which may be owned by the undersigned from time to time while any advances made under this credit remain unpaid, and which are now or may hereafter be in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere.” The request was for a revolving line of credit of \$5,000.00 for the applicant’s pulpwood business. At the same time, Atkinson
20 executed an agreement as to the powers of the Bank in relation to all advances and securities held therefor which it is not necessary to discuss at present. Suffice it to say that it is in his name and his name alone.

Before 12th March the Bank advanced \$2,000.00 upon such security as it had obtained. Apparently Atkinson had asked the defendant to agree to have the contract changed so that he would be substituted for the New Lepreau, Limited, for we have the defendant’s letter to him of that date agreeing to the change but stating that the defendant was charging against that contract the advances already made “on this particular contract.”

30 There was no agreement between Atkinson and the New Lepreau, Limited. I think he sums up the attitude of himself and the Bank manager when he says (Record p. 78):—“I am the New Lepreau, Limited.” He acted in that manner so far as he could. It does not appear that there was any examination of his right to do so. When one looks at the contract of 31st October, 1933 (No. 1 in evidence) and notes that the change which Atkinson requested be made therein was made by typing “()” around the words “New Lepreau, Ltd.” and typing over the top of it the words “E. C. Atkinson”, without making any alteration in the execution of the document, and so far as the
40 evidence discloses, without the execution of any instrument of transfer or any agreement, it is unfortunate that a Bank manager should have thought it to be sufficient. Here was plain evidence that the limits did not belong to Atkinson or at least that the lands which were to provide the wood were owned or controlled by the New Lepreau, Limited. Surely this called for an examination of the timber licenses by the plaintiff’s manager or the making of some enquiries. None were made. Mr. Atkinson’s “L’etat c’est moi” was accepted as sufficient! One who holds control

In the
Supreme
Court of
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No. 24.
Reasons for
Judgment of
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—continued.

of the shares in a company cannot assume, merely by reason of that fact, to act as the company. *Solomon's case* (1897) A. C. 22; *Gramophone & Typewriter, Ltd. v. Stanley* (1908), 2 K. B. 89; *Macaura v. Northern Assurance Co.* (1925) A. C. 619.

Security under Section 88 can only be given by the owner. *Hatfield v. Imperial Bank*, 6 Terr. L. R. 296; *Barry v. Bank of Ottawa*, 17 O. L. R. 83.

The word "owner" has no definite meaning. It may refer to owners having either the whole or partial interests. It is not a legal term but must be understood from its ordinary use. It may be taken to mean any parties who have any interest, A man cannot become an owner without his assent. *Lister v. Lobley*, 7 A. & E. 124; *Chauntler v. Robinson*, 4 Ex. 163; *Eglinton v. Norman*, 46 L. J. 9 B. 557; *Miller v. Alliance Ins. Co.* 7 Fed. Rep. 649. 10

These and many other cases might be referred to. Most of them involve the construction of particular statutes but through them all there runs the idea that an owner must have some interest. Without interest, he is not an owner. Now in the present case the timber licenses were held by the New Lepreau, Limited. They were not assigned to Atkinson. Eventually they were deposited with the Bank but there is no testimony as to the authority by which they were deposited. There is no evidence of any agreement between the New Lepreau, Limited and Atkinson and it is most probable that there was none. In fact, when he says:—"I am the New Lepreau, Limited" I think he goes to the root of the whole matter so far as his own actions were concerned. In short, he assumed that as President he had control of the company and could do whatever he desired to do with its property. But what he did was in his own name. His actions do not raise any question as to the powers of a president or as to whether what was done was simply a matter of internal management. He gave the security under Section 88 in his own name and professed to be owner of the wood. So far as the evidence discloses, the wood was the property of the New Lepreau, Limited. When and how did Atkinson become the owner of it? It surely cannot be contended that by professing to sell as his own the property of some other party that he could make himself the owner of it. 20 30

Section 88 constitutes a necessary invasion of provincial constitutional powers. It transcends the provincial Acts relating to the evidence of title by sale or mortgage of certain chattel property. But we cannot either add to or take away from its language. When the section speaks of certain things which may be done by an "owner" then the only person who can do them must fall within some reasonable interpretation of that word. Atkinson does not. It was incumbent upon the Bank manager to see that, when he took security under Section 88 he was getting it from an owner. The slightest investigation on his part would have made it manifest that Atkinson was not an "owner." So far, therefore, as the Bank's case is based upon Section 88 it cannot be supported. 40

On 10th March, 1934 Atkinson assigned to the plaintiff "all moneys, claims, rights and demands whatsoever which the undersigned (Atkinson) may now or at any time hereafter have or be entitled to under or by virtue

of or in respect of or incidental to a certain contract dated the 31st day of October, 1933 made between the undersigned and Port Royal Pulp & Paper Co. securing and/or covering 1000 to 4000 cords of draw shaved or rossed spruce and firm pulpwood." I agree with the plaintiff's contention that this is not an assignment of the contract itself but only of any debt or claim which might arise under it. Notice of this assignment was given to the defendant by the Bank manager's letter of 12th March in which he asked what payments the defendant had made to date on this contract. The reply, 16th March, states that the advances during the winter were \$484.90
 10 "plus an amount of about \$4,000.00, over advanced on the other contract which we have with him and which he has asked us to charge against this new contract." That refers, evidently, to the amount of \$5,330.91 before mentioned. Atkinson says (Record p. 76) that he never objected to charging up against the latter contract what he terms "the discrepancies on the first one." Strange to say, Mr. Lacroix the defendant's manager, was not asked about this, and the plaintiff's counsel made no attempt to attack the statement. Accepting the evidence, slender as it is, as sufficient to incorporate the deficit on the first contract of 1933 in the contract of 31st October
 20 of that year, yet the language cannot, I think, be extended to the contract of 20th April, 1934. It is true that the defendant practically treated all these contracts as one but I cannot see, in view of the testimony, any justification for applying the original deficit to anything but the contract of 31st October, 1933. It seems clear, however, that the deficit on the earlier contract was agreed to be charged against the contract of 31st October, 1933 before Atkinson's assignment to the Bank.

We now come to the third contract, that of 26th April, 1934 whereby Atkinson agreed to deliver to the defendant ten thousand cords of peeled spruce and fir pulpwood to be cut from lands owned or controlled by the seller and situated in Charlotte County, N. B. The next day an assignment
 30 was made to the plaintiff of the rights and debts under this contract similar to the terms of the assignment of the contract of 31st October, 1933.

To quote from the plaintiff's factum:—"Copies of these assignments were delivered to the defendant by the Bank and the defendant made payments from time to time to the Bank which the Bank applied against its advances to Atkinson in connection with his operations. This procedure continued until about July, 1934 when the question of re-payment of the Bank's advances became a very live issue."

After that time the defendant paid all the operating expenses and the Bank ceased to make any advances to Atkinson. The result of the three
 40 contracts is summed up (Record p. 359-60). The loss to the defendant on the three contracts was \$542.29. A factor in this calculation is \$5,330.91, the defendant's loss on the contract in 1933—the first contract,—which was to be charged to the contract of 31st October, 1933 but has nothing to do with that of 26th April, 1934.

From sheet "D" we find that 701.17 cords of draw shaved pulpwood were delivered to the defendant under the contract of 31st October, 1933 for that description of wood. The price is \$6.50 per cord, so the defendant

*In the
 Supreme
 Court of
 New
 Brunswick
 (Appeal
 Division).*

No. 24.
 Reasons for
 Judgment of
 Baxter C.J.
 —continued.

*In the
Supreme
Court of
New
Brunswick
(Appeal
Division).*

No. 24.
Reasons for
Judgment of
Baxter C.J.
—continued.

received wood to the value of \$4,596.60 which it could properly set off against the balance due upon the preceding contract of \$5,330.91, leaving a loss to the defendant of \$734.31 which it is not entitled to charge against the contract of 26th April, 1934. When we subtract this amount of \$5,330.91 from the total debit of \$43,551.26 it leaves \$38,220.35 as the debit chargeable to the latter contract. Under that contract the defendant received 5298.26 cords at \$7.25 per cord which would give Atkinson a credit of \$38,412.37 or a balance in his favour of \$192.02. I think this calculation is as favourable to the plaintiff as it can be made. It may be that owing to the defendant's method of treating all these contracts as one transaction that there are some details which should be charged against the latter contract rather than the former. It is impossible to ascertain this from the evidence and I do not think that it is of any use to order a reference as it is manifest that the method of accounting employed will not disclose anything more than we have in sheet "D." On this branch of the case the plaintiff cannot claim anything more than Atkinson would have been entitled to receive and it was for them to show what that amount was.

The judgment in favour of the plaintiff must, therefore, be reduced to \$192.02, with costs of the action, and the defendant must have the costs of this appeal.

10

20

No. 25.

Notice of Appeal.

*In the
Supreme
Court of
Canada.*

No. 25.
Notice of
Appeal,
24th June,
1937.

TAKE NOTICE that the above named Respondent will appeal and does hereby appeal to the Supreme Court of Canada from the Judgment of the Supreme Court of New Brunswick, Appeal Division, entered in this cause on the eleventh day of June, A.D. 1937, whereby the Judgment entered herein by the Chief Justice of the King's Bench Division on the fifth day of February, A.D. 1937, in favour of the said Respondent for the sum of Eight Thousand Eight Hundred and Ninety-Seven Dollars and
10 Fifty-Three Cents (\$8,897.53) and costs, was reduced to the sum of One Hundred and Ninety-Two Dollars and Two Cents (\$192.02), with costs to the said Respondent on the trial of the action, and with the costs of appeal allowed to the said Defendant.

Dated this 24th day of June, A.D. 1937.

(Sgd) HANSON, DOUGHERTY, & WEST
Solicitor for Respondent.

To Messrs. Sanford & Teed,
Appellant's Solicitor.

No. 26.

Bond on Appeal.

No. 26.
Bond on
Appeal,
17th Sept-
ember,
1937.

20

KNOW ALL MEN BY THESE PRESENTS that we, THE ROYAL BANK OF CANADA, a duly incorporated Bank under and by virtue of the laws of the Dominion of Canada, having its Head Office at the City of Montreal, in the Province of Quebec; CHARLES L. DOUGHERTY, of the City of Fredericton, in the County of York and Province of New Brunswick, Barrister-at-Law; and WILLIAM J. WEST, of the same place, Barrister-at-Law; are jointly and severally held and firmly bound unto Port Royal Pulp and Paper Company, Limited, in the penal sum of Five Hundred Dollars (\$500.00) of lawful money of Canada to be paid to the said Port
30 Royal Pulp and Paper Company, Limited, its successors and assigns;

FOR WHICH PAYMENT well and truly to be made the Royal Bank of Canada binds itself, and each of the said Charles L. Dougherty and William J. West binds himself, their and each of their heirs, executors, administrators and successors, firmly by these presents.

Sealed with our seals and Dated this seventeenth day of September, A.D. 1937.

Whereas a certain action was brought in the King's Bench Division of the Supreme Court of New Brunswick by the said The Royal Bank of

*In the
Supreme
Court of
Canada.*

No. 26.
Bond on
Appeal,
17th Sept-
ember,
1937—con-
tinued.

Canada, Plaintiff, against the said Port Royal Pulp and Paper Company, Limited, Defendant; and

Whereas Judgment was given in the said Court against the said Port Royal Pulp and Paper Company, Limited, who appealed from the said Judgment to the Supreme Court of the Province of New Brunswick, Appeal Division; and

Whereas Judgment was given in the said action in the said last mentioned Court on the 11th day of June, A.D. 1937; and

Whereas the said The Royal Bank of Canada complains that in giving the last mentioned Judgment in the said action upon the said appeal manifest error hath intervened, wherefor the said The Royal Bank of Canada desires to appeal from the said Judgment of the Supreme Court of New Brunswick, Appeal Division, to the Supreme Court of Canada; 10

Now the condition of this obligation is such that if the said The Royal Bank of Canada shall effectually prosecute its said Appeal and pay all such costs and damages as may be awarded against it by the Supreme Court of Canada, then this obligation shall be void, otherwise to remain in full force and effect.

Signed, sealed and delivered by The
Royal Bank of Canada in the
presence of

(Sgd) F. C. ARMSTRONG

(Sgd)

S. R. NOBLE
Assistant General Manager

(Sgd)

J. T. KEAY
Assistant Secretary.

20

Signed, sealed and delivered by the
said Charles L. Dougherty and
William J. West in the presence of

(Sgd) JENNIE D. SAUNDERS

(Sgd)

CHARLES L. DOUGHERTY

(Sgd)

WILLIAM J. WEST

No. 27.

Agreement settling Case on Appeal.

*In the
Supreme
Court of
Canada.*

It is hereby agreed that the following shall constitute and form the case on appeal to the Supreme Court of Canada :

No. 27.
Agreement
settling
Case on
Appeal,
27th Sept-
ember,
1937.

1. Writ of Summons.
2. Amendment to endorsement of Writ of Summons.
3. Statement of Claim.
4. Defence.
5. Amended Statement of Claim.
- 10 6. Defence to Amended Statement of Claim.
7. Amendment to Defence to Amended Statement of Claim, dated April 23rd, 1936.
8. Amendment to Defence to Amended Statement of Claim, dated December 2nd, 1936.
9. The stenographer's record of the trial.
10. All exhibits numbered one to twenty-seven inclusive and A to D inclusive.
11. Judgment of Chief Justice Barry on the trial of the action.
12. Certificate of Clerk of York Nisi Prius Court.
- 20 13. Notice of Appeal to the Appeal Division.
14. Reasons for Judgment in the Court of Appeal.
15. Rule of Court of Appeal allowing the Appeal.
16. Notice of Appeal to the Supreme Court of Canada.
17. This agreement settling the case on Appeal.
18. Bond on Appeal.
19. Order approving security for costs of Appeal.
20. Certificate of Registrar of the Supreme Court.
21. Certificate of Solicitor for Appellant.

Dated this twenty-seventh day of September, A.D. 1937.

30

(Sgd.) HANSON, DOUGHERTY & WEST,
Appellant's Solicitor.

(Sgd) SANFORD & TEED.
Respondent's Solicitor.

*In the
Supreme
Court of
Canada.*

No. 28.

Order approving security for costs of Appeal and Case on Appeal.

IN THE SUPREME COURT OF CANADA.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

No. 28.
Order
approving
security for
costs of
Appeal and
Case on
Appeal,
28th Sept-
ember,
1937.

Between

THE ROYAL BANK OF CANADA - - - - (Plaintiff) Appellant

AND

PORT ROYAL PULP & PAPER COMPANY, LIMITED - (Defendant) Respondent.

Upon the application of the above named Appellant, and upon agree-
ment between the parties as to what shall constitute and form the case 10
on appeal to the Supreme Court of Canada and that an Order be made in
the terms of the said Agreement, and upon hearing what was alleged by
Counsel for the Appellant, IT IS ORDERED that the Bond entered into on
the seventeenth day of September, A.D. 1937, in which The Royal Bank of
Canada, Charles L. Dougherty and William J. West are Obligors and Port
Royal Pulp and Paper Company, Limited, is Obligee, filed as security
that the Appellant will effectually prosecute its Appeal from the Judgment
of the Appeal Division of the Supreme Court of New Brunswick dated the
eleventh day of June, A.D. 1937, and will pay such costs and damages as
may be awarded against the said The Royal Bank of Canada by the Supreme 20
Court of Canada, be and the same is hereby allowed as good and sufficient
security; AND IT IS FURTHER ORDERED that the case agreed upon and
dated the twenty-seventh day of September, A.D. 1937, signed by the
Solicitors for both parties shall constitute and form the case on Appeal
to the Supreme Court of Canada, AND IT IS FURTHER ORDERED that the
costs of this application be costs in the cause.

Dated this 28th day of September, A.D. 1937.

(Sgd)

W. HENRY HARRISON

Judge of the Supreme Court of New
Brunswick—Appeal Division. 30

No. 29.

No. 29.

Certificate of Appellant's Solicitor.

(Not printed.)

No. 30.

No. 30.

Registrar's Certificate certifying Case on Appeal and Bond.

(Not printed.)

No. 31.

Factum of The Royal Bank of Canada.

In the
Supreme
Court of
Canada.

PART I.

Statement of Facts.

No. 31.
Factum of
The Royal
Bank of
Canada.

The action herein was brought by the Appellant against the Respondent for the sum of Eight Thousand Dollars (\$8,000.00) with interest thereon at the rate of seven per centum (7%) per annum from the thirtieth day of June, A.D. 1935, being the amount of advances by the Appellant to one Ewart C. Atkinson to assist him in two pulpwood contracts he had with the Respondent, Exhibit #1, (Record p. 221) and Exhibit #10, (Record p. 316). The moneys at any time due and payable by the Respondent to the said Atkinson under the said contracts were assigned by two assignments, one dated March 10th, 1934, (Exhibit #6, Record p. 310) by which the moneys due and payable under the first contract (Exhibit #1, Record p. 221) were assigned to the Bank, and the other dated May 27th, 1934, (Exhibit #11, Record p. 318), which assigned the moneys due and payable by the Defendant to Atkinson under the second contract. In the alternative the Appellant claims against the Respondent for the conversion of 6005.43 cords of pulpwood to which the Appellant claimed ownership and title by virtue of security given thereon to the Appellant by Atkinson under the provisions of Section 88 of The Bank Act.

The action was tried before Chief Justice Barry of the King's Bench Division, without a jury, at the York Nisi Prius Sittings, on the 17th, 18th and 19th days of November 1936, but judgment was reserved pending the filing of briefs by Counsel upon questions of both law and fact with the Trial Judge. Counsel filed briefs, the Plaintiff on the 17th day of December, A.D. 1936, and the Defendant on the 6th of January, A.D. 1937, which briefs have been filed with the Judgment by the Trial Judge, and on the fifth day of February, 1937, the learned Trial Judge delivered Judgment finding for the Plaintiff for the full amount of claim, which with interest amounted to \$8,897.53, for which amount Judgment was entered. From this Judgment the Defendant appealed to the Supreme Court of New Brunswick, Appeal Division. By a Judgment of the Appeal Division of the Supreme Court of New Brunswick the Judgment in favour of the Plaintiff was reduced to the sum of \$192.02 with costs of the action to the Plaintiff and with costs of the appeal to the Respondent (Defendant). The said Judgment was delivered on the eleventh day of June, 1937.

The facts of the case although somewhat involved are, in the main, not disputed.

The Bank's claim against the Company is twofold, in that the Bank is suing the Company (1) for conversion, and (2) as assignee of the purchase price of certain pulpwood received by the said Company under two contracts with the said Ewart C. Atkinson.

*In the
Supreme
Court of
Canada.*

No. 31.
Factum of
The Royal
Bank of
Canada—
continued.

The Bank claims the ownership of the pulpwood in question, under and by virtue of the security given by Atkinson to the Bank under the provisions of Section 88 of The Bank Act. The Bank also claims all money due and payable by the Company under the terms of the two contracts, by reason of the assignment of all moneys due thereunder from Atkinson to the Bank.

However, the Bank is only seeking to recover from the Company to the extent of its advances to Atkinson still outstanding and unpaid, together with interest thereon to date.

These advances are represented by certain demand notes of the said Atkinson payable to the Bank, as set out in the Statement of Claim and admitted in evidence (Exhibit #21, numbered 21 to 41, inclusive, Record pp. 327-348). 10

The facts as disclosed by the evidence are as follows, viz.: New Lepreau, Limited, a Limited Company, entered into a contract with Port Royal Company on the 31st October, 1933, to sell and deliver to the said Company 1,000 to 4,000 cords of draw shaved or rossed spruce and fir pulpwood, at the price of \$6.50 per cord delivered at the Company's mill at Fairville, N.B., the same to be cut from lands owned or controlled by the seller at New River, New Brunswick. This contract is in evidence (Exhibit #1, Record p. 221). The capital stock of New Lepreau, Limited, was at the time of the making of the said contract practically all held and owned by the said Ewart C. Atkinson, who owned and held 247 shares, and the Respondent, who held 241 shares, out of the total issued capital stock of 490 shares. The other two shares were held as qualifying shares. 20

About March 1st, 1934, by agreement between Mr. Atkinson and the Defendant Company, Ewart C. Atkinson was substituted for New Lepreau, Limited, in the said contract (Exhibit #5, Record p. 309).

On or about January 20th, 1934, the said Ewart C. Atkinson applied to the Manager of the Royal Bank of Canada at Fredericton, N.B., for assistance by way of advances, in order to carry on his pulpwood operations, and on the same day Atkinson signed a Notice of Intention to give security to the Bank under the authority and provisions of Section 88 of The Bank Act. This notice was duly filed with the Assistant Receiver General at Saint John, N.B., on the 22nd day of January, 1934 (Exhibit #2, Record p. 223). 30

On the 24th of January, 1934, the said Ewart C. Atkinson signed an application to the Bank for a revolving line of credit up to \$5,000.00, in connection with his pulpwood operations, agreeing thereby to give security to the said Bank on all the rough or draw shaved or sap peeled spruce and fir pulpwood which was then owned by Atkinson or which might be owned by him while any advances made under the said application for credit remained unpaid, and which said pulpwood was then or might afterwards be in the Lawrence flowage on New River, in the County of Charlotte, or elsewhere (Exhibit #3, Record p. 224). 40

At the same time Atkinson signed Bank Form 301, being an agreement setting out the powers of the Bank in relation to advances and securities held therefor (Exhibit #4, Record pp. 225-228), Sections 1, 2

(Record p. 225), 5, (Record p. 226) and 12 (Record p. 228) of this form specify the Bank's right to the proceeds of the sale of the goods secured and provide for the assignment of these proceeds to the Bank.

The same day the Bank made its first advance to the said Atkinson of \$1,000.00 and took security from him on all the rough or draw shaved spruce and fir pulpwood in the Lawrence flowage on New River in the county of Charlotte or elsewhere (Exhibit #20 (1) Record p. 229). In all the Bank made some forty-one (41) advances to Ewart C. Atkinson totalling \$8,000.00, in connection with his pulpwood operations in the years 1934-
 10 1935 and took from him forty-one (41) separate forms of security under the provisions of Section 88 of The Bank Act therefor (Exhibit #20, 1 to 41 inclusive, Record pp. 229-307.)

When each advance was made by the Bank to Mr. Atkinson, the Bank took from Atkinson his demand note for the amount of such advances and a form of security on the pulpwood of the said Atkinson situate in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere, for the amount of such advances.

In all some forty-one (41) demand notes corresponding with the forty-one (41) forms of security (Exhibit #20, 1 to 41 Record pp. 229-307)
 20 were given by the said Atkinson to the Bank, covering the advances made to Atkinson by the Bank, but at the time of the issuing of the Writ herein the first twenty (20) of said notes had been liquidated. The remaining notes (Exhibit #21 to 41 inclusive Record pp. 327-348) represent the amount of Atkinson's indebtedness to the Bank and is the amount now claimed by the Bank against the Defendant Company.

Between January 24th, 1934, and March 10th, 1934, the Bank had advanced to Mr. Atkinson, in connection with his operations, \$3,000.00, and had taken security therefor in the manner and form above referred to.

On the 10th of March, 1934, the Bank took from Atkinson an assign-
 30 ment of all moneys due under the contract dated October 31st, 1933 (Exhibit #6, Bank Form Le 212, Record p. 310) and a copy of said assignment was mailed to the Pulp Company on the 12th of March, 1934 (Exhibit #7, Record p. 313) and acknowledged by the Company (Exhibit #8, Record p. 313) on March 16th, 1934. This form of assignment was executed pursuant to and was a carrying out of the terms of the agreement set out in Form 301.

On March 20th, 1934, the Bank notified the Company that it held security from Mr. Atkinson on his pulpwood under provisions of Sections 88 of the Bank Act (Exhibit #9, Record p. 314).

On April 26th, 1934, the said Ewart C. Atkinson entered into another
 40 contract with the said Company for 10,000 cords of peeled spruce and fir pulpwood at the price of \$7.25 per cord delivered at the Company's mill at Fairville, N.B. (Exhibit #10, Record p. 316), said pulpwood to be cut from lands owned or controlled by Atkinson at New River, Charlotte County, New Brunswick.

On May 27th, 1934, the said Atkinson assigned to the Bank all moneys at any time due and payable to the said Atkinson under the contract of

*In the
 Supreme
 Court of
 Canada.*

No. 31.
 Factum of
 The Royal
 Bank of
 Canada—
continued.

*In the
Supreme
Court of
Canada.*

No. 31.
Factum of
The Royal
Bank of
Canada—
continued.

April 26th, 1934 (Exhibit #11, Record p. 318). On July 17th, 1934, the Bank forwarded a copy of this assignment to the Defendant Company (Exhibit #12, Record p. 327).

On July 16th, 1934, the said Ewart C. Atkinson, finding that he required further assistance from the Bank to assist him in carrying on his operations, applied to the Bank for an increase in his line of credit. The application he signed therefor (Exhibit #14, Record p. 321) was marked as follows "supplementary to application and promise dated January 24, 1934," and was an application for a revolving line of credit up to \$10,000.00, Mr. Atkinson thereby agreeing to give security to the Bank therefor on all the rough, draw shaved or sap peeled spruce and fir pulpwood in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere. At this time the said Atkinson signed another Form 301 and delivered same to the Appellant (Exhibit #15, Record p. 323).

On the 19th of July, 1934, the Company acknowledged to the Bank the receipt of the assignment of moneys due under the contract of April 26th, 1934, and at the same time advised the Bank that they had made advances to Atkinson on his contracts amounting to \$10,975.62 (Exhibit #16, Record p. 349).

This sum of \$10,975.62 included therein a sum of \$5,330.91 carried forward by the Defendant Company from an old contract which the said Company had with New Lepreau, Limited, in the Spring of 1933 (which is not in evidence) and subsequently applied by the said Defendant Company against the current contracts which said Company had with Atkinson, namely, Exhibits #1 and #10 (Record pp. 221 and 316). This sum of \$5,330.91 shows in the knocked down statement of account (Exhibit D1, Record p. 359).

The Bank had assisted said New Lepreau, Limited, with the contract referred to in the preceding paragraph, and the Defendant Company paid to the Bank the balance due the Bank thereon, in the month of January 1934, and prior to the application for credit made by Atkinson dated January 24th, 1934, the same having been paid to the Bank by a post dated cheque of the Defendant Company for the sum of \$5,350.00 (Exhibit #27, Record p. 308). So that in reality the Defendant Company in the month of July, 1934, according to its own figures, had advanced to Atkinson on the current contracts (Exhibits #1 and #10, Record pp. 221 and 316) the sum of \$5,644.71, and at the same time the Bank had advanced to Atkinson on his same operations the sum of \$6,000.00 and had taken Section 88 security on his pulpwood therefor, and had so advised the Defendant Company on the 20th of March 1934 (See Exhibit #9, Record p. 314).

By agreement between the Company and Atkinson the Company agreed to take fall delivery of 3,000 cords of pulpwood and actually received from him 1,772.90 cords in the month of November 1934.

During the months of July, August and September, 1934, there were at least two conferences between Mr. A. J. Lacroix, Manager of the Defendant Company, Mr. Atkinson and Mr. Murray, Manager of The Royal Bank of Canada at Fredericton, N.B., at which interviews the whole situation was discussed. There was also some correspondence between the same parties

(See Exhibits 17, 18, 19, 22, 23, 24 and 25, Record pp. 349; 354; 355; 350; 351; 353; 352). Nothing, however, came from these interviews and the correspondence, and the relative positions of the Bank and the Company were in nowise changed as a result thereof.

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The Bank made repeated demands for payment from time to time, both to Mr. Atkinson and to the Defendant Company, without result, and on May 15th, 1935, the Bank notified Mr. Atkinson by letter not to move any of the pulpwood until the Bank's advances were fully paid (Exhibit #26, Record p. 358).

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10 This letter was shown by Mr. Atkinson to Mr. Lacroix the next day, May 16th, 1935, and they discussed the matter fully (See evidence of Mr. Atkinson at Record p. 65).

Despite these instructions from the Bank the Company actually took delivery of 4,332.52 cords of pulpwood in the months of May, June and July, 1935, valued, according to the Company's own figures, at \$26,786.32. Nothing was paid to the Bank. (See evidence of Mr. Lacroix at Record p. 95).

20 In all, the Company took delivery of all the pulpwood, amounting to 6005.43 cords of pulpwood, under the two contracts dated October 31st, 1933, and April 26th, 1934, "but refused to pay the Bank the monies due under the contracts hereinbefore referred to and sought to apply these monies against Mr. Atkinson's liability to the Company as well as the old debt of New Lepreau for \$5,330.91 under the earlier contract above referred to, but not forming part of any of the subject matter of this suit."

In other words, the Company took all the pulpwood on which the Bank held Section 88 security for its advances and did not repay the advances or any part of the same.

PART II.

Grounds of Appeal.

30 1. The Court of Appeal was in error in reducing the amount of the Plaintiff's Judgment to the sum of \$192.02.

2. The Judgment of the learned Trial Judge was in accordance with the facts and the law and should not have been disturbed.

3. The Court of Appeal was in error in finding that the Plaintiff did not have title to the pulpwood under Section 88 of The Bank Act.

40 4. The Court of Appeal was in error in finding that Ewart C. Atkinson was not an owner of the pulpwood and in holding that only the owner could give security under Section 88 of The Bank Act. Further, the Court of Appeal was in error in finding that the said Ewart C. Atkinson could not give security to the Bank on the pulpwood under Section 88 of The Bank Act, even if he were not the owner.

5. The Defendant is estopped from denying Ewart C. Atkinson's right and authority to give security to the Bank under Section 88 of The Bank Act by reason of its treatment of the said Atkinson as the owner of the same.

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6. The finding of the Court of Appeal that Atkinson did not have any title to the pulpwood sold by him to the defendant is inconsistent with the Court's finding that the Bank was entitled to the moneys payable to Atkinson under the Contracts (Exhibits 1 and 10—Record pp. 221 and 316).

7. The Court of Appeal was in error in setting off the sum of \$5,330.91, being the indebtedness of New Lepreau, Limited, to the defendant under a certain contract not in issue before the Court, against moneys due to the Plaintiff bank as assignee thereof from Ewart C. Atkinson under the contracts (Exhibits #1 and #10, Record pp. 221 and 316).

8. The Court of Appeal was in error in setting off the said sum of \$5,330.91, alleged by the Defendant to be due from New Lepreau Limited to the Defendant, without New Lepreau, Limited, being joined as a party to the action.

9. The Court of Appeal was in error in not holding that the Defendant was liable for conversion in the present circumstances.

10. The Defendant, as against a Plaintiff in possession, cannot set up a *jus tertii* in New Lepreau, Limited.

11. The Court of Appeal was in error in allowing the deductions to be made from the purchase price of the pulpwood without showing them to be "either encumbrances or Government dues on the wood under the contracts".

12. The Court of Appeal was further in error in holding that it was for the Appellant to show the balance due under the contracts after deductions, rather than in holding that it was for the Respondent to show what deductions could properly be made.

13. The Court of Appeal was further in error in allowing these deductions on the ground of set-off.

PART III.

Argument.

The Plaintiff's claim is against the Defendant Company for certain 30 moneys due and payable by the Defendant to one Ewart C. Atkinson under two contracts (Exhibits #1 and #10, Record pp. 221 and 316) the same having been assigned by the said Ewart C. Atkinson to the Bank by two certain agreements in writing bearing date March 10th, 1934 (Exhibit #6, Record p. 310) and May 27th, 1934 (Exhibit #11, Record p. 318) respectively. In the alternative the Plaintiff's claim is against the Defendant for conversion of some 6005.43 cords of pulpwood, the property of the Bank under and by virtue of security given to the Bank by the said Ewart C. Atkinson under the provision of Section 88.

The Defendant sets up several defences to the action which may be 40 summarized as follows :

1. The Bank cannot acquire by section 88 security any better title in the pulpwood to be secured thereby than the party giving the said

security had, and the said Ewart C. Atkinson having no title in and to the pulpwood in question the Bank would therefore acquire no title thereto or therein under its Section 88 security.

2. Any title that the Bank might receive in and to the pulpwood in question could at the best be only an equitable title and the Bank's title thereto would be subject to the equity of the Defendant Company therein by reason of the Bank taking the security from the said Atkinson knowing the pulpwood to have been contracted for by Atkinson with the Defendant Company.

10 3. The security purported to have been taken by the Plaintiff from Atkinson on the pulpwood was, in part at least, invalid in that it did not comply with the provisions of Sections 88 and 90 of The Bank Act.

4. That of the principal sum of \$8,000.00 advanced by the Bank to Atkinson on his two contracts (Exhibits #1 and #10, Record pp. 221 and 316) for which the Bank received from Atkinson security on the pulpwood under Section 88 of The Bank Act, \$5,000.00 of such advances is secured against pulpwood cut under the contract of October 31st, 1933 (Exhibit #1, Record p. 221) and was advanced to the said Atkinson under application for credit dated January 24, 1934 (Exhibit #3, Record p. 224); and the balance
20 of \$3,000.00 was advanced against the pulpwood cut under the contract of April 26th, 1934 (Exhibit #10, Record p. 316) and made under application for credit date July 16th, 1934 (Exhibit #14, Record p. 321).

5. The Plaintiff cannot sue for conversion, having accepted payments from the Defendant on account of the purchase price of the pulpwood.

6. Although this defence was not pleaded, the Defendant attempted to charge against the moneys payable by the Defendant to the Bank as assignee of moneys due under the two contracts (Exhibit #1 and #10, Record pp. 221 and 316) the sum of \$5,330.91 alleged by the Defendant to be due to the Defendant from New Lepreau, Limited, under a contract alleged
30 to have been made between these two companies in the Spring of 1933.

The Court of Appeal in its judgment, whereby the amount of the Plaintiff's judgment was reduced from the sum of \$8,897.53 to \$192.02, only dealt with the defences set out in numbers one and six above, finding first that Ewart C. Atkinson was not an owner such as could give to the Bank security on the pulpwood which he, the said Atkinson, sold to the Defendant Company, under the provisions of Section 88 of The Bank Act, and secondly, although the Bank was entitled to the moneys payable by the Defendant for the pulpwood sold and delivered by Atkinson to the Defendant under the said two contracts (Exhibits #1 and #10, Record
40 pp. 221 and 316) the said Defendant was entitled to set off against the same the sum of \$5,330.91, which sum the Defendant now alleges to be due and payable to the Defendant from New Lepreau, Limited, under a certain contract made between the said two Companies in the Spring of 1933.

Although the Court of Appeal allowed certain other deductions to be made by the Defendant from the purchase price of the pulpwood there was no suggestion as to the basis of these deductions, other than for the

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sum of \$5,330.91, the balance alleged by the Defendant to be due to the Defendant from New Lepreau, Limited, which the said Court set off against the moneys due under the first contract (Exhibit #1, Record p. 221).

Dealing first with the finding of the said Appeal Court that Ewart C. Atkinson was not the owner of the said pulpwood and that the Bank did not acquire any title to the same by reason of the security given to the Bank by Atkinson under Section 88 of The Bank Act, it is respectfully submitted that the said Court was in error in so finding.

The Plaintiff admits that its title to the pulpwood is such title as is given to the Bank under and by virtue of Section 88 security of The Bank Act. Such title is set out in The Bank Act (Sections 88 and 89). 10

Sub-sections 1, 3, 5, 6 and 7 of Section 88 of The Bank Act are applicable hereto and read as follows :

“ 88. (1) The Bank may lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, upon the security of such products.

(3) The Bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise upon the security of the goods, wares and merchandise 20 manufactured by him, or procured for such manufacture.

(5) Any such security, as mentioned in the foregoing provisions of this section, may be given by the owner of the said products, goods, wares and merchandise.

(6) The security may be taken in the form set forth in Schedule C of this act, or to the like effect.

(7) The bank shall, by virtue of such security acquire the same rights and powers in respect of the products, goods, wares and merchandise covered thereby as if it had acquired the same by virtue of a warehouse receipt; Provided, however, that the wages 30 (salaries or other remuneration of persons employed by any wholesale purchaser, shipper or dealer, or by any wholesale manufacturer, in connection with any of the several wholesale businesses referred to, or by any farmer, in connection with the farm, owing in respect of a period not exceeding three months, shall be a charge upon the property covered by the said security in priority to the claim of the bank thereunder, and such wages, salaries or other remuneration shall be paid by the bank if the bank takes possession of or in any way disposes of the said security or of the products, goods, wares and merchandise covered thereby).” 40

The title conveyed to the Bank under the provisions of Section 88 is the same title as acquired under and by virtue of a warehouse receipt under the provisions of Section 86 of the Bank Act, which Section reads as follows :

“ 86. (1) The Bank may acquire and hold any warehouse receipts or bill of lading as collateral security for the payment of any

debt incurred in its favour, or as security for any liability incurred by it for any person, in the course of its banking business.

(2) Any warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof.

(a) all the right and title to such warehouse receipt or bill of lading and to the goods, wares and merchandise covered thereby of the previous holder or owner thereof; or

(b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom such goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of such goods, wares and merchandise. R.S. c. 12. S 86 am."

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It is further submitted by the Appellant that whatever title Ewart C. Atkinson had to the pulpwood which he sold to the Defendant under the contracts above referred to was vested in the Plaintiff Bank by reason of the security given by Atkinson to the Bank. The Plaintiff submits that Atkinson had such title in and to the pulpwood so secured to the Bank as is necessary under the provisions of Section 88 of The Bank Act to permit
20 Atkinson to give security to the Bank thereon.

From a perusal of the first contract dated October 31st, 1933, made between New Lepreau, Limited, and the Defendant (Exhibit #1, Record p. 221) (later changed to the name of Ewart C. Atkinson by agreement between Atkinson and the Defendant) the said Atkinson agreed to sell and deliver to the Defendant and the Defendant agreed to purchase and accept from the said Atkinson 1,000 to 4,000 cords of draw shaved or rossed spruce and fir pulpwood to be cut from lands owned or controlled by the Seller (Atkinson) and situate at New River, Charlotte County, New Brunswick. The price to be paid therefore was \$6.50 f.o.b. Fairville, New Brunswick,
30 with certain payments to be made from time to time by the Defendant to Atkinson as deliveries were made. Under the second contract (Exhibit #10, Record p. 316) the said Atkinson agreed to sell and deliver to the said Defendant and the Defendant agreed to purchase from Atkinson 10,000 cords of peeled spruce and fir pulpwood, the same to be cut from lands owned or controlled by the Seller (Atkinson) and situate in Charlotte County, New Brunswick, the price to be paid therefor being \$7.25 f.o.b. Fairville, New Brunswick.

New Lepreau, Limited, is a company controlled by Ewart C. Atkinson, and is the holder of 62 square miles of Crown Timber Licenses in Charlotte
40 County, New Brunswick. The issued capital stock is 490 shares, of which Atkinson holds 247 shares, the Defendant 241 shares, and 2 Directors qualifying shares. It is therefore fair to say that the Defendant is as conversant with the holdings and the Company set up of New Lepreau as is the said Atkinson, Atkinson being the President of New Lepreau, Limited.

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The subject matter of this action is not the stumpage on these 62 square miles of Crown Timber lands, but 6,005.43 cords of pulpwood which Atkinson cut from the lands of New Lepreau, Limited, and sold to the Defendant under two contracts (Exhibits #1 and #10, Record pp. 221 and 316), and both Atkinson and the Defendant evidently preferred to carry on the contracts in Atkinson's name as it was Atkinson and the Defendant who changed the first contract from New Lepreau, Limited, to Ewart C. Atkinson, by letter (Exhibit #5, Record p. 309) which change was not made at the suggestion or request of the Bank. The second contract (Exhibit #10, Record p. 316) between Atkinson and the Defendant was taken in Atkinson's name. It was the severed pulpwood that Atkinson gave security on to the Bank, being the same pulpwood which the said Atkinson sold and delivered to the Defendant. 10

The Defendant alleges title to the pulpwood in the said Atkinson for the purpose of selling and delivering the same to the Defendant, and at the same time pleads no title in Atkinson such as is necessary to give security to the Bank under the provisions of Section 88 of The Bank Act, and the Court of Appeal in effect so held.

It is submitted by the Appellant that the Appeal Court's interpretation of the word "owner" is too restricted and not in accordance with the authorities. The word has been enlarged to include within its scope the holder of an equitable title so that the holder of an equitable title could give valid security under the provisions of Section 88 of The Bank Act. See the following cases : 20

Dominion Iron and Steel Company et al vs Canadian Bank of Commerce (1928) 1 D.L.R. 809.

Royal Bank of Canada vs Hodges (1931) 1 D.L.R. 397.

Bank of Montreal vs Guarantee Silk Dyeing Company (1935) 4 D.L.R. 483.

Falconbridge on Banking, 5th Edition. Quoting from page 249 : 30
"Sub-section 5 says that the security 'may be given by the owner' but the form apparently contemplates that the person to whom the advance is made and the person by whom the goods are owned may be different persons." See also page 254 et seq.

Atkinson was in possession of the pulpwood on which he gave security to the Bank and which he sold to the Defendant. He was in possession of it with the knowledge and consent of the Defendant and with the knowledge and consent of all the officers and shareholders of New Lepreau, Limited, including the Defendant Company, which at the time was the holder of 241 shares of the capital stock of New Lepreau, Limited. When Atkinson 40 applied to the Bank for financial assistance in his operations and advised the Bank that he had a contract with the Defendant, the Bank Manager knew that Atkinson was President of New Lepreau, Limited, and that he, Atkinson, and the Defendant, comprised the shareholders of New Lepreau, Limited. It was proper for the Bank Manager to conclude that Atkinson was in a position to deal with the pulpwood in every respect and manner.

The only person who could question his title therein was New Lepreau, Limited. Atkinson's possession of and dealing with the pulpwood was never questioned by New Lepreau, Limited, nor by any of its shareholders. The Defendant in all its correspondence with the Bank and in the various interviews between the Manager of the Bank and Mr. Lacroix, the Manager of the Defendant Company, always acknowledged the Bank's title in the pulpwood.

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10 Atkinson was in possession of the pulpwood in question as a manufacturer. The history behind Section 88 of The Bank Act would clearly indicate that a manufacturer of timber could give security on the said timber to a Bank to secure advances made by the said Bank to assist such manufacturer in his operation. Formerly the main form of security was a warehouse receipt to facilitate movement of goods. In order to get the advantage of Bank facilities the custom grew up for owners to make out warehouse receipts to themselves. This practice was validated by Section 54 of The Bank Act of 1886, 49 Victoria, Chapter 120, reading as follows :

20 " 54. If any person who grants a warehouse receipt or bill of lading is engaged in the calling, as his ostensible business, of keeper of a yard, cove, wharf, or harbor, or of warehouseman, miller, saw-miller, malster, manufacturer of timber, wharfinger, master of a vessel, or other carrier by land or by water, or by both, curer or packer of meat, tanner, dealer in wool or purchaser of agricultural produce, and is at the same time the owner of the goods, wares and merchandise mentioned in such warehouse receipt or bill of lading, every such warehouse receipt or bill of lading, and the right and title of the bank thereto and to the goods, wares and merchandise mentioned therein, shall be as valid and effectual as if such owner, and the person making such warehouse receipt or bill of lading, were
30 different persons."

It should be noted that the above section allows a manufacturer of timber to give such a warehouse receipt and makes it permissive for the owner and the manufacturer to be one and the same person. The later Bank Act enlarges the function of the Bank, as Mr. Fielding aptly put it in 1923 in The Bank Act Revision Proceedings, 1913-1928 at page 238, when he says that Section 88 is not a privilege for the Bank but it is designed for the benefit of Canadian industry which was not sufficiently taken care of by Section 86. As a result of Section 88 in its present form you have the following set up: By Section 86 a warehouseman may
40 borrow; by Section 87 an Agent being a warehouseman may borrow; by sub-sections 1, 2 and 3 of Section 88 a manufacturer, &c. may borrow; and by sub-section 5 of Section 88 the position formerly protected by Section 54 of the Act of 1886 above quoted of the owner who wishes to give security along the lines of a warehouse receipt is again protected and the owner may also borrow. It is submitted that sub-section 5 of Section 88 is not to be construed as applying to the previous sections but merely as saving

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the position of the owner. It should be noted that the wording of sub-section 5 is permissive. Had it been the intention of Parliament to say that the persons mentioned in sub-sections 1, 2 and 3 of Section 88 must be owners it would have been very simple to have said so. The form prescribed by the Act leaves such blanks as would suggest that the borrower may be a different person from the owner.

It is submitted that *Barry v. Bank of Ottawa*, 17 O.L.R. p. 83, apparently holding the contrary and *The Union Sulphur Company of New York v. Riordon Company, Limited and the Bank of Montreal*, (1924) 30 R.L. n.s. 144, are distinguishable. In the first case an agent, on 10 commission, pledged his principal's goods and the principal took proceedings against the bank to assert his own title. The point at issue was whether the provisions of Section 87 of the Bank Act could extend the meaning of the word "owner" in Section 88.

In the *Riordon* case, again, the true owner sued asserting his title and the borrower denied any title under Section 88. The case turned upon the meaning of the word "owner".

It is submitted that the manufacturer of timber giving security to the Bank need not therefore be the owner but may be the owner as well as the manufacturer, and any security given by Atkinson to the Bank on the 20 pulpwood being manufactured by him as such borrower to secure the advances made by the Bank to assist him, Atkinson, in his pulpwood operations, would be valid security under Section 88 of The Bank Act.

Atkinson's right to give security may also be justified under Section 88, sub-section 1, and the contentions developed above would still apply.

All the moneys advanced by the said Bank to Atkinson were used by him in his pulpwood operations. Quoting from the evidence of Atkinson (Record p. 69):

"Q.—By the Court.—Were these pulpwood operations of yours from a financial point of view successful or did you lose on them? 30
—A. Didn't make any money, that is, we had too large expenditures to open up the country.

Q. The expenses were not at all relative to the amount of lumber?—A. No.

Q. Did all the moneys you got from the Bank, advances from the Royal Bank, go into the operation?—A. Every dollar.

Q. You did not divert any of it to any other purpose?—A. No."

In view of the fact that Defendant had complete knowledge of the Bank's advances and the extent thereof and of the Bank's position and rights under section 88 of the Bank Act, it is submitted that by taking and 40 holding the pulpwood and denying the Bank's claim therein for its advances the Defendant became a converter.

Morris vs. Robinson (1824) 3 B & C 196; *Hughes vs. Sutherland* 1 Kerr 574 (3 N.B.R. 574); *Coombes vs. Hatheway*, 3 Kerr 592 (5 N.B.R. 592); *Snow vs. Peacock*, (1825) 2 C & P 215; *Canadian Orchestrphone Ltd.*

vs. *British Canadian Trust Co.*, (1932) 4 D.L.R. 86; *Valpy vs. Saunders*, (1848) 5 C.B. 886.

In the circumstances the Defendant could not set up a *jus tertii* in New Lepreau Limited. *Lebel vs. Fredericton Boom Co.* 4 Allen 198, (9 N.B.R. 198); *Leake vs. Loveday*, (1842) 4 Man & G 972; *The Winkfield* [1902] P 42; *Jeffries vs. Great Western Railway*, (1856) 25 L.J.Q.B. 107; *Glenwood Lumber Co. vs. Phillips*, [1904] A.C. 405.

10 The Appeal Court did not question the sufficiency or the legality of the security given by Atkinson to the Bank, other than from the standpoint that Atkinson was not the owner.

The other aspect of the Judgment of the Court of Appeal has to do with certain deductions made by the Defendant from the purchase price of the pulpwood, and the set-off, without any reasons therefor, of the sum of \$5,330.91 against the moneys due from the Defendant as the purchase price payable for the pulpwood delivered under the first contract (Exhibit #1, Record p. 221). This sum of \$5,330.91 is the amount now alleged by the Defendant to be due the Defendant from New Lepreau, Limited, under an old contract between New Lepreau, Limited, and the Defendant in the Spring of 1933.

20 Although the Defendant did not plead this amount as a set-off, nor at the trial did it treat the same as a set-off, the Defendant's position with respect to this particular item is fully set out in a statement of Defendant's Counsel at the trial: (Record p. 72).

" Court.—Are you claiming as a set-off this amount of \$5,330.91? Are you setting up this claim in your defence to this amount in your pleadings?

Mr. Inches.—No, we don't put it that way. We say that the Bank has not got a lien ahead of us. That is what our defence is."

30 It is submitted that a debt can only be set off between the same parties and in this particular case the Court set off an alleged indebtedness of New Lepreau, Limited, to the Defendant, against moneys due by the Defendant to one Ewart C. Atkinson. If this sum of \$5,330.91 was neither pleaded nor claimed by the Defendant as a set-off at the trial, then the Court of Appeal was in error in allowing such set-off against the moneys due and payable by the Defendant under the first contract between Atkinson and the Defendant.

That set-off must be specially pleaded—see *Graham v. Partridge*, 1 M & W. page 395; *The Saxicava* (1924) 93 L.J.P. page 66).

40 That the Defendant cannot set-off the New Lepreau debt against the monies payable to the Bank as assignee—see:

Bowyer v. Pawson (1881) 50 L.J. Q.B. 495.

Turner v. Turner (1911) 80 L.J. Ch. 473.

In re Pennington and Owen Limited (1926) 95 L.J. Ch. 93.

Doe v. Darnton, 3 East. 147.

Hewett v. Pigott, 8 Bing. 61.

In re Pinto Leite and Nephews ex parte Visconde dos Oliveas

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“The debtor cannot set-off against the Assignee a debt which grew due subsequently to the date of the notice, even though that debt may arise out of a liability which existed at or before the date of the notice.”

If this amount is not a set-off then the only other ground on which the Defendant could claim as a deduction from the purchase moneys under its contract with Atkinson would be that it, the Defendant, had a prior equity in the said contract to the extent of this amount prior to the assignment by Atkinson to the Bank. The only evidence on which a prior equity could be claimed by the Defendant was a letter from the Defendant to the Bank dated March 16th, 1934 (Exhibit #8, Record p. 313) which was in reply to a letter from the Bank notifying the Defendant of the assignment from Atkinson to the Bank and enclosing a copy of the said assignment. The only oral testimony in support of such an equity is the evidence of Ewart C. Atkinson taken on discovery and put in evidence as part of the Defendant's case, and the direct testimony of Mr. Lacroix, Manager of the Defendant's mill. Quoting from the evidence of Ewart C. Atkinson taken on discovery, (Record p. 76) we find the following: 10

“Q.—It was quite satisfactory to you as a matter of fact that the Port Royal charged up against the later contracts the discrepancies on the first one?—A. The Port Royal and I never had a dispute about anything.

Q.—And that was quite in order?—A. Yes, we never objected.”

And the direct evidence of Mr. A. J. Lacroix, the Defendant's Manager, (Record p. 84):

“Q. Now, Mr Lacroix, you were financing the New Lepreau, Limited on a contract in the Spring of 1933. That was for sap peeled wood?—A. It was, sir. 30

Q. When was that wood finally delivered to you?—A. In the Spring of 1934. I want to correct that. The Spring and Summer of 1934.

Q. While the operation was going on you entered into this October contract of 1933 for this draw shaved wood?—A. We did.

Q. At that time I take it you would not know what the final result of the Spring contract for sap peeled wood would be?—A. No, not before the last shipment would be in.

Q. But in the summer of 1934 when final delivery was made of this sap peeled wood the result was there was a deficit of \$5,331.91? 40 (\$5,330.91—?)—A. Yes.

—Also on the same page:

“Q.—You have stated that this sap peeled wood under the Spring contract of 1933 was finally cleaned up in the Summer of 1934?—A. Yes.”

It will be noted from the above extract from the evidence that it was not a case of Atkinson agreeing to this New Lepreau debt being charged against Atkinson's present contracts before the giving of the security by Atkinson to the Bank or the assigning of the moneys due thereunder to the Bank, as the language used is all in the past tense, but is rather a case of Atkinson not objecting to the Defendant having charged this old New Lepreau debt to Atkinson's contract after the amount thereof had been ascertained in the Summer of 1934. The sum of \$5,330.91 could not be charged against the October contract (Exhibit #1, Record p. 221) before
 10 the assignment from Atkinson to the Bank as the amount was not ascertained by the Defendant until the Summer of 1934, and if the New Lepreau debt could be set off against Atkinson's contracts they could be set-off against the April contract (Exhibit #10, Record p. 316) just as well as against the October contract of 1933 (Exhibit #1, Record p. 221) as the Defendant attempted to set-off the same against all moneys due Atkinson on both contracts after the wood has been shipped. Exhibit #5, (Record p. 309) a letter from Port Royal to Atkinson dated March 1, 1934, would defeat any possible claim by Defendant of a prior equity. Here would be the natural place to record any arrangement, equity or agreed set-off, but
 20 the Defendant merely says that it is charging against the contract the advances already made totalling \$584.90.

Even if the subsequent letter of March 16, 1934, (Exhibit #8, Record p. 313), when coupled with the evidence, could be used as the basis for any further contention as to an equity between Atkinson and the defendant, then this equity could only be for the sum of \$4,000.00, the amount mentioned in the said letter of March 16th, 1934 (Exhibit #8, Record p. 313), as the sum of \$5,330.91 was not ascertained until the Summer of 1934, or after all the wood had been shipped (Record p. 309).

If the Defendant is relying on the letter of March 16th, 1934, to create
 30 its prior equity in the said contract, then Form 301 (Exhibit #4, Record p. 225) would defeat any such claim. This Form 301 was executed by Atkinson on January 24th, 1934, when he made his first application to the Bank for a loan. The effect of this Form 301 when the goods on which the lien has been given are sold is fully set out in sub-section 5 of said form (Exhibit #4, Record p. 225) so that the Bank's interest in the assignment would date back to January 24th, 1934, the time of the signing of Form 301 by the said Atkinson.

In support of the claim for deduction of \$5,330.91 and other deductions the defendant put in evidence an Exhibit D-1, (Record p. 359), which is a
 40 statement prepared by the Defendant of receipts and disbursements in connection with the said two contracts between the Defendant and Atkinson, and after trial Defendant delivered an amendment to its Defence to the Amended Statement of Claim, dated the 19th of December, setting out the manner in which the Defendant alleges the price of the wood was disbursed by the Defendant, which was in keeping with Exhibit D-1, (Record p. 359) but Defendant did not set up any claim by way of set-off or

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prior equities, but merely supported the evidence of Exhibit D-1 (Record p. 359).

In addition to the sum of \$5,330.91 the Court of Appeal made further deductions from the purchase price of the pulpwood, all as set out in Exhibit D-1 (Record p. 359) without giving any reasons therefor and treating the same as having a priority over the Bank's assignment from Atkinson to cover the advances.

Under the terms of the contracts Exhibits 1 and 10, (Record pp. 221 and 316) only "encumbrances or government dues on said wood" may be deducted by the Defendant from the purchase price. Relying on this clause Defendant retained from the purchase price payable the sum of \$43,551.26 (Exhibit D-1, Record p. 359), including the item of \$5,330.91 above mentioned. This Exhibit D-1 is a statement of alleged receipts and disbursements by Defendant in connection with the two contracts between Defendant and Atkinson. 10

There is no evidence, however, to show that anything appearing in the statement as disbursements comes under the heading of "encumbrances or Government dues on said wood." It is submitted that the burden of proving and justifying these deductions rests upon the Defendant and has not been discharged. 20

The Appellant analyses the respective items as follows :

(1) WAGES PAID BY PORT ROYAL \$9,631.11

This deduction could only be claimed if an encumbrance on the wood attaching to it in any hands. (*Stroud's Judicial Dictionary, verbo Encumbrances*). Claims against Atkinson personally could not be included.

Further it is submitted that there would be no encumbrance for liens in the sense of the contract, unless these liens were duly registered. See the Woodmen's Lien Act, R.S.N.B. 1927, chap. 161, sections 3, 4, 5, 6, reading as follows :

" 3. Every person performing labor or services in connection 30
with any logs or timber intended to be driven down rivers or streams,
or hauled directly from the woods or brought by railway to the
place of destination, shall have a lien thereon for the amount due
for such labor, service or services, and the same shall be deemed
a first lien or charge on such logs or timber, and shall have
precedence over all other claims or liens thereon, except any lien
or claim which the Crown may have upon such logs or timber,
for or in respect of any dues or charges, or which any owner of
lands may have for the stumpage upon such logs or timber, or
which any streams improvement company or boom company, 40
or person owning streams improvements or booms may have thereon
for or in respect of tolls.

" 4. The lien provided for in section 3 shall not attach or
remain a charge on the logs or timber, unless and until a statement
hereof in writing, duly verified upon oath by the person claiming

such lien, or some one duly authorized on his behalf, is filed in the office of the clerk of the County Court of the county in which the labor or services, or some part thereof, have been performed."

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" 5. Such statement, Form A, shall set out briefly the nature of the debt, demand or claim, the amount due to the claimant, as near as may be, over and above all legal set-offs or counter claims, and a description of the logs or timber upon or against which the lien is claimed.

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" 6. The statement of claim shall, in respect of work done in the woods, be filed within thirty days after the last day on which such labor or services were performed, and in respect to work done in stream driving or otherwise than in the woods, within twenty days after the last day on which such labor or services were performed; provided that no sale or transfer of the logs or timber upon which a lien is claimed under this Chapter during the time limited for the filing of such statement of claim and previous to the filing thereof, or after the filing thereof, and during the time limited for the enforcement thereof, shall in anywise affect such lien, but such lien shall remain in force against such logs or timber in whosoever possession the same shall be found."

20

The only evidence on this point appears at Record p. 86.

(2) Supplies \$4,482.31

The items composing this head are set out at the bottom of Record p. 359 and at the top of Record p. 360. No evidence appears to show that these constituted encumbrances on the wood or anything but personal claims. Some of the items cover live stock or materials, presumably still existing, for which no credit is given.

The only evidence on this point appears at Record pp. 84 and 90.

30

(3) STUMPAGE, WORKMEN'S COMPENSATION, TAXES etc.

\$7,376.56

The details of this item are shown on Record p. 360. Of the five items, only one, \$4,790.49, paid to the Provincial Treasurer for stumpage and interest thereon, could be deducted under the head of Government dues on the wood.

The payment of \$409.20 to The Royal Bank of Canada is not, on the face of it, an encumbrance or Government dues on the wood and no evidence is advanced in this regard.

40

The amount of \$408.08 stated to be paid to the Department of Lands and Mines for mileage license is not, on the face of it, a Government due on the wood or an encumbrance. Nor is it even shown that the pulpwood in question came off lands to which such license applied. It is clear that the only Government dues on the wood is that payable for

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stumpage. See The Crown Lands Act, R.S.N.B. 1927, Chap. 30, sections 19 and 20.

“ 19. All lumber cut within the limits of any license, and by virtue of the authority of any such license, shall be and remain the property of the Crown until the stumpage thereon is paid; and the Crown shall have a first lien and charge against all the property, both real and personal, of the licensee to secure the payment of such stumpage, provided always that the said lien and charge shall not apply to a licensee holding a license or licenses as a Trustee and in such case said lien or charge shall operate against the person creating the trust; and when a note or notes are taken for the payment of stumpage, the property in the lumber for the stumpage of which such note or notes are given, shall remain and be the property of the Crown until such note or notes are actually paid. 10

“ 20. In case of the non-payment of any sum or sums of money at any time coming due by any person or persons for stumpage on lumber cut on any lands leased by the Crown to any person or persons, or for any stumpage due on lumber cut on Crown lands under any license from the Crown, and whether such sum or sums of money shall have been secured by any note or notes, or have not been so secured, it shall be lawful for the Crown, if it see fit, by or through any of its seizing officers appointed under the authority of this Chapter, or any other officer authorized in that behalf, to seize and sell at public auction, for cash, after giving fourteen days notice of the time and place of sale to the operator, if practicable, or if not, then to the party in whose possession the lumber may be, and after public notice posted up for a like period in at least three public places in any parish in which the lumber or any part thereof may be then situated, all or any part of the said lumber or anything into which the same may have been manufactured; and after deducting the amount so due for stumpage and all expenses of sale, the balance (if any) shall be paid over to the licensee or his assigns. Where the timber to be seized or to be sold is mixed up with other timber from vacant Crown Lands or private lands the whole of the timber may be seized and sold unless separated to the satisfaction of the minister.” 20 30

Similarly for the item of \$724.11 paid to the Workmen's Compensation Board. Nothing appears to justify this as an encumbrance as coming within the phrase “ encumbrances or Government dues on the wood ”. The Workmen's Compensation Act, Statute of New Brunswick 22, Geo. V. c. 36, sec. 68 (2) provides as follows — 40

“ (2) The amount of an assessment and any judgment with respect to same, shall be a first lien upon all the property, real, personal or mixed, used in or in connection with the industry with respect to which the employer is assessed, subject only to municipal taxes and

the amount levied under execution upon any such judgment to the extent of the amount due upon such execution, shall forthwith be paid by the sheriff or his deputy to the Board.”

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It has not been shown that any assessment was made under the provision, that if it were made it amounted to \$724.11, or that if any assessment were made it related to the operations under these contracts.

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(4) HANSON, DOUGHERTY & WEST—STUMPAGE
(FRASERS) \$1,044.68

10 The evidence in regard to this is at Record pp. 88 and 89 and shows that the amount in question represents a settlement with the Frasers for a trespass. What is referred to at one time as “damages under the settlement” and at another time as “the stumpage” was apparently the purchase price of the wood which, so far as the evidence shows, may have come off freehold lands belonging to the Frasers.

Reference may also be made to the two contracts Exhibits 1 and 10 (Record p. 221, line 37 and Record p. 316, line 35) stating that the pulpwood in question was to be cut from the lands owned or controlled by the seller. (See the first contract at Record p. 221, line 37 and the second contract at Record p. 316, line 35). Any claim for wood cut on other
20 property could not be within the contract exceptions.

(5) RENT HOUSING MEN \$26.00

The same argument applies to this amount.

(6) FREIGHT ON WOOD RECEIVED UNDER THE
CONTRACTS..... \$5,607.81

This item could only be claimed under the heading of an encumbrance and is not justified as such.

This is no evidence that any such encumbrance ever existed, nor is there any evidence as to how or when the freight was paid. If the freight were paid on a running account, no encumbrances could arise.

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Further, delivery was to be made f.o.b. cars Fairville, N.B. (Record p. 94, line 14), that is, at the charge of the vendor. In other words the freight had to be paid by the vendor (Atkinson) and therefore could not have been contemplated as a deduction by the defendant under the contract provisions.

It is submitted, then, that quite apart from the item of \$5,330.91, deductions have been made which cannot in any way be justified under the two contracts and that if these cannot be maintained the amount owing is more than sufficient to meet the Bank’s claim.

40 The Defendant has referred to the case of *Shepherd v. Livingston* (1924) 1 D.L.R. 723, apparently in an attempt to support these expenditures as necessary expenditures. It is submitted that there is no evidence in this regard. On the contrary the Defendant contended throughout that it never took over the contract from Atkinson (Lacroix—Record p. 88) but

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that Atkinson's men under Atkinson's supervision continued to ship the pulpwood while the Defendant paid the bills direct. In *Shepherd v. Livingston* the defendant was compelled to take over the operations and necessarily made its expenditures in consequence. It may further be noted that in that case no purchase price under the assignment ever became due to the assignor. Compare also *McMillan v. Ritchie*, 2 Allen 242 (2 N.B.R. 242).

The Appellant asks that the Appeal be maintained and that the judgment of the Trial Judge be restored, with costs.

The whole respectfully submitted.

HANSON, DOUGHERTY & WEST,

Solicitors for the Appellant.

W. F. Chipman,
of Counsel.

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PART I.

STATEMENT OF FACTS.

The facts of this action are somewhat complicated, but are not seriously in dispute. To review them properly, it is necessary to commence in the Spring of 1933, when the Respondent (Defendant) herein called the Port Royal entered into an agreement with New Lepreau Limited a New Brunswick Company for the purchase of a quantity of pulpwood. 20

It appears that the Appellant (Plaintiff) herein called the Bank made advances to New Lepreau Limited on that contract, and in January of 1934 the Port Royal sent the Bank a cheque for \$5,350.00 in full settlement of advances to New Lepreau Limited for the operation of pulpwood 1933. (Exhibit 27, Record, p. 308.) This was done not on demand of the Bank, but at the request of Ewart C. Atkinson, who was the President of New Lepreau Limited. (Evidence of Mr. Lacroix, Record, p. 92, ll 6-16.) This figure is similar to, but should not be confused with the figure 30 \$5,330.91 which will appear subsequently.

It appears that there was not sufficient wood delivered to the Port Royal under the original first contract of the Spring of 1933 to cover all advances and payments made by the Port Royal to or on account of New Lepreau Limited. On March 16th, 1934, the Port Royal estimated that there would be a shortage of approximately \$4,000. (Exhibit No. 8, Record, p. 313.) Subsequently when the last wood was received about the end of May, 1934, it appeared that the actual amount which the Port Royal overpaid amounted to \$5,330.91 (Evidence of Mr. Lacroix, Record, p. 84, ll 16-28.) 40

In the meantime and while the original contract was still running, on October 31st, 1933, New Lepreau Limited entered into a second contract with the Port Royal for the sale to it of 1,000 to 4,000 cords of draw shaved pulpwood. (Exhibit No. 1, Record, p. 221.)

By agreement between the Port Royal and E. C. Atkinson and at the request of the Bank, the name of the Contractor in this contract for draw shaved wood was changed from New Lepreau Limited to E. C. Atkinson personally on March 1st, 1934. (Exhibit 5, Record, p. 309.)

By March 16th, 1934, the Port Royal had advanced on this draw 10 shaved contract the sum of \$484.90, and had also charged as advances on the contract \$4,000,—being the amount then estimated to be over-advanced on the original contract of the Spring of 1933. This was done at Atkinson's request. (Exhibit No. 8, Record, p. 313.)

In the meantime on January 20th, 1934, notice of intention of Atkinson to give security to the Bank under Section 88 was registered at the Office of the Receiver-General in Saint John.

On January 24th, 1934, Atkinson made application to the Bank for 20 advances totalling \$5,000. Advances were made from time to time by the Bank and prior to the first of March, (that is before he even had a contract in his name or any suggestion of assets on which to give security) \$2,000 had been advanced to Atkinson.

On the 14th of March, 1934, the Bank advanced a further sum of \$500.00 being a total advance of \$2,500.

On the 10th of March, 1934, Atkinson assigned to the Bank all moneys, claims, rates and demands which he might have or be entitled to under the contract dated the 31st of October, 1933. (Exhibit 6, Record, p. 310.) A Copy of this Assignment was received by the Port Royal on the 16th day of March, 1934. (Exhibit 8, Record, p. 313.)

On the 20th of March, 1934, Mr. Murray, the Bank's Manager at 30 Fredericton, wrote to the Port Royal stating that he had advanced \$3,000 on the contract dated October 31st, 1933, under Section 88, and expected payment of this amount before the Port Royal's claim of \$4,000 over advanced on the first contract was paid. (Exhibit 9, Record, p. 314.) To this letter the Port Royal replied on March 26th (Exhibit A, Record, p. 315) denying any first claim of the Bank on the draw shaved wood, but agreeing to protect the Bank's advances after the Port Royal's claim, totalling \$4,484.90, had been liquidated. To this letter the Bank made no reply, but continued to make further advances to Atkinson. Thus by March 19th the total advances of the Bank reached \$3,000. (See Exhibit 40 20 (5), Record, p. 234.) By May 28th \$4,000. (See Exhibit 20 (9), Record, p. 242.) By June 2nd the advances totalled \$4,200. (See Exhibit 20 (10), Record, p. 244.) By June 8th totalled \$4,400. (See Exhibit 20 (12), Record, p. 248.) June 14th \$4,600. (See Exhibit 20 (13), Record, p. 250.) June 14th, \$4,800. (See Exhibit 20 (14), Record, p. 252.) June 30th, \$5,000. (See Exhibit 20 (16), Record, p. 256.)

Down to this date the Bank had been operating under an application for credit dated January 24th, 1934. (Exhibit No. 3, Record, p. 224) and

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the security had been taken on the wood to be cut under the contract on the draw shaved wood. (See evidence of Mr. Murray, Record, p. 74, ll 18-21.)

In the meantime on April 26th, 1934, the Port Royal entered into a further contract with E. C. Atkinson for the purchase of 10,000 cords of sap peeled pulpwood. (Exhibit No. 10, Record, p. 316.) Advances were made by the Port Royal from time to time under this last contract, and also under the draw shaved contract of October, 1933, until by the 19th of July, the total had reached \$5,644.71, to which the defendant had added \$5,330.91, being the balance owing under the original contract of the Spring of 1933, making a total of \$10,975.62. (See letter from Port Royal to Bank,—Exhibit No. 16, Record p. 349). 10

On May 27th, 1934, Atkinson assigned to the Bank all moneys to grow due under the contract of April 26th, 1934, and on July 19th, 1934, the Port Royal received notice of this Assignment. (See Exhibit No. 16, Record, p. 349.)

On July 16 Atkinson made a further application for credit to the Bank for advances totalling \$10,000. (See Exhibit 14, Record, p. 321) and further advances were made by the Bank as follows: July 17th, 1934, \$1,000. Total advances, \$6,000. (See Exhibit 20 (21), Record, p. 266) July 24th, \$1,000. Total advances \$7,000. (See Exhibit 20 (22), Record, p. 268), July 28th, 1934, a further \$1,000. Total advances \$8,000. (See Exhibit 20 (23), Record, p. 270), which was the total actual advance by the Bank. Subsequently the Bank received \$500.00 reducing their advance to \$7,500 on the 2nd of August, 1934. (See Exhibit 20 (24), Record, p. 272), but the loan was again increased on August 12th to \$8,005. (See Ex. 20 (26), Record, p. 276.) This was the last Bank money to be advanced to Atkinson. (See evidence of Mr. Murray on Discovery, Record, p. 74, ll 32-39.) 20

Subsequently, however, various transactions went through the Bank's accounts. As moneys were received from the Port Royal, they would be debited in one account and credited in another, but in effect, the indebtedness remained constant. See evidence of Mr. Murray, (Record, p. 42, ll 32-44) to the effect that after July 28th, 1934, all subsequent dealings in the account would be renewals,—just a routine matter). The renewals and transactions in the account as shown by the securities (Exhibits 20 (27 to 41) coincide exactly with the dates on which cheques were received from the Port Royal as shown by the evidence of Mr. Murray the Bank Manager, Record, pp. 54-55. 30

It is to be noted that the actual securities themselves, Exhibits 20, Nos. 1 to 29 inclusive, only purported to grant security on rough or draw shaved wood. In other words, the entire amount of \$8,000 advanced by the Bank was advanced on the security of draw shaved wood, which subsequently turned out to be worth approximately \$4,500. delivered at the mill. (See *infra*.) 40

Commencing, however, with security Exhibit 20 (30) dated September 11th, 1934, (Record, p. 284) and continuing to the last Security, Exhibit 20 (41) security was taken on rough draw shaved and sap peeled wood.

In the summer of 1934 the Port Royal's Manager, Mr. Lacroix, becoming aware that the Bank's advances had reached \$8,000, endeavoured to negotiate some compromise between the parties in a settlement of their conflicting claims, and believing that there would be sufficient wood to meet the claims of both parties (Record, p. 90, ll 12-15) endeavoured to reach an arrangement whereby the wood would be conveyed to the Port Royal by a Bill of Sale, and the Bank would receive \$2.00 a cord as the wood was delivered at the Mill. (See letter from Mr. Lacroix to Mr. Murray of September 13th, 1934—Exhibit No. 23, Record, p. 350). This offer, however, was refused. (See letter from Mr. Murray to Mr. Lacroix of September 14th, 1934, Exhibit 25, Record, p. 352). The Port Royal however, at that time commenced to pay all bills of the operation by its own cheques, with the exception of a few small items that went through the Bank, which latter are shown in the evidence (Record, p. 55, ll 17-26) and continued so to do until the operation was completed, and the last of the wood received in June of 1935.

Some 1772 cords of wood were received by the Port Royal during the late Fall of 1934, and the Bank demanded payment of \$2.00 per cord, apparently under the terms of the suggested settlement which the Bank had refused to accept.

To this the Port Royal replied by letter dated December 28th, 1934 (Exhibit C, Record, p. 357) that they were going to deduct their own advances before anything was paid to the Bank. Here the situation rested until the Spring of 1935, when in May the Bank wrote Atkinson that no further wood was to be shipped until its advances were paid. This letter was in effect ignored, and the Bank did nothing to protect its position, taking no steps to seize the wood or in any way realize on its purported security.

In all, the Port Royal received under the two contracts in question 6,005.43 cords of pulpwood. Of this quantity 707.17 cords was draw shaved wood, which at the contract price of \$6.50 per cord was valued at \$4,596.60. And the balance of the wood consisting of 5,298.26 cords was sap peeled wood, which at the contract price of \$7.25 per cord was valued at \$38,412.37.

It is common ground that the pulpwood in question in this suit was, with the exception of 522 cords cut on lands of the Fraser Companies Limited, cut on lands held by New Lepreau Limited, an incorporated Company, under Timber and Pulpwood licenses from the Province of New Brunswick. Thus Atkinson in his evidence on discovery read into the record (Record, p. 77, l 45 - p. 78, l 10) says that the operations were on lands held under Timber Licenses from the Crown, with the exception of 522 cords cut on lands of the Fraser Companies Limited, and all the licenses were in the name of New Lepreau Limited.

Of the issued common stock of this Company amounting to 489 shares, 247 shares were in the name of Atkinson, indorsed to the Bank as security for old indebtedness. 241 shares were and are owned by the Port Royal.

It is further evident from various exhibits, consisting of promissory notes, agreements to give security and the actual securities themselves, that

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Atkinson in no instance when giving security to the Bank purported to act as an officer or representative of New Lepreau Limited, but acted solely as an individual, and any security he gave or any agreement he made to give security was simply a personal act of his own.

In fact, Atkinson (Record, p. 78 ll 11-14) said he had no agreement with New Lepreau Limited about cutting.

It is also clear that the Bank at no time had possession of any of the pulpwood.

The summaries of the Port Royal's accounts which are in evidence as Exhibits D1, D2 and D3 (Record, pp. 359-360) show that as a result of the 10 whole transactions, the Port Royal sustained a loss on the three operations of \$542.29. They further show the manner in which the contract price of the wood, cut under the Contracts of October, 1933 and April, 1934, totalling \$43,008.97 was paid and that at the completion of delivery under the contracts in question, Atkinson was indebted to the Port Royal in the sum of \$542.29.

PART II.

POINTS IN ISSUE.

In this case the Bank has claimed.

First,—for damages for conversion by Port Royal of certain pulpwood 20 upon which the Bank claimed to hold security under Section 88, and

Second,—for payment to the Bank of certain purchase monies of the wood in question which purchase monies the Bank claims were assigned to it by E. C. Atkinson.

On the first claim, the following points are in issue :

1. Was E. C. Atkinson the owner within the meaning of Section 88 of the Bank Act of the pulpwood on which he purported to give security to the Bank under that Section? The Port Royal submits he was not.

2. Did the Bank have a title to the pulpwood superior to that of the Port Royal? The Port Royal submits it did not. 30

3. Did the Bank have sufficient title to the pulpwood in question on which it could successfully found an action for conversion? The Port Royal submits it did not.

4. Did the Bank affirm the sale of the pulpwood from E. C. Atkinson to the Port Royal and thus waive any tort of conversion which may have been committed? The Port Royal submits that the Bank did so waive any tort.

5. Was the Bank's security under Section 88 taken in compliance with Section 90 of the Bank Act? The Port Royal submits it was not, and that security is therefore invalid in part at least. 40

On the second claim, the following points are in issue :

1. Did the Port Royal pay the purchase price of the pulpwood bought by it from Atkinson or is there a balance of such purchase price still owing to the Bank under assignments of such purchase price from E. C. Atkinson?

The Port Royal submits that the purchase price is fully paid and there is no balance owing thereon.

2. In the payment of such purchase price was the Port Royal justified in paying to itself by way of set-off all or any part of the sum of \$5,330.91 owed to it by New Lepreau Limited on a previous contract? The Port Royal submits that it was justified in the set-off so made by it.

3. As regards the right of set-off, is there any distinction to be drawn between the set-off as against the contract of October, 1933, which was originally made with New Lepreau Limited and subsequently changed to E. C. Atkinson and the contract of April, 1934, which was originally made with E. C. Atkinson? The Port Royal submits that no distinction should be made.

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PART III.

ARGUMENT.

The Bank claims under two general heads :

First, that the Port Royal has converted to its own use the pulpwood cut under the two contracts of October 31, 1933, and April 26, 1934, which was the property of the Bank by virtue of securities given to the Bank by Atkinson under Section 88 of the Bank Act, and Second, that the Port Royal is indebted to the Bank for part of the purchase price of the said wood.

To these two claims the defences of the Port Royal are as follows :

As to the claim for conversion :

1. Atkinson was not the owner of the wood at any time and therefore could not give valid security to the Bank.
2. Actually the title of the Port Royal is superior to that of the Bank.
3. Even if the title of the Port Royal is not superior, the Bank has not sufficient title to succeed in an action for conversion.
4. The Bank having adopted the sale by Atkinson to Port Royal are estopped on their claim for conversion.
5. The Bank's security is invalid in part at least by reason of failure to comply with the provisions of Section 90 of the Act.

As to the claim for the purchase price :

The Port Royal has paid the purchase price in accordance with the terms of the contracts and its arrangements with the Vendor which were made prior to receipt by Port Royal of Notice of assignments to the Bank of the purchase monies.

THE CLAIM FOR CONVERSION.

The first claim, that of conversion of the Bank's pulpwood has been treated throughout by Counsel for the Bank as its main cause of action, and it will be treated here under the following propositions :

1. ATKINSON WAS NOT THE OWNER OF THE WOOD AT ANY TIME AND THEREFORE COULD NOT GIVE VALID SECURITY TO THE BANK.

While Atkinson is described as the owner of the wood in question in the various securities given by him to the Bank, his ownership of the

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wood was denied by the Port Royal in its pleadings, it claiming that title to the wood was in New Lepreau Limited with the exception of 522 cords cut by Atkinson on trespass of lands of Fraser Companies Limited, the title to this quantity having passed direct from the Fraser Companies Limited to the Port Royal on payment by the Port Royal to the Fraser Companies of the latter's claim in connection with the wood (Record, p. 88, l 42-89, l 5) and put the Bank to the proof of its title.

Aside from proving as was admitted in the defence that Atkinson was the President of New Lepreau Limited and was nominally, though not beneficially the owner of the majority of the stock of that Company, 10 the Bank has completely failed to discharge the burden of proving its title and in fact has not attempted to prove title of any sort in Atkinson.

In this connection, the Bank is apparently proceeding on one or both of two assumptions: First, that Atkinson as President of New Lepreau Limited and as the nominal holder of the majority of stock of that Company, was the owner of the assets of the Company, or—Second, that under Section 88 of the Bank Act, the Bank can acquire valid security by a document executed by some person other than the owner of the goods.

The first suggestion that Atkinson by reason of his registered ownership of the majority of the stock of New Lepreau Limited and his position as 20 President of that Company was the owner of the assets of the Company is completely negated by the authorities.

The case of *Salomon vs. Salomon* (1897) Appeal Cases, page 22, in the House of Lords, clearly established that even if the Company was a one-man Company, so called, it is entirely separate and distinct from the individuals who comprise it.

So also in *Gramophone and Typewriter Limited vs. Stanley* (1908) 2 K B page 89; Cozens-Hardy, M. R., in the Court of Appeal said at pages 95 and 96:

“The fact that an individual by himself or his nominees holds 30
“practically all the shares in a Company, may give him the control
“of the Company in the sense that may enable him by exercising
“his voting powers to turn out the Directors and to enforce his
“own views as to policy, but it does not in any way diminish the
“rights or powers of the Directors, or make the property or assets
“of the Company his.”

A still stronger case is that of *Macaura vs. Northern Assurance Company Limited* (1925), A C, page 619. Here the appellant was the owner of real estate in Ireland. He agreed to sell all the timber on it for £27,000 to a Canadian Company, to be paid for in full by fully paid-up shares of 40 that Company, and gave the Company leave and license to enter and use the Mills for the purpose of sawing. As consideration for the timber and certain other moneys advanced by him, the Company issued to the appellant 42,000 fully paid-up \$1.00 shares, constituting the entire issue of stock issued by the Company, and all the shares were held by the appellant or his nominees. Some three years later, and after the lumber

was all cut, the appellant insured the same in his own name against fire. At the time the appellant was also a creditor of the Company to the extent of £19,000. Shortly afterwards the greater part of the timber was destroyed by fire. The insurance Company contended that the appellant had no insurable interest. His contention was that he did have. On the argument it was urged that it was the case of a sole shareholder dealing with property created by his money, and that he had a serious interest in fact in the property, both as a creditor and a shareholder.

10 This contention was rejected by the House of Lords, who held that the appellant had no legal insurable interest, and therefore the action must fail.

Lord Sumner said at page 630 :

“ He (the appellant) stood in no ‘ legal or equitable relation ’
 “ to the timber at all. He had ‘ no concern in ’ the subject insured.
 “ His relation was to the Company, not to its goods.”

Lord Wrenbury said at page 633 :

20 “ My Lords, this appeal may be disposed of by saying that
 “ the corporator, even if he holds all the shares, is not the Corporation,
 “ and that neither he nor any creditor of the Company has any
 “ property, *legal or equitable*, in the assets of the Corporation.”

30 The case of *Export Brewing and Malting Company vs. The Dominion Bank* decided in the Privy Council last year, reported 1937, 3 D.L.R. page 513, is the most recent authority on this point and favours the Port Royal. In the case Lord Russell of Killowen in giving the judgment of the Court said at page 523, “ They (their Lordships) believe it to be of supreme
 “ importance that the distinction should be clearly marked, observed
 “ and maintained between an incorporated company’s legal entity and
 “ its actions, assets, rights and liabilities on the one hand and the individual
 “ shareholders and their actions, assets, rights and liabilities on the other
 “ hand.”

Adapting then the words of Lord Wrenbury in the *Macaura* Case to the facts of the present case, even if Atkinson had owned all the shares in New Lepreau Limited, he had no legal or equitable property in the assets of the Company which he could convey to the Bank under Section 88, so as to enable the plaintiff to succeed in an action for conversion.

This case is even stronger, as practically half the stock of New Lepreau Limited was owned by the Port Royal.

40 Furthermore, this is not a case of an ignorant man, who might possibly conceive a Company and its President had the same rights, but the plaintiff herein was represented by its Manager,—an experienced Banker, who was so he states himself familiar with the corporate set-up of New Lepreau Limited.

The second suggested claim of the Bank that Section 88 of the Bank Act enables the Bank to obtain valid security on goods not owned by the giver of the security is also completely negated by the authorities.

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Section 88 of the Bank Act, sub-section 5, itself provides that any security under this Section may be given by the owner of the goods, wares and merchandise. There is no provision in the Act for the giving of such security by any person other than the owner and the express enactment stating the persons who may give security shuts the door to any further implication. Thus the persons who may give valid security under Section 88 are limited to such as come within the classification of "Owners."

A leading case in this connection is "*Blackburn vs. Flavelle*" L.R. 6 App. Cas. decided by the Privy Council in 1881. Here the statute in question provided for a certain sale to be made by public auction. It was in fact made by Conditional Sale and it was held that the procedure by Conditional Sale was invalid, the statute having expressed the mode in which the sale should be conducted, and Sir Barnes Peacock in giving judgment at page 634 quotes with approval the statement of law given by Mr. Justice Hargrave in "*Drinkwater vs. Arthur*" (10 S.C. N.S.W. 193) as follows: "If there be any one rule of law clearer than another as to the construction of all statutes and all written instruments (as for example sales under powers in deeds and wills) it is this: that where the legislature or the parties to any instrument have expressly authorized one or more particular modes of sale or other dealing with property, such expressions always exclude any other mode except as specifically authorized." See also to like effect "*Shaw vs. Reckitt*" (1893) Q. B.D. 779 per Hawkins, J., at p. 781 and per Cave, J., at p. 782.

In other words, under the Bank Act a person to give a valid security must be the owner of the goods, wares or merchandise in question. This interpretation of the Act has been followed in every case in which the question has come before the Courts.

Thus in "*Barry vs. The Bank of Ottawa*" 1909, 17 O.L.R. page 83, it was held that a commission merchant could not give valid security to the Bank under Section 88 on goods which were not his own property. So too, in "*Union Sulphur Company of New York vs. Riordon Company Ltd. and The Bank of Montreal*" (30 Rev Leg. 144, 1922) it was held by Mr. Justice Surveyor in the Superior Court of Quebec that certain sulphur which was owned by the Sulphur Company but in possession of the Riordon Company on a consignment basis could not be the subject of security given by the Riordon Company to the Bank. The learned Judge went into the authorities at great length and points out that while under Section 87 of the Bank Act certain persons other than the owner of goods could give valid security to the Bank under Section 86, this does not apply to Section 88 and that to come within the purview of the latter section, the security giver must be the owner.

So also, in *re William A. March*, 11 C.B.R. 463, Gibsone J. said at page 466:

"It is neither the purpose nor the effect of The Bank Act, Section 88, to make the security receipt effective to transfer to the Bank more rights in the merchandise than the customer himself has; in other words, it is only the rights in the merchandise

“ which the customer himself has which are transferred to the
 “ Bank by the security . . . as against another claimant to the
 “ merchandise in general, the Bank is entitled only to the rights
 “ which its customer had, and which its customer transferred
 “ to it.”

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The case of *Royal Bank of Canada vs. Hodges* in the British Columbia Court of Appeal 1930, 1 D.L.R. 397, is a further instance where the Court held that security under Section 88 must be given by the owner. In that case the Court, consisting of Macdonald, C.J., Martin, Phillips and Macdonald J.J.A., all considered that security under Section 88 must be given by the owner of the goods and then went on and decided on varying grounds that under the facts of the case the security had been given by a person who could properly be described as the owner of the goods in question.

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Another instance of a similar decision is the case of *Mutchenbacher vs. Dominion Bank* in the Manitoba Court of Appeal (1911 21 Man. L. R. page 320). See also *Hatfield vs. Imperial Bank* 1907. 6 Terr. L.R. 296.

The text writers are also unanimous in stating that security under Section 88 must be given by the owner. See Falconbridge on Banking and Bills of Exchange 5th Edition 1935, pages 223 and 256. Also MacLaren on Banks and Banking 5th Edition 1928 at page 337 where the author says: “ It is only the owner who can give the security mentioned in this section.”

Further text authority is Canadian Banking Practice 5th Edition 1937 edited by Mr. Falconbridge. This work takes the form of questions and on page 366 the following question and answer is given:

“ Question 678. A Bank agrees to make an advance to Brown Bros. on the security of hogs. The hogs are the property of the firm, but are in possession of Robert Brown, one of the partners. Should the assignment under Section 88 of the Bank Act be taken from Robert Brown or from the firm ? ”

“ Answer—The assignment must be taken from the owner of the goods, in this instance from the firm of Brown Bros. It is not necessary that the goods should be in the owner’s possession in order to validate the assignment, but the name of the person in whose possession they are should be mentioned, as also the place or places where the hogs are kept.”

The same question and answer are set forth in the fourth edition of this work 1921 at page 306.

It is thus apparent that it has become settled law that security under Section 88 is only valid if given by the owner of the goods, the subject of the security.

In the present case, counsel for the Bank argued in the appeal to the Appeal Division of the Supreme Court of New Brunswick though not at the trial that as Section 88, sub-section 7, provided that the Bank by virtue of such security would obtain the same rights and powers in respect of goods

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covered by the security as if it had acquired the same by virtue of a warehouse receipt, that a valid security could be given under Section 88 by any person who could give valid security under Section 86 and its complementary Section 87, that is, generally speaking, any person in possession of the goods or indicia of title thereto with the consent of the owner.

This argument was strongly advanced by counsel and carefully considered by the Court in the case of *Barry vs. The Bank of Ottawa* 17 O.L.R. page 83, but it was held by the trial judge and also unanimously by the Court of Appeal of Ontario consisting of Falconbridge, C.J.K.B., Britton and Magee, J.J., that the proposition was untenable. 10

We particularly refer to the judgment of Falconbridge, C.J., at page 88.

So too, in the *Union Sulphur Company of New York vs. Riordon Company and the Bank of Montreal* cited above, the same argument was advanced and action was dismissed. The same argument was also advanced in the *Mutchenbacher* case but was apparently not considered by the Court as being of any validity.

Aside from the words of the Statute there is a real distinction between the two classes of security dealt with under Section 86 and Section 88 respectively. In Section 86 the Act deals with documents of title which for years, particularly in the case of Bills of Lading, have been known to the commercial world as instruments which were to all practical purposes negotiable and the Act is also dealing with a class of persons who under Provincial Act and under the common law have power to transfer title of goods which they do not themselves own. 20

In effect, Sections 86 and 87 import into the Bank Act the provisions of the Factors Act which are common to the commercial law of the country as a whole and are well known to the commercial public.

Under Section 88 the Act is dealing with a security which as Davis, J., said in *Royal Bank of Canada vs. Workmen's Compensation Board of Nova Scotia* 1936, S.C.R. at p. 567, is a particular statutory form of Mortgage. 30

2. ACTUALLY, THE TITLE OF THE PORT ROYAL IS SUPERIOR TO THAT OF THE BANK.

(1) LEGAL ESTATE IN THE CROWN.

Of the 6,005.43 cords, 5,483.09 were cut on Crown Lands under license to New Lepreau Limited. Cap. 22, 23, Geo. V 1933, provides that.

“ All lumber cut within the limits of any license . . . shall
“ be and remain the property of the Crown until the Stumpage
“ thereon is paid.”

This stumpage was not paid until after delivery, and was then paid by Port Royal. The balance of the 6,005.43 cords, namely 522.34 cords, 40 was cut on Fraser's lands wrongfully, and was at no time the property of Atkinson, and Port Royal paid Frasers their stumpage of \$1,044.68 after delivery.

Having purchased the rights of these claimants, namely: the Crown and Frasers, the Port Royal should be regarded as the owner of the property.

An analogous situation is that of the right of a stranger who pays off a mortgage on an estate. Falconbridge on the Law of Mortgages, 2nd Ed. 1931, says at page 338 :

“ Presumably he does not intend to discharge the mortgage but keep it alive for his own benefit,

and quotes the following from *Crosbie-Hill vs. Sayer* (1908) 1 Ch. 866, at 877 :

“ Where a third party, at the request of a mortgagor, pays off a first mortgage with a view of himself becoming a first mortgagee of the property, he becomes, in default of evidence of intention to the contrary, entitled in equity to stand, as against the property, in the shoes of the first mortgagee.”

Hanbury, *Modern Equity*, 1935, in referring to *Crosbie-Hill vs. Sayer* says at page 450 :

“ It is not right that a perfectly honest transaction between A and B should confer an undeserved increment on C., who was no party to it.”

Hanbury, again at p. 626 :

“ Lastly, there is a somewhat complex equitable doctrine, which Wright, J., in *Liggett vs. Barclays Bank* (1928, 1 K.B. 48) refused to identify with subrogation so called, but it is respectfully submitted that the two doctrines are sufficiently alike to be called by the same name. The doctrine is that where one person has paid the debts of another, without authority, he is entitled to stand in the place of the creditors against the debtors who he has thus relieved.”

And on Page 627 :

“ This right, however, of one who gratuitously discharges another's debt to stand in the place of the creditor closely resembles genuine subrogation in many ways, and not least in that it is generated by the payment; it cannot arise until the payment has been made. It is at least a half-brother of the genuine article, and their common parent might be said to be the converse of the fifth maxim of Equity ‘ He who has done equity, may seek equity ’.”

(2). THE PORT ROYAL HAD AN EQUITABLE INTEREST SUPERIOR TO THAT OF THE BANK.

Even though we disregard the *Macaura* case entirely, the legal estate in the pulpwood being in the Crown, Fraser Companies or possibly New Lepreau Limited, Atkinson could at the most have only an equitable interest in the wood given to either the Bank or the Port Royal and we claim that the Port Royal's equitable interest in such event would be superior to that of the Bank.

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The Bank says no title passed to the Port Royal until delivery. An examination of the contracts is important. The October contract says

“ That the seller in consideration of the sum of one dollar (\$1.00) to him in hand this day paid by the Company, the receipt whereof is hereby acknowledged, doth hereby agree to sell and deliver to the Company, and the Company agrees to purchase and accept: 1000 to 4000 cords of Draw shaved or rossed spruce & fir pulpwood . . . to be cut from lands owned or controlled by the seller and situated: New River, N. B. . . . Advances agreed by Company to New Lepreau Ltd. as follows: \$1.25 per cord when cut, \$2.00 per cord when draw shaved or rossed in the woods, \$1.00 per cord when piled on the bank of river ready to be driven.” 10

The balance was payable on delivery.

As to the sap peeled contract of April 26, the clause read:

“ Advances on the said pulpwood shall be made by the said Company to the seller at the rate of:

“ (a) \$1.25 per cord when wood has been peeled;

“ (b) Further advances of \$1.25 per cord when the wood has been sawed and piled in the forest ready for scaling.

“ To make these advances, the Company's estimation will be used, and the wood stamped with the Company's mark. 20

“ (c) A further advance of \$1.00 when the wood has been hauled to the river ready for driving.

“ (d) A further advance of 50 cents a cord when the wood has been driven down the river to the New River Station.

“ (e) The balance to be paid on the twentieth (20) of each month for all pulpwood delivered to and accepted by the Company during the previous month.”

Although “ stamping ” is not mentioned in the October contract, the evidence is that the wood under both contracts was stamped as a matter of course. 30

Under this contract it is submitted title passed to the Port Royal in something as soon as the contract was signed. In consideration of one dollar, the vendor agreed to cut down sufficient trees to make from 1,000 to 4,000 cords. And then comes the provision with reference to the instalment payments. If no legal title was obtained from Atkinson, it is submitted that the vendee obtained rights in equity which bind a subsequent purchaser or mortgagee, with notice. The Bank argues that this equity would only extend to \$484.90, the amount advanced by the Port Royal to New Lepreau Limited before the first advance by the Bank to Atkinson, but if there is an equity, it must extend to one of the considerations which induced the Port Royal to enter into the contract, namely: the payment of the old debt, and further, to the obligation to pay the balance of the moneys to the Bank. It is submitted that the Port Royal had sufficient equity in the contract to justify a Court in granting an injunction restraining the vendor and a 40

prospective purchaser with notice, from consummating a transfer of the property. Kerr on Injunctions, 6th Ed. 462, says at page 462 :

“ So also the Court will not, as a rule, restrain by injunction the breach of a contract for the sale and delivery of chattels.”

But that the power exists to do so is clear, and to that end the authorities are trending. See the remarks of Fry, J., in *Donnell v. Bennett*, 22 Ch. D. 835 (1883), at 837.

10 If the power to grant an injunction depends on whether or not the Court would grant specific performance of the contract, attention is called to Section 48 of the Sale of Goods Act, chapter 149 R. S. N. B. 1927, which enables the Court to grant such specific performance in the case of a contract for the sale of specific or ascertained goods. Hanbury, *Modern Equity* (1935) 525, discusses the similar section under the English Act, and points out in the note at the bottom of page 526, that

“ The statutory power exists whether or not property in the goods has passed under the contract.”

See also Hanbury's discussion at page 547 of *Jones v. Earl of Tankerville* (1909) 2 Ch. 440.

R. S. N. B. 1927, Chap. 149, The Sale of Goods Act, section 48, provides

20 “ In any action for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, decree that the contract shall be performed specifically, without giving the defendant the option to retain the goods on payment of damages.”

This section by giving an equitable remedy which really acts in rem against specific or ascertained goods, gives also an equitable right therein, which the remedy protects. This is one of the general principles of Jurisprudence—the remedy presumes the right, and in certain cases establishes the right. The question is whether the goods in question are specific or ascertained.

30 Specific goods are defined in the Act itself as meaning goods identified and agreed upon at the time the sale is made.

Ascertained goods are taken to mean goods which in accordance with the contract are subsequently appropriated to it. Thus Atkin, L. J. in *re Wait* (1927) 1 Chan. 606, says :

“ ‘ Ascertained ’ probably means identified in accordance with the agreement after the time a contract of sale is made, and I shall assume that to be the meaning.”

This was cited with approval by Donovan, J., in *re Western Canada Pulpwood Co.* (1929) 4 D. L. R. at page 346.

40 *James Jones & Sons Ltd. vs. Earle of Tankerville* (1909) 2 Chan. page 440. Here the plaintiff entered into a contract with the defendant for the purchase and removal of certain timber growing on his property. The plaintiff entered on the property, erected mills and commenced to cut timber, etc. The defendant repudiated the contract and forcibly ousted

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the plaintiff. The plaintiff claimed an injunction restraining the defendant from preventing the due execution of the contract. Held: That although the Court might be unable to compel the plaintiff to cut the timber, if he refused to do so, it had jurisdiction to give relief by way of specific performance, and the injunction ought to be granted.

We claim in the present case that the pulpwood was ascertained as soon as Atkinson cut it in accordance with the contract. He was only carrying on the one operation, or a series of operations, and that was for the Port Royal. Therefore, all the wood he cut was appropriated by him either to the draw shaved contract or the sap peeled contract. He stated in his evidence on discovery that the wood for the draw shaved contract was practically all cut prior to Christmas 1933. It was then hauled to the river bank in readiness for delivery by the spring freshet. 10

For further definition of "ascertained," see Sanky, J., in *Thomas Sack and Bag Co. vs. Knowles* (1919) 88 L. J. K. B. 585, where he said:

"I rule that 'ascertained' means that the individuality of the goods must in some way be found out, and when it is, then the goods have been ascertained."

And in Benjamin on Sale, 7th Ed. page 1026, the author states that the effect of the ruling seems to be that "ascertained" means made specific after the contract, for there can be no logical distinction between specific goods and goods whose individuality has been ascertained. 20

In considering as to whether a Court would grant specific performance where it has authority to do so, it is clear that the Court will take into consideration the fact that a remedy in damages might be illusory. (See: *In re Wait* (1926) Ch. 962.) The decision was reversed on appeal, but as stated in Hanbury's Modern Equity, page 526, the powers given under the Sale of Goods Act will be used in the case in which a remedy of damages will prove abortive, owing to the bankruptcy of the vendor.

A further illustration of this principle is *Re Western Pulpwood Co.* 1929, 3 W. W. R. 544 (Man. C.A.). Here, there was an agreement for the sale of a quantity of pulpwood not then owned by the seller, but on Crown land in the Province of Manitoba, for the price of \$7.00 per cord in accordance with certain specifications, delivery to be made at Anderson's Point, Lake Winnipeg. The wood was to be scaled by the purchaser, and on scaling \$6.50 was to be paid,—the balance to be reserved until the purchaser took delivery. The wood was scaled from time to time, and was marked by the purchaser, and payments were made accordingly. There was a special provision in the contract that the property should not be deemed nor considered to have passed to the purchaser until the pulpwood is delivered and in the possession of the purchaser. The vendor went into bankruptcy. In the meantime the purchaser had paid the stumpage to the Government of Manitoba. 30 40

The Trustee in Bankruptcy claimed the wood as against the purchaser on the ground that there was no complete contract of sale, the title was still in the vendor and hence in its trustee; and, secondly, that there was

a violation of the Provincial Bills of Sale Act, in that there was a purported contract of the sale of goods where possession had not passed, and hence it was void against the Trustee.

Donovan, J., the Trial Judge, had held (1929) 3 W. W. R. 81) that the property in the wood and the right to, and actual possession thereof had passed to the paper company; and that, in the event of it appearing that because of any claim by the owner of the land from which the wood was cut or for any other reason a declaration in favour of said Company as to ownership and possession would not be sufficient, an Order would go for specific performance of the contract. The judgment was upheld on appeal. Fullerton and Prendergast, J.J.A., holding that the purchaser was entitled under sec. 51 of The Sale of Goods Act, to specific performance of the agreement, whether or not the property in the wood had passed. Trueman, J.A., Dennistoun, J. A., concurring, held that, if there had been nothing more than a contract to sell pulpwood to be cut, the purchaser's right to the wood would depend upon whether the case was one for specific performance or not; but that, since the purchase price had been paid, then though the property had not passed, an equity existed which the Court would enforce by a declaration of ownership without regard to whether in different circumstances specific performance would be decreed or not. With respect to the passing of the property, Fullerton and Prendergast, J.J.A., held that the property had not passed; Dennistoun and Trueman, J.J.A., held that it had passed.

Fullerton and Prendergast, J.J.A., said that "ascertained" in sec. 51 of the Sale of Goods Act means identified in accordance with the terms of the contract. In *re Wait, Trustee vs. Humphries & Bobbett* (1927) 1 Ch. 606, at 630 followed.

Attention is called to the large number of cases referred to in the judgments of the Trial Judge and the Court of Appeal, and in particular :

Dixon vs. Yates (1833) 5 B. & Ald. 313, 340; 110 E. R. 806.

Tailley vs. Official Receiver 13 A. C. 523.

Langdon vs. Waring (1865) 18 C. B., N. S. 315; 144 E. R. 465.

If the Bank should argue that the goods were not ascertained, the answer is that Atkinson was cutting only for this contract, and that the goods were ascertained as far as the contract is concerned, as soon as the cutting took place.

If the Bank should argue that the agreements of sale were void as against the Bank in that there was no registration under the Bills of Sales Act, it is only necessary to point out in reply that the statute only avoids an unregistered conveyance as against a subsequent purchaser or mortgagee in good faith, i.e., without notice.

(3) EFFECT OF NOTICE.

Authority supports the proposition that an agreement to sell goods which to the buyer's knowledge the seller was under contract to sell to another, is illegal and unenforceable.

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See Pollock on Contracts, 9th Ed. p. 475, as follows :

“ A. makes an agreement with B. the execution of which would
“ involve an unlawful action on B.’s part (e.g. a breach of B.’s
“ contract with C.)

“ If A. does not know this, there is generally a good contract,
“ and A. can sue B. for a breach of it, though B. cannot be compelled
“ to perform it or may be restrained from performing it. We may
“ say (and must, it seems, where the illegality is such as to involve
“ a personal incapacity on B.’s part to make such a contract) that
“ B. is deemed to warrant that he can lawfully perform his promise.” 10

See also Corpus Juris, Vol. 13, p. 490, sec. 434, where it is stated :

“ An agreement may be contrary to public policy and illegal
“ because it affects a duty which one person owes to another.”

In *Sharpe vs. M Keen*, 4 N.B.R. at page 531, the Court said, quoting from another case :

“ A plaintiff cannot recover in a court of justice whose cause
“ of action arises out of a contract made between him and the
“ defendant in fraud or to the prejudice of third persons.”

See also *Wanderers Hockey Club vs. Johnson* (B. C.) 25 Western L. R. 434, where Murphy, J., said :

“ On the merits of the case, I find the facts to be that Patrick
“ had a contract with Johnson for his services for the season
“ 1912-1913; that he, Patrick, communicated the fact of his having
“ such contract to the plaintiffs; that the plaintiffs subsequent
“ to obtaining this information, influenced Johnson to enter into
“ a contract with them by offering him a higher salary; that
“ Johnson thereupon tore up his contract with Patrick and entered
“ into the contract herein sued upon, without in any way arranging
“ for any release from his contract with Patrick. Under these
“ circumstances, I think the axiom ‘ex turpi causa non oritur actio,’ 20
“ applies.

“ The nearest case I have been able to find in the English Courts
“ is that of *Hannington vs. Victoria Graving Docks Co.* 47 L. J. Q. B.
“ 594. In that case, though the jury found that the contract sued
“ upon had not, in effect, influenced the employee in his relations
“ to his employer, yet it was held that it might have had that effect,
“ and, consequently, was not enforceable in a Court of Law. This
“ case is much stronger, inasmuch as, whilst the direct object of the
“ contract sued upon was undoubtedly to obtain Johnson’s services
“ for the plaintiffs’ club during the season 1912-13, yet it must 40
“ have been obvious to both parties that such contract could not be
“ carried out without breaking the existing contract between Patrick
“ and Johnson.”

In this connection, attention is called to The Factors Act, Chapter 154 R. S. N. B. 1927, section 12, which provides that,

“ Where a person having sold goods, continues or is in possession
 “ of the goods . . . the delivery or transfer by that person . . .
 “ of the goods . . . under any sale, pledge or other disposition
 “ thereof, to any person receiving the same in good faith, and
 “ without notice of the previous sale, shall have the same effect
 “ as if the person making the delivery of transfer were expressly
 “ authorized by the owner to make the same.”

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10 This section, by implication, is a statutory recognition of the principle that a purchaser, with notice, takes subject to prior rights in the goods.

That there are equitable rights in personal property was decided by *Holroyd vs. Marshall* (1826) 10 H. L. C. 191. This case is discussed by Hanbury at p. 30. See also the discussion by Hanbury at pp. 32 and 33 of *Re Wait* (1927) 1 Ch. 606.

The same principles naturally apply to a mortgage given by a vendor who has agreed to sell goods, where the mortgagee knows of the contract of sale.

20 That security under Section 88 of The Bank Act is nothing more or less than a mortgage, is the last word of the Supreme Court of Canada. See *The Royal Bank of Canada vs. Workmen's Compensation Board in Nova Scotia* (1936) S. C. R. 560 (Part VIII October 31, 1936). Davis J., at p. 567, said :

“ I had occasion in *Bank of Montreal vs. Guaranty Silk Dyeing
 “ and Finishing Co. Ltd.*, to consider this particular form of security
 “ and came to the conclusion, contrary to the very able argument
 “ of counsel for the Bank in that case, that the security did not
 “ operate to transfer absolutely the ownership in the goods, but
 “ that the transaction was essentially a mortgage transaction and
 30 “ subject to the general law of mortgages, except where the statute
 “ has otherwise expressly provided.

“ *The Bank of Montreal vs. Guaranty Silk* case which is found
 “ in (1935) 4 D. L. R. 483, decided that The Bank Act purports to
 “ confer on a bank holding a security under Sec. 88, only such right
 “ or title to the goods, wares and merchandise therein mentioned
 “ as was at the time held by the person who gives such security
 “ to the Bank.”

Applying these principles to the instant case, the situation in brief, is as follows :

40 New Lepreau or Atkinson was engaged in selling pulp to the Port Royal starting in the spring of 1933. It was a continuous performance. Port Royal agreed to enter into another definite contract on October 31, 1933, provided that it could recoup any overpayment it might make on the first contract out of the profits coming to Atkinson on the second contract, and the situation was that on January 20, 1934, when Atkinson approached

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the Bank, Port Royal had already advanced money on the October contract, and had charged up against this account the deficit on the spring contract, which eventually turned out to be \$5,330.91.

On said January 20, 1934, the Bank knew of this loss, so to speak, on the first contract. The Bank Manager's evidence that he thought it was in the vicinity of \$4,000., has already been quoted.

In March the Bank notified the Port Royal that it was making advances to Atkinson, and asks the Port Royal to let the Bank know what payments have been made to date on this contract, and the Port Royal immediately write back and tell the Bank of their agreement with Atkinson in the following words : 10

“ The advances on this contract during the winter were \$484.90
“ plus an amount of about \$4,000., over advanced on the other
“ contract which we have with him, and which he has asked us to
“ charge against this new contract.”

And then the same procedure is gone through with respect to the contract of April 26, 1934, for 10,000 cords. It is not until July 17 that the Bank takes an assignment of this contract, and they notify Port Royal of the assignment, and again ask for advices as to “ the amount you have advanced him on pulp wood not delivered.” 20

And the Port Royal writes back on July 19, 1934 (Exhibit 16)

“ The amount of advances to Mr. Atkinson on pulp wood from
“ our Company is \$10,975.62.”

Attention is called to the fact that not once, but many times the Bank Manager was asked on cross examination why he wanted to know the amount of these advances, and all he would answer was that he just wanted to know.

The authorities already referred to show that security taken under Section 88 is nothing more than a mortgage, and that the same principles of law which apply to all mortgages apply to this kind of security. 30

Under the decisions, the borrower must own the property upon which the mortgage is given. If a third party has any prior interest in the property, the Bank takes the security at its peril, and subject to that prior interest. If that prior interest is a charge which is registered according to law, the Bank has the same constructive notice as any mortgagee lending money.

If the prior charge is not recorded, the Bank without notice, is in the position of a bona fide purchaser. If, however, the Bank has actual notice of the prior charge, the decisions are uniform that the Bank's mortgage is deferred to the prior charge.

And that in effect is what the Bank Act provides : 40

“ 88 (1) The bank may lend money to any wholesale purchaser
“ or shipper of or dealer in products of . . . the forest . . . upon
“ the security of such products.
“ (5) Any such security may be given by the owner of the said
“ products.

“ (7) The bank shall, by virtue of such security, acquire the same rights and powers in respect of the products . . . covered thereby as if it had acquired the same by virtue of a warehouse receipt.”

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It, therefore, is necessary to refer to Section 86 :

86 (2) provides that :

“ Any warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof.

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10 “ (a) All right, title and interest to such warehouse receipt or bill of lading, and to the goods, wares and merchandise covered thereby of the previous holder thereof.”

That is all the bank gets, namely : all the right, title and interest of the owner—with one exception, namely : Section 89 (2) gives the bank a prior claim of an unpaid vendor, unless the bank had notice that the unpaid vendor had a lien.

In *Cole vs. North Western Bank* (1875) L. R. 10 C. P. 354, Blackburn, J., said at 362 :

20 “ At Common Law, a person in possession of goods could not confer on another either by sale or by pledge, any better title to the goods than he himself had.”

This Common Law rule has been changed somewhat by Sec. 23 (1) of The Sale of Goods Act, cap. 149 R. S. N. B. 1927, which provides that where a person having sold goods continues or is in possession of the goods, the delivery or transfer by that person of the goods under any sale, pledge or other disposition thereof, to a person receiving the same in good faith, and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the sale.

30 But when the subsequent purchaser has notice of the sale, as the plaintiff had in this case, the Common Law rule prevails.

The agreements were contracts for the sale of goods. See. Cap. 149 again, sec. 57 (i).

“ ‘ Goods ’ include all chattels personal other than things in action or money. The term includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under a contract of sale.”

40 It is argued by the Bank that the situation is the same as that described by Mignault, J., in *Landry Pulp Wood Company vs. The Banque Nationale* (1928) 1 D. L. R. 493, at p. 499, namely : that the object of The Bank Act is to assist both the Manufacturer and the Bank, and if the Bank lends money to a manufacturer or operator to go into the forest and cut down trees, the Bank has a lien.

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That is all very well, and undoubtedly good law as far as it goes, but in that case the borrower owned the timber limits and Mignault, J., does not say that if these trees belong to somebody else, or somebody else had a prior claim to them the Bank's lien would come in ahead.

The instant case is not a case where the operator or manufacturer owns trees, and wants money advanced to him to turn them into the finished product with the end in view of selling the product after it is finished to some purchaser that he can find. It is a case where he agrees to sell this specific product to a third person, and then goes to the Bank and tells the Bank that he has made the sale, and requests the Bank to make him advances, and to secure these advances he will assign the purchase moneys to the Bank.

What Atkinson did in this case was to make the Bank a partner in the transaction. In other words, Atkinson and the Bank were selling these trees to the Port Royal, and the Bank was to receive the purchase moneys.

And that is the way in which the case appeals to the Bank's solicitor; in his opening remarks (Record p. 28) he says :

“ It is a double barrelled action. It is an action for goods sold,
“ certain pulpwood sold and delivered, and it is also an action for
“ conversion of certain pulpwood.” etc.

and throughout the trial the fact was firmly impressed upon the Court by the Bank's counsel, that these were goods that had been sold by the Bank, which had stepped into the shoes, in that regard, of the original contractor, and the Bank was to receive the purchase price.

The Bank Manager was posted with full particulars of the contract on January 20, 1934. It was not until March 10, 1934, that the formal assignment of the contract was made by Atkinson to the Bank and a copy of this assignment was received by the Port Royal on March 16, 1934. In the letter forwarding a copy of this assignment to the Port Royal (Ex. 7) the Bank asks the Port Royal in future to send all cheques in payment direct to the Bank, and asks the Port Royal what payments have been made to date on the contract. In its reply of March 16, 1934 (Ex. 8) the Port Royal say they have advanced under the contract \$484.90, and have charged up the deficit on the spring contract of 1933. On March 20, 1934, the Bank came right back with a letter (Ex. 9) and told the Port Royal that they have advanced \$3,000 on the contract of October, 1933, under Section 88 security, and expect to be repaid before the Port Royal is paid the deficit on its own contract.

This is the letter upon which such emphasis is laid by the Bank as bringing notice to the Port Royal that the Bank has Section 88 security. And the Bank argues that the Port Royal never questioned this, but in fact admitted it.

That is not so. On March 26, 1934, the Port Royal wrote the Bank (Ex. A).

“ We are sorry to advise that our Head Office do not want to
“ release their first claim on advances to E. C. Atkinson on contract

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“ for draw shaved wood, dated October 21, 1933. We are quite
 “ willing to agree to protect your advances as much as possible
 “ after our amount has been taken care of, consisting of \$4,000.,
 “ in addition to the amount of \$484.90, making a total of \$4,484.90
 “ which we hold as advances against this contract.”

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It must be borne in mind that this contract was made nearly three months before notice of intention to take security was given, on January 20, 1934, and the Bank had full notice at that time of the indebtedness that was going to be charged up to the contract which was part of the continuous operation as before mentioned. And the case comes squarely within the principles of the authorities cited on the equitable title of the Port Royal in the pulp wood.

The Bank put in correspondence which took place between the Bank and the Port Royal in the summer of 1934, from which it argues that the Port Royal recognized that the Bank had security under Section 88. For example: the Bank emphasizes a statement like this: “ It is not our intention to advance any more money to increase your security under Section 88.”

That again is far from the fact. As pointed out before, in its letter of March 26, 1934 (Exhibit A) the Port Royal told the Bank they were quite willing to protect the Bank's advances as much as possible after the Port Royal advances were taken care of.

It is true that there were conversations, both verbal and by letter, between the Bank and the Port Royal, where the Port Royal was trying to make some arrangement with the Bank whereby the work could go on, but would only do so if the Bank agreed that the Port Royal would be secured in some way by a chattel mortgage. But all these negotiations fell through, because the Bank was adamant, and refused to be a party to continuing the operation.

Even if the Port Royal thought that the Bank had security under Section 88, that erroneous conception of the Port Royal does not create a valid security in law prior in time to the Port Royal rights.

We submit that the Port Royal having acquired an equity in the goods pursuant to the contract and having subsequently got in the legal estate in the goods without acting inequitably but rather in strict compliance with the terms of the contracts which provided for the payments by the Port Royal of any encumbrances, is entitled to priority over the Mortgage claimed by the Bank. See *Taylor vs. Russell*, 1892 A. C. 244.

3. CONVERSION AND JUS TERTII.

It is clear law that in a claim for conversion where the plaintiff was not in actual possession at the time of the alleged conversion but relies

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upon his right to possession, he must recover on the strength of his own title. See Salmond on Torts, 8th Ed. p. 334, where the author says :

“ If, however, the plaintiff was not in actual possession, but
“ relies upon his right to possession, he must recover on the strength
“ of his title, and the proof of the *ius tertii* will destroy the only
“ thing upon which he relies.”—

quoting *Leake vs. Loveday* (1842) 4 M. & G. 972; Holdsworth's History of English Law, Vol. 7, pp. 424 to 431.

The case of *Kent vs. Ellis*, 31 S.C.R. 110 contains a clear cut statement of the necessity in conversion of the plaintiff proving an absolute title in himself. In that case the plaintiff relied on his right to possession and it was held that in such case he must prove an absolute title. 10

The headnote of the case is as follows :—

“ In an action claiming damages for the conversion of goods,
“ the plaintiff must prove an unquestionable title in himself and
“ if it appears that such title is based on a contract the defendant
“ may successfully urge that such contract is void under the statute
“ of fraud, although no such defence is pleaded.”

At page 120, Gwynne, J., said in delivering the judgment of the Court :

“ When defendant denies the actual taking of the goods from 20
“ the plaintiff and also the plaintiff's property in the goods, the
“ case is wholly at issue and nothing remains but evidence of title
“ which the plaintiff, in order to recover must prove to be in himself
“ by an unquestionable title and if an instrument in writing is
“ necessary, under the circumstances appearing in evidence to make
“ his title perfect as against the defendant, he must prove such
“ instrument or fail, and if he should make default in showing a
“ perfect title it is quite competent for the defendant still as it
“ always was to point to such defect in the plaintiff's title and to
“ insist upon it.” 30

In Holdsworth's History of English Law, Vol. 7, pages 424 to 429, the author considers the history of the rule of law that in cases of trover (i.e. conversion where the goods were not in actual possession of the plaintiff at the time of taking), the defendant could succeed by setting up a *ius tertii*, and following *Cooper vs. Chitty*, 1 Burr 20, and *Leake & Loveday*, 4 Man., and Gr. 97, and Pollock & Wright on Possession, p. 91, states the law to be as follows :—

“ If his (the plaintiff's) actual possession has not been disturbed
“ by the act complained of, he may be defeated by showing that
“ someone else who need not be the defendant or anyone through 40
“ whom the defendant claims had a better title.”

He quotes with approval the words of Tindall, C. J., in *Leake v. Loveday*, as follows :

“ The action in trover to which the defendants have pleaded
 “ ‘ not guilty ’ and that the plaintiff was not possessed of the goods
 “ as his own property and the question is whether under the latter
 “ plea the title of third persons may be set up. It seems to me
 “ that from the very form of the plea the plaintiff is called upon
 “ to prove the goods to be his property and that the defendants
 “ are let into any evidence which will show goods are not the
 10 “ plaintiff’s.”

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In the present case the Bank was not in possession, and attempts to show title by claiming on security under Section 88 of The Bank Act given to it by E. C. Atkinson. As before explained, Section 88 of The Bank Act contains no magic, and the effect of a grant of security under it is to convey to the Bank only such right or title as the giver of the security actually had himself.

4. THE BANK HAVING ADOPTED THE SALE ARE ESTOPPED ON THEIR CLAIM FOR CONVERSION.

By accepting an assignment of the right to the balance of the purchase
 20 moneys, the Bank, as far as it was concerned, confirmed the sale to the Port Royal. It was as if there had been no sale of the goods, and a bank had advanced money under Sec. 88 to assist an operator in getting out his pulp. When the operation is over, the operator makes an agreement of sale with a purchaser for a sum less than the advances, and takes the agreement to the Bank who notifies the purchaser to pay it the purchase moneys, and the purchaser does so. The Bank then notifies the purchaser not to take the goods until it pays the balance due on the advances. Surely no authority is necessary for the proposition that the Bank is estopped. But if it is, see *Clark vs. Phinney*, 25 X. C. R. (1895) 633, where Sedgewick, J.,
 30 at p. 646, described a claim such as the Bank makes as “ a claim that shocks the conscience and is opposed to the fundamental principles of natural justice.” He adopts, at p. 647, the remarks of Strong, J., in an American case, *Maple vs. Kassart*, 91 Am. Dec. 214, as follows :

“ It is a maxim of common honesty as well as of law that a
 “ party cannot have the price of land sold and the land itself.
 “ Accordingly, it has been ruled uniformly that if one receive the
 “ purchase money of land sold he affirms the sale, and he cannot
 “ claim against it, whether it was void or only voidable.”

So coming back to the instant case. Whatever may have been its
 40 rights if the Bank had not taken an assignment of the purchase moneys, for motives best known to itself, it did so. In taking this assignment, it did so subject to (to use the words of Halsbury 2nd Ed., vol. 4, p. 455, sec. 836) the same equities and the same rights of set-off and other defences as the Port Royal would have had at the date at which notice of assignment was given. Halsbury goes on to say sec. 837

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“ It is the duty of the assignee to make inquiries, and the debtor or fund holder is not bound on receiving notice to volunteer information unless the notice shows that the assignee has been deceived. In the latter case, if the debtor does not undeceive the assignee, he may be prevented from taking advantage of equities between himself and the assignor.”

The Port Royal has submitted that the Bank knew all about the contractual relationships existing between the parties to the contract on January 24, 1934. When the Port Royal received notice of the assignment on March 12, 1934, it notified the Bank of the agreement as to the old debt having been applied on account of the purchase moneys. 10

If the Bank did not want to be bound by that agreement, it should have given back the assignment to the assignor. Instead of doing that, it accepted from the Port Royal from time to time, nearly eleven thousand dollars on account of the purchase price. The Bank claims it was the owner of the goods. Whether owner or mortgagee, it cannot now, according to Sedgewick, J., both reprobate and approbate. Then comes the cessation of operations. The Port Royal tells the Bank to go in and finish. The Bank could not have gone in, seized what was on hand and sold it for the problematical sum it might bring, because it had affirmed the sale—in other words—“ taken subject to the rights of the other party.” The Port Royal, if the above reasoning is sound, was entitled to the possession then of any wood that was on hand. 20

PARTNERSHIP BETWEEN ATKINSON AND THE BANK.

It has already been argued that the Bank and Atkinson entered into an arrangement whereby the Port Royal was to get the goods if it paid the purchase price to the Bank.

The object of the Bank in entering into this arrangement is very obvious. Atkinson owed the Bank some \$30,000. The Bank Manager after being pressed very hard in examination on discovery, finally admitted that he had in mind in making the advances to Atkinson that there would be a profit on the transaction which would go to reduce Atkinson's indebtedness. 30

But another feature must not be overlooked. The Bank was in the position at the time the contracts were entered into and for some years prior thereto, to exercise control of the New Lepreau Limited. The majority stock interest was held by the Bank. It is true the Bank held but the endorsed certificates, but it was in a position at any time to register the stock certificates in the name of the Bank, and it is not far from the fact to state that the Bank, having this control, arranged with Atkinson that the New Lepreau would operate the limits for which it held Crown Land licenses on behalf of the Bank, in order to reduce this \$30,000 indebtedness. 40

This fact is mentioned just to show the close relations between the operating parties who were really New Lepreaux, Atkinson and the Bank.

AN ANOMOLOUS SITUATION.

Port Royal makes a contract with New Lepreau Limited for 1,000 to 4,000 cords of pulp wood to be cut off certain defined limits the purchase price to be paid by instalments, as follows :

- \$1.25 per cord when cut rough ;
- \$2. per cord when draw shaved or rossed in the woods ;
- \$1. per cord when piled on river bank ready to be driven ;

and the balance, presumably on delivery at Saint John.

10 Port Royal makes advances as per contract, and pays out a considerable sum of money.

Over four months after the contract is made, and during which period Port Royal makes advances under the contract, the contract is assigned to the Bank, and the Bank gives Port Royal notice of the assignment, and incidentally tells Port Royal it has security under Section 88, and also tells Port Royal to make future payments under the contract to the Bank.

The Bank's counsel argues that because the Port Royal is now given notice of Section 88, that the Bank's advances in the past and in the future will have a prior lien on the lumber.

Is that common sense ?

20 The Port Royal must go on paying the price. If the Port Royal does not pay the purchase price from time to time, the Bank, as assignee under the contract, can bring an action against the Port Royal as each instalment falls due, and according to the Bank's argument, the Port Royal must pay this amount to the Bank although it knows that if the Bank keeps on making advances to Atkinson, say, up to \$50,000, the end result will be that the Bank will get all the purchase money and the Port Royal will not get the goods, because, after crediting the purchase price received from the Port Royal on the loan to Atkinson, the Bank must resort to the wood for payment of the balance.

30 It so happens in this case that the Bank advanced but \$8,000. We have only Atkinson's evidence that this went into the pulp wood operation.

But suppose, instead of \$8,000, it was \$50,000. Suppose further that the Bank tells the Port Royal, " We are going to advance Atkinson \$50,000 against this pulp wood ; you have got to keep on paying the purchase price to the Bank ; we, the Bank, know that by the time you have paid all your purchase price, which we will credit on account of the \$50,000, Atkinson will not be able to pay us the balance of the loan, and we will resort to the pulp wood to satisfy that balance, and you will get nothing."

40 Suppose the Port Royal tells the Bank that under those circumstances, it will not pay another dollar. According to the Bank it can be sued for the purchase price if it does not pay.

It is submitted that the Bank Act does not contemplate any such result as this.

Surely the situation must be that if the Bank is going to collect the purchase price, it has got to give the quid pro quo to the Port Royal, namely : the pulp wood.

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The Port Royal claims that the Bank, having adopted the sale of the pulpwood made by Atkinson to the Port Royal, and accepted part of the purchase price thereunder, and further, having sued for the balance of the purchase price, cannot set up as an alternative, a claim for conversion, but must be deemed to have waived the tort (if any such existed) and have adopted the contract.

The case of *Smith and Baker*, L. R. 8 C. P. (1873), p. 350, is an authority in point here. In that case, as was said by Bovill, C. J., at p. 54, the question is :

“ Whether there has been what amounts to the adoption of a
“ wrongful act of the defendant by the plaintiff whereby the plaintiff
“ has waived his right to sue for tort.”

At page 355, he said :

“ The law is clear that a person who is entitled to complain of
“ a conversion of his property, but who prefers to waive the tort may
“ do so and bring his action for money had and received for the
“ proceeds of the goods wrongfully sold. The law implies under such
“ circumstances a promise on the part of a tortfeasor that he will
“ pay over the proceeds of the sale to the rightful owner. But if 20
“ an action for money had and received is so brought, that is in point
“ of law a conclusive election to waive the tort and so the com-
“ mencement of the action for trespass or trover is a conclusive
“ election the other way.”

So also, in *Trust and Guarantee Company vs. Brenner* (1932) 2 D. L. R. 688, Riddell, J. A., in giving the judgment of the Court of Appeal of Ontario, at page 692 :

“ It is, of course, elementary that when a bailee, agent or
“ otherwise sells property without authority, the owner has one of 30
“ two courses to take, but not both; he may claim in tort for con-
“ version, or he may waive the tort and claim the proceeds as
“ money had and received in his use; if he take the latter course,
“ he cannot then resort to the former.”

If any tort existed, the Bank waived the same by accepting payments on account of the purchase price from time to time, and having therefore elected to receive the purchase price, the Bank stands in place of the vendor, and must hand over the goods to the vendee, free and clear of all liens.

WAIVER OF LIEN.

Assuming for the sake of argument that the Bank has a lien prior to the Port Royal's rights; *Corpus Juris*, Vol. 37, page 338, says : 40

“ A lien may be waived or extinguished by the sale of the
“ property to which it attaches by or with the consent of the lienor,”

citing *McMillan vs. Byers*, 15 S. C. R. 194, and *Steeves vs. Cowie*, 40 N. S. 40. See also, *Corpus Juris*, Vol. 41, page 708, as follows :

“ If the absolute title, free from the lien of the mortgage is to be passed to the purchaser, the mortgagee must be a consenting party to the transaction, in the absence of any stipulation in the mortgage providing for such a contingency.

“ THE MORTGAGEE'S CONSENT MAY BE INFERRED FROM CIRCUMSTANCES, PARTICULARLY WHERE HE RECEIVES TO HIS OWN USE THE MONEY PAID BY THE PURCHASER AND APPLIES IT ON THE MORTGAGE DEBT.”

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Assuming again that the Bank has the prior right, is not the above just what happened in this case? The Bank agrees to the sale of the property, provided the purchase price is assigned to it.

Suppose, for example, Atkinson, without any particular purchaser in view, desired to get out pulpwood; the Bank advances him money for the operation, taking security under Section 88. When the operation is completed and the wood is ready for delivery, Atkinson goes to the Port Royal and enters into a written contract with the Port Royal to sell the Port Royal the wood.

Atkinson then takes this contract of sale to the Bank; the Bank takes an assignment of the contract, notifies the Port Royal of the Assignment, and tells the Port Royal to pay the purchase money to the Bank.

The Port Royal sends the purchase money to the Bank, and then demands the wood. The Bank writes back that the purchase money has not satisfied the amount of the advances, and they are holding the wood until the Port Royal pays the Bank an additional sum over and above the purchase price.

It is submitted that no authority is necessary for the proposition that the Bank adopted the sale.

5. EVEN IF ATKINSON COULD GIVE SECURITY TO THE BANK UNDER SECTION 88, THE SECURITY IN THE PRESENT CASE WOULD BE INVALID IN PART AS BEING TAKEN IN CONTRAVENTION OF SECTION 90 OF THE BANK ACT.

For clarification it seems meet to set forth in chronological order the material happenings and in detail the advances made by the Bank to Atkinson, and the payments made by the Port Royal to the Bank on account of the purchase price.

October 31, 1933 : The draw shaved contract for from 1,000 to 4,000 cords, against the purchase price of which \$5,330.91 was to be charged. In all 707.17 cords were delivered—value \$4,596.60.

January 15, 1934 : (Record, p. 92 l. 14) Port Royal gives cheque to Atkinson for \$5,350.00, post dated February 15, 1934, to give to Bank in payment of advances made by Bank to New Lepreau, Limited, on the spring contract of 1933 (Ex. No. 27, Record, p. 308).

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January 20, 1934 : Notice of intention to give security filed, on which date the Bank had notice of the October 31, 1933, contract, and that there would be a deficit on the spring contract of 1933, probably \$4,000.

January 24, 1934 : Application for a revolving line of credit of \$5,000 upon the security of "all the rough or draw shaved or sap peeled spruce and fir pulp wood" etc. (Ex. No. 3, Record p. 224, accompanied by an agreement as to powers (Ex. No. 4, Record p. 225).

January 24, 1934 : Advance by Bank to Atkinson of \$1,000 followed by advances of \$500 on February 15, and \$500 on February 24.

March 1, 1934 : Substitution of E. C. Atkinson for New Lepreau, 10 Limited.

March 10, 1934 : Assignment by Atkinson to Bank of the October contract for draw shaved pulpwood.

March 14, 1934 : Further advance by Bank of \$500.

March 16, 1934 : Port Royal receives written notice of the assignment with request to make payments to the Bank in future and to advise the Bank what payments the Port Royal had made on the contract.

March 16, 1934 : Port Royal advises Bank that the advances are \$484.90, "plus an amount of about \$4,000 over advanced on the other contract we have with him, and which he had asked us to charge against 20 this new contract." (Ex. No. 8, Record p. 313).

March 19, 1934 : Bank writes Port Royal "we have advanced him \$3,000 on the contract dated October 21st, under section 88 security, and therefore shall expect our advances in this connection to be repaid before your claim of \$4,000, mentioned." (Ex. No. 9, Record p. 314.)

March 26, 1934 : Port Royal writes Bank that it will not release the Port Royal's first claim (Ex. A., Record p. 315).

To this letter the Bank did not reply.

April 24, 1934 : Further advance by Bank to Atkinson of \$300 which was the first payment, received that day, from Port Royal. 30

April 26, 1934 : Contract between Atkinson and Port Royal for 10,000 cords of sap peeled wood.

May 1, 1934 : Further advance by Bank to Atkinson, of \$200 the sum which had that day been received from Port Royal.

May 19, 1934 : Similar advance of \$200 the sum which had that day been received from Port Royal.

May 27, 1934 : Assignment by Atkinson to Bank of April contract for sap peeled wood.

May 28, 1934 : Further advance by Bank to Atkinson of \$1,000.

June 2, 1934 : Similar advance of \$200. 40

June 5, 1934 : Similar advance of \$750, the sum which had that day been received from Port Royal.

June 8, 1934 : Similar advance of \$200.

June 14, 1934 : Similar advance of \$700, of which amount \$500 had that day been received from Port Royal.

June 15, 1934 : Similar advance of \$200.

June 23, 1934 : Similar advance of \$1,200, the sum which that day had been received from Port Royal.

June 30, 1934 : Similar advance of \$200.

July 4, 1934 : Similar advance of \$500, out of \$1,000 that day received from Port Royal.

July 5, 1934 : Similar advance of \$500, the balance of the \$1,000 received the day before from the Port Royal.

July 9, 1934 : Similar advance of \$300 part of \$500 received from Port Royal on July 6.

10 July 12, 1934 : Similar advance of \$200, the balance of the \$500 received from Port Royal on July 6.

July 16, 1934 : Application for a revolving line of credit of \$10,000 similar in terms to the former application of January 24. (Ex. No. 14, Record p. 321).

July 17, 1934 : Further advance by Bank to Atkinson of \$1,000.

July 19, 1934 : Port Royal received notice from Bank of assignment of April contract with a request for advice as to "the amount you have advanced him on pulp wood not delivered." (Ex. No. 12, Record p. 327.)

20 July 19, 1934 : Port Royal advise Bank the amount is \$10,975.62, (Ex. 16, Record p. 349). (In this sum is included \$5,330.91, which is the amount, finally ascertained, of the deficit on the spring contract of 1933.)

There was no reply from the Bank to this letter.

July 24, 1934 : Further advance by Bank to Atkinson of \$1,000.

July 28, 1934 : Similar advance of \$1,000.

To date the Bank had made advances amounting to \$12,650 and had received from Port Royal \$4,650 leaving a balance of \$8,000, the principal sum claimed in this suit.

30 From that time on the Bank received in 18 payments from Port Royal \$5,921.17, all of which except \$6.72 it loaned back to Atkinson in 18 payments of similar amounts as soon as received.

The following is a summary of the advances and receipts :

ADVANCES BY THE BANK TO ATKINSON

No.	1934		No.	Forward	\$4,900
1	Jan. 24	\$1,000	11	June	750
2	Feb. 15	500	12	8	200
3	24	500	13	14	700
4	Mar. 14	500	14	15	200
5	19	500	15	23	1,200
6	Apr. 24	300	16	30	200
40 7	May 1	200	17	Jul. 4	500
8	19	200	18	5	500
9	28	1,000	19	9	300
10	June 2	200	20	12	200
					\$9,650

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<i>In the</i>	No.	1934	Forward	\$9,650	No.	Forward	\$16,150	
<i>Supreme</i>	21	July	17	1,000	30	Sept. 11	490	
<i>Court of</i>	22		24	1,000	31	14	535	
<i>Canada.</i>	23		28	1,000	32	18	100	
No. 32.	24	Aug.	2	1,000	33	Oct. 9	100	
Factum of	25		4	500	34	26	100	
Port Royal	26		13	500	35	31	100	
Pulp and	27		24	500	36	Nov. 17	100	
Paper	28		29	500	37	Dec. 7	200	
Company	29		31	500	38	13	250	10
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<i>continued.</i>								
				<u>\$16,150</u>				
					1935			
					40	Jan. 11	69.45	
						29	170	
							<u>\$18,564.45</u>	

PAYMENTS MADE BY PORT ROYAL TO BANK

1934								
Apr.	24		\$300	Forward		\$8,650		
May	1		200	Sept. 14		530		
	19		200	18		100	20	
June	5		750	Oct. 9		100		
	14		500	26		100		
	23		1,200	31		100.02		
Jul.	4		1,000	Nov. 17		100		
	6		500	Dec. 7		200		
			<u>\$4,650</u>	14		250		
July	30		500	27		201.70		
Aug.	2		1,000	1935				
	13		500	Jan. 11		69.45		
	24		500	29		170	30	
	29		500					
	31		500					
Sept. 11			500					
			<u>\$8,650</u>					

Total advances	\$18,564.45
Received from defendant	10,571.17
	<u>\$7,993.28</u>

From the comparison of the above it is apparent that the Bank actually advanced its own monies as follows :

	January, 1934	-	-	-	-	-	-	-	\$1,000.00	<i>In the Supreme Court of Canada.</i> No. 32. Factum of Port Royal Pulp and Paper Company Limited— <i>continued.</i>
	February 15	-	-	-	-	-	-	-	500.00	
	February 24	-	-	-	-	-	-	-	500.00	
	March 14	-	-	-	-	-	-	-	500.00	
	March 19	-	-	-	-	-	-	-	500.00	
	May 28	-	-	-	-	-	-	-	1,000.00	
	June 2	-	-	-	-	-	-	-	200.00	
10	June 8	-	-	-	-	-	-	-	200.00	
	June 14	-	-	-	-	-	-	-	200.00	
	June 15	-	-	-	-	-	-	-	200.00	
	June 30	-	-	-	-	-	-	-	200.00	
	July 17	-	-	-	-	-	-	-	1,000.00	
	July 24	-	-	-	-	-	-	-	1,000.00	
	July 28	-	-	-	-	-	-	-	1,000.00	

All the other purported advances by the Bank were actually a mere relaying on to Atkinson of monies sent by Port Royal to the Bank pursuant to the assignments in question and which the Bank knew were earmarked as advances to finance the operation.

The matter of a revolving loan and the manner in which it is operated has been the cause of extensive litigation and it is perhaps well to consider here the basis for and justification of such a method of procedure.

The case of *Bank of Montreal vs. Guarantee Silk Dying and Finishing Company*, 1934, 4 D.R.R. 394, is an excellent example of circumstances which justify a revolving loan. In that case the Brupbacher Company was a wholesale manufacturer of silk goods. It was their business to buy, finish and sell silks. The goods in their possession and ownership were constantly changing as purchases and sales revolved their stock of merchandise. It was, therefore, necessary for the Bank financing them to release its security on goods sold and take new security for new advances to purchase new goods and this was the transaction. As was said by Masten, J. A., in the Ontario Court of Appeal in that case 1934, 4 D.L.R. at page 491, the situation was thus :

“ An advance is made by the Bank for the purchase of raw silk and a security is taken. The goods remain subject to the Bank’s claim until the manufacture is completed and the goods sold, when the Bank receives the purchase price and the total indebtedness is thereby diminished. But meantime it becomes necessary to buy more raw material so the Bank makes a further advance for this purpose and takes a new security. *In this process there is a genuine satisfaction of the old security, a genuine new advance and a valid security taken therefor.*”

Contrast this statement with the facts of the present case. Here, there was no revolving of the goods, the goods remained constant. They

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were always the same and the Bank did not suggest or in any way admit that any other securities were released on any revolution of the loan, but on the contrary they claim on all the securities from the earliest to the latest, claiming each one is a valid charge.

The Port Royal admits that none of the earlier securities were released although the notes taken at the time the securities were taken were renewed. It is enlightening here to consider the position as at September 11, 1934.

Down to that date the Bank held security for \$8,000.00 advances but the security had been taken on draw shaved wood only. It was about that time that the Bank had determined not to co-operate with the Port Royal but to stand firm and rely on its security. Presumably it then realized that the draw shaved wood would prove insufficient to meet the advances of the Bank and that instead of 3,000 or 4,000 cords of draw shaved wood there was less than 1,000 cords actually manufactured. The Bank then realizing that its security was insufficient and that Atkinson was insolvent looked about for some method of protecting itself further and came to the conclusion that it must endeavour to get security on its advances on the sap peeled as well as on draw shaved wood and this it attempted to do by revolving its loan as payments were made by Port Royal to Atkinson for particular payments of accounts in the neighbourhood of Fredericton. The Bank put the Port Royal payments through its account as purported repayments to itself and purported new loans to Atkinson. 10

We should not inquire why the Bank would go ahead and make loans to Atkinson at a time when they knew that there was going to be trouble with Port Royal and that Atkinson was insolvent. Why did not the Bank simply credit these payments of the Port Royal against Atkinson's indebtedness and refuse to let Atkinson have the money? 20

We submit the answer lies in the knowledge of the Bank Manager that the monies paid on September 11 and afterwards were earmarked for expenses of the operation which the Port Royal was paying and if any of them had been diverted into the Bank's account no further payments would have been made. The amounts were small comparatively and the most the Bank could have received and held would be approximately \$500.00. 30

It is of interest here to see what the Bank Manager thought of the purported revolving of the loan of September 11, 1934, and subsequently. In the direct evidence of the Bank Manager, Record, p. 42, we have the secret of the whole transaction.

“ Q. On July 28, 1934, what were the advances to Mr. Atkinson at that time?—A. \$8,000.00—that was the maximum advance. 40

“ Q. After that, all subsequent advances made, would they be renewals?—A. After July 28, 1934, when we received a cheque from say the Port Royal Company for example—\$200.00—this amount was credited to the sales account, debited to that account and applied to the oldest note. But in order that Mr. Atkinson could use the funds a new note was made out. The maximum

" amount was \$8,000.00. This is a routine that we follow in carrying out Section 88 securities.

" Q. So that the advances did not go above \$8,000.00?—

" A. No, it is just a routine matter. We could have handed him over the cheque and he could have used that, but in order to carry out the regulations under Section 88 we took the money we received and applied it on the oldest note and in order to give him the benefit of some new money we put through another note for the same amount."

10 And on page 85, Mr. Murray said that after the thirteenth of August the Bank put no fresh money of its own in the operation but when they reached \$8,000.00 they quit.

See also Record p. 76 where Atkinson explains the transactions with the Bank after September. (l. 33.)

" A. From September on. Anyway from after that, from that until the end of the operation, the Port Royal paid the wage bill and supplies bill and no more money was advanced by the Bank to me at all.

20 " Q. There was some small items went through?—A. Yes, they were to pay some bills in Fredericton in connection with the operation, just small amounts."

From the above we submit it is apparent that from August, 1934, the Bank was making no advances to Atkinson. It was getting no payments on the wood which it could apply on the indebtedness which it could validly use to reduce its loan and the payments made to the Bank were only made by Port Royal in order that the particular amounts covered by the Port Royal cheques should be available to pay bills in Fredericton. We repeat, the payments made by the Port Royal were to the knowledge of the Bank earmarked for the Fredericton bills of the operation which the Port Royal was then paying and could not be applied by the Bank in 30 reduction of Atkinson's indebtedness.

The Bank Manager recognizing this, but nevertheless compelled by the regulations issued by the Bank as to transactions under Section 88 was forced to simulate payments to the Bank and a new advance by the Bank, but does admit that the transaction was really the cashing of Port Royal's cheques for Atkinson and that really there was no new advance by the Bank on any occasion after August, 1934.

40 The case of *Clarkson vs. Dominion Bank* 1919, 58 S. C. R. 448, remains the authority on Sections 88 and 90 of the Bank Act insofar as transactions of this type are concerned. In that case the Court differentiated between the two cases where security might be given. The one in the case of security given at the time of the advance and the other case where security could not be given by reason of non-ownership of the goods at the time, in which case the Act required a particular promise to give security made at the time of the advance and Davies, C.J., said at page 451 that as an alternative to the acquisition by the Bank of the security itself in those

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numerous cases where the loan had necessarily to be advanced to enable the borrower to get the goods so that he might give the security, a written promise taken at the time the loan was negotiated would be sufficient to support the security subsequently taken pursuant to that specific promise.

The decision of the Court with Anglin, J., dissenting was clear that a general promise to give security was invalid and the promise must be given at the time of the advance. So too, it appears to have been the opinion of the Court, Anglin, J., dissenting that the security could be validly taken pursuant to a prior specific promise only in those cases where it was not practical to take security at the time of the advance itself. 10

The Court considered the practice of the Bank in that case in continuing the former course of action of pretending that an actual advance had been made as of the date of each security of the total loan and the Court states that it is a dangerous and misleading practice.

The Banks, however, appear to have continued using the same forms with the exception of removing any reference to any prior promise.

They took security for a purported advance in the present case of \$8,000.00 when there was actually no advance or if there was any advance the amount at any one time was at the most \$1,000.00.

Apparently the Banks are still labouring under the impression that notwithstanding the amendments to the Bank Act of 1913 and even though no goods were in fact substituted, the Bank must take new security for the whole debt each time an advance of any amount is made. 20

We wish to point out again that this was not a case of revolving security or revolving loan but was in fact a cumulative loan, and there is no justification for forcing on the transaction the forms which are applicable to cases where goods are bought and sold by a wholesale manufacturer or dealer and the loans do in fact revolve.

If the valid securities then are limited to those taken at the time of actual Bank advances it would be found that such securities only covered draw shaved wood. The Bank however will probably claim that the securities on the sap peeled wood are validated by previous promises to give security, both those contained in the applications for credit and also the promises contained in the various notes which were given at the time of the advances or simulated advances were made by the Bank. 30

The Port Royal's answer is, if this is the case,—there is nothing in the documents to indicate it.

The securities themselves all purport to be given in consideration of advances of \$8,000.00, etc. There is no suggestion anywhere in the documents that they are given pursuant to a promise. It would appear that if the real transaction was that these securities were given pursuant to a prior promise it would be an elementary precaution to so state in the securities themselves. In this connection it is interesting to note that in *Clarkson vs. Dominion Bank* the securities particularly stated that they were given pursuant to past promises and a particular promise the date of which is specified. We presume the Banks use forms which are practically identical and that the Royal Bank as well as the Dominion Bank at the time of the 40

Clarkson case used forms which referred to past promises and stated that security was taken pursuant to them. Now the Clarkson case held primarily that a general promise to give security was invalid and that the promise to be relied upon under Section 90 must be a promise given at the time of the advance. In other words, to be valid under the decision of that case, the securities would have to refer to promises made at the time of the advances. Apparently in that case no promises were given when the respective advances were made, but as pointed out by the Court, it is necessary when relying on a promise that the security must be given pursuant to a written promise. We maintain that in the present case the security was not given pursuant to the written promises.

We maintain then that the securities of September 11 and following, being the only securities in which the sap peeled wood was purportedly charged, are invalid by reason of their having been in fact no advances by the Bank and secondly they were not given in consideration of past promises but in consideration of a purported present advance of \$8,000.00 which in fact had not been made. If the Bank relied on the promises then in the words of Idington, J., in the *Clarkson* case—What promises are the Court to pick out of the mass of promises that have been given? Some of which are supported by a real advance and others not.

Again we maintain that where the Bank has taken security on the draw shaved wood to the full extent of its advances it cannot come in and take security on the sap peeled wood without releasing its security on the draw shaved wood and the Bank released no such security.

As Davies, C. J., said in the *Clarkson* case, subsection (b) of Section 90 is limited in its application to cases where the security could not be given at the time of the advance. See 58 S. C. R. 452 as follows: "It was only intended in my opinion to cover cases where the actual security could not be given because of non-possession of the goods or property at the time by the borrower," and as the various Judges of the Court said, the taking of security pursuant to a written promise is an *alternative* method of procedure. There is no suggestion that it is a *cumulative* method.

What the Bank has attempted to do is this. Having financed Atkinson on his contract for draw shaved wood to the extent of \$8,000.00 and having taken security on the wood at the time of the advances, they later, finding that the amount of the draw shaved wood has been misrepresented and that there is not sufficient on hand to meet their advances, purport to take further security for the old debt on an entirely different commodity, namely the sap peeled wood which was not in existence or in contemplation of the parties at the time when the arrangements were made regarding the loan and attempt to justify that by saying that Atkinson promised to give them further security.

As Davies, C. J., said in the *Clarkson* case at page 452: "The written promise to give security had reference and reference only, not to a future debt or loan to be subsequently made but to the then debt or loan being negotiated and to the goods and personal property then existing which it

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was proposed to give security upon, and with reference to which negotiations were taking place.”

The Port Royal says that under the circumstances of this case the sap peeled wood could not be the subject of valid security to the Bank, the security not having been taken in consideration of or pursuant to a prior promise but rather on a simulated or feigned advance which in fact was not made.

It should be pointed out here that the application for credit of January 24, 1934, was for \$5,000.00 and the application for credit of July 16, was for \$10,000.00. Now the applications for credit do not of themselves create 10 or purport to create any security or give the Bank any rights in rem.

At no time down to July 16th did the advances of the Bank exceed \$5,000.00, though the purported advance had amounted to \$9,650.00 but of this latter amount \$4,650.00 was Port Royal's money. After the application of July 16th, 1934, the Bank made real advances numbers 21, 22 and 23 for \$1,000.00 each on July 17th, 24th and 28th respectively, bringing the total advance of the Bank on July 28th to \$8,000.00. The advances never exceeded this amount.

Following this increase in the line of credit on July 16th and the loans which brought the total indebtedness to that figure, the Bank took security 20 only on rough or draw shaved wood until September 11th when on a purported advance Number 30 the security read “rough or draw shaved or sap peeled spruce and fir pulp wood.” At that date the purported advances totalled \$16,150.00 of which \$8,150.00 was Port Royal's money.

After September 11th, the purported advances numbers 30 to 41 totalled \$2,414.45, all being money received from Port Royal and it was only these later securities, from September 11th on, that mentioned or included the sap peeled wood.

As above stated, we have maintained that there were no actual advances from September on for which valid security could be given but if the Court 30 does not accede to this argument, we still maintain that only advances subsequent to September 11th and which could properly be a charge against the sap peeled wood total this figure \$2,414.45.

We maintain again following the similar argument before referred to that the Bank having notice at the time of these advances of the rights of the Port Royal took whatever security it may have obtained subject to those rights.

FILING OF NOTICE OF INTENTION DOES NOT CONSTITUTE NOTICE.

The Bank may submit that the Port Royal by entering into the contract in April, 1934, after notice of intention had been filed in January of that 40 year, had notice of the security. We maintain, however, that this is not so. A notice of intention does not under the Act constitute notice to any person. It is a mere sine qua non without which no security is valid. Indeed it would be hard to argue otherwise. A Notice of intention is simply a notice that at some time in the future the borrower may borrow money from the Bank to an amount unspecified and give security therefor on goods unspecified.

In short, it shows that the customer may have some dealings with the Bank within a three-year period. There is nothing to indicate what the Bank may take security on. It might be any of the classes of security mentioned by Section 88.

Again, a mere promise to give security is not a lien. See Maclaren on Banking, 5th Edit. 1928, at page 358. "Failure to implement security. A promise to give security is not a lien and if the borrower fails to implement his promise and pledges elsewhere the merchandise mentioned therein, the Bank would have no claim against the pledgee. Its only recourse would be against the borrower."

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THE AMENDMENT OF SECTION 90 IN 1934.

Falconbridge on Banking, 1935, Edit. page 278 notes the change made in the Bank Act in 1934 whereby Section 90 was amended to leave out the word "such" and says that this amendment was made seemingly to overcome the view that the promise in question is limited to a specific security.

In answer to this the Port Royal says that the Bank Act of 1934 came into force on July 1st of that year by which time the Bank had already made advances totalling \$5,000.00, and further, the change in the Bank Act in 1934 did not affect the point so well taken by Davies, C. J., in the *Clarkson* case, that security can only be taken pursuant to prior promises, when it was not feasible to take the actual security at the times when advances were actually made.

We wish to refer again to *Clarkson vs. Dominion Bank* cited above and again emphasize the fact that the securities taken on September 11, 1934, and subsequently being the only securities in which the sap peeled wood was charged do not purport to have been given pursuant to any promise and in fact were not given pursuant to a promise but rather in reliance upon simulated or pretended concurrent advances, which advances were not in fact made by the Bank at the time the securities in question were taken.

RELEASE BY BANK OF SECURITY.

If, however, the Court should hold that the Bank actually made advances at all times that it purported to do so, then following the Bank's practice it is obvious that certain of the notes were paid by Port Royal money and we claim that if this is so, the security given at the time of the notes must be taken to have been released in favour of the Port Royal and that to this extent the Port Royal would stand in the shoes of the Bank as First Mortgagee.

In other words, each payment received by the Bank from Port Royal having been credited upon the note of Atkinson earliest in time, the security given for that note must be deemed to have been satisfied and the wood released, otherwise we would be faced with a proposition such as this: Suppose for instance that there was wood in existence of the value of \$5,000.00. The Port Royal pays the Bank \$5,000.00. Equity demands

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that the Port Royal should have the wood. But the Bank loans the \$5,000.00 back to Atkinson avowedly to get out more wood and claims the right to hold all the wood old as well as new for the new loan. Surely such a claim cannot be protected by the Bank Act nor is such a transaction within the contemplation of that Statute. Following this example, suppose Atkinson should use the second advance of \$5,000.00 for something else and not get out any more wood. What then? Are the Port Royal to lose the wood they have bought and paid the Bank for? We submit such a transaction would not be protected by the Act.

In the present case Atkinson claimed that all money he got from the Bank went into the operation, but into what part of the operation did it go? The sap peeled wood or the draw shaved wood? And what proportion of it went into the drive and delivery expense of the wood cut under the Spring contract of 1933 which the Bank had released to the Port Royal in January of 1934, though the drive of this wood did not take place until the spring of 1934. 10

WHAT WAS THE VALUE OF THE WOOD AT THE TIME OF ALLEGED CONVERSION?

Again, the Bank claim against the Port Royal for conversion of their wood and when did the conversion take place. Presumably in September, 1934. What was the value of the wood then? 20

These questions the Bank has utterly failed to answer. In conversion the claim is for the value of the goods. The Bank have given no evidence of the value of the goods at the date of conversion. Certainly it was not the whole purchase price because the Port Royal expended over \$27,000.00 after that date in making the wood a marketable commodity.

In this connection it is to be noted that in November and December of 1934 the Port Royal received at its mill all the draw shaved wood consisting of 707.17 cords and 1065.73 cords of sap peeled wood, a total of 1772.90 cords. This was done without objection from the Bank who apparently were relying on the security on the balance of the wood not delivered. What value could be attributed to the 4332.52 cords which the Port Royal did not receive at its mill until the spring of 1934, at the date when the alleged conversion presumably took place, that is September, 1934? 30

While no doubt this wood had been cut and peeled, as peeling operations must be finished before the end of August, it is improbable that the peeled sticks had been cut into four foot lengths or hauled to the river. If this had been done, the wood would undoubtedly have been delivered in the fall of 1934 instead of waiting over until the spring drive of 1935. 40

What the value of this pulpwood was is entirely problematical. The Bank have given no evidence as to this then value and we maintain that the wood cut and peeled but otherwise unmanufactured and lying deep in the woods would have a very small value, and submit if all other defences

should fail, the Bank is only entitled on the claim for conversion to the value of this 4,332.52 cords as of September, 1934, a value regarding which there is no evidence.

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BANK'S CLAIM FOR PURCHASE PRICE.

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The second branch of the Bank's claim is that the Port Royal had not paid to it as assignee of Atkinson's rights the price of the pulpwood purchased by Port Royal from him under the contracts, the subject of this action.

10 The Bank obtained assignments from Atkinson for the moneys due under the two contracts dated October 31st, 1933, and April 26th, 1934, and gave notice of these assignments to the Port Royal on the 16th day of March, 1934, and the 17th day of July, 1934, respectively.

The evidence shows by the Exhibits of D1, D2, and D3 that the total contract price of the wood was \$43,008.97.

The October, 1933, contract called for from 1,000 to 4,000 cords of draw shaved wood at \$6.50. The April, 1934, contract called for 10,000 cords of sap peeled wood at \$7.25.

707.17 cords only of draw shaved wood was delivered.

5,298.26 cords only of sap peeled wood was delivered.

20 The following is a summary of the amounts payable under the two contracts, and how the same were paid by the Port Royal:

The contract price was as follows:

707.17 cords draw shaved at \$6.50 under October contract	\$4,596.60
5,298.26 cords sap peeled at \$7.25 under April Contract -	38,412.17

\$43,008.97

Moneys paid by Port Royal were as follows:

(1) Debit balance of New Lepreau Limited - -	\$5,330.91
(2) Moneys paid New Lepreau Limited and or Atkinson under October contract before 30 assignment to Bank, and to Atkinson and or Bank after assignment - - - -	11,096.56
(3) Wages, completing operation - - - -	9,631.11
(4) Supplies completing operation - - - -	4,482.31
(5) Stumpage, Workmen's Compensation, etc. -	7,376.56
(6) Rent for housing men - - - -	26.00
(7) Freight - - - - -	5,607.81
	<hr/> \$43,551.26

Leaving still due Port Royal, \$542.29.

BANK'S RIGHTS AS ASSIGNEE.

40 I. It is clear law that the Bank by its assignment can have no greater rights than Atkinson had at the date that the notices of assignments were given to the Port Royal.

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Section 32 of The Judicature Act under which the Bank is claiming, since this is the only way it can sue in its own name under the assignments, provides that any assignment of a chose in action is taken subject to all equities which exist between the original parties. It may be phrased another way by quoting the words of Perdue, J.A., in the Manitoba Court of Appeal in the case of *Chalmers vs. Machray*, 26 D.L.R. at page 528 :

“ The assignee cannot by giving notice create for himself higher rights than the assignor possesses.”

See also to the same effect—*Morgan vs. Green* (1630) 82 E. R. 118; *Ord vs. White* (1840) 5 Beav. 357, 49 E.R. 140; *Brandon vs. Brandon* 10 (1856) 7 DeG. M. & G. 365, 44 E. R. 142; *Re Rhodesian Goldfields Limited* (1910) 1 Ch. 239. As was said by Lord Hobhouse in the case of *Government of Newfoundland vs. Newfoundland Railway Co.* (1887) 13 A. C. 199 at p. 212 :

“ It would be a lamentable thing if it were found to be the law that a party to a contract may assign a portion of it, perhaps a beneficial portion, so that the assignee shall take the benefit wholly discharged of any counter-claim by the other party in respect of the rest of the contract which may be burdensome.”

So too, in Hanbury's *Modern Equity*, pages 107 and 108 the author 20 says :

“ It is expressly laid down in the sub-section that the assignee takes subject to all equities, which would before the Act (Judicature) have been entitled to priority over his interest. The word ‘ equities ’ is used in a sense wider than its strict technical sense, for the obstacle to the completeness of the assignees title may be constituted not only by a genuine equitable interest which will take priority under the rule in *Dearle vs. Hall*, but by the presence of fraud or illegality which vitiated the title of the assignor. In certain cases the assignee has lost his priority by his own laches, 30 having complacently stood by and allowed a debt between the assignor and the debtor to be incurred.”

What then were the rights of the Port Royal under the contracts in question which would be binding on the assignee? What were the “ equities ”? The Port Royal's equities were three-fold :

FIRST : The right of the Port Royal to pay the purchase price of the wood in accordance with the terms of the contract.

SECOND : That the Port Royal in return for the purchase price should received the wood, the subject of the contracts, and this aside from any particular provision in the contract itself. 40

THIRD : The right to insist on the set-off which had been made between the Port Royal and Atkinson at the dates of receipt by the Defendant of the notices of the assignments by Atkinson to the Bank.

FIRST: As to the first equity, that is payment in accordance with the terms of the contract, there are various items to consider.

(1) The debit balance of New Lepreau Limited assumed by Atkinson amounting to \$5,330.91. This will be treated under the third head, that is the right of set-off.

(2) Item (2) \$11,096.56: of this amount \$484.90 was paid by Port Royal to New Lepreau, Limited on the October contract before the Bank notified Port Royal of the assignment to the Bank and requested future payments be made to the Bank; after this notice all payments were made to the Bank except those moneys which it was necessary to pay to liquidate items (3) and (7) inclusive, as shown on Record pp. 37-38 above.

It is clear law that until notice of assignment has been given by the assignee to the debtor or a fund holder, the latter can continue to pay to the assignor all moneys due or accruing due. See Hanbury's Modern Equity, page 101, where the author says:

"For in *Stocks vs. Dobson* (4 DeG. M. & G., p. 11) and *Bence vs. Sherman* (1898, 2 Ch., 582) is laid down the somewhat obvious proposition that until he receives notice of the assignment, A (the fundholder) is perfectly at liberty to go on paying B (the creditor) and for such sums as he does pay, C (the assignee) has no claim against him."

Similarly, the Bank cannot complain about moneys that were actually paid to the Bank under the assignments.

It is clear from the evidence, Exhibit D. 1, that the Port Royal paid in cash under the said contracts to New Lepreau Limited prior to notice of assignment, and subsequently to E. C. Atkinson and the Royal Bank, in which case the moneys were actually received by the Bank, the total of \$11,096.50, which payments are not in any way questioned or contested by the Bank.

(3) The defendant also paid direct in cash the following expenses of the operation:

Wages	-	-	-	-	-	-	-	-	-	\$9,631.11
Supplies, principally food stuffs	-	-	-	-	-	-	-	-	-	4,482.31
Stumpage, timber license fees, Workmen's Compensation										
Board claims	-	-	-	-	-	-	-	-	-	7,376.56
Rent for housing men	-	-	-	-	-	-	-	-	-	26.00
Freight	-	-	-	-	-	-	-	-	-	5,607.81

\$27,123.79

The contract specified that if there were any encumbrances or government dues on the wood, the amount thereof was to be deducted from the purchase price to be paid. In other words, it was contemplated and provided by the contracts themselves that the Port Royal should enquire into the claims against the wood, and if it saw fit, it should pay them direct.

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We consider now the question of wages, supplies, stumpage and freight as shown on the summary D (1). Were these items "encumbrances" or government dues which the Port Royal was entitled to pay direct by the terms of the contracts? It is submitted that they were. The charge of the common carrier for the carriage of goods or freight is to common knowledge an encumbrance. The Railway Company holds a common law lien (see Halsbury 2nd Edition, Vol. 4, p. 90, sec. 130), and will not deliver up the goods transported unless and until they are paid or guaranteed the payment. The Railway also has a statutory lien vide The Railway Act.

The items of stumpage, timber license fees and Workmen's Compensation Assessment are also clear cases of "encumbrances or government dues" and, as a matter of fact, are both encumbrances and also government dues, with the exception of the Stumpage amounting to \$1,044.00 paid to Fraser Companies on their wood taken by Atkinson by trespass which was certainly an encumbrance in that without payment of stumpage the title of the wood in question (522 cords) could not be obtained by the Port Royal from the owners.

This leaves to be considered the items of wages, supplies and rent for housing the men. It is clear from Atkinson's evidence, (Record p. 70), that part of the pay of their men was their board and keep. The men were paid so much a day and found.

Mr. Lacroix in his evidence (Record p. 84), said the supplies were for food and other camp requirements. In other words, the supplies were part of the necessary expenses of looking after the men and thereby part of their wages.

Now, the Woodmen's Lien Act, being Chapter 161 R. S. N. B. (1927) provides in paragraph 3 as follows :

"Every person performing labor or service in connection with
" any logs or timber intended to be driven down rivers or streams or
" hauled directly from the woods or brought by railway to the place
" of destination, shall have a lien thereon for the amount due for
" such labor or service, and the same shall be deemed a first lien
" or charge on such logs or timber and shall have precedence over
" all other claims or liens thereon, except Crown dues, stumpage and
" tolls for booming."

By section 2, sub-section B, logs or timber include pulpwood.

Now this lien, by Section 6 lasts for thirty days after the last day on which the labour was performed, or twenty days in case of stream driving, without registration.

The Port Royal, therefore, in paying such wage claims was again simply following the terms of its contract and paying encumbrances on the wood, as it was entitled to do.

The Port Royal further submits that having discharged these liens against the wood, it was subrogated to the rights of the lienors, and relies on the authorities hereinbefore cited, under the heading "Title in the Crown" for the proposition that it stands in the place of the creditors or rather encumbrancers whom it has paid off.

SECOND : The second equity was that the Port Royal, in return for the purchase price should receive the wood, the subject of the contracts, and this aside from any particular provision in the contract itself.

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This right of the Port Royal is recognized in the case of *Shepherd v. Livingstone* in the Appeal Court of Alberta (1924) 1 D. L. R. 723. Here the defendant Livingstone was the holder of an oil lease, and entered into an agreement with one Norman, whereby he employed Norman to drill for oil at the price of \$5.50 per foot up to 1,200 feet, and \$7 per foot beyond that. Norman actually drilled 1,294 feet, for which the contract price was \$7,258. In the meantime, Norman assigned \$2,250 of the money so to become due to him under the contract to the plaintiff, and notice of the assignment was given to the defendant, who agreed to pay the plaintiff the sum of \$2,250, should such sum be due and payable upon the completion of the contract, and undertook to retain out of the moneys payable to Norman such sum for this purpose. Norman fell down on the contract, and was unable to finance it, so the defendant made advances direct for the purchase of supplies and payment of workmen's bills to complete the well, which advances exceeded the total contract price. The Alberta Court of Appeal held that the defendant's course of action was justified and the action by the plaintiff upon its assignment was dismissed with costs.

Shepherd vs. Livingstone is very similar to the present case, and applying the rule in that case to the present facts, it appears clear beyond doubt that the Port Royal was justified in paying the amounts it did whether under the terms of the contract or not, if such payments were necessary in order to obtain that for which it had contracted, and this despite any assignment which Atkinson may have made of the moneys coming due to him under the contract. If it were to be held otherwise, it would mean that a person having contracted to supply goods at a certain price could assign the price to a third party, then refuse to deliver the goods, and the third party would be able to recover the price from the purchaser. It is submitted that this proposition only has to be stated in these simple terms to be shown to be absurd. To hold otherwise would be to say in effect that the assignment of the purchase price of goods is not subject to the equities between the original parties.

THE FINANCING OF THE OPERATION BY THE PORT ROYAL.

When the Bank refused to enter into any agreement with the Port Royal in September, 1934, the situation was that if the operation was not finished, there would be a serious loss.

In its letter of September 15, 1934, to the Bank (Exhibit 24) the Port Royal told the Bank plainly that Atkinson had been placed in a state of bankruptcy, and unless someone stepped in and completed operations, both parties would stand considerable loss.

The Port Royal points out the loss that will occur if the operation is not finished, and suggests to the Bank that it had better make arrangements to finish the operations. The Bank refuses to do so.

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Finally, Port Royal decided that if the venture is not to be a complete loss they will have to finance the completion of the operation.

To complete the operation Port Royal paid out \$27,123.81. The Bank actually argues that this sum of money was part of the purchase price of the pulp wood, and should have been paid into the Bank.

It is submitted that such a claim is unconscionable.

THIRD: The third equity was the right of set-off existing between the Port Royal and Atkinson at the dates of receipt by the Port Royal of notices of the assignments. The general right of set-off is well known to the law. The Judicature Act of New Brunswick, O. 19, r. 3, provides:

“ 3. A defendant in an action may set off, or set up by way of
“ counterclaim against the claims of the plaintiff, any right or claim,
“ whether such set off or counterclaim sound in damages or not,
“ and such set off or counterclaim shall have the same effect as a
“ cross action.”

In the present case the debt which the Port Royal sets off against the purchase moneys under the contracts amounted to \$5,330.91. By setting off this amount, however, together with the other payments made by the Port Royal under the Contracts, the Port Royal over paid on the contracts in question the sum of \$542.29, so that in reality against the purchase price 20 of the wood, the subject of these contracts the Port Royal only set off \$4,788.62. The question is—was the set off of this amount justified?

A clear exposition of the right of set-off in circumstances such as this case has disclosed is given by Clauson, J., in the case of *In re Pinto, Leite and Nephews, ex parte Visconde des Olivares* (1929) 1 Ch. 221, at page 233, where the Judge said:

“ It is, of course, well settled that the assignee of a chose in action
“ (and the Visconde is an assignee from Fonseca of this particular
“ chose in action, that is the right on the terms stated in the docu-
“ ment of May 30, 1918, to recover the £100,000 from the firm) takes 30
“ subject to all rights of set-off which were available against the
“ assignor, subject only to the exception that, after notice of an
“ equitable assignment of a chose in action, a debtor cannot set off
“ against the assignee a debt which accrues due subsequently to the
“ date of notice, even though that debt may arise out of a liability
“ which existed at or before the date of the notice; but the debtor
“ may set off as against the assignee a debt which accrues due
“ before notice of the assignment, although it is not payable until
“ after that date.”

A further authority for this proposition is the case of *Christie vs. 40 Taunton, etc.* (1893) 2 Ch. 175.

It is also clear that in order for rights of set-off to arise, there is no necessity that the opposing claim should arise out of the same transaction. This is clearly demonstrated in the case of *Bennett vs. White* in the English

Court of Appeal (1910), 2 K. B. D. 643, the headnote of which case is as follows :

“ In an action to recover a debt due from the defendant to the plaintiff, the defendant is entitled to set off a debt originally from the plaintiff to a third person, who has assigned it to the defendant.”

The case of *Caldwell vs. Hughes*, 10 D. L. R. 788, in the Supreme Court of Ontario, is authority for the further proposition that a set-off agreed to by both parties before action brought is equivalent in law to a payment.

10 We now have to consider the facts of the present case as applicable to this question of set-off.

As early as March 16, 1934, the Port Royal notified the Bank that it claimed to set off against the purchase price of the wood, the subject of this action, the amount of \$4,000, being the then known loss on the original contract between New Lepreau Limited and the Port Royal.

At the time the Port Royal notified the Bank of this right of set-off the Bank had advanced only \$2,500, but despite this warning, it went ahead and advanced the sum of \$5,500 thereafter, making the total advances \$8,000.

20 Furthermore, when the Port Royal received notice of the assignment of the contract of April 26, 1934, which it did on July 17, 1934, it at the request of the Bank informed the Bank that its advances to Atkinson totalled \$10,975.62. This amount included the figure of \$5,330.91, which was the amount of the loss or overpayment on the first and original contract. The Port Royal thus had not only the right of set off, but it actually had set off by agreement with Atkinson this amount of \$5,330.91 at that time, and this set-off was actually made by agreement amounting in the words of Middleton, J., in the case of *Caldwell vs. Hughes* above referred to, an actual payment. But though the Port Royal had so paid by set off, even without this the Port Royal would be permitted to set off this amount if in fact it was a debt due by Atkinson at the date of the assignments and
30 payable at any time up to the date this action commenced.

As was said by McKeown, J., in giving judgment of the Court of Appeal of N. B., in the case of *Windsor vs. Young*, 43 N. B. R. p. 313 at p. 324 :

“ Now, the authorities above referred to are, I think decisive in showing that to be properly made the subject of a set-off, the defendant's claim must exist at the time the plaintiff brings his action.”

40 Of course in the case where an assignment of a chose in action enters into the matter, the debt so to be set off must also have been due at the date of notice of the assignment. This requirement is completely fulfilled in this case according to the evidence as shown above.

The learned trial Judge with regard to this so called set-off or payment said as follows : (Record p. 97, 146).

“ It appears by this contract, the earliest of the three, which has not been produced, that in the spring of 1933 the defendant entered into an agreement with New Lepreau, Limited, for the

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“ purchase of a quantity of pulpwood. The plaintiff bank made
 “ advances to New Lepreau Limited on the contract, and in
 “ January, 1934, the defendant sent the plaintiff a cheque for
 “ \$5,350.00 in full settlement of those advances. This was done,
 “ not on the demand of the plaintiff, but at the request of Ewart C.
 “ Atkinson, the president and proprietor of 247 of the 489 shares
 “ of the capital stock of New Lepreau Limited. The cheque is
 “ marked by the Defendant, ‘ Payment in full of advances to New
 “ Lepreau Limited for operation of pulpwood, 1933.’ This, so far
 “ as the plaintiff bank is concerned would seem to be the end of 10
 “ the 1933 pulp contract, but the defendant company evidently does
 “ not so regard it. It appears that on the 1933 contract with New
 “ Lepreau Limited, the defendant company sustained a loss of
 “ \$5,330.91, and this loss the defendant now seeks to recoup by
 “ charging or setting it off against the contract price of the pulp-
 “ wood delivered under the two contracts of 31st of October, 1933
 “ (Exhibit No. 1) and 26th of April, 1934, (Exhibit No. 10). The
 “ plaintiff objects, and in my opinion with reason objects, to its
 “ security being impaired by the withdrawal, without its consent,
 “ of the sum of \$5,330.91 from the price of the pulpwood delivered 20
 “ under the two later contracts, to which, under the Bank Act, it
 “ has a right to look for repayment of its advances for the carrying
 “ on of the contracts between Atkinson and the defendant company.
 “ It is to be borne in mind that the first contract was with a cor-
 “ poration, the New Lepreau Limited, and that the two succeeding
 “ contracts were with Ewart C. Atkinson individually, who would
 “ not be personally liable for the debts of the corporation of which
 “ he was president. It is familiar law that a director or other chief
 “ officer of a corporation is not ordinarily individually responsible
 “ for the corporate defaults. It is in evidence and appears to be 30
 “ the fact that this, the earlier deficit, was charged against the two
 “ succeeding contracts at Atkinson’s own instance, but there is no
 “ evidence that this was acquiesced in by the plaintiff, and without
 “ its consent it is obvious that this transaction between contractor
 “ and contractee could not prejudicially affect the rights of the bank
 “ in its financing of the later operations.”

The Appeal Division, while permitting the set-off, as we will call it for convenience, insofar as the price of the wood under the contract of October, 1933, was concerned, said that no part of this original New Lepreau debit could be charged against the purchase price of the wood under the 40 contract of April, 1934.

We respectfully submit that on this point the Appeal Division was in error and while there is no cross-appeal, the Port Royal claims that it was justified in the set-off it had made in regard to the April, 1934, contract as well as the October, 1933, contract.

Now this indebtedness of \$5,330.91 was an indebtedness of New Lepreau Limited to the Port Royal. By March 16, 1934, that is by the time the Port Royal had notice of the assignment to the Bank of the October, 1933, contract, it was estimated by the Port Royal and Atkinson that the wood then in the woods and remaining to be shipped under the contract of the spring of 1933, would not be sufficient in quantity to meet at the contract price the advances the Port Royal had then made against it and that the shortage would amount to approximately \$4,000.00. (Exhibit 8, Record p. 313.)

10 Subsequently, when the last of the wood under the Spring contract of 1933 was received by the Port Royal in the early summer of 1934, it was found that the wood was still further short of estimate and that the exact over-payment of the Port Royal to New Lepreau Limited was \$5,330.91. This was determined prior to the receipt by the Port Royal of notice of the assignment of the April, 1934, contract to the Bank.

It has been stated that the first contract of the Spring of 1933 was between New Lepreau Limited and Port Royal. How then does Port Royal justify setting off the indebtedness of a limited company against monies due by it to an individual? The answer is simply this, that 20 Atkinson personally assumed the indebtedness of the Company to the Port Royal. For this assumption of liability there was ample consideration. For some reason or other and at the instigation of the Bank, it was desired that the Port Royal should change the October, 1933, contract from New Lepreau Limited to Atkinson personally. This change was quite satisfactory to the Port Royal providing Atkinson would assume the indebtedness of New Lepreau to the Port Royal which by that time had assumed substantial proportions and which indebtedness the Port Royal at that time was perfectly justified in charging against the October, 1933, contract with New Lepreau Limited, this was agreeable to Atkinson.

30 Atkinson then assumed and became responsible for the existing indebtedness of New Lepreau Limited to the Port Royal. It became his personal obligation and this was before the Bank appeared in the picture as far as the Port Royal knew. (See Exhibit 8, Record p. 313, Evidence of Atkinson, Record p. 76, ll. 20-24). It should be noted here that Atkinson said it was quite in order to charge up the losses of the first contract of the spring of 1933 "against the later contracts." It is to be noted that the word "contracts" is plural and obviously refers to the contract of October, 1933, as well as that of April, 1934. Now Atkinson's personal assumption of this New Lepreau Limited indebtedness to Port Royal was 40 not questioned by Counsel for the Bank or challenged in any way, as indeed it could not be and the Bank substantially says that while it does not deny the assumption of the indebtedness by Atkinson, it does deny the legal right of the Port Royal to set off this indebtedness against the purchase price of the wood under the contracts of October, 1933, and April, 1934. The Port Royal, on the other hand says that this indebtedness was set off before it had notice that the Bank was an assignee and that the effect in law is the same as if the Port Royal had paid Atkinson the

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money in question in cash as an advance under the contracts in question and Atkinson had immediately paid the money back to the Port Royal in liquidation of the old New Lepreau Limited indebtedness which he had agreed to pay. The transactions were accomplished facts and effective in law as to each contract before notice was given to Port Royal of the Bank's claims.

Now the spring contract of 1933, the contract of October, 1933, and the contract of April, 1934, were really one continuous pulp operation. Thus the last of the wood under the Spring contract of 1933 was not received by the Port Royal until the early summer of 1934. In other words, it 10 came down river on the spring drive.

Similarly, the draw shaved wood was cut under the contract of October, 1933, during the winter of 1933-34 came down river on the spring drive that year, and was shipped in to the Port Royal in the fall of 1934.

The contract of April, 1934, commenced in the spring of 1934, continued during the summer and fall of that year, some of the wood being shipped in during the fall and the balance being delivered on the spring drive of 1935. In other words, the operations under all three contracts were going 20 on simultaneously.

It was anticipated by the contracting parties that if there was a loss on the spring contract of 1933 by reason of the Port Royal overpaying New Lepreau Limited, this loss would be recouped to the Port Royal by it retaining to itself or setting off the necessary proportion of the purchase price of the wood to be delivered under the contracts of October, 1933, and April, 1934.

It is idle for the Bank to argue that this deficit of \$5,330.91 on the spring contract does not have any connection with the transaction sued upon; the Bank says that it was not a party to any such agreement, and that according to the testimony of Mr. Atkinson, he never told the Bank 30 there might be a shortage on that old contract.

But see the evidence of the Bank Manager, (Record p. 73):

“ Q. In your conversation with him of January 24th of that year you must have discussed his indebtedness to the Port Royal at that time?—A. Yes, no doubt we did, that would be the natural thing for us to do.

(Record p. 73.)

“ Q. When you discussed with him on January 24th that he did owe the Port Royal something on the first contract, surely you would get an approximate idea of the amount owed at that 40 time?—A. No doubt I discussed it with him—that would be the ordinary course—but I think, if I remember right, the amount would be this \$4,000, mentioned here.”

Attention is called to the Bank Manager's evidence, which is most evasive in its nature. Both he and Atkinson, however, admit that they were in constant touch with each other, and it transcends comprehension

to suggest that the Bank Manager was not conversant with every detail of Atkinson's business when he agreed on January 20, 1934, to advance him money.

It is submitted, with respect, that the learned Trial Judge entirely overlooked the fact that the original contractor with the Port Royal in the October contract was New Lepreau Limited, and that four months later when the Port Royal consented to the change of parties, there was no consent to a change in the terms of payment. It is difficult to see why the Bank's privity was necessary to a transaction in which, at that time, it had acquired no interest.

The Appeal Division accepts the evidence with reference to the agreement to make payment as above, and says (Record p. 109, l. 23).

"It seems clear, however, that the deficit on the earlier contract was agreed to be charged against the contract of 31st October, 1933, before Atkinson's assignment to the Bank."

Both the Trial Judge and the Appeal Division however, failed to realize the legal importance and effect of Atkinson's personal assumption of New Lepreau Limited's liability to Port Royal.

The Bank has made capital of the fact that the amount which the Port Royal have charged up against the contracts of October, 1933, and April, 1934, that is the amount claimed by way of set-off or payment by set-off amounting to \$5,330.91 was in effect the amount of \$5,350.00 which the Bank had advanced New Lepreau Limited on the spring contract of 1933 (Exhibit 27).

While these two figures are very similar it was only by chance that they were so. For instance, it was estimated in March, 1934, that the loss on the first contract would be \$4,000.00 though it later turned out when all the wood was in that the loss was \$5,330.91. The actual loss might just as well have been \$2,000.00 or \$10,000.00. The loss depended not on the amount paid the Bank but on the quantity of pulpwood that was then lying in the woods.

When the Port Royal paid this amount of \$5,350.00 to the Bank at the request of New Lepreau, Limited, the Port Royal thought that there would be enough pulp wood forthcoming under this spring contract of 1933 to offset this amount paid to the Bank, but as it subsequently transpired, there wasn't anything like the amount of pulpwood on hand that had been represented to the Port Royal, and the end result was that the Port Royal had overpaid New Lepreau Limited or the Bank at Atkinson's request the sum of \$5,330.91.

Presumably if the Port Royal had known that there was to be this shortage in the pulp wood, it would never have paid the Bank that amount, and the Bank would have naturally suffered a loss of \$5,350.00.

When, therefore, the Bank suggested that it would be an injustice to allow the defendant to charge up this deficit of \$5,330.91 to the contract of October 31, 1933, it must be borne in mind that approximately that sum had been received by the Bank through a mistaken representation made by

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the Bank's customer to Port Royal that there would be sufficient pulpwood forthcoming to satisfy the amount so paid to the Bank.

PORT ROYAL'S KNOWLEDGE OF SECTION 88 SECURITY

The Bank's counsel makes a statement in his written argument at the trial, which is not borne out by evidence. He said :

" It is submitted, therefore, that not only did the Port Royal Company have knowledge of the fact that this Bank held Section 88 security from the said Atkinson as early as March, 1934, but it never questioned the same and in fact admitted it." (See Exhibit No. 24.)

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On March 20, 1934, just two months after the Bank Manager had seen the October contract and had been advised of the contractual relationship between the vendor and vendee, the Bank Manager wrote the Port Royal (Ex. 9).

" We have advanced him \$3,000 on the contract dated October 21st under Section 88 security, and therefore shall expect our advances in this connection to be repaid before your claim of \$4,000.00 mentioned."

The Port Royal wrote back immediately (Ex. A) advising the Bank that it would not release " their first claim."

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What the Bank has reference to is presumably the Port Royal's statement in its letter of September 15, 1934 (Ex. 24) :

" It is not our intention to advance any more money to increase your security under Section 88 . . . on the paper which we sent you to be signed, you will find reference permitting you to hold present guarantee under Section 88."

The evidence shows there was never any recognition by the Port Royal of any prior right in the Bank, if that is material. In the summer the Bank Manager and the Port Royal's manager had several conferences. In these the Bank Manager claimed he had Section 88 security, which the Port Royal as stoutly repudiated. Negotiations for a way out failed, and wasn't it, therefore, quite the natural thing for the Port Royal's Manager to write as he did? The letter must be read with Exhibits Nos. 22, 23, and 25, and also with the evidence given by Murray and Lacroix, all of which show the desire of the Port Royal to continue the operations, which had come to a stop, and it was willing to compromise, if that end could be achieved.

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The letter goes on to tell the Bank Manager that unless a prompt decision on the suggested compromise is arrived at

" we are going to drop out of this picture altogether and take our own chances regarding the advances we have made."

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This is an expression of confidence that their advances were secure. The letter further says :

“ If you decide not to give us the security we are asking for, you
“ had better make arrangements to finish the operations.”

It is pertinent here to note that under the agreement as to powers (Ex. 4. para. 10) the Bank was given the power to step in and take over
“ for the purpose of completing, selling, shipping or otherwise dealing
“ with the goods in such manner as the Bank may think proper to
“ enable the goods to be realized upon.”

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10 The Bank refused to take this step. The Port Royal then stepped in and took over the operation completing it at an expenditure of upwards of \$27,000.

The Bank actually says that this was purchase money and should be paid to it. There is a case, *Price vs. Bannister*, 3 Q. B. D. (1878) 569, where it was held that if Atkinson, for example, actually finished the work himself, the debtor must pay the assignee the purchase moneys, but Cotton, R. J., at 577, pointed out that if the debtor had stepped in and finished the work, the assignee was not entitled, citing *Tooth vs. Hallett*, L. R. 4 Ch. App. 242.

20 It is to be noted, however, that in *Price vs. Bannister* the contract contained no provision regarding payments being made by the purchaser in discharge of encumbrances on the goods, whereas the contracts in question particularly provided that the Port Royal should have the right to pay persons other than Atkinson if it became necessary to do so in order to obtain a good title. Moreover, we maintain that *Price vs. Bannister* has been overruled in effect by the case of the *Government of Newfoundland vs. Newfoundland Railway Co.* (1888) 13 App. Cas. 199 P.C.

In the instant case the Port Royal took over, paid the wages, incurred and paid the supply bills, paid the stumpage and Workmen's Compensation.

30 The Bank adopted an attitude of passivity, evidently under the impression that it had no obligations whatever as assignee of the contract. It is not urged by the Port Royal that the Bank as assignee under an instrument which transferred to it “ all moneys, claims, rights and demands ” stepped into the shoes of Atkinson, and was obligated to carry on the operation, but it does come within the principle enunciated by Halsbury 2nd Ed. Vol. 4 p. 461. sec. 843 :

“ When the benefit of a burdensome contract is assigned, the
“ assignee will take subject to the rights of the other party.”

40 citing *Newfoundland Government vs. Newfoundland Rail Co.* (1888) 13 App. Cas. 199, P. C.

The right of the Port Royal to the set-off claimed is remarkably similar to the case *Beattie vs. Best and Ash* 1921 61. S. C. R. 576. In that case there was a sale by Ash as Vendor to Beattie as Purchaser, whereby it was agreed that the Vendor would transfer certain shares and interests in

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consideration of the Purchaser assuming certain obligations of the Company set forth in a schedule and in further consideration of the promise of the Purchaser to pay to the Vendor or the various persons entitled thereto the sum of \$5,900.00. The Vendor, Ash, presumed to assign certain of the said \$5,900.00 to Best, his father-in-law, and to Calvert, his brother-in-law. Upon the transaction being completed it developed that the liabilities which the Purchaser had assumed were considerably in excess of those stated in the schedule and it was held that the Purchaser was entitled to set-off the additional liabilities against the said sum of \$5,900.00 notwithstanding the assignment of the portions of that sum to other parties. In the present case the situation was that at Atkinson's request the Port Royal agreed to transfer the Contract of 30th October, 1933, to Atkinson's name provided he assumed the loss on the Contract of the spring of 1933 which was due from New Lepreau Limited to the Port Royal. Atkinson agrees and subsequently purports to assign the moneys payable under the contracts of October, 1933, and April, 1934, to the Bank. We submit that the Bank's position is no better than the position of Calvert and Ash in the case cited and that the Port Royal is entitled as against the Bank to set-off the indebtedness of New Lepreau Limited to Port Royal which Atkinson had assumed. 10

The Port Royal maintains that it has paid for the wood purchased by it under the two contracts in accordance with the terms and provisions of the contracts and in accordance with arrangements made between it and Atkinson, the Vendor of the wood prior to the acquisition by the Bank of any interest in the purchase price, and that as the purchase price has been fully paid in accordance with such conditions and arrangements, there is no balance owing by it to Atkinson or his assignee the Bank and that the latter's claim on this head must wholly fail. 20

For the various reasons set out above, the Respondent submits that this appeal should be dismissed. 30

SANFORD & TEED,
Respondent's Solicitors.

C. F. INCHES,
Of Counsel with Respondent.

March, 31, 1938.

APPENDIX OF STATUTES REFERRED TO

THE BANK ACT, 1934 24-25 George V, C. 24—Sections 86, 87, 88, 89 and 90.

86. (1) The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favour, or as security for any liability incurred by it for any person, in the course of its banking business. 40

(2) Any warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof,

(a) all the right and title to such warehouse receipt or bill of lading and to the goods, wares and merchandise covered thereby of the previous holder or owner thereof; or

(b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom such goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of such goods, wares and merchandise. R.S., c. 12, s. 86, am.

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87. (1) If the previous holder of such warehouse receipt or bill of lading is any person

(a) entrusted with the possession of the goods, wares and merchandise mentioned therein, by or by the authority of the owner thereof;

(b) to whom such goods, wares and merchandise are, by or by the authority of the owner thereof, consigned; or

(c) who, by or by the authority of the owner of such goods, wares and merchandise, is possessed of any bill of lading, receipt, order or other document covering the same, such as is used in the course of business as proof of the possession or control of goods, wares and merchandise, or as authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such a document to transfer or receive the goods, wares and merchandise thereby represented,

the bank shall be, upon the acquisition of such warehouse receipt or bill of lading, vested with all the right and title of the owner of such goods, wares and merchandise, subject to the right of the owner to have the same retransferred to him if the debt or liability, as security for which such warehouse receipt or bill of lading is held by the bank, is paid.

(2) Any person shall be deemed to be the possessor of such goods, wares and merchandise, bill of lading, receipt, order or other document as aforesaid

(a) who is in actual possession thereof; or

(b) for whom, or subject to whose control such goods, wares and merchandise are, or bill of lading, receipt, order, or other document is held by any other person. R.S., c. 12, s. 87.

88.—(1) The bank may lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, upon the security of such products.

(2) The bank may lend money to a farmer upon the security of his threshed grain grown upon the farm.

(3) The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise upon

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the security of the goods, wares and merchandise manufactured by him, or procured for such manufacture.

(4) If, with the consent of the bank, the products, goods, wares and merchandise, upon the security of which money has been loaned under the authority of this section, are removed and other products, goods, wares and merchandise of substantially the same character are respectively substituted therefor, then to the extent of the value of the products, goods, wares and merchandise so removed, the products, goods, wares and merchandise so substituted shall be covered by such security as if originally covered thereby; but failure to obtain the consent of the bank to any such substitution shall not affect the validity of the security either as respects any products, goods, wares and merchandise actually substituted as aforesaid or in any other particular. 10

(5) Any such security, as mentioned in the foregoing provisions of this section, may be given by the owner of the said products, goods, wares and merchandise.

(6) The security may be taken in the form set forth in Schedule C to this Act, or to the like effect.

(7) The bank shall, by virtue of such security, acquire the same rights and powers in respect of the products, goods, wares and merchandise covered thereby as if it had acquired the same by virtue of a warehouse receipt: Provided, however, that the wages, salaries or other remuneration of persons employed by any wholesale purchaser, shipper or dealer, or by any wholesale manufacturer, in connection with any of the several wholesale businesses referred to, or by any farmer, in connection with the farm, owing in respect of a period not exceeding three months, shall be a charge upon the property covered by the said security in priority to the claim of the bank thereunder, and such wages, salaries or other remuneration shall be paid by the bank if the bank takes possession or in any way disposes of the said security or of the products, goods, wares and merchandise covered thereby. 20 30

(8) The bank may lend money to the owner, tenant or occupier of land for the purchase of seed grain or fertilizer upon the security of any crop to be grown from such seed grain, or from land on which in the same season such fertilizer has been used, and for the purchase of binder twine upon the security of the crop grown by the borrower and which is about to be harvested.

(9) The security taken under subsection eight of this section for money lent for the purchase of seed grain, fertilizer or for money lent for the purchase of binder twine, may be taken in the relevant and appropriate form set forth in Schedule D, or Schedule E, as the case may be, to this Act or in a form to the like effect. 40

(10) The bank shall by virtue of such security acquire a first and preferential lien and claim for the sum secured and interest thereon upon the seed grain, fertilizer or binder twine purchased and the crop covered by the security, as well before as after the severance of the crop from the soil, and upon the grain threshed or the crop harvested therefrom, and

the bank shall by virtue of such security acquire the same rights and powers in respect of such seed grain, fertilizer or binder twine and of the grain so threshed or crop harvested as if it had acquired such rights and powers by virtue of a warehouse receipt.

(11) The bank shall have the right, through its servants or agents, in case of default in payment of the money lent or in case of neglect to care for and harvest the crop, or in case of any attempt to dispose of the crop without the consent of the bank or in case of the seizure of the crop under process of law, to enter upon the land upon which the crop is grown, to take possession of, care for and harvest the crop and thresh the grain therefrom.

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(12) The bank may lend money to a farmer and to any person engaged in stock raising upon the security of his live stock; provided however that such security shall not include and shall be deemed not to include any live stock which on the first day of July, one thousand nine hundred and twenty-three, was by any statutory enactment exempt from seizure under writs of execution.

(13) The provisions of subsection four of this section, making live stock substituted for live stock removed subject to the security, shall apply to the live stock substituted by the farmer or other person engaged in stock raising.

(14) The security taken under subsection twelve of this section may be taken in the form set forth in Schedule F to this Act or in a form to the like effect.

(15) The bank shall by virtue of the security taken under subsection twelve of this section have full power, right and authority, if the bills or notes therein mentioned or described or any of them are not paid according to their tenor, to enter upon the premises upon which the live stock mentioned in the security are, to take possession of or seize such live stock, and before or after such taking possession of or seizure, to sell such live stock, or such part thereof as may be necessary to realize the amount due and payable, at public auction, not less than five days after.

(a) notice of the time and place of such sale has appeared in a newspaper published in or nearest to the place where the sale is to be made, and

(b) posting a notice in writing or in print of the time and place of such sale in or at the post office nearest to the place where the sale is to be made.

(16) After all necessary and reasonable expenses in connection with such seizure and sale have been deducted and prior privileges, liens or pledges existing in favour of third parties and for which claims may have been filed with the party making the sale have been satisfied, the balance of the proceeds of the sale shall be applied in payment of the said bills or notes and the surplus, if any, returned to the grantor.

(17) Any person intending to give a bank security under the authority of this section must give notice of such intention before any loan is made

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by the bank to such person and the security taken, by signing a document hereinafter called a "notice of intention," which may be in the form set out in Schedule G to this Act or to the like effect.

(18) The notice of intention shall be registered in the manner hereinafter provided, and, after the first day of August, one thousand nine hundred and twenty-three, any security subsequently taken under the authority of this section, before such notice of intention is registered, shall be null and void as against the creditors of such person and as against subsequent purchasers or mortgagees in good faith; and a notice of intention when registered shall be deemed to be notice for the purposes of this section in respect of all securities taken by the bank from such person, under said authority, during the period of three years after the date of registration. 10

(19) The notice of intention shall be registered in the office of the Assistant Receiver General, hereinafter called the Assistant Receiver, or in such office as may be prescribed by the Minister after the coming into force of the *Bank of Canada Act*, in the province in which the place of business, or principal place of business in case the person has more than one place of business, of the person is situate.

(20) "Assistant Receiver" in this section includes anyone acting for the Assistant Receiver or the officer in charge of the office to be prescribed as aforesaid. 20

(21) If the person has no place of business then the notice of intention shall be registered in the office of the Assistant Receiver in the province in which such person resides.

(22) "Place of Business" and "principal place of business" shall, in the case of a company incorporated in Canada, be deemed to be the place where the head office or chief place of business of the company is situate, or if a foreign corporation, then the place of business of such corporation for the purposes of this section shall be the place at which civil process in the province in which the loan is made can be served upon the company. 30

(23) The Assistant Receiver shall number consecutively every notice of intention received by him and shall endorse thereon the number and the hour and date of receiving it, and shall file the same and enter, in alphabetical order, in a book to be kept by him, the name of every person who has given such notice of intention, with the number endorsed thereon opposite to each name.

(24) The Assistant Receiver shall endorse over his signature on a copy of the notice of intention to be supplied by the bank, for the records of the bank, the date of registration and number, and the production of the copy with such endorsement and signature shall be conclusive evidence in all courts of the registration and of the time of registration as thereon endorsed. 40

(25) The notice of intention may be cancelled by the Assistant Receiver in the book containing such registration at the place where the registration is entered on receipt by him from the bank named in the notice of intention registered of a certificate of release duly signed on behalf of the bank to the effect that each and every security under this section, given to the bank by

the person has been released, or that no security was given to the bank as the case may be, and such certificate of release shall bear on the face thereof the number and date endorsed on the original document on file in the office of the Assistant Receiver.

(26) The Assistant Receiver shall number consecutively every certificate of release received by him and shall endorse thereon the number and the hour and date of its receipt and shall file the same.

10 (27) Every person, upon payment of the proper fees, shall have access to and be entitled to inspect the registration book and any document registered or filed pursuant to this section.

(28) For services under this Act, the Assistant Receiver shall be entitled to the following fees, for which he shall be accountable to the Consolidated Revenue Fund :—

For registration of each notice of intention and endorsement of copy over signature	- - - - -	25c.
For production of registration book for inspection		25c.
For production of any notice of intention for inspection	- - - - -	25c.
For registration of each certificate of release	-	25c.

20 (29) Any person, desiring to ascertain whether a notice of intention or certificate of release has been registered by any other person pursuant to this section, may make enquiry by sending a prepaid telegram or other written communication addressed to the Assistant Receiver, and it shall be the duty of the Assistant Receiver, without payment of any fee prescribed in the next preceding subsection, to make the necessary inspection of the registration book and of the relative documents, if any, and to make answer to the enquiry of the sender by a telegraphic message at the expense of the sender, and stating therein the name of the bank mentioned in the notice of intention.

30 89. (1) If goods, wares and merchandise are manufactured or produced from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or included in or covered by any security given under section eighty-eight of this Act, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title, and for the same purposes and upon the same conditions, as it held or could have held the original goods, wares and merchandise.

40 (2) All advances made on the security of any bill of lading or warehouse receipt, or of any security give under section eighty-eight of this Act, shall give to the bank making the advances a claim for the repayment of the advances on the products, goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor, but such preference shall not be given over the claim of any unpaid vendor who had a lien upon the products, goods, wares

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and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading, or security, unless the same was acquired without knowledge on the part of the bank of such lien.

(3) In the event of the non-payment at maturity of any debt or liability secured by a warehouse receipt or bill of lading, or secured by any security given under section eighty-eight of this Act, the bank may sell the products, goods, wares and merchandise mentioned therein, or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the warehouse receipt, bill of lading, or security, or the products, goods, wares and merchandise mentioned therein, as the case may be, were acquired; but such power of sale shall be exercised subject to the following provisions, namely:— 10

(a) No sale, without the consent in writing of the owner of any products of the forest shall be made under this Act until notice of the time and place of such sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledgor thereof, at least thirty days prior to the sale thereof;

(b) No such products (other than products of the forest), and no goods, wares and merchandise shall be sold by the bank under this Act without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledgor thereof, at least ten days prior to the sale thereof; 20

(c) Every sale, under such power of sale, without the consent of the owner, shall be made by public auction, after notice thereof by advertisement in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof; and, if the sale is in the province of Quebec, then at least one of such newspapers shall be a newspaper published in the English language, and one other such newspaper shall be a newspaper published in the French language. 30

(4) Where payment of a loan made by a bank under the provisions of section eighty-six or section eighty-eight of this Act is guaranteed by a third person and such loan is paid by the guarantor, such guarantor shall be subrogated in and to all of the powers, rights and authority of the bank under the security which the bank holds in respect of the said loan under the provisions of the said sections eighty-six and eighty-eight. R.S., c. 12, s. 89, am.

90. (1) The bank shall not acquire or hold any warehouse receipt or bill of lading, or any security as aforesaid, to secure the payment of any bill, note, debt, or liability, unless such bill, note, debt or liability is negotiated or contracted 40

(a) at the time of the acquisition thereof by the bank; or

(b) upon the written promise or agreement that a warehouse receipt or bill of lading or security as aforesaid, would be given to the bank:

Provided that such bill, note, debt or liability may be renewed, or the time for the payment thereof extended, without affecting any security so acquired or held.

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(2) The bank may

(a) on the shipment of any products, goods, wares and merchandise for which it holds a warehouse receipt, or any such security as aforesaid, surrender such receipt or security and receive a bill of lading in exchange therefor;

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10 (b) on the receipt of any products, goods, wares and merchandise, for which it holds a bill of lading, or any such security as aforesaid, surrender such bill of lading or security, store the products, goods, wares and merchandise and take a warehouse receipt therefor, or ship the products, goods, wares and merchandise, or part of them, and take another bill of lading therefor ;

(c) surrender any bill of lading or warehouse receipt held by it and receive in exchange therefor any security that may be taken under this Act ;

20 (d) when it holds any such security as aforesaid on grain in any elevator, take a bill of lading covering the same grain or grain of the same grade or kind shipped from such elevator, in lieu of such security, to the extent of the quantity shipped ;

(e) when it holds any security whatsoever covering grain, take, in lieu of such security to the extent of the quantity covered by the security taken, a bill of lading or warehouse receipt for, or any document entitling it under the provisions of *The Canada Grain Act*, to the delivery of, the same grain or grain of the same grade or kind. R.S., c. 12, s. 90, am.

THE BANK ACT, R.S. Canada, 1927, Chapter 12, Section 90.

30 90.—(1) The bank shall not acquire or hold any warehouse receipt or bill of lading, or any such security as aforesaid, to secure the payment of any bill, note, debt or liability, unless such bill, note, debt or liability is negotiated or contracted

(a) at the time of the acquisition thereof by the bank ; or

(b) upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank ;

Provided that such bill, note, debt or liability may be renewed, or the time for the payment thereof extended, without affecting any such security.

(2) The bank may

40 (a) on the shipment of any products or stock, goods, wares and merchandise, or grain, for which it holds a warehouse receipt, or any such security as aforesaid, surrender such receipt or security and receive a bill of lading in exchange therefor ; or

(b) on the receipt of any products or stock, goods, wares and merchandise, or grain, for which it holds a bill of lading, or any such security as aforesaid, surrender such bill of lading or security,

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store the products or stock, goods, wares and merchandise, or grain, and take a warehouse receipt therefor, or ship the products or stock, goods, wares and merchandise, or grain, or part of them, and take another bill of lading therefor, 1923, c. 32, s. 90.

THE CROWN LANDS ACT (New Brunswick) 23 George V, 1933, Chapter 22, Section 19.

19. All lumber cut within the limits of any license, and by virtue of the authority of any such license, shall be and remain the property of the Crown until the stumpage thereon is paid; and the Crown shall have a first lien and charge against all the property, both real and personal, of the licensee to secure the payment of such stumpage, provided always that the said lien and charge shall not apply to a licensee holding a license or licenses as a trustee and in such case said lien or charge shall operate against the person creating the trust; and when a note or notes are taken for the payment of stumpage, the property in the lumber for the stumpage of which such note or notes are given shall remain and be the property of the Crown until such note or notes are actually paid. 10

SALE OF GOODS ACT (New Brunswick) R.S.N.B. 1927, Chapter 149, 20
Sections 23 (1), 48, 57 (i) and (o).

SALE OF GOODS ACT.

23.—(1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. 30

48. In any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just, and the application by the plaintiff may be made at any time before judgment or decree. 1919, c. 4, s. 52.

57. (i) "Goods" include all chattels personal other than things in action or money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land 40

which are agreed to be severed before sale or under the contract of sale;

(o) "Specific goods" means goods identified and agreed upon at the time a contract of sale is made;

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THE FACTORS ACT (New Brunswick) R.S.N.B. 1927, Chapter 154, Section 12.

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12. Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the
10 goods or documents of title under any sale, pledge or other disposition thereof, or under any agreement for sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. 1919, c. 5, s. 8.

WOODMEN'S LIEN ACT C 161, R.S.N.B. Sections 2, 3, 4, 5, 6.

2. In this Chapter unless the context otherwise requires

(a) "Labour, service or services" means and includes cutting, skidding, felling, hauling, scaling, barking, driving, rafting or
20 booming any logs, timber or pulpwood, cedar posts, telegraph poles, railway ties, or any work done by cooks, blacksmiths, artisans or others used or employed in connection with the work.

(b) "Logs or timber" means and includes what is ordinarily known as logs, timber, lathwood or pulpwood, cedar posts, telegraph poles, railway ties, but does not include cordwood, tan bark, shingle bolts or staves.

(c) "Place of destination" means the boom or rafting ground where the logs are rafted or sorted, in case of logs or timber driven down rivers or streams; and the mill or mill pond, in cases where
30 the logs or timber are hauled from the woods or brought by railway to a mill or the pond in connection therewith, or driven in the stream to a mill or mill pond, without first being rafted or sorted, or other place where logs or timber are brought or hauled for the purpose of being manufactured or sawn. C. S. c. 148, s. 2; 1920, c. 43, ss. 1, 2 am.

3. Every person performing labor or services in connection with any logs or timber intended to be driven down rivers or streams, or hauled directly from the woods or brought by railway to the place of destination, shall have a lien thereon for the amount due for such labor, service or
40 services, and the same shall be deemed a first lien or charge on such logs or timber, and shall have precedence over all other claims or liens thereon, except any lien or claim which the Crown may have upon such logs or timber, for or in respect of any dues or charges, or which any owner of

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lands may have for the stumpage upon such logs or timber, or which any streams improvement company or boom company, or person owning streams, improvements or booms may have thereon for or in respect of tolls. C. S. c. 148, s. 3 am.

4. The lien provided for in s. 3 shall not attach or remain a charge on the logs or timber, unless and until a statement thereof in writing, duly verified upon oath by the person claiming such lien, or some one duly authorized on his behalf, is filed in the office of the clerk of the County Court of the county in which the labor or services, or some part thereof, have been performed. C. S. 148, s. 4 am. 10

5. Such statement, Form A, shall set out briefly the nature of the debt, demand or claim, the amount due to the claimant, as near as may be, over and above all legal set-offs or counter claims, and a description of the logs or timber upon or against which the lien is claimed. C. S. c. 148, s. 5 am.

6. The statement of claim shall, in respect of work done in the woods, be filed within thirty days after the last day on which such labor or services were performed, and in respect to work done in stream driving or otherwise than in the woods, within twenty days after the last day on which such labor or services were performed; provided that no sale or transfer of the logs or timber upon which a lien is claimed under this chapter during the time limited for the filing of such statement of claim and previous to the filing thereof, or after the filing thereof, and during the time limited for the enforcement thereof, shall in anywise affect such lien, but such lien shall remain in force against such logs or timber in whosoever possession the same shall be found. C. S. 148, s. 6 am. 20

BILLS OF SALES ACT, R. S. N. B. 1927, c. 151, s. 6.

6. (1) Every sale of goods and chattels not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Chapter, and shall be accompanied by an affidavit, Form D, of a witness thereto of the due execution thereof, and an affidavit, Form E, of the bargainee or his agent, Form F, duly authorized in writing to take the conveyance, a copy of which authority shall be attached to the conveyance, that the sale is bona fide and for good consideration as set forth in the said conveyance and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainer. 30

(2) The conveyance and affidavit shall be filed as hereinafter provided within thirty days from the execution thereof, otherwise the sale shall be absolutely void as against subsequent purchasers or mortgagees in good faith, the assignee of the grantor under any law relating to insolvency or insolvent, absconding or absent debtors, or an assignee for the general benefit of the creditors of the maker or as against the execution creditors of the maker, or any sheriff, constable or other person levying on or seizing 40

the property comprised in such bill of sale under process of law. C. S. c. 142, s. 6, am.

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JUDICATURE ACT OF NEW BRUNSWICK, 1927, s. 32.

32. Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor; provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action, shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled if he thinks fit, to call upon the several persons making claim thereto to interplead concerning the same or he may, if he thinks fit, pay the same into the Court upon obtaining a Judge's order therefor to abide the determination of the Court in respect thereof. 1909, c. 5, s. 19, part am.

No. 32.
Factum of
Port Royal
Pulp and
Paper
Company
Limited—
continued.

RULES OF THE SUPREME COURT OF NEW BRUNSWICK, Order 19,
Rule 3

3. A defendant in an action may set off, or set up by way of counter-claim against the claims of the plaintiff, any right, or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim. But the Court, or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

RAILWAYS ACT, R.S.C. 1927, c. 170, Sections 355, 356 (1), (2), (3).

COLLECTION OF TOLLS.

355. In a case of refusal or neglect of payment on demand of any lawful tolls or any part thereof, the same shall be recoverable in any court of competent jurisdiction 1919, c. 68, s. 355.

356. The Company may, instead of proceeding as aforesaid for the recovery of such tolls seize the goods for or in respect whereof such tolls are payable, and may detain the same until payment thereof, and in the meantime the said goods shall be at the risk of the owners thereof.

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Supreme
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No. 32.
Factum of
Port Royal
Pulp and
Paper
Company
Limited—
continued.

Section 2 as amended by Section 4, C. 36, 20-21 Geo. V, 1930.

2. If the tolls on live animals or goods liable to deteriorate or perish while in the possession of the company are not paid forthwith on demand, or if the tolls on bulk goods, as hereinafter defined, are not paid within two weeks after demand, or if the tolls on any goods are not paid within four weeks after demand, the company may, without further notice to the consignee or owner advertise and sell the whole or any part of the goods and out of the money realized from such sale retain the tolls payable and all reasonable charges and expenses of such seizure, detention, advertisement and sale. "Bulk goods" for the purposes of this subsection shall mean and include carload lots of coal, coal products, wood, sand, gravel, brick, scrap metal, and of such other goods as may be approved by the Board. 10

3. The company shall pay or deliver the surplus, if any, or such of the goods as remain unsold, to the person entitled thereto and may recover the deficiency, if any, by action in any court of competent jurisdiction. 1919, c. 68, s. 356.

No. 33.
Formal
Judgment,
19th Decem-
ber, 1938.

No. 33.

Formal Judgment.

IN THE SUPREME COURT OF CANADA.

Monday, the 19th day of December, 1938. 20

Present :

THE HONOURABLE MR. JUSTICE CANNON
THE HONOURABLE MR. JUSTICE CROCKET
THE HONOURABLE MR. JUSTICE DAVIS
THE HONOURABLE MR. JUSTICE KERWIN
THE HONOURABLE MR. JUSTICE HUDSON

Between :

THE ROYAL BANK OF CANADA - - - - (Plaintiff) Appellant

and

PORT ROYAL PULP & PAPER COMPANY, LIMITED - (Defendant) Respondent. 30

The appeal of the above-named Appellant from the Judgment of the Supreme Court of New Brunswick, Appeal Division, pronounced in the above cause on the 11th day of June, A.D. 1937, varying the Judgment of Chief Justice Barry of the King's Bench Division of the Supreme Court of New Brunswick, rendered in the said cause on the 5th day of February, A.D. 1937, having come on to be heard before this Court on the 17th and 18th days of May, 1938, in the presence of Counsel as well for the Appellant as for the Respondent, whereupon and upon hearing what was alleged

by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was allowed, that the said Judgment of the Supreme Court of New Brunswick, Appeal Division, should be and the same was reversed and set aside, and that the said Judgment of Chief Justice Barry of the said King's Bench Division of the Supreme Court of New Brunswick should be and the same was restored.

10 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the said Respondent should and do pay to the said Appellant, the costs incurred by the said Appellant as well in the said Supreme Court of New Brunswick, Appeal Division, as in this Court.

(Signed) J. F. SMELLIE
Registrar.

No. 34.

Reasons for Judgment.

(a) CROCKET, J. (Concurred in by CANNON, J.).

20 This action arose out of two contracts, which the defendant entered into for the purchase of pulpwood for the defendant's pulp manufacturing operations at its mill at Fairville, New Brunswick, the first contract dated October 31, 1933, and the second April 26, 1934. Although stating in its introduction that it is made between E. C. Atkinson (New Lepreau Ltd.) of Fredericton and the defendant, the first contract was signed New Lepreau Ltd. by Ewart C. Atkinson, President, and Port Royal Pulp and Paper Co. Ltd. by its manager. By it the seller agreed to sell and deliver to the defendant and the defendant agreed to purchase and accept 1000 to 4000 cords of draw shaved or rossed spruce and fir pulpwood at \$6.50 per cord. The pulpwood was to be cut from lands owned or controlled 30 by the seller and situated at New River, N.B., (these lands were Crown lands on which New Lepreau Ltd. held a licence to cut timber), and was to be shipped from New River, consigned to the defendant at Fairville or such other points as the company might designate, freight to any other point than Fairville to be equalized on Fairville freight rate. It was agreed that the contract should continue as directed by the Defendant until all pulpwood had been shipped to the defendant during the winter 1933-34, "to be completed by June 1, 1934". The contract provided that payment should be made by the defendant to the seller on the 15th 40 day of each month for all pulpwood delivered to and accepted by the company during the previous month, and also that if there were any encumbrances or government dues on the wood the company "shall deduct the same from remittance to the seller."

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No. 33.
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Atkinson was the president of New Lepreau Ltd., in which he owned a controlling interest, holding 247 of the 489 shares of its capital stock, the remaining shares with the exception of five qualifying shares being held by the defendant company. On January 20th Atkinson gave notice under the provisions of The Bank Act of his intention to give security under s. 88 to the plaintiff Bank. This notice was duly registered in the office of the Receiver General at Saint John on January 22nd. Two days later he made application to the plaintiff on the usual printed form for a revolving line of credit to the amount of \$5,000 for his pulpwood business and for advances thereunder on the security of all the rough or draw shaved or sap peeled spruce and fir pulpwood "which are now owned or which may be owned by the undersigned from time to time while any advances made under this credit remained unpaid, and which are now or may hereafter be in the Lawrence flowage on New River Stream in the County of Charlotte," and agreed to give the Bank "from time to time and as often as required security and further security for the said advances by way of assignments under s. 88 of The Bank Act" covering all the said goods, and appointed the Bank his attorney "to give from time to time such security and further security." Simultaneously he executed an agreement with the Bank in the regular printed form also as to its powers in relation to all advances and securities held therefor. 10 20

On March 1, 1934, the manager of the defendant wrote Atkinson that following their conversation and correspondence the defendant would agree "to change the contract of October 31, 1933, which was in the name of the New Lepreau Ltd., to E. C. Atkinson, personal account." On the same date the defendant advised the Bank of this change in the contract, and on March 10th Atkinson executed an assignment to the Bank by way of security under s. 88 of "all moneys, claims, rights and demands whatsoever, which the undersigned may or at any time hereafter have or be entitled to under and by virtue of or in respect of or incidental to" the said contract, the said moneys, claims, rights and demands or any of them or any part or parts thereof being hereinafter referred to as the "debt." It sets forth in para. 2 that Atkinson agrees that 30

"the debt shall be held by the Bank as general and continuing collateral security for the fulfilment of all obligations, present or future, of him to the Bank, whether arising from dealings between the Bank and the undersigned or from any other dealings by which the bank may be or become in any manner whatsoever a creditor of the undersigned, and whether such obligations were or be incurred alone or jointly with another or others, and whether as principal or surety, and whether matured or not, and whether absolute or contingent." 40

Also by para. 14 that it

"is given in addition to and not in substitution for any similar assignment heretofore given to and still held by the Bank and is taken by the Bank as additional security for the fulfilment of the

aforesaid obligations of the undersigned to the Bank and shall not operate as a merger of any simple contract debt or in any way suspend the fulfilment of, or prejudice or affect the rights, remedies and powers of the Bank in respect of the said obligations or any securities held by the Bank for the fulfilment thereof."

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10 On March 12th the manager of the Bank sent the defendant a copy of this assignment, requesting it at the same time in future to send all cheques in payment direct to the Bank and to advise the Bank what payments the defendant had made to date on the contract. On March 16th the defendant
10 Bank that its advances on the contract during the winter amounted to \$484.90 plus an amount of about \$4,000 over advance on a previous contract it had with Atkinson and which, the letter stated, Atkinson had asked the defendant to charge against the new contract. To this letter the Bank made the following reply :

20 " Referring to your letter of the 16th inst., in which you advise that \$484.90 has been paid against the contract dated Oct. 31st, 1933, with Mr. E. C. Atkinson, we note that you have a claim against him for \$4,000 on the previous contract, which has not yet been completed owing to pulp to be shipped. We have advanced him
20 \$3,000 on the contract dated Oct. 31st, under s. 88 security and therefore shall expect our advances in this connection to be repaid before your claim of \$4,000 mentioned."

No pulpwood had been shipped or delivered to the defendant under the October, 1933, contract up to this time.

The Bank made its first advance—\$1,000—on January 24, 1934—the date of Atkinson's application for the \$5,000 credit—and four other advances of \$500 each between that date and March 19th. No further advance was made until May 28th.

30 In the meantime, on April 26th, the defendant entered into the second contract, this time with Atkinson personally. By this contract Atkinson agreed to sell and deliver and the defendant to purchase and accept 10,000 cords of peeled spruce and fir pulpwood at \$7.25 per cord, which was " to be cut from lands owned or controlled by the seller and situated in Charlotte County, N.B." This last contract provided that advances on the pulpwood should be made by the defendant to Atkinson at the rate of \$1.25 per cord when it had been sawed and piled in the forest ready for scaling, an additional dollar per cord when the wood had been hauled to the river ready for driving and the further advance of 50 cents a cord when it had
40 been driven down the river to New River Station, and that the balance of the purchase price should be paid on the 20th day of each month for all pulpwood delivered to and accepted by the defendant during the previous month. It contained the same provision as regards shipment as the contract of Oct. 31st, 1933, and as to deduction for any encumbrances or government dues.

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On May 27th Atkinson executed an assignment to the Bank as security under s. 88 of "all moneys, claims, rights and demands whatsoever, which the undersigned may now or at any time hereafter have or be entitled to under or by virtue of or in respect of or incidental to" this last contract in the same terms as his assignment of his rights under the first contract.

On July 14th the defendant wrote a letter to Atkinson advising him that it agreed to alter the contract to read, "whatever shipment you may have this summer up to a quantity of 3,000 cords" and "to take care of this shipment on the terms in this contract."

On July 16th Atkinson made application to the Bank for a further revolving line of credit for his pulpwood business to the amount of \$10,000 and for advances to him thereunder on the security of all "the rough or draw shaved or sap peeled spruce or fir pulpwood, which are now owned or which may be owned by the undersigned from time to time while any advances made under this contract remain unpaid, and which are now or may hereafter be in the Lawrence flowage on New River Stream in the County of Charlotte"—the same locus as described in his application for the \$5,000 credit on January 24th. This application was in precisely the same form and contained the same undertakings on the part of Atkinson as that of January 24th in respect of the first contract. At the same time Atkinson signed another agreement as to the powers of the Bank in relation to all advances and securities held therefor in the same form as that of January 24th in reference to advances and securities in connection with the first contract. The Bank made its first advance thereunder (\$1,000) on July 17th, on which date the manager sent the defendant Atkinson's assignment of May 27th. In his covering letter he made reference to the defendant's letter to Atkinson of July 14th and the statement contained therein as to its agreement to "take delivery of 3,000 cords this summer" and asked the defendant to advise him the amount the defendant had advanced to Atkinson on pulpwood not delivered. The defendant acknowledged the receipt of this letter on July 19th and advised the Bank that the amount of advances to Atkinson on pulpwood was \$10,975.62, and on July 24th wrote Atkinson that it was "going to make all the effort possible to provide further advances of three thousand for August 6th."

Up to the time when the second contract was entered into (April 26, 1934), the Bank had made advances to Atkinson to the amount of \$3,000 on the security it took from Atkinson in January, 1934, in connection with the first contract of October 31, 1933, the last of these advances—\$500—having been made on March 19th. In addition to the \$1,000 advanced on May 28th four other advances of \$200 each and another \$500 were made in the month of June after Atkinson had entered into his second contract for the 10,000 cords of pulpwood to be cut on the same limits and for which, the record makes it quite clear, the Bank had not been fully repaid, neither when Atkinson executed the assignment to the Bank of his rights under the second contract on May 27th nor when he obtained his additional credit of July 16th. On the making of all these advances the Bank took

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from Atkinson a demand note for the amount of each advance with interest from date until paid, to which was attached a signed promise to give the Bank from time to time, as required, security and further security for such note by way of assignments and further assignments under s. 88 upon the goods mentioned in his application for the line of credit as well as a further assignment of the "goods now owned by the undersigned and now in the possession of Atkinson in the Lawrence flowage in New River Stream in the County of Charlotte or elsewhere." To each of these assignments was attached a schedule setting out the advances made under the line of credit to date. The schedule annexed to the assignment of May 28th shows nine advances amounting to \$4,000 and that of June 30th eleven advances amounting to \$5,000. On July 17th, 1934, after the Bank received Atkinson's application for the \$10,000 credit and the assignment of his rights under the second contract the assignment of the pulpwood at the Lawrence flowage under s. 88 is stated as being given in consideration of an advance of \$6,000 and the attached schedule setting out the advances includes all those made from May 28th to July 17th, totalling \$6,000, while the demand note of \$1,000 given to the Bank on that date (July 17th, 1934) is stated in Atkinson's attached written promise as being given "for an advance to the undersigned under the terms of the application for credit and promise to give bills of lading, warehouse receipts or security under s. 88 made by the undersigned to the Bank and dated January 24th and July 16th day of 1934." The Bank made two further advances of \$1,000 each in July; six advances in August amounting to \$3,500; four in September amounting to \$1,125; three in October amounting to \$300; one in November of \$100; three in December amounting to \$650 and two in January, 1935, amounting to \$239.45.

An examination of the schedules attached to the various individual assignments shows that on August 6th Atkinson's indebtedness to the Bank in respect of its advances to him for his pulpwood operations under both contracts had reached \$8,000 and that, although subsequent advances were made during August, September, October, November, December and down to January 29th, 1935, on further demand notes with individual assignments under s. 88 attached thereto similar to the one referred to as given on July 17th, 1934, the subsequent advances effected no increase in his net indebtedness to the Bank beyond this sum. This, presumably, was due to the fact that the demand notes given thereafter by Atkinson to the Bank, secured as described, were in reality the consequences of adjustments of interest and renewals of previous notes.

While the first contract of October 31, 1933, described the wood Atkinson agreed to sell and deliver to the defendant and the defendant agreed to purchase and accept as "draw shaved or rossed spruce and fir pulpwood" and the contract of April 26, 1934, as "peeled spruce and fir pulpwood," all the individual assignments executed by Atkinson in consideration of the various advances made to him by the Bank from January 24th under his formal applications for credit of January 24th and July 16th, 1934, described the wood as "all the rough or draw

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shaved spruce and fir pulpwood" down to September 11th, 1934. The assignment taken on the latter date and all subsequent assignments down to January 29th, 1935, described the wood covered thereby as "all the rough or draw shaved or sap peeled spruce and fir pulpwood."

Atkinson cut and delivered to the defendant a total of 6,005.43 cords of pulpwood under the two contracts, of which the defendant claimed that 707.17 cords were cut and delivered under the first contract and the balance amounting to 5,298.26 cords were cut and delivered under the second. The purchase price, therefore, of the 707.17 cords at the contract price of \$6.50 per cord would amount to \$4,596.60 and the purchase price of the 5,298.26 at the contract price of \$7.25 per cord to \$38,412.37, making for the 6,005.43 cords \$43,008.97. 10

None of the pulpwood was shipped to the defendant under either contract until November, 1934, Atkinson having made his first shipment on the 12th of that month. The defendant received the entire quantity of 6,005.43 cords between November 1st, 1934 and the last day of July, 1935.

Although the Bank in its action, which it brought in February, 1936, sued in the alternative for the wrongful taking and conversion of the pulpwood and for the purchase price under the two contracts as assignee of Atkinson's rights thereunder, it claims on either head only to the amount of the advances made by it and interest on the demand notes given therefor. 20

The defendant in its statement of defence challenged the validity of all the Bank's assignments from Atkinson under the provisions of s. 88 and denied that it wrongfully converted any of the pulpwood. It denied also that it was aware of Atkinson's assignment of May 26th, 1934 of his rights under the second contract until it received from the Bank a copy thereof on or about July 17, 1934. It claimed that it paid the Bank and Atkinson jointly all moneys thereafter accruing due to the latter under the contract of April 26th and denied that any further moneys were due and payable by it to the plaintiff or to Atkinson under that contract. It also raised the question as to the Bank's having no security on any of the "sap peeled" pulpwood until after September 11th, and claimed that the defendant had an equitable right in the wood as soon as it was cut and marked and that the Bank had actual knowledge or notice of its said equitable right. The defendant also raised the question as to its right to charge against the Bank's security a sum of \$5,330.91, alleged to have been due to it by Atkinson for over-advances on a previous contract it had with Atkinson in the spring of 1933. This apparently was the amount at which, after the termination of the operations of 1934-5, under the two contracts of October 31st, 1933 and April 26th, 1934, it figured its over-advances to Atkinson in relation to the earlier contract of the spring of 1933, and which in its letter to the Bank under date of March 16th, 1934, it placed at \$4,000—the amount that letter stated Atkinson had asked the defendant to charge against the new contract of October 31st, 1933. The Bank in its reply hereinbefore set out refused to assent to this proposition and informed the defendant that it would expect its advances to Atkinson 30 40

on the October 31st contract under s. 88 security to be repaid before the said claim of \$4,000.

The defence also put forward a claim that of the 6,005.43 cords of pulpwood it received from Atkinson, 522.34 cords were cut upon lands of the Fraser Co. Ltd. or the Restigouche Co. Ltd., without the consent or licence of either of those companies and that the stumpage on this 522.34 cords (\$1,044.68), having been paid after its delivery to the defendant, it was entitled to deduct this amount from the amount of the advances made by the Bank to Atkinson.

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10 It also claimed priority over the Bank's security to an amount of \$11,096.56 for moneys paid to New Lepreau, Ltd. and/or Atkinson under its contract of October 31st, 1933, prior to its receipt of notice of Atkinson's assignment to the Bank of his rights thereunder, and moneys subsequently paid to Atkinson and/or the Bank, which it alleged were received by the Bank. It also claimed priority over the Bank's security in respect of the following moneys :

	Moneys paid for wages for the operation	-	-	-	9,631.11
	Moneys paid for supplies for the operation	-	-	-	4,482.31
20	Moneys paid for stumpage, Crown Land Timber License fees, Workmen's Compensation Board Assessment	-	-	-	7,376.56
	Moneys paid for rent, housing men for operation	-	-	-	26.00
	Moneys paid for freight on wood received	-	-	-	5,607.81

The action was tried by Barry, C.J., K.B.D., without a jury, who found a verdict for the plaintiff for the full amount of its claim \$8,366.66, to which he added \$530.87 to represent the accrued interest on the principal sum of \$8,000 from the date of the delivery of the particulars to the date of his judgment.

30 The defendant appealed from this judgment to the Appeal Division of the Supreme Court with the result that the judgment was reduced to \$192.02 with costs of the action, while the Bank was ordered to pay the costs of the appeal. The judgment of the Appeal Court was delivered by Baxter, C.J., and concurred in by Grimmer and Fairweather, JJ. It seems to have been based principally on the conclusion that Atkinson was not an "owner" within the meaning of s. 88 of the Bank Act and that, so far as the Bank's case was based on that section, it could not be supported. Having reached that conclusion, the court proceeded to deal with the case on the basis of the assignment which Atkinson made to the Bank of all his rights under the contract of October 31st, 1933, a copy of which the Bank sent to the defendant on March 12th.

40 Referring to the defendant's letter of March 16th as to the charging of the \$4,000 overadvanced on the previous contract, the learned Chief Justice said :

"I cannot see, in view of the testimony, any justification for applying the original deficit to anything but the contract of 31st October, 1933. It seems clear, however, that the deficit on the earlier contract was agreed to be charged against the contract of 31st October, 1933, before Atkinson's assignment to the Bank."

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This, of course, refers to the agreement between the defendant and Atkinson and not between them and the Bank. As already pointed out, the Bank refused to assent to the proposal. Then the learned Chief Justice dealt with the contract of April 26th, 1934, and pointed out that after July of that year the defendant paid all the operating expenses and the Bank ceased to make any further advances to Atkinson. His Lordship held that the defendant received wood to the value of \$4,596.60 under the contract of October 31st, 1933, and which it could properly set off against the balance of \$5,330.91 due upon the earlier contract, leaving a loss to the defendant of \$734.31 in respect of the earlier contract, which it was not entitled to charge against the contract of April 26th, 1934. He subtracts the \$5,330.91 from the total debit against Atkinson of \$43,551.26 for the overadvance in respect of the earlier contract of the spring of 1933 and for moneys paid and supplies provided by the defendant on account of Atkinson's operations under the contract of April 26th, 1934, leaving \$38,220.35 as the debit chargeable to the latter contract. "Under that contract," he says, "the defendant received 5,298.26 at \$7.25 per cord would give Atkinson a credit of \$38,412.37, or a balance in his favour of \$192.02." 10

If the Appeal Court is right in its conclusion that the Bank's securities under s. 88 of the Bank Act were invalid because Atkinson was not the owner of the pulpwood within the meaning of that section and the case is one which rests entirely, so far as the Bank is concerned, upon the assignments to it, apart from the provisions of s. 88, of Atkinson's rights under the two contracts of October 31st, 1933 and April 26th, 1934, the result at which it arrived might be difficult to impeach. 20

This appeal, however, in my view, turns entirely upon the question as to the validity of the Bank's assignments under s. 88 in respect of the two contracts of October 31st, 1933 and April 26th, 1934, and their relation to each other. As to this, after the fullest and most careful consideration I have been able to give to the case I find myself in complete accord with the reasons by which Barry, C.J. so lucidly and logically supports his judgment. There is no material dispute respecting any one of the facts I have above set forth. As the learned trial judge points out, the question is: In whom during the interim between the first advance of \$1,000 to Atkinson on July 17th, 1934, and the shipments of the pulpwood to the defendant in the following November rested the legal title to the pulpwood? I quote the following passages from his judgment: 30

"Before the banks were authorized to loan money on such operations as those with which we are now dealing, it was the common practice of purchasers under a contract to cut lumber, to make it a term of the written contract with the operator that the property in the lumber cut would be in the contractee from the stump. This would be a protection to the party who was advancing the money to the operator to carry on the operation. But no such stipulation, I venture to think, will be found in the contracts of the present day, in cases at any rate where the operator has to go to 40

a bank for assistance, for the very obvious reason that such stipulation would deprive the operator of the very assistance which he wanted, in the event of neither the operator nor the purchaser of the output being able to finance the operation. No bank would loan to a pulpwood operator, were the product of the operation as soon as cut, to become the property of the purchaser of the output. So, also, I think it would be true to say, that no bank would be willing to advance money to a woods-operator of any kind, to enable him to carry on an operation, unless he could satisfy the bank that he had a contract with some responsible party, to take at a commercially attractive price, the output of the operation. If that be sound doctrine then we are met here with the paradoxical contention of the defendant, which advances the proposition, and one which I think untenable, that because Ewart C. Atkinson had contracted to sell his pulpwood cut to the defendant company and the plaintiff bank was aware of the fact, it could not under the Bank Act take security for advances on the pulpwood, the subject matter of the contract between Atkinson and the defendant company. There is nothing in the Bank Act that I can see to prevent the Bank from doing so.

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“ It is set out in the defendant's factum that : ‘ In the summer of 1934, the defendant's manager, Mr. Lacroix becoming aware that the plaintiff's advances had reached \$8,000, endeavoured to negotiate some compromise between the parties in a settlement of their conflicting claims, and believing that there would be sufficient wood to meet the claims of both parties, endeavoured to reach an arrangement whereby the wood would be conveyed to the defendant by Bill of Sale, and the plaintiff would receive \$2.00 a cord as the wood was delivered at the mill. This offer, however, was refused.’

30

“ Although this offer was refused, it shows at least one thing, that is that the defendant at that time had little faith and did not think itself secure in the title which it now asserts, but was anxious to have the wood conveyed to it by Bill of Sale from the plaintiff so as to put its title to the wood upon a sounder basis and beyond further question.

“ Pulpwood is pulpwood whether draw shaved, rossed or sap peeled. The particular designations, if I understand the matter, only serve to indicate the season of the year in which the wood is cut; nothing more. If cut in the spring while the sap is running freely, and the bark can be easily removed, it is sap peeled wood. If cut in the fall and winter, when the sap has stopped running, the bark is more firmly attached to the tree trunk, and another method of removing it has to be resorted to; it is then called rough draw shaved or rossed, but to say that it is an entirely different commodity from the sap peeled wood is, I think, a fallacy.

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“ The title to all of the spruce and fir pulpwood gotten out by Ewart C. Atkinson during the two seasons and put into the Lawrence flowage on New River Stream in the County of Charlotte, no matter of what particular description it may be called, was in my opinion pledged to the plaintiff bank upon the taking of the securities referred to.

“ There is no evidence that there was any other operator simultaneously cutting pulpwood on the ground operated by Atkinson, or that there was any other operator putting wood into the Lawrence flowage on New River Stream in the County of Charlotte. There was no danger of Atkinson's cut becoming intermingled or mixed up with the cut of any other operator. There was not the slightest danger of failure of identification. Extrinsic evidence, could, as we have seen, have been resorted to if necessary. Therefore it is that I say that in my opinion the description of the pulpwood pledged by Atkinson to the bank, anterior to the 11th of September, 1934, was broad enough in its terms to include “ sap peeled ” wood, although that term was not used in the securities taken.

“ Aside from all that, however, I can see no objection to the bank taking additional security upon the sap peeled pulpwood at the time of the renewals of the \$8,000 note. If the bank holding pledged pulpwood as security for the notes, substitutes for these notes renewals from time to time, without, however, receiving actual payment, the whole series of notes and renewals form links in the chain of liability, which is secured by the pledged pulpwood. Although as a matter of bookkeeping the bank may have treated the first notes, and the subsequent substituted notes, as paid by the application of the proceeds from time to time of the renewals, there is no payment in fact of the notes for which the security was given.

“ The facts of the transactions between Atkinson and the bank are not really in dispute here; it is the legal effect of those transactions that is the question. The bank had before it the contracts between Atkinson and the defendant company, and therefore knew that the company as purchaser of the pulpwood under the contracts, would, when the liens and charges against it were discharged, become its owner. In its negotiations with Atkinson the bank was not acting in the dark or behind closed doors, but on the contrary kept the defendant fully informed of every step in the negotiations. I think one would be justified in saying that the company knew as much of what was going on between the bank and Atkinson as did the bank itself. That I think is so fully demonstrated by the mass of documentary evidence which was introduced at the trial, that I see no reason for further referring to this phase of the case.”

I have no hesitation in holding, for my part, that upon the undisputed facts as disclosed by the evidence, Atkinson must be treated as the owner of the pulpwood when it was cut, within the meaning of s. 88 of the Bank Act, and that his assignments to the plaintiff Bank were valid thereunder. This being so, and the Bank having kept the defendant fully informed of every step in its negotiations with Atkinson, as the learned trial judge has found, I cannot understand upon what ground the defendant's claim can be justified that it has a right to deduct from the advances made by the Bank any moneys which it (the defendant) paid to Atkinson or to anybody else for supplies, wages, stumpage or any other purpose in pursuance of the terms and conditions of its agreement with him.

I would allow the appeal and restore the trial judgment with costs throughout.

(b) DAVIS, J.

The transactions out of which this litigation arose were carried on throughout their various stages by the parties to this litigation and one Atkinson, with whom both parties were dealing, in such a loose and unbusinesslike manner as necessarily to create a state of facts which now involves difficult questions of law. And the evidence at the trial was not in any way developed to lessen the manifest difficulties and confusion.

The respondent, Port Royal Pulp & Paper Company Limited (hereinafter for convenience referred to as the Port Royal Company) carried on, as its name implies, a pulp and paper business in the province of New Brunswick. One of its sources of supply for pulpwood appears to have been the standing timber in what is commonly called the Lawrence flowage in Charlotte County in the said province held under licence to cut from the Crown by another New Brunswick company, New Lepreau Limited. There is so little evidence in the case directed to the narrative and the really material facts (the Crown timber licence is not even produced) that the Court is driven to conjecture to a large extent as to what really occurred. It is plain that prior to the transactions involved in this litigation New Lepreau Limited had acted as a contractor in taking out wood from its limits for the Port Royal Company. Atkinson and the Port Royal Company were the owners of practically all of the shares of New Lepreau Limited. What is a common practice in the woods operations of large pulp and paper companies in this country was no doubt adopted by the Port Royal Company, that is, to engage a contractor to cut, haul and deliver pulpwood to the mill rather than do the work by servants or employees of the company because of practical business considerations in dealing with the woods operations in that way. In this case, the Port Royal Company and Atkinson (although we are told nothing about it) may have incorporated and organized New Lepreau Limited, and very likely did, for that very purpose. All we know is that Atkinson held 247 shares and the Port Royal Company 241 shares out of a total issued capital stock of 490 shares. Why the Crown timber licence to cut was not taken in the name of the Port Royal Company rather than in the name of New Lepreau Limited is not

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explained. The common practice in this country undoubtedly is for the large pulp and paper mills to acquire their own timber limits from the Crown upon which to cut timber for the supply of wood to their mills and then to let out to different contractors the cutting and delivery of the wood to the mills. All that is plain in the evidence is that the timber involved in this case was cut upon Crown land in respect of which New Lepreau Limited held a licence to cut.

For reasons best understood by themselves, not attempted to be explained in any way in this litigation, the Port Royal Company made two contracts with Atkinson personally whereby Atkinson undertook and agreed 10
to cut on the New Lepreau limits and deliver to the Port Royal Company at its mills, and the appellant bank undertook to assist Atkinson in financing his woods operations. The singular fact is that although all the parties were perfectly familiar with the position of New Lepreau Limited, no one of them appears to have paid the slightest attention to the rights of that company. So far as the evidence shows, New Lepreau Limited for the purposes of these two contracts was just obliterated from the picture. The two contracts for the delivery of the pulpwood were dated October 31st, 1933 and April 26th, 1934 respectively. The first contract covered 1,000
to 4,000 cords of pulpwood and the second contract covered 10,000 cords. 20
The first of these contracts had in fact been made between the Port Royal Company and New Lepreau Limited, Atkinson signing for New Lepreau Limited as its President, but sometime about March 1st, 1934 Atkinson and the Port Royal Company agreed to strike out the name New Lepreau Limited on this contract and substitute therefor Atkinson's name as the seller. The first of the several promissory notes sued on in this action, secured by sec. 88 security, was taken by the bank subsequent to this change in the first contract. The second contract was taken directly in the name of Atkinson as seller. The Port Royal Company clearly under- 30
stood the position of New Lepreau Limited, whatever it was, because the Port Royal Company was with Atkinson in substance a joint owner of the company. The appellant bank knew of New Lepreau Limited because it had a pledge of Atkinson's shares in that Company and it had the Crown timber licence of that company in its possession. But New Lepreau Limited, so far as the evidence discloses, was disregarded in these two transactions. It is shown in the evidence that at the time of the first contract Atkinson was personally indebted to the appellant bank in a large sum of money and that on an earlier contract (of the spring of 1933) which the Port Royal Company had with New Lepreau Limited the Port
Royal Company ultimately sustained a loss of approximately \$5,000. The 40
conclusion appears to me to be inescapable that both the appellant bank and the Port Royal Company desired to see Atkinson get a chance to make some money for himself by taking these pulpwood contracts in his own name and at his own risk, in the hope that he might recoup both the bank and the Port Royal Company, to some extent at least, for their losses. Atkinson undoubtedly agreed with the Port Royal Company that that company might charge up against him the amount of its loss on the New

Lepreau Limited contract that had been made in the spring of 1933, although at the time of entering into the contracts the actual amount of the loss, or of any loss at all, has not been ascertained.

In due course Atkinson cut and delivered to the Port Royal Company large quantities of pulpwood under the two contracts in question. The Government dues for cutting the timber from Crown lands were ultimately paid to the Government and there is no suggestion that the Government ever raised any question of trespass. New Lepreau Limited is not a party to these proceedings and does not appear to have raised at any time any question as to Atkinson's right to go in and cut on the areas covered by its Crown timber licence and a fair inference on the evidence is that both the Government and New Lepreau Limited knew and were quite satisfied that Atkinson should personally take the contracts in question here. It made no difference to the Government so long as it got its Crown dues paid, which it did, and it is only reasonable to assume that New Lepreau Limited (owned and controlled as it was by Atkinson and the Port Royal Company) was content that what was done should be done. We do not know what consideration moved New Lepreau Limited, but there is nothing to indicate any protest or unwillingness on its part that Atkinson should personally cut on its limits. New Lepreau Limited did not own the land or the standing timber; it had a mere right or licence to cut and remove on payment of Crown dues.

It is perfectly plain that Atkinson had no money and was known to have no money to finance the woods operations covered by his two contracts. While Atkinson was not strictly an employee or servant of the Port Royal Company in relation to his woods operations under the two contracts, he was virtually in the position of an agent or employee. The arrangement no doubt was a matter of business convenience; Atkinson in this way could borrow money at the bank on the wood by giving security under sec. 88 of The Bank Act, and, over and beyond whatever borrowings he could make from the bank to finance the operations in ease of the Company, the Company would itself advance moneys to Atkinson during the course of the woods operations to enable him to carry out his contracts. And that is what actually happened. The bank advanced substantial sums; the Company advanced substantial sums; and Atkinson superintended the woods operations and delivered the wood to the Company. Both the bank and the Company were perfectly familiar from the beginning to the end with the fact (though perhaps not with the exact details) of the borrowings and advances from each of them to enable Atkinson to carry out his contracts.

On the completion of the contracts, it became obvious that Atkinson had not made any profit. When the amount of wood which he had actually delivered had been calculated at the contract price per cord, the total advances of the bank and of the Company exceeded the total contract price. The bank was out of pocket \$8,366.66 and the Company claimed to be out of pocket \$542.29, although in arriving at the latter sum the Company had charged up against Atkinson on the two contracts the amount of its loss on

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the New Lepreau Limited contract that had been made in the spring of 1933, the actual loss from which contract had in the meantime become ascertained at \$5,330.91.

The bank demanded from the Port Royal Company that it pay the balance that remained outstanding upon Atkinson's borrowings in respect of the two contracts, which had, to the full knowledge of the Company, been secured not only by sec. 88 security but by assignments of the purchase moneys under the two contracts. There does not appear to have been any effort made by the bank to collect from Atkinson; no doubt because his position must have been worse at the conclusion of the two contracts than it was when he undertook them. The Port Royal Company, while not denying in any way that it got the pulpwood, took two positions against the bank. First, it said that the bank security under sec. 88 was invalid because Atkinson was not the owner of the wood that had been cut—it said that it was the timber of New Lepreau Limited and not of Atkinson—and that the bank was therefore not entitled to take sec. 88 security from him. Second, that it was entitled as between itself and the bank to charge against Atkinson's contracts the \$5,330.91 loss that it had suffered in the contract with New Lepreau Limited of the spring of 1933 and that when this sum was charged up against Atkinson on the contracts, there was a debit against Atkinson of \$542.29. A subsidiary point taken on behalf of the Port Royal Company, but a point without any substance, was that the difference between rossed or rough draw shaved pulpwood and sap peeled pulpwood materially affected the issues in the action.

The learned trial judge, the Chief Justice of the King's Bench Division of the Supreme Court of New Brunswick, Chief Justice Barry, gave judgment in favour of the appellant bank for its full claim with interest (\$8,897.53) and costs. An appeal was taken by the Company from that judgment to the Appeal Division of the Supreme Court of New Brunswick which allowed the appeal and reduced the amount of the judgment in favour of the bank to \$192.02. The members of the Appeal Court took the view that Atkinson was never an "owner" within the meaning of sec. 88 of The Bank Act and that the bank was therefore not entitled to take from him sec. 88 security. They held that

"So far as the evidence discloses, the wood was the property of the New Lepreau Limited."

But although the Crown timber licence was not produced at the trial, it was perfectly plain that it was Crown land and that the standing timber was Crown property. All that the licensee, New Lepreau Limited, had was a right to enter upon and to cut and remove the standing timber; and no doubt, as stated by one of the counsel on the hearing of the appeal before us, the licence contained the usual provision that the property in the wood would not pass from the Crown to the licensee until the Crown dues were paid. However, in the conclusion of the Appeal Court that Atkinson was not an "owner" within the meaning of sec. 88, that Court held that the

bank's security under sec. 88 was invalid. The Appeal Court then considered the rights of the bank by virtue of its assignments from Atkinson of the purchase moneys under the two contracts. That court held that the Port Royal Company was entitled, as between itself and the bank, to charge against Atkinson the deficit (\$5,330.91) on the New Lepreau contract of the spring of 1933 upon the ground that Atkinson had agreed to the charging of this deficit against him before the date that the bank had taken the assignment from Atkinson of the first of the contracts involved in this action (that is, the contract of October 31st, 1933). But the Appeal Court

10 held that the agreement to charge the deficit against Atkinson only applied to the first of the two contracts (that of October 31st, 1933) and not to the second of the contracts (that of April 26th, 1934) and therefore arrived at the conclusion that so treating the deficit any credit to Atkinson on the first contract had been wiped out; but disregarding the deficit, or any part of it, on the second contract Atkinson had a credit balance of \$192.02 on the second contract for which amount, and for which amount alone, the Appeal Court held the bank was entitled to recover from the Port Royal Company on the basis of the assignment to the bank by Atkinson of the second contract.

20 On the argument before this Court, counsel for both parties very ably discussed at considerable length the history and the effect of sec. 88 security but I do not find it necessary for the purpose of this appeal to become involved in the consideration of the somewhat intricate points of law argued on this branch of the case. It seems quite plain to me that Atkinson had at all times a qualified ownership or interest in the wood, as soon as it was cut from the standing timber, sufficient to entitle the bank to take from him sec. 88 security. I think the attack upon the bank's security fails.

30 That being so, the question was then argued that the liability of the Port Royal Company, if any, to the bank rests in a claim for damages for wrongful conversion. An attempt was made by the company to fix the damages (in the event that its attack upon sec. 88 security failed) by ascertaining the exact value of the pulpwood at the time and in the condition the Company took possession of it. In dealing with deliveries from time to time of thousands of cords of pulpwood very practical difficulties arise in any attempt to fix value at any particular stage. The Company took possession of the wood with full knowledge of the bank's position and of its rights, and destroyed the identity of the wood in using it in its mill operations. It is the knowledge of the Company that is the determining factor

40 in this case. Atkinson's evidence is that all the moneys he got from the bank were actually used in the woods operations and not diverted to any other purpose. The evidence does not satisfy me that the actual value of the wood when the Company took possession of it was less than the amount of the bank's advances against it and I think that under all the circumstances the Company is bound to pay the full amount of the Bank's advances.

For these reasons I would allow the appeal and restore the judgment at the trial, with costs throughout.

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The first point to be determined in this appeal is whether the security which banks may take under subsections one and three of section 88 of the Bank Act must be given by the owner of the products, goods, wares and merchandise therein referred to. Prior to 1890 when Parliament inserted in the Bank Act the forerunner of section 88, it was possible for a bank to lend money upon a warehouse receipt issued by the possessor of the goods to a third party (the owner) or upon a warehouse receipt issued by the owner who originally was one of a select class of manufacturers but which class had been considerably widened by 1890. Chapter 31 of the statutes of that year retained the privilege, so far as warehouse receipts issued by the possessor, not being the owner, were concerned but it abolished the right of the bank to loan upon warehouse receipt issued by the possessor, who was also the owner, and substituted what is now known as Schedule C security. If subsection 3 of section 74 of the Act of 1890 had provided only that the bank should acquire by virtue of such security the same rights as if it had acquired them by virtue of a warehouse receipt, it might have been contended that, the security being given by an owner, no rights could be acquired by the bank, and it was to overcome that difficulty that it was provided that the security might be given by the owner. 10

It appears obvious to me that if security under section 88 is not given by the owner, it is of no avail as the bank cannot acquire title from a person who has none. The notice of intention to give security must be given by the person to whom the loan is to be made. That, I think, is apparent from subsection 17 of section 88, which reads as follows:— 20

“Any person intending to give a bank security under the authority of this section must give notice of such intention before any loan is made by the bank to such person and the security taken, by signing a document hereinafter called a ‘notice of intention,’ which may be in the form set out in Schedule G to this Act or to the like effect.” 30

I have no hesitation, therefore, in coming to the conclusion that the security must be given by the owner.

While the licenses to cut timber had been issued in the name of New Lepreau Limited and the first contract for the sale of logs to the respondent was made by that company, and the contract of October, 1933, was at first made between the same parties, the respondent agreed to the alteration whereby Atkinson was substituted as vendor under the last mentioned contract. New Lepreau Limited is not a party to these proceedings and while there is no evidence that it agreed to the alteration, it must be borne in mind that all the shares in that company, except a few qualifying ones, are held by the respondent and Atkinson and as a matter of fact the latter's certificates were left with the appellant. The distinction between a company and its shareholders is well known but no claim has been made by New Lepreau Limited that it is the owner of the logs. Furthermore, it is only by virtue of the two contracts filed as exhibits that the respondent 40

claims any interest in the logs and I think the proper inference from the evidence is that Atkinson was the owner and that he gave security to the Bank under section 88.

10 It was argued that the securities were not validly given or taken but I find no substance in this contention as, with reference to the last twenty-one advances made by the Bank to Atkinson (which are the only ones in question), the evidence is clear that these were made contemporaneously with the taking of the securities, and in any event the second notice by Atkinson of intention to give security had been given after the amendment to the statute in 1934 and the advances in question are all later than the date of the coming into force of that enactment.

It was also contended that in any event, of the securities taken only the twelve last were valid. This argument is based upon the fact that the nine prior securities described the products of the forest owned by Atkinson and in his possession as being "all the rough or draw shaved spruce and fir pulp wood and as being in the Lawrence flowage on New River Stream in the County of Charlotte," while in the latter securities the words "or sap peeled" were inserted after the words "draw shaved." I agree, however, with what the trial judge said with respect to this:—

20 "Pulpwood is pulpwood whether draw shaved, rossed or sap peeled. The particular designations, if I understand the matter, only serve to indicate the season of the year in which the wood is cut; nothing more. If cut in the spring while the sap is running freely, and the bark can be easily removed, it is sap peeled wood. If cut in the fall and winter, when the sap has stopped running, the bark is more firmly attached to the tree trunk, and another method of removing it has to be resorted to; it is then called rough draw shaved or rossed, but to say that it is an entirely different commodity from the sap peeled wood is, I think, a fallacy."

30 I am of the opinion that the description in the securities objected to is sufficient.

40 Upon the basis of the respondent's own figures, as contained in its factum, the total advances made by the appellant, after deducting all sums received by it from the respondent, left a balance of approximately the principal sum claimed by the appellant in this action, \$8,000. As security for the repayment of this sum together with interest thereon, the Bank, under subsection 7 of section 88, had acquired the same rights in respect of the logs as if it had acquired the same by virtue of a warehouse receipt; that is, in the circumstances all the right and title of the owner, Atkinson (section 86). Notwithstanding that the respondent had notice of the Bank's rights, it converted the logs to its own use and is therefore liable in damages for such conversion; *i.e.*, the value of the logs at the time and place of conversion.

No evidence was directed to the determination of the proper amount of damages on that footing. The respondent, however, submitted a statement showing the value of the logs at the place they were to be

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delivered by Atkinson to the respondent under his contracts with it. The appellant has accepted this value as correct although it was arrived at only after certain amounts had been expended by the respondent subsequent to the conversion. The items deducted by the respondent from the value in its statement are as follows:—

1. Moneys paid to E. C. Atkinson before assignment of the Draw Shaved contract and moneys subsequently paid to E. C. Atkinson and or the Royal Bank which was received by the bank.	11,096.56	
2. Wages paid by Port Royal	9,631.11	10
3. Supplies	4,482.31	
4. Stumpage, Workmen's comp. Taxes etc.	7,376.56	
5. Rent Housing men	26.00	
6. Freight on Wood received under the contracts	5,607.81	
	<hr/>	
	38,220.35	

No question arises as to the first item and I understood counsel for the appellant to admit the propriety of allowing the fourth item. In no case did it challenge the accuracy of the amounts or the fact that they had been paid for the purposes mentioned. I have no doubt, however, that Item 2, being the amount paid by the respondent as wages in the manufacture of the logs to a point where they acquired the value accepted by the appellant; Item 3, being the amount paid for supplies in connection with the same work; Item 5, being rent for housing the workmen, and Item 6, being the freight on the wood to the point of delivery, should all be allowed. In case I misunderstood counsel's admission, I should add that in my view Item 4 is in the same position.

This is not a claim for detinue such as arose in *Glenwood v. Phillips* (1904) A.C. 405, but the general rule applicable is stated in *Reid v. Fairbanks* (1853) 13 C.B. 692, as epitomized in the Second Edition of Halsbury, Vol. 10, page 138, paragraph 138:—

“The value of a chattel which was converted whilst in an unfinished state is estimated by ascertaining what would have been its value in a complete state at the place where it was converted and deducting the amount which it would have cost to complete it.”

An allowance for freight under the circumstances has been justified ever since the decision in *Morgan v. Powell* (1842) 3 Q.B. 278, which was approved in *Burmah Trading Corporation v. Mirza Mahomed* (1878) L.R.I.A. 130 at 134.

In addition to the items to which I have referred, the respondent seeks to deduct from the value of the logs the balance of an old claim under the first contract between it and the New Lepreau Limited and which it claims Atkinson authorized it to set off against the amount that would ultimately be due him by the respondent under the later contracts of 1934 and 1935. Even with Atkinson's consent it can have no right to deduct this sum from the amount of damages that it should properly pay.

Respondent's statement shows that, excluding this sum, it paid out \$38,220.35 and that the increased value of the logs was \$43,008.97. The balance of \$4,788.62 represents the value at the time and place of the conversion. As assignee of Atkinson's rights under the two contracts, the appellant can claim no greater amount and I would, therefore, allow the appeal and direct that judgment be entered for the sum together with interest thereon at five per cent. per annum from July 31st, 1935, being the date agreed upon in the pleadings of each party by which the respondent had received the last of the logs. The respondent should pay the costs of the action and of the appeal to this Court but they are entitled to their costs of the appeal to the Appeal Division.

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(d) HUDSON, J.

(d) Hudson J.

I agree that this appeal should be allowed and judgment at the trial restored with costs throughout for the reasons given by my brothers Crocket and Davis.

Ottawa, Ont., January 13th, 1939. I hereby certify that the foregoing is a true copy of the reasons for judgment given by the Honourable Judges of the Supreme Court of Canada in this case.

(Sgd.) S. EDWARD BALTON,
Law Reporter.

No. 35.

Order staying proceedings pending Appeal to His Majesty in Council.

IN THE SUPREME COURT OF CANADA.

ON AN APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

Before : THE HONOURABLE THE CHIEF JUSTICE OF CANADA
(in Chambers).

Friday the 13th day of January, A.D. 1939.

Between

ROYAL BANK OF CANADA - - - - - Appellant

and

PORT ROYAL PULP AND PAPER COMPANY LIMITED - - Respondent.

1. UPON the application of Counsel for the Respondent in presence of Counsel for the Appellant and upon hearing read the affidavit of Antoine J. Lacroix filed herein and what was alleged by Counsel aforesaid.

2. IT IS ORDERED that upon the above named Respondent giving within 30 days from this date security in the sum of \$10,000.00 to indemnify the appellant for the Judgment and costs herein to the satisfaction of the

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Registrar of this Court, that all proceedings herein be stayed until the end of the present sittings of the Judicial Committee of the Privy Council, or until the judgment of the said Judicial Committee is issued except the settlement of the minutes of Judgment and taxation of costs, to afford the Respondent an opportunity of launching an application to the said Judicial Committee for leave to appeal, provided, however, that the said application be launched by the said Respondent during the present sittings of the said Judicial Committee.

3. AND IT IS FURTHER ORDERED that the Respondent have leave to apply to this Court for a further stay of proceedings in the event of the Judgment of the said Judicial Committee not being pronounced before the end of the present sittings of the said Judicial Committee. 10

4. AND IT IS FURTHER ORDERED that the costs of and incidental to this application hereby fixed at the sum of \$30.00 be paid forthwith to the Respondent by the Appellant.

L. P. DUFF C.J.

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His Majesty
in Council,
25th May,
1939.

No. 36.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT OF SAINT JAMES

The 25th day of May, 1939

20

PRESENT

HIS ROYAL HIGHNESS THE DUKE OF GLOUCESTER
HIS ROYAL HIGHNESS THE DUKE OF KENT
HER ROYAL HIGHNESS THE PRINCESS ROYAL
HER ROYAL HIGHNESS PRINCESS ARTHUR OF CONNAUGHT

LORD PRESIDENT

LORD MACMILLAN

LORD CHATFIELD

MR. CHANCELLOR OF THE DUCHY OF LANCASTER

WHEREAS His Majesty, in pursuance of the Regency Act, 1937, was pleased, by Letters Patent dated the fifth day of May, 1939, to delegate and grant unto Her Majesty The Queen, His Royal Highness The Duke of Gloucester, K.G., K.T., K.P., G.C.M.G., G.C.V.O., His Royal Highness The Duke of Kent, K.G., K.T., G.C.M.G., G.C.V.O., Her Royal Highness The Princess Royal, C.I., G.C.V.O., G.B.E., and Her Royal Highness Princess Arthur of Connaught, or any two of them, as Counsellors of State, full power and authority during the period of His Majesty's absence from the United Kingdom to summon and hold on His Majesty's behalf His Privy Council and to signify thereat His Majesty's approval of any matter or thing to which His Majesty's approval in Council is required: 40

AND WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of May 1939 in the words following, viz. :—

*In the
Privy
Council.*

10 “ WHEREAS by virtue of His late Majesty King Edward the Seventh’s Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Port Royal Pulp & Paper Company Limited in the matter of an Appeal from the Supreme Court of Canada between the Petitioners Appel-
lants and the Royal Bank of Canada Respondents setting forth
(amongst other matters) that this is a Petition for special leave to
15 appeal from a Judgment of the Supreme Court dated the 19th December 1938 allowing an Appeal by the Respondents from a Judgment of the Supreme Court of New Brunswick Appeal Division and restoring a Judgment of the Supreme Court of New Brunswick King’s Bench Division whereby judgment was given in favour of the Respondents for 8,897.53 dollars and costs : that the Judgment of the Supreme Court of New Brunswick Appeal Division was that the sum of 8,897.53 dollars should be reduced to 192.02 dollars and that the Appellants should have the costs of the Appeal to
20 that Court : that there is not thought to be any serious dispute about the facts as thereafter set out : and reciting such facts up to the commencement of these proceedings : that in February 1936 this Action was commenced by the Respondents claiming that the Appellants had converted to their own use wood the subject of contracts of 31st October 1933 and 16th April 1934 to the damage of the Respondents as holders of security thereon under the provision of Section 88 of The Bank Act and in the alternative that the Appellants had not paid to the Respondents the purchase price of the wood in accordance with the assignments of such purchase price to the Respondents : And humbly praying Your Majesty in
30 Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Supreme Court of the 19th December 1938 or for such further or other Order as to Your Majesty in Council may appear fit :

No. 36.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
25th May,
1939—con-
tinued.

40 “ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the said 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 Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 19th day of December 1938 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

“ AND THEIR LORDSHIPS do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be

*In the
Privy
Council.*

No. 36.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
25th May,
1939—*con-
tinued.*

accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

Now, THEREFORE, His Royal Highness The Duke of Gloucester, His Royal Highness The Duke of Kent, Her Royal Highness The Princess Royal and Her Royal Highness Princess Arthur of Connaught, being authorised thereto by the said Letters Patent, have taken the said Report into consideration and do hereby, by and with the advice of His Majesty's Privy Council, on His Majesty's behalf approve the same and order as it is hereby ordered that the same be punctually observed, obeyed and 10 carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

RUPERT B. HOWORTH.

EXHIBITS.

1.—Contract between E. C. Atkinson and Port Royal Pulp & Paper Co. Ltd.

No. 1
Nov 17/36
J. H. B.

**PORT ROYAL PULP & PAPER CO., LTD.
PEELED PULPWOOD CONTRACT
MILL DELIVERY.**

Exhibits.
—
Plaintiff's
Document.
—
1.
Contract
between
E. C.
Atkinson
and Port
Royal Pulp
& Paper
Co. Ltd.,
31st Octo-
ber, 1933.

10 THIS AGREEMENT MADE THIS 31st day of October A.D. 1933 between E. C. Atkinson (New Lepreau Ltd.) of Fredericton in the County of York and Province of New Brunswick hereinafter called "the Seller" of the First Part, and the Port Royal Pulp and Paper Co., Limited, hereinafter called "the Company" of the Second Part.

WITNESSETH THAT the Seller for and in consideration of the sum of One Dollar (\$1.00) to him in hand this day paid by the Company, the receipt of which is hereby acknowledged, doth hereby agree to sell and deliver to the Company, and the Company agrees to purchase and accept:— 1000 to 4000 Cords of Draw shaved or rossed Spruce & Fir Pulpwood.

20 The Pulpwood hereby contracted for shall be cut from fresh, sound, live trees, and shall contain not less than fifty (50) per cent. Spruce. The said Pulpwood hereby contracted for shall not contain any fire killed or burnt wood and must be reasonably straight and free from knots, which must be trimmed flush with the body of the stock, and all outer and inner bark must be thoroughly removed from the stock. It must be free from all mildew, stain, worm holes, fungus, dozy spots, sap rot, heart rot, red heart, or any other imperfections of any description. No pine, cat, skunk, pasture or tamarack spruce will be accepted. If any car or other shipment of pulpwood delivered under this Contract is of such inferior quality and not in accordance with the specifications of this Contract, so as to render it, in the opinion of the Company, unfit for use in the manufacture of pulp for paper at the mill of the Company to which it is consigned, or such other mill as the said company may designate, such car or other shipment as aforesaid may be rejected by the Company and all freight charges, demurrage and expenses in connection with the said shipment shall be borne by the Seller and shall be charged by the Company against the Seller when final settlement is made.

The Pulpwood is to be cut from lands owned or controlled by the Seller and situated: New River, N. B.

40 All pulpwood to be delivered under this Contract must be four (4) feet in length and four (4) inches and upwards in diameter at the small end, of which not over 10 per cent. shall be four (4) inches. All Pulpwood delivered under this Contract must be sawn square at each end. No axe-made Pulpwood will be accepted.

All Pulpwood under this contract is to be shipped from New River consigned to Port Royal Pulp & Paper Company, Limited, Fairville, N. B.,

Quantity.
Quality.

Marking of
Pulpwood.
Location.
Specifications.

Shipments.

Exhibits.
 ———
 Plaintiff's
 Document.
 ———

1.
 Contract
 between
 E. C.
 Atkinson
 and Port
 Royal Pulp
 & Paper
 Co. Ltd.,
 31st Octo-
 ber, 1933—
continued.
 Scale.

or such other points as the Company may designate. Freight to any other point than Fairville to be equalized on Fairville freight rate. On the date of shipment of each car of Pulpwood under this Contract, the Seller shall forward to the Company the original bill of lading and a notice stating the name, number and contents (both kind and quantity) of each car. It is distinctly understood and agreed that all Pulpwood delivered under this Contract is to be loaded by the Seller compactly, in full carload lots, to the satisfaction of the Company. Shipments under this Contract shall begin and shall continue as directed by the Company until all pulpwood covered by this Contract has been shipped to the Company, during Winter 1933-34 to be completed by June 1, 1934. 10

All Pulpwood delivered under this Contract shall be measured, inspected and classified on delivery at the Company's mill at Fairville or at such other mill as the said Pulpwood may be delivered to, by some competent person appointed by the Company, whose measure, inspection and classification shall be final and binding upon the parties hereto. All Pulpwood under this contract shall be measured and scaled on the basis of 128 cubic feet per cord. It is distinctly understood and agreed that no scale shall be allowed the Seller for any Pulpwood under this Contract measuring less than four (4) inches in diameter at the small end, and not in accordance with any and all other specifications of this Contract. 20

Payments.

Advances agreed by company to New Lepreau Ltd. as follows: \$1.25 per cord when cut rough, \$2.00 per cord when draw shaved or rossed in the woods, and \$1.00 per cord when piled on bank of river ready to be driven shipment to be complete by June 1, 1934.

The Company agrees to pay to the Seller Six-Fifty (6.50) Dollars per cord for Pulpwood containing fifty (50) per cent. of Spruce or over, delivered under this contract, and in the event of the said Pulpwood containing balsam or fir in excess of fifty (50) per cent. (if accepted by the Company) the Company shall only pay for such Pulpwood at the rate of Dollars per cord. Above prices are F. O. B. Fairville, N. B.

Payments for this wood shall be made by the Company to the Seller on the fifteenth day of each month for all Pulpwood delivered to and accepted by the Company during the previous month. Also, if there are any incumbrances or Government dues on said wood, company shall deduct same from remittance to the Seller. 30

Signed and delivered by the Parties hereto.

(Sgd) New Lepreau Limited.

(Sgd) Florence J. Atkinson
 Witness to Signature of
 Seller.

Ewart C. Atkinson, President
 Seller.

Approved this 10 day of November
 A.D. 1933.

(Sgd) Elsie E. McColgan
 Witness to Signature of
 Company.

PORT ROYAL PULP & PAPER CO. LTD., 40
 By (Sgd) Antoine J. Lacroix.

2.—Notice of Intention to give Security under Section 88 of the Bank Act.

Exhibits.

No. 2 911
J. H. B.
Nov. 17/36

Plaintiff's Document.

2.

Notice of Intention to give Security under Section 88 of the Bank Act, 20th January, 1934.

TO WHOM IT MAY CONCERN :

E. C. Atkinson

Fredericton, N. B.

(Name of Person Firm or Company)

(Post Office Address)

hereby gives notice that it is my intention to give security under the authority of Section 88 of The Bank Act, to The Royal Bank of Canada.

10 Dated at Fredericton, N. B. the 20th day of January, 1934.

(Sgd) Ewart C. Atkinson.

Date of Registration of the document of which the reverse side is a copy.

10 A.M.

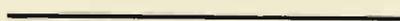
January 22, 1934.

(Hour)

(Date)

Number 911.

(Sgd) Thos. Knight
Assistant Receiver General
SAINT JOHN, N. B.
(Place)



Exhibits.
Plaintiff's
Document.

3.—Application for credit and promise to give Bills of Lading, warehouse receipts or security under Section 88.

No. 3
J H B
Nov. 17/36

3.
Application for credit and promise to give Bills of Lading, warehouse receipts or security under section 88, 24th January, 1934.

Form 302. Rev. 8-19.

Application for credit and promise to give bills of lading, warehouse receipts or security under section 88.

Fredericton, N. B. Jan'y 24 1934

To the Manager

THE ROYAL BANK OF CANADA,
Fredericton, N. B.

10

DEAR SIR :

The Bank is hereby requested by the undersigned to grant and continue during the current season (which shall be considered to terminate Twelve months after the date hereof) a revolving line of credit for my/our pulpwood business of \$5,000.00....., and to make advances to the undersigned thereunder on the security of all the Rough or draw shaved or sap peeled spruce and fir pulpwood

20

(hereinafter referred to as " goods ") which are now owned or which may be owned by the undersigned from time to time while any advances made under this credit remain unpaid, and which are now or may hereafter be in the Lawrence flowage on New River stream in the County of Charlottesituated or elsewhere.....

And the undersigned promise and agree to give the said Bank from time to time and as often as required security and further security for the said advances by way of assignments under Section 88 of The Bank Act, covering all the said goods or part thereof, and/or bills of lading and/or warehouse receipts for goods of the above kinds or some of them; and you or the Acting Manager for the time being are hereby appointed the Attorney of the undersigned, to give from time to time to the Bank the security and further security above mentioned and to sign the same on behalf of the undersigned.

30

The Bank may from time to time take from the undersigned bills and/or notes representing the advances in whole or part. Such bills and/or notes shall not extinguish or pay the indebtedness created by such advances but shall represent the same only.

This undertaking is to apply to all advances made to the undersigned under the said line of credit, the intention being that all said goods which the undersigned may from time to time have in said place or places shall

40

from time to time be assigned and further assigned as often as required to the Bank under Section 88 as security for all advances, and that all bills of lading or warehouse receipts covering goods of the above kinds which the undersigned may receive from time to time shall be given to the Bank as such security, and that no security taken shall be merged in any subsequent security or be taken to be substituted for any former security.

Exhibits.
—
Plaintiff's
Document.
3.
—continued.

Yours truly,

(Sgd) Ewart C. Atkinson (L.S.)

(SEAL)

10 4.—Agreement as to powers of the Royal Bank of Canada in relation to all advances and securities held therefor.

Form 301.
Rev. 11-19.

No. 4
J. H. B.
Nov. 17/36

4.
Agreement
as to powers
of the Royal
Bank of
Canada
in relation
to all
advances
and receipts
held there-
for, 24th
January,
1934.

Agreement as to Powers of The Royal Bank of Canada in relation to all Advances and Securities held therefor.

To The Royal Bank of Canada :—

In consideration of any advance or advances which may be made by THE ROYAL BANK OF CANADA (hereinafter called the "Bank") including any advance or advances upon the security of warehouse receipts or bills of lading or upon any promise to give security or upon security under Section 88 of *The Bank Act*, the undersigned (hereinafter called the "Customer") consents, promises and agrees with the Bank as follows :—

1. All warehouse receipts, bills of lading or securities under *The Bank Act* (hereinafter referred to as "the securities") covering all goods, wares and merchandise as defined in *The Bank Act*, live stock and dead stock and grain as defined in *The Bank Act*, and crops (hereinafter referred to as the "goods"), together with all other securities now or hereafter acquired by the Bank from the Customer (including any securities which the Bank may allow to be substituted from time to time therefor or for any part thereof), and all proceeds thereof, together with all products of the goods and the proceeds of all sales of the goods shall at the option of the Bank be held as continuing collateral security for the payment of all advances so made and of all liabilities of the customer to Bank now or hereafter incurred and due or to become due and interest, including all costs, charges and expenses incurred in connection therewith or with the security taken therefor and interest thereon (all of which are hereinafter referred to as the "liabilities").

2. Any surplus resulting from the realization of such collateral security remaining after payment of the liabilities may be applied by the Bank in payment of or held by it as continuing collateral security for any and every other liability of the Customer to the Bank, due or to become due, heretofore, now

Exhibits.
 Plaintiff's
 Document.

4.
 Agreement
 as to powers
 of the Royal
 Bank of
 Canada in
 relation
 to all
 advances
 and receipts
 held there-
 for, 24th
 January,
 1934—con-
 tinued.

or hereafter incurred, and interest and costs, charges and expenses in connection therewith or with the security thereof (all of which are hereinafter referred to as "additional liabilities").

3. The interest above provided for shall be paid at the rate of 7 per cent. per annum so long as anything remains due in respect of the liabilities and additional liabilities unless otherwise provided or agreed on and the liabilities and additional liabilities including such interest the Customer expressly agrees to pay.

4. The Customer shall upon demand from time to time deliver to the Bank additional securities or make payments on account to its satisfaction and on default or on default in respect of any of the terms of this agreement, all the said liabilities and additional liabilities shall, at the option of the bank be payable forthwith, and without any demand, and the Bank is hereby authorized to sell all or any of the securities of the Customer and the goods and any part thereof and all products of the goods or any part thereof, if, and as, and when, and where the Bank, in its absolute discretion shall think proper, without notice to the Customer or any other person, without advertisement and without selling at public auction and to apply the proceeds in reduction of the liabilities and additional liabilities as the Bank may, from time to time see fit without prejudice to its claim for any deficiency and free from any right of redemption on the part of the Customer which is hereby waived and released, the Customer expressly waiving all and every formality prescribed by custom or by law in relation to any such sale. 10

5. If the Customer shall sell the goods or any part thereof the proceeds of any such sale, including cash, bills, notes, evidences of title and securities, and the indebtedness of any purchaser in connection with such sales shall be the property of the Bank to be forthwith paid or transferred to the Bank and until so paid or transferred to be held by the Customer in trust for the Bank. Execution by the Customer and acceptance by the Bank of an assignment of book debts shall be deemed to be in furtherance of this declaration and not an acknowledgment by the Bank of any right or title on the part of the Customer to such book debts. 20

6. If the Bank shall surrender to the Customer any of the securities from time to time for the purpose of enabling the Customer to obtain possession of the goods, the Customer shall receive possession of the securities, and the goods as bailee for and on behalf of the Bank and deal with the same as the Bank may direct from time to time and shall give to the Bank securities under the Bank Act covering said Goods.

7. The Customer shall keep the goods insured against damage by fire and if demanded by the Bank against any other loss or damage to their full insurable value in companies approved by the Bank, which shall be entitled to the benefit of all such insurance and shall assign to the Bank all policies evidencing the same or have the loss made payable to, and deliver the policies to the Bank, and upon default the Bank shall be entitled but not bound to effect insurance on the goods to such extent as it sees fit and the customer will pay on demand the premiums and interest thereon. 40

8. The Customer shall at all times duly and seasonably pay and discharge the wages, salaries and other remuneration of all persons employed by the Customer in connection with the business of the Customer, and shall from time to time if so requested by the Bank obtain such waivers of prior liens for salaries, wages or other remuneration as may be necessary to secure to the Bank a first lien on the goods.

10 9. Any promissory note or bill of exchange received by the Bank together with any security and/or documents attached thereto or received therewith shall be subject to the terms of this agreement and the Bank and/or holders for the time being of such bill or note may at any time before or after the maturity thereof and whether or not the same has been dishonoured accept payment and deliver the security or documents or accept partial payment from time to time and thereupon release a proportionate part of the security or the goods covered thereby.

20 10. The Bank may itself or by an agent, from time to time, without any demand, forcibly break open, enter upon or into and occupy and use free of charge and to the exclusion of all others including the Customer, the premises and property (real and personal, immovable and movable) of or used by the Customer in connection with the goods (not being the premises of a warehouseman or carrier) until the goods shall be fully realized upon and may from time to time appoint a receiver or agent to act for the Customer, who alone shall be responsible for his acts and such agency the Customer shall not have any power to revoke or determine. Such agent or receiver shall have the powers hereby granted to the Bank (including entry and use as above provided) and in addition the right from time to time in the name of the Customer to exercise all rights, powers, and privileges of the Customer of every kind and to do all acts and things that the Customer could do if acting, for the purpose of completing, selling, shipping or otherwise dealing with the goods in such manner as the Bank may think proper to enable the goods to be realized upon.

40 11. The Bank may release, compromise, settle and adjust any claim, dispute or difference which may arise in respect of the securities the goods and proceeds thereof and any lateral security and may use any Clearing Houses established by the Canadian Bankers' Association and in all dealings with the Customers' accounts and with Bills of Exchange and presentment for payment thereof may act under and in accordance with the rules and regulations under which such Clearing Houses are operated and shall not be responsible for any loss occasioned by acting hereunder, nor for any neglect, failure or delay in exercising or enforcing any of its powers or rights nor for any act, default or misconduct of any agent, broker, officer, employee or servant of the Bank, and the Bank shall be accountable only for such moneys as it shall actually receive. It shall not be necessary for the Bank to give notice of this agreement or of the securities taken hereunder to any person, and the Bank shall not be responsible for any failure to give notice, nor for granting any extension of time or indulgence.

Exhibits.
—
Plaintiff's
Document.
4.

Agreement
as to powers
of the Royal
Bank of
Canada
in relation
to all
advances
and receipts
held there-
for, 24th
January,
1934—con-
tinued.

Exhibits.
—
Plaintiff's
Document.
4.
Agreement
as to powers
of the Royal
Bank of
Canada in
relation
to all
advances
and receipts
held there-
for, 24th
January,
1934—con-
tinued.

12. The Customer shall from time to time execute, draw, endorse, and deliver the securities and the notes for such advances and all notes, bills of exchange, agreements, contracts, leases, assignments or other documents which may from time to time in the opinion of the Bank be necessary or expedient for the purpose of carrying into effect any of the provisions hereof and of perfecting the title of the Bank to the securities the goods and proceeds thereof and of securing the payment to the Bank of the said liabilities and additional liabilities and hereby appoints the Bank and any of its managers or acting managers the Attorney and Attorneys of the Customer, with full power of substitution from time to time and in the name of the Customer 10
to do any and all of the aforesaid acts, and this appointment being made in consideration of such advances shall be irrevocable so long as any part of the liabilities and additional liabilities remains unpaid and notwithstanding the death of the Customer, and every power, right and discretion conferred upon the Bank by this agreement or by the Bank Act may be exercised on the part of the Bank by the General Manager, or Assistant General Manager, or by any Inspector of the Bank, or any person from time to time nominated by the Bank as well as by the Manager or any person acting as such for the time being of any Branch of the Bank where the Customer may keep an account. 20

13. The provisions hereof shall be in addition to all other legal remedies of the Bank, and to all rights under agreements heretofore given.

14. Any notice to the Customer shall be sufficiently given if sent by mail addressed to the Customer at the address subjoined hereto.

15. The benefit of all rules of law or equity inconsistent with any of the provisions hereof is hereby waived by the Customer.

16. This is to be a continuing consent and agreement and all the provisions hereof shall extend to all advances now presently made or hereafter to be made by the Bank to the Customer and to all securities from time to time held by the Bank therefor, and the proceeds thereof; and every 30
advance or loan hereafter made shall be deemed to be made upon the consents, promises and agreements herein contained.

17. The word "Customer" shall mean and include the undersigned and the executors, administrators, successors and assigns of the undersigned.

Signed and Sealed at Fredericton, N.B. this 24th day of Jan. 1934.

(Sgd.) EWART C. ATKINSON. (L.S.) seal

Signature.....

P. O. Address.....



20.—Security under Section 88 for one or more Promissory Notes. Nos. 1 to 41 inclusive.

No. 1.

No. 20
Nos. 1 to 41 inclusive
J. H. B.
Nov. 17/36

Exhibits.
Plaintiff's Document. 20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive.
No. 1.
24th January, 1934.

Form 303 Security under Sec. 88 for one or more
4-22 Promissory Notes

10 IN CONSIDERATION of an advance of One thousand 00/100.....dol-
lars made by THE ROYAL BANK OF CANADA to the undersigned, for which the
said Bank holds the following bills or notes :.....
.....Jan. 24/1934. \$1000.00

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

20 mentioned below ^{are}_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

30 Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

^{are}_{is} now owned by the undersigned and ^{are}_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or draw shaved spruce and fir pulpwood

40 and are in the Lawrence flowage on New River stream in the County of Charlotte or elsewhere
situated.....

Dated at Fredericton, N.B., the 24th.....day of.....Jan'y.....19...34
(Sgd) Ewart C. Atkinson (L.S.)
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

Exhibits. **No. 2.**

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes
4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—
IN CONSIDERATION of an advance of Fifteen hundred 00/100.....dol-
lars made THE ROYAL BANK OF CANADA to the undersigned, for which the
said Bank holds the following bills or notes :.....
.....Jan. 24-1934..... \$1000.00
.....Feb. 15-1934..... 500.00
..... \$1500.00

continued.
No. 2.
15th Febru-
ary, 1934.

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, 20 and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest.
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... 30
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or draw shaved spruce and fir pulpwood

..... and are in the Lawrence flowage on New River stream in the County of Charlotte or.....
situated elsewhere

Dated at Fredericton, N.B., the 15th.....day of.....Feb.....19...34
(Sgd) Ewart C. Atkinson (L.S.) 40
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

No. 3.

Form 303 Security under Sec. 88 for one or more
4-22 Promissory Notes

Exhibits.
Plaintiff's Document, 20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 3.
24th February, 1934.

IN CONSIDERATION of an advance of Two Thousand.....00/100.....
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for
which the said Bank holds the following bills or notes :
.....Jan. 24-1934.....\$1000.
.....Feby. 15-1934.....500.
.....“... 24-1934.....500.

10

\$2000.00

Rule out the classes of products, etc., not to be covered.

~~the products of agriculture,~~
the products of the forest,
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

20

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

~~the products of agriculture,~~
the products of the forest,
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

30

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or draw shaved spruce and fir pulpwood

.....
and are in the Lawrence flowage on New River stream in the County of Charlotte or.....
situated elsewhere

40

Dated at Fredericton, N. B. the 24th.....day of.....Feby.....19...34
(Sgd) Ewart C. Atkinson (L.S.)
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

Exhibits. **No. 4.**

Plaintiff's Document. 20.

Form 303 Security under Sec. 88 for one or more Promissory Notes

Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.* No. 4. 14th March, 1934.

IN CONSIDERATION of an advance of Two thousand five hundred.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.	{	the products of agriculture, the products of the forest, the products of the quarry and mine, the products of the sea, lakes and rivers, the live stock or dead stock or the products thereof, the grain, the goods, wares and merchandise	10
--	---	---	----

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.	{	the products of agriculture, the products of the forest, the products of the quarry and mine, the products of the sea, lakes and rivers, the live stock or dead stock or the products thereof, the grain, the goods, wares and merchandise	20
--	---	---	----

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of,..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or draw 30 shaved spruce and fir pulpwood

and are in the Lawrence flowage on New River stream in the County of Charlotte or elsewhere situated

Dated at Fredericton, N. B. the.....14th.....day of Mch.....19...34
(Sgd) Ewart C. Atkinson
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 4 Continued

SCHEDULE A

Date of Note	Promissor	Endorser	When Payable	Amount
Jan. 24/34	E. C. Atkinson	Own	Dmd	\$1000.
Feby 15/34	" "	"	"	500.
24/34	" "	"	"	500.
Mch 14/34	" "	"	"	500.
				<hr/> \$2500.

Exhibits.
 Plaintiff's
 Document.
 20.
 Security
 under
 Section 88
 for one
 or more
 Promissory
 Notes,
 Nos. 1 to 41
 inclusive—
continued.
 No. 4,
 14th March,
 1934—*con-
 tinued.*

Exhibits. No. 5.

Plaintiff's Document. 20. Form 303 Security under Sec. 88 for one or more Promissory Notes

Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 5. 19th March, 1934.

IN CONSIDERATION of an advance of Three thousand 00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered. { the-products-of-agriculture, the products of the forest, the-products-of-the-quarry-and-mine, the-products-of-the-sea,-lakes-and-rivers, the-live-stock-or-dead-stock-or-the-products-thereof, the-grain, the goods, wares and merchandise 10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment. { the-products-of-agriculture, the products of the forest, the-products-of-the-quarry-and-mine, the-products-of-the-sea,-lakes-and-rivers, the-live-stock-or-dead-stock-or-the-products-thereof, the-grain, the goods, wares and merchandise 20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....

.....Ewart C. Atkinson..... and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood.....

..... and are in the Lawrence flowage on New River stream in County of Charlotte situated or elsewhere.....

Dated at Fredericton, N. B. the...19th.....day.....Mch.....19...34

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 5 Continued

SCHEDULE A

Exhibits.

Plaintiff's Document. 20.

Date of Note	Promissor	Endorser	When Payable	Amount
Jan. 24/34	E. C. Atkinson	Own	Dmd	\$1000.
Feby 15/34	" "	"	"	500.
24/34	" "	"	"	500.
Mch 14/34	" "	"	"	500.
19/34	" "	"	"	500.
				3000.

Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 5.
19th March, 1934—*continued.*

10

Exhibits. **No. 6.**

Plaintiff's Document. 20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.* No. 6. 24th April, 1934.

Form 303 Security under Sec. 88 for one or more Promissory Notes

IN CONSIDERATION of an advance of Three thousand 00/100.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

The security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood.....

..... and are in the Lawrence flowage on New River stream in County of Charlotte..... situated or elsewhere.....

Dated at Fredericton, N.B. the ...24th.....day of...April.....19...34

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 6 Continued

SCHEDULE A

Date of Note	Promissor	Endorser	When Payable	Amount
Bal. Jan. 24/34	E. C. Atkinson	Own	Dmd	\$700.
Feby 15	" "	" "	" "	500.
" 24	" "	" "	" "	500.
Mch 14	" "	" "	" "	500.
19	" "	" "	" "	500.
Apl 24	" "	" "	" "	300.
				<hr/> 3000.

Exhibits.
 Plaintiff's Document. 20.
 Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
 No. 6.
 24th April, 1934—*continued.*

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Exhibits. **No. 7.**

Plaintiff's Document. 20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.* No. 7. 1st May, 1934.

Form 303 Security under Sec. 88 for one or more Promissory Notes

IN CONSIDERATION of an advance of Three thousand 00/100.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills nor notes :

Rule out the classes of products, etc., not to be covered. { ~~the products of agriculture,~~
the products of the forest.
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment. { ~~the products of agriculture,~~
the products of the forest.
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 39 shaved spruce and fir pulpwood.....

and are in the Lawrence flowage on New River stream in County of Charlotte..... situated or elsewhere.....

Dated at Fredericton, N. B. the...1st.....day of.....May.....19...34

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 7 Continued

SCHEDULE A.

Date of Note	Promissor	Endorser	When Payable	Amount	Exhibits. Plaintiff's Document. 20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 7. 1st May, 1934— <i>con- tinued.</i>
Bal. Jan. 24/34	E. C. Atkinson	Own	Dmd	\$500.	
Feby 15/34	" "	"	"	500.	
24/34	" "	"	"	500.	
Mch 14/34	" "	"	"	500.	
19/34	" "	"	"	500.	
Apr 24/34	" "	"	"	300.	
10 May 1/34	" "	"	"	200.	
				<hr/> \$3000.	

Exhibits. No. 8.

Plaintiff's Document. 20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 8. 19th May, 1934.

Form 303 Security under Sec. 88 for one or more Promissory Notes

IN CONSIDERATION of an advance of Three thousand 00/100 dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes:

Rule out the classes of products, etc., not to be covered. { the-products-of-agriculture, the products of the forest, the-products-of-the-quarry-and-mine, the-products-of-the-sea, lakes and rivers, the live-stock-or-dead-stock-or-the-products-thereof, the-grain, the goods, wares and merchandise 10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment. { the-products-of-agriculture, the products of the forest, the-products-of-the-quarry-and-mine, the-products-of-the-sea, lakes and rivers, the live-stock-or-dead-stock-or-the-products-thereof, the-grain, the goods, wares and merchandise 20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere situated

Dated at Fredericton, N. B. the19..... day of May19...34

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 8 Continued

SCHEDULE A

Exhibits.
Plaintiff's
Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 8. 19th May, 1934— <i>con-</i> <i>tinued.</i>
Bal. Jan. 24/34	E. C. Atkinson	Own	Dmd	\$300.	
Feby 15/34	" "	"	"	500.	
24/34	" "	"	"	500.	
Mch 14/34	" "	"	"	500.	
19/34	" "	"	"	500.	
Apr. 24/34	" "	"	"	300.	
10 May 1/34	" "	"	"	200.	
19/34	" "	"	"	200.00	
				<u>3200.00</u>	
				0	
				as <u>\$3000.</u>	

Exhibits. No. 9.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 9. 28th May, 1934.

IN CONSIDERATION of an advance of Four thousand 00/100 dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

..... and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere situated

Dated at Fredericton, N. B. the ...28th.....day of.....May.....19...34

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 9 Continued

SCHEDULE A

Exhibits.
Plaintiff's
Document.
20.

Date of Note	Promissor	Endorser	When Payable	Amount	
Bal. Jan 24/34	E. C. Atkinson	Own	Dmd	\$300.	Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 9. 28th May, 1934— <i>continued.</i>
Feby 15/34	" "	"	"	500.	
24/34	" "	"	"	500.	
Mch 14/34	" "	"	"	500.	
19/34	" "	"	"	500.	
Apl 24/34	" "	"	"	300.	
10 May 1/34	" "	"	"	200.	
19	" "	"	"	200.	
28	" "	"	"	1000.	
				<u>4000.</u>	

Exhibits. No. 10.

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.* No. 10. 2nd June, 1934.

IN CONSIDERATION of an advance of Forty two hundred 00/100.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved spruce and fir pulpwood 30

..... and are in the Lawrence flowage on New River stream in County of Charlotte or situated elsewhere

Dated at Fredericton, N. B. the...2nd.....day of.....June...1934...

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 10 Continued

SCHEDULE A

Exhibits.
Plaintiff's
Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 10. 2nd June, 1934— <i>con- tinued.</i>
Bal. Jan 24/34	E. C. Atkinson	Own	Dmd	\$300.	
Feby 15/34	" "	"	"	500.	
24/34	" "	"	"	500.	
Mch 14/34	" "	"	"	500.	
19/34	" "	"	"	500.	
Apl 24/34	" "	"	"	300.	
10 May 1/34	" "	"	"	200.	
19/34	" "	"	"	200.	
28/34	" "	"	"	1000.	
June 2/34	" "	"	"	200.	
				<u>4200.00</u>	

Exhibits. No. 11.

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 11. 5th June, 1934.

IN CONSIDERATION of an advance of Forty two hundred...00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said Bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

..... and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere situated

Dated at Fredericton, N. B. the...5th day of June 1934

(Sgd)—Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 11 Continued

SCHEDULE A

Exhibits.

Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 11. 5th June, 1934— <i>continued.</i>
Bal. Feby 15/34	E. C. Atkinson	Own	Dmd	\$ 50.	
24/34	" "	"	"	500.	
Mch 14	" "	"	"	500.	
19	" "	"	"	500.	
Apr. 24	" "	"	"	300.	
May 1	" "	"	"	200.	
10 19	" "	"	"	200.	
28	" "	"	"	1000.	
June 2	" "	"	"	200.	
5	" "	"	"	750.	
				4200.	

Exhibits. No. 12.

Plaintiff's Form 303 Security under Sec. 88 for one or more Document. 4-22 Promissory Notes

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 12.
8th June, 1934.

IN CONSIDERATION of an advance of Forty four hundred 00/100.....
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered. { ~~the products of agriculture,~~
the products of the forest,
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment. { ~~the products of agriculture,~~
the products of the forest,
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30
shaved spruce and fir pulpwood.....

.....
and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere.....
situated.....

Dated at Fredericton, N.B. the...8th.....day of.....June.....1934.

(Sgd) Ewart C. Atkinson
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40
seal must be affixed.

No. 12 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 12. 8th June, 1934— <i>continued.</i>
Bal. Feby 15/34	E. C. Atkinson	Own	Dmd	\$ 50.	
24	" "	"	"	500.	
Mch 14	" "	"	"	500.	
19	" "	"	"	500.	
Apr 24	" "	"	"	300.	
May 1	" "	"	"	200.	
10 19	" "	"	"	200.	
28	" "	"	"	1000.	
June 2	" "	"	"	200.	
5	" "	"	"	750.	
8	" "	"	"	200.	
				4400.	

Exhibits. **No. 13.**

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes
4-22

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 13.
14th June, 1934.

IN CONSIDERATION of an advance of Forty six hundred...00/100.....
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills nor notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

10

mentioned below $\frac{are}{is}$ hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

20

$\frac{are}{is}$ now owned by the undersigned and $\frac{are}{is}$ now in the possession of.....
.....Ewart C. Atkinson.....

and $\frac{are}{is}$ free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved spruce and fir pulpwood..... 30

.....
and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere.....
situated.....

Dated at Fredericton, N. B. the...14th.....day of...June...19...34

(Sgd) Ewart C. Atkinson
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 13 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 13. 14th June, 1934— <i>continued.</i>
Bal. Feby 24/34	E. C. Atkinson	Own	Dmd	\$ 50.	
Mch 14	" "	"	"	500.	
19	" "	"	"	500.	
Apr 24	" "	"	"	300.	
May 1	" "	"	"	200.	
19	" "	"	"	200.	
10 28	" "	"	"	1000.	
June 2	" "	"	"	200.	
5	" "	"	"	750.	
8	" "	"	"	200.	
14	" "	"	"	700.	
				4600.	

Exhibits. **No. 14.**

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes
4-22

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 14.
14th June, 1934.

IN CONSIDERATION of an advance of Forty eight hundred...00/100.....
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for
which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn
shaved spruce and fir pulpwood.....

30

.....
and are in the Lawrence flowage on New River stream in County of
Charlotte or elsewhere.....
situated.....

Dated at Fredericton ... the ... 14thday of June ... 1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

40

No. 14 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 14. 14th June, 1934— <i>continued.</i>
Bal. Feby 15/34	E. C. Atkinson	Own	Dmd	\$ 50.	
Mch 14	" "	"		500.	
19	" "	"		500.	
Apr 24	" "	"		300.	
May 1	" "	"		200.	
19	" "	"		200.	
28	" "	"		1000.	
10 June 2	" "	"		200.	
5	" "	"		750.	
8	" "	"		200.	
14	" "	"		700.	
15	" "	"		200.	
				<u>4800.</u>	

Exhibits. No. 15.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.* No. 15. 23rd June, 1934.

IN CONSIDERATION of an advance of Forty eight hundred ...00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ~~are~~^{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

~~are~~^{is} now owned by the undersigned and ~~are~~^{is} now in the possession of..... Ewart C. Atkinson

and ~~are~~^{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved spruce and fir pulpwood

30

..... and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere

situated..... Dated at Fredericton, N. B. the.....23.....day of June.....19...34

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

40

No. 15 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note		Promissor	Endorser	When Payable	Amount	No. 20.
Apr	24/34	E. C. Atkinson	Own note	Dmd	\$150.	Security under
May	1/34	" "	" "	"	200.	Section 88
	19	" "	" "	"	200.	for one
	28	" "	" "	"	1000.	or more
June	2	" "	" "	"	200.	Promissory
	5	" "	" "	"	750.	Notes,
10	8	" "	" "	"	200.	Nos. 1 to 41
	14	" "	" "	"	700.	inclusive—
	15	" "	" "	"	200.	<i>continued.</i>
	23	" "	" "	"	1200.	No. 15.
						23rd June.
						1934— <i>con-</i>
						<i>tinued.</i>
					<u>4800.</u>	

Exhibits. No. 16.

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes

IN CONSIDERATION of an advance of Five thousand...00/100.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes:

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued.

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

No. 16. 30th June, 1934.

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

..... and are in the Lawrence flowage on New River stream in Charlotte County or elsewhere situated.....

Dated at Fredericton, N. B. the.....30.....day of June.....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 16 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 16. 30th June, 1934— <i>continued.</i>
Apr. 24/34	E. C. Atkinson	Own note	Dmd	\$150.	
May 1/34	" "	" "	" "	200.	
19/34	" "	" "	" "	200.	
28/34	" "	" "	" "	1000.	
June 2/34	" "	" "	" "	200.	
5	" "	" "	" "	750.	
10 8	" "	" "	" "	200.	
14	" "	" "	" "	700.	
15	" "	" "	" "	200.	
23	" "	" "	" "	1200.	
30	" "	" "	" "	200.	
				<u>5000.</u>	

Exhibits. No. 17.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 17. 4th January, 1934.

IN CONSIDERATION of an advance of Forty five hundred...00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :.....

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere situated.....

Dated at Fredericton, N.B. the ...4th.....day of.....Jany...1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 17 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	
Bal. May 28/34	E. C. Atkinson	Own note	Dmd.	\$550.	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i>
June 2	" "	" "	"	200.	No. 17. 4th January, 1934— <i>continued.</i>
5	" "	" "	"	750.	
8	" "	" "	"	200.	
14	" "	" "	"	700.	
15	" "	" "	"	200.	
23	" "	" "	"	1200.	
30	" "	" "	"	200.	
July 4	" "	" "	"	500.	
				<u>4500.</u>	

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Exhibits. **No. 18.**

Plaintiff's Document. **Form 303** Security under Sec. 88 for one or more
4-22 Promissory Notes

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 18.
5th July, 1934.

IN CONSIDERATION of an advance of Five thousand...00/100.....
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :.....

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest.
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30
shaved spruce and fir pulpwood

.....
and are in the Lawrence flowage on New River stream in the County of Charlotte.....
situated and elsewhere

Dated at Fredericton, N. B. the.....5th... day of July.....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40
seal must be affixed.

No. 18 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 18. 5th July, 1934— <i>continued.</i>
Bal. May 28/34	E. C. Atkinson	Own Note	Dmd	\$550.	
June 2	" "	" "	"	200.	
5	" "	" "	"	750.	
8	" "	" "	"	200.	
14	" "	" "	"	700.	
15	" "	" "	"	200.	
23	" "	" "	"	1200.	
30	" "	" "	"	200.	
July 4	" "	" "	"	500.	
5	" "	" "	"	500.	
				<u>5000.</u>	

10

Exhibits. No. 19.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 19. 9th July, 1934.

IN CONSIDERATION of an advance of Forty eight hundred ... 00/100dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

16

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....

.....Ewart C. Atkinson and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte situated and elsewhere.....

Dated at Fredericton, N. B. the.....9th.....day of...July.....1934

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 19 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount
Bal. May 28/34	E. C. Atkinson	Own note	Dmd	\$ 50.
June 2	" "	" "	"	200.
5	" "	" "	"	750.
8	" "	" "	"	200.
14	" "	" "	"	700.
15	" "	" "	"	200.
23	" "	" "	"	1200.
30	" "	" "	"	200.
July 4	" "	" "	"	500.
5	" "	" "	"	500.
9	" "	" "	"	300.
				4800.

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 19.
9th July, 1934—*continued.*

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Exhibits. No. 20.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 20. 12th July, 1934.

IN CONSIDERATION of an advance of Five thousand ... 00/100dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes:.....

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved spruce and fir pulpwood 30

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte and..... situated elsewhere.....

Dated at Fredericton, N. B. the...12th.....day of...July.....1934.

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 20 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 20. 12th July, 1934—*continued.*

Date of Note	Promissor	Endorser	When Payable	Amount
Bal. May 28/34	E. C. Atkinson	Own note	Dmd	\$ 50.
June 2	" "	" "	"	200.
5	" "	" "	"	750.
8	" "	" "	"	200.
14	" "	" "	"	700.
15	" "	" "	"	200.
10 23	" "	" "	"	1200.
30	" "	" "	"	200.
July 4	" "	" "	"	500.
5	" "	" "	"	500.
9	" "	" "	"	300.
12	" "	" "	"	200.
				5000.

Exhibits. No. 21.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

No. 20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued.

No. 21. 17th July, 1934.

IN CONSIDERATION of an advance of Six thousand ... 00/100dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood.....

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte and..... situated elsewhere.....

Dated at Fredericton, N. B. the.....17th.....day of July.....1934

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 21 Continued

SCHEDULE A

Exhibits.

Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 21. 17th July, 1934— <i>continued.</i>
Bal. May 28/34	E. C. Atkinson	Own note	Dmd	\$ 50.	
June 2	" "	" "	"	200.	
5	" "	" "	"	750.	
8	" "	" "	"	200.	
14	" "	" "	"	700.	
15	" "	" "	"	200.	
10	" "	" "	"	1200.	
30	" "	" "	"	200.	
July 4	" "	" "	"	500.	
5	" "	" "	"	500.	
9	" "	" "	"	300.	
12	" "	" "	"	200.	
17	" "	" "	"	1000.	
				<u>6000.</u>	

Exhibits. No. 22.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more 4-22 Promissory Notes

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 22. 24th July, 1934.

IN CONSIDERATION of an advance of Seven thousand ... 00/100 dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following Bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

The security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson..... and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood and are in the Lawrence flowage on New River Stream in the County of Charlotte and..... situated elsewhere.....

Dated at Fredericton, N. B. the.....24th.....day of July.....1934

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 22 Continued

SCHEDULE A

Exhibits.
Plaintiff's
Document.

Date of Note		Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 22. 24th July, 1934— <i>con- tinued.</i>
May	28/34	E. C. Atkinson	Own note	Dmd	\$ 50.	
June	2	" "	" "	" "	200.	
	5	" "	" "	" "	750.	
	8	" "	" "	" "	200.	
	14	" "	" "	" "	700.	
	15	" "	" "	" "	200.	
10	23	" "	" "	" "	1200.	
	30	" "	" "	" "	200.	
July	4	" "	" "	" "	500.	
	5	" "	" "	" "	500.	
	9	" "	" "	" "	300.	
	12	" "	" "	" "	200.	
	17	" "	" "	" "	1000	
	24	" "	" "	" "	1000.	
					7000.	

Exhibits. No. 23.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 23. 28th July, 1934.

IN CONSIDERATION of an advance of Eight thousand...00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered. { ~~the products of agriculture,~~ the products of the forest, ~~the products of the quarry and mine,~~ the products of the sea, lakes and rivers, ~~the live stock or dead stock or the products thereof,~~ the grain, the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment. { ~~the products of agriculture,~~ the products of the forest, ~~the products of the quarry and mine,~~ the products of the sea, lakes and rivers, ~~the live stock or dead stock or the products thereof,~~ the grain, the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson..... and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood and are in the Lawrence flowage on New River Stream in the County of Charlotte and situated elsewhere.....

Dated at Fredericton, N. B. the ...28th.....day of.....July... 19...34

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 23 Continued

SCHEDULE A

Exhibits,
Plaintiff's
Document.

Date of Note		Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 23. 28th July, 1934— <i>con- tinued.</i>
May	28/34	E. C. Atkinson	Own note	Dmd	\$ 50.	
June	2	" "	" "	"	200.	
	5	" "	" "	"	750.	
	8	" "	" "	"	200.	
	14	" "	" "	"	700.	
	15	" "	" "	"	200.	
10	23	" "	" "	"	1200.	
	30	" "	" "	"	200.	
July	4	" "	" "	"	500.	
	5	" "	" "	"	500.	
	9	" "	" "	"	300.	
	12	" "	" "	"	200.	
	17	" "	" "	"	1000.	
	24	" "	" "	"	1000.	
	28	" "	" "	"	1000.	
					8000.	

Exhibits. No. 24.

Plaintiff's Form 303 Security under Sec. 88 for one or more Document. 4-22 Promissory Notes

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 24. 2nd August, 1934.

IN CONSIDERATION of an advance of Seven thousand, five hundred 00/xxdollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock of the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock of the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson..... and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood and are in the Lawrence flowage on New River Stream in the County of Charlotte and..... situated elsewhere

Dated at Fredericton, N. B. the.....2nd.....day of.....Aug.....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 24 Continued

SCHEDULE A

Exhibits.
Plaintiff's
Document.
20.

Date of Note	Promissor	Endorser	When Payable	Amount	
June 14	E. C. Atkinson	Own note	Dem.	400.	Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 24. 2nd August, 1934— <i>continued.</i>
15				200.	
23				1200.	
30				200.	
July 4				500.	
5				500.	
9				300.	
12				200.	
17				1000.	
24				1000.	
28				1000.	
Aug. 2				1000.	
				<u>7500.</u>	

10

Exhibits. No. 25.

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 25. 4th August, 1934.

IN CONSIDERATION of an advance of Eight thousand...00.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved spruce and fir pulpwood 30

and are in the Lawrence flowage on New River Stream in the County of Charlotte and situated elsewhere.....

Dated at Fredericton, N. B. the...4th.....day of.....Aug.....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 25 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	
June 14 1934	E. C. Atkinson	Own note	Dem.	400.	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 25. 4th August, 1934— <i>continued.</i>
15				200.	
23				1200.	
30				200.	
July 4				500.	
5				500.	
10 9				300.	
12				200.	
17				1000.	
24				1000.	
28				1000.	
Aug. 2				1000.	
6				500.	
				<u>8000.</u>	

Exhibits. No. 26.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 26. 13th August, 1934.

IN CONSIDERATION of an advance of Eight thousand and five 00/..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest.
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson..... and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved spruce and fir pulpwood.....

30

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte and..... situated elsewhere.....

Dated at Fredericton, N. B. the.....13th.....day of.....Aug.....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 26 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 26. 13th August, 1934— <i>continued.</i>
1934					
June 15				105.	
23				1200.	
30				200.	
July 4				500.	
5				500.	
9				300.	
12				200.	
17				1000.	
24				1000.	
28				1000.	
Aug. 2				1000.	
6				500.	
13				500.	
				8005.	

40

Exhibits. No. 27.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 27. 24th August, 1934.

IN CONSIDERATION of an advance of Eight thousand and five 00/100... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte..... situated and elsewhere

Dated at Fredericton, N. B. the.....24th.....day of.....Aug. 19...34

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

No. 27 Continued

SCHEDULE A

					Exhibits.
					Plaintiff's Document.
Date of Note	Promissor	Endorser	When Payable	Amount	20.
					Security under
					Section 88
					for one
					or more
					Promissory
					Notes,
					Nos. 1 to 41
					inclusive—
					<i>continued.</i>
					No. 27.
					24th August,
					1934— <i>con-</i>
					<i>tinued.</i>
1934					
Bal. June 23	E. C. Atkinson		Dmd.	\$805.	
30	"		"	200.	
July 4	"		"	500.	
5	"		"	500.	
9	"		"	300.	
10 12	"		"	200.	
17	"		"	1000.	
24	"		"	1000.	
28	"		"	1000.	
Aug. 2	"		"	1000.	
6	"		"	500.	
13	"		"	500.	
24	"		"	500.	
				8005.	

Exhibits. No. 28.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued.

IN CONSIDERATION of an advance of Eight thousand & five 00/100.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

No. 28. 29th August, 1934.

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest.
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn spruce and fir pulpwood

..... and are in the Lawrence flowage on New River stream in County of Charlotte..... situated and elsewhere

Dated at Fredericton, N. B. the.....29th.....day of.....Aug. 1934

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

No. 28 Continued

SCHEDULE A

Exhibits.
Plaintiff's
Document.

Date of Note	Promissor	Endorser	When Payable	Amount	20, Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i>
Bal. June 23/34	E. C. Atkinson		Dmd	\$305.	No. 28. 29th August, 1934— <i>con- tinued.</i>
30	" "		"	200.	
July 4	" "		"	500.	
5	" "		"	500.	
9	" "		"	300.	
12	" "		"	200.	
10 17	" "		"	1000.	
24	" "		"	1000.	
28	" "		"	1000.	
Aug. 2	" "		"	1000.	
6	" "		"	500.	
13	" "		"	500.	
24	" "		"	500.	
29	" "		"	500.	
				<u>8005.</u>	

Exhibits. No. 29.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 29. 31st July, 1934.

IN CONSIDERATION of an advance of Eight thousand and five 00/100... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved spruce and fir pulpwood

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte..... situated elsewhere.....

Dated at Fredericton, N. B. the.....31st.....day of...July.....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 29 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 29.
31st July, 1934—*continued.*

Date of Note	Promissor	Endorser	When Payable	Amount
Bal. June 30 34	E. C. Atkinson		Dmd	\$ 5.
July 4	" "		"	500.
5	" "		"	500.
9	" "		"	300.
12	" "		"	200.
17	" "		"	1000.
24	" "		"	1000.
28	" "		"	1000.
Aug. 2	" "		"	1000.
6	" "		"	500.
13	" "		"	500.
24	" "		"	500.
29	" "		"	500.
31	" "		"	500.
				8005.

10

Exhibits. **No. 30.**

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes
4-22

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 30.
11th September, 1934.

IN CONSIDERATION of an advance of Eight thousand and five 00/100...
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned,
for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.	{	the products of agriculture, the products of the forest, the products of the quarry and mine, the products of the sea, lakes and rivers, the live stock or dead stock or the products thereof, the grain, the goods, wares and merchandise	10
--	---	---	----

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said Bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.	{	the products of agriculture, the products of the forest, the products of the quarry and mine, the products of the sea, lakes and rivers, the live stock or dead stock or the products thereof, the grain, the goods, wares and merchandise	20
--	---	---	----

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....
and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30
shaved or sap peeled spruce and fir pulpwood

.....
and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere.....
situated

Dated at Fredericton, N. B. the.....11th.....day of Sept.....1934

(Sgd) Ewart C. Atkinson
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40
seal must be affixed.

No. 30 Continued

SCHEDULE A

Date of Note		Promissor	Endorser	When Payable	Amount	Exhibits. Plaintiff's Document.
July	4/34	E. C. Atkinson		Demand	15.	20. Security under Section 88
"	5/34	" "		"	500.	for one
"	9/34	" "		"	300.	or more
"	12/34	" "		"	200.	Promissory
"	17/34	" "		"	1,000.	Notes,
"	24/34	" "		"	1,000.	Nos. 1 to 41
10	"	" "		"	1,000.	inclusive—
"	28/34	" "		"	1,000.	<i>continued.</i>
Aug.	2/34	" "		"	1,000.	No. 30.
"	4/34	" "		"	500.	11th Sept-
"	13/34	" "		"	500.	ember, 1934
"	24/34	" "		"	500.	— <i>continued.</i>
"	29/34	" "		"	500.	
"	31/34	" "		"	500.	
Sept.	11/34	" "		"	490.	
					8,005	

Exhibits. **No. 31.**

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes

4-22

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 31.
14th September, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100...
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned,
for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are} ~~is~~ hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are} ~~is~~ now owned by the undersigned and ^{are} ~~is~~ now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are} ~~is~~ free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30
shaved or sap peeled spruce and fir pulpwood.....

.....
and are in the Lawrence flowage on New River stream in County of Charlotte or elsewhere.....
situated.....

Dated at Fredericton, N. B. the.....14th.....day of Sept.....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40
seal must be affixed.

No. 31 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note		Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i>
July	9/34	E. C. Atkinson		Demand	\$275	No. 31. 14th September, 1934 — <i>continued.</i>
"	12/34	" "	"	"	200.	
"	17/34	" "	"	"	1,000.	
"	24/34	" "	"	"	1,000.	
"	28/34	" "	"	"	1,000.	
Aug.	2/34	" "	"	"	1,000.	
10	"	4/34	" "	"	500.	
"	13/34	" "	"	"	500.	
"	24/34	" "	"	"	500.	
"	29/34	" "	"	"	500.	
"	31/34	" "	"	"	500.	
Sept.	11/34	" "	"	"	490.	
"	14/34	" "	"	"	535.	
					8,000.	

Exhibits. No. 32.

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 32. 18th September, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.	{	the products of agriculture, the products of the forest, the products of the quarry and mine, the products of the sea, lakes and rivers, the live stock or dead stock or the products thereof, the grain, the goods, wares and merchandise	10
--	---	---	----

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.	{	the products of agriculture, the products of the forest, the products of the quarry and mine, the products of the sea, lakes and rivers, the live stock or dead stock or the products thereof, the grain, the goods, wares and merchandise	20
--	---	---	----

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved or sap peeled spruce and fir pulpwood..... 30

..... and are in the Lawrence flowage on New River stream in the County of Charlotte or elsewhere..... situated.....

Dated at Fredericton, N. B. the.....18th.....day of.....Sept. 1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed. 40

No. 32 Continued

SCHEDULE A

Date of Note		Promissor	Endorser	When Payable	Amount	Exhibits. Plaintiff's Document.
July	9/34	E. C. Atkinson		Demand	\$ 175.	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 32. 18th Sept- ember, 1934 — <i>continued.</i>
"	12/34	do.		"	200.	
"	17/34	do.		"	1,000.	
"	24/34	do.		"	1,000.	
"	28/34	do.		"	1,000.	
Aug.	2/34	do.		"	1,000.	
10 "	4/34	do.		"	500.	
"	13/34	do.		"	500.	
"	24/34	do.		"	500.	
"	29/34	do.		"	500.	
"	31/34	do.		"	500.	
Sept.	11/34	do.		"	490.	
"	14/34	do.		"	535.	
"	18/34	do.		"	100.	
					8,000.	

Exhibits. **No. 33.**

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes
4-22

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 33.
9th October, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100...
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes:

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved or sap peeled spruce and fir pulpwood.....

.....
and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere.....
situated.....

Dated at Fredericton, N. B. the.....9th.....day of.....Oct. 1934

(Sgd) Ewart C. Atkinson
(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

No. 33 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note		Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i>
July	9/34	E. C. Atkinson		Demand	\$ 75.	
"	12/34	do.		"	200.	
"	17/34	do.		"	1,000	
"	24/34	do.		"	1,000	
"	28/34	do.		"	1,000	
Aug.	2/34	do.		"	1,000	
10 "	4/34	do.		"	500.	<i>continued.</i>
"	13/34	do.		"	500.	No. 33.
"	24/34	do.		"	500.	9th October, 1934—
"	29/34	do.		"	500.	<i>continued.</i>
"	31/34	do.		"	500.	
Sept.	11/34	do.		"	490.	
"	14/34	do.		"	535.	
"	18/34	do.		"	100.	
Oct.	9/34	do.		"	100.	
					8,000.	

Exhibits. **No. 34.**

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more 4-22 Promissory Notes

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 34.
26th October, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100...
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for
which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn
shaved or sap peeled spruce and fir pulpwood.....

30

.....
and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere.....
situated.....

Dated at Fredericton, N. B. the.....26th.....day of October...1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate
seal must be affixed.

40

No. 34 Continued

SCHEDULE A

Date of Note		Promissor	Endorser	When Payable	Amount	Exhibits. Plaintiff's Document. 20.
July	12/34	E. C. Atkinson		Demand	\$ 175.	Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 34. 26th Octo- ber, 1934— <i>continued.</i>
	17	do.		"	1,000	
	24	do.		"	1,000	
	28	do.		"	1,000	
Aug.	2/34	do.		"	1,000	
	4	do.		"	500.	
10	13	do.		"	500.	
	24	do.		"	500.	
	29	do.		"	500.	
	31	do.		"	500.	
Sept.	11/34	do.		"	490.	
	14	do.		"	535.	
	18	do.		"	100.	
Oct.	9/34	do.		"	100.	
	26	do.		"	100.	
					8,000	

Exhibits. No. 35.

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes

IN CONSIDERATION of an advance of Eight Thousand.....00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 35. 31st October 1934.

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below $\frac{\text{are}}{\text{is}}$ hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

$\frac{\text{are}}{\text{is}}$ now owned by the undersigned and $\frac{\text{are}}{\text{is}}$ now in the possession of..... Ewart C. Atkinson.....

and $\frac{\text{are}}{\text{is}}$ free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved or sap peeled spruce and fir pulpwood.....

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere..... situated.....

Dated at Fredericton, N. B. the.....31st.....day of...October 19...34

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

No. 35 Continued

SCHEDULE A

Exhibits.
—
Plaintiff's
Document.

Date of Note		Promissor	Endorser	When Payable	Amount	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 35. 31st Octo- ber, 1934— <i>continued.</i>
July	12/34	E. C. Atkinson		Demand	\$ 75.	
	17	do.		"	1,000	
	24	do.		"	1,000	
Aug.	28	do.		"	1,000	
	2/34	do.		"	1,000	
10	4	do.		"	500.	
	13	do.		"	500.	
	24	do.		"	500.	
	29	do.		"	500.	
	31	do.		"	500.	
Sept.	11/34	do.		"	490.	
	14	do.		"	535.	
Oct.	9/34	do.		"	100.	
	26	do.		"	100.	
	31/34	do.		"	100.	
					8,000.	

Exhibits. No. 36.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 36. 17th November, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :.....

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn shaved or sap peeled spruce and fir pulpwood.....

30

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere..... situated.....

Dated at Fredericton, N. B. the.....17th.....day of.....Nov....1934

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate seal must be affixed.

40

No. 36 Continued

SCHEDULE A

Exhibits.
Plaintiff's Document.

Date of Note		Promissor	Endorser	When Payable	Amount	20.
July	17/34	E. C. Atkinson		Demand	\$975.	Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 36. 17th November, 1934 — <i>continued.</i>
	24	do.		"	1,000.	
Aug.	28	do.		"	1,000.	
	2	do.		"	1,000.	
10	4	do.		"	500.	
	13	do.		"	500.	
	24	do.		"	500.	
	29	do.		"	500.	
	31	do.		"	500.	
Sept.	11	do.		"	490.	
	14	do.		"	535.	
Oct.	18	do.		"	100.	
	9	do.		"	100.	
	26	do.		"	100.	
Nov.	31	do.		"	100.	
	17	do.		"	100.	
					8,000	

20

Exhibits. No. 37.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 37. 7th December, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions thereof and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- the grain,
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved or sap peeled spruce and fir pulpwood.....

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere..... situated.....

Dated at Fredericton, N. B. the.....7th.....day of.....Dec....1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 37 Continued

SCHEDULE A

Exhibits.

Plaintiff's
Document.

20.

Security
under
Section 88
for one
or more
Promissory
Notes,
Nos. 1 to 41
inclusive—
continued.
No. 37.
7th Decem-
ber, 1934—
continued.

Date of Note		Promissor	Endorser	When Payable	Amount
July	17/34	E. C. Atkinson		Demand	\$ 775.
	24	do.		"	1,000.
	28	do.		"	1,000.
Aug.	2	do.		"	1,000.
	4	do.		"	500.
	13	do.		"	500.
10	24	do.		"	500.
	29	do.		"	500.
	31	do.		"	500.
Sept.	11	do.		"	490.
	14	do.		"	535.
	18	do.		"	100.
Oct.	9	do.		"	100.
	26	do.		"	100.
	31	do.		"	100.
Nov.	17	do.		"	100.
20 Dec.	7	do.		"	200.
					8,000.

Exhibits. No. 38.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive —continued. No. 38. 13th December, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved or sap peeled spruce and fir pulpwood.....

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere..... situated.....

Dated at..... the 13th day of Dec. 1934

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 38 Continued

SCHEDULE A

					Exhibits.
					Plaintiff's Document.
Date of Note	Promissor	Endorser	When Payable	Amount	20.
July 17/34	E. C. Atkinson		Demand	\$ 525.	Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 38. 13th December, 1934— <i>continued.</i>
24	do.		"	1,000.	
28	do.		"	1,000.	
Aug. 2	do.		"	1,000.	
4	do.		"	500.	
13	do.		"	500.	
10 24	do.		"	500.	
29	do.		"	500.	
31	do.		"	500.	
Sept. 11	do.		"	490.	
14	do.		"	535.	
18	do.		"	100.	
Oct. 9	do.		"	100.	
26	do.		"	100.	
31	do.		"	100.	
Nov. 17	do.		"	100.	
20 Dec. 7	do.		"	200.	
Dec. 13	do.		"	250.	
				8,000.	

Exhibits. No. 39.

Plaintiff's Document. Form 303 Security under Sec. 88 for one or more Promissory Notes 4-22

20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—continued. No. 39. 27th December, 1934.

IN CONSIDERATION of an advance of Eight Thousand.....00/100..... dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered. { ~~the products of agriculture,~~
~~the products of the forest,~~
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment. { ~~the products of agriculture,~~
~~the products of the forest,~~
~~the products of the quarry and mine,~~
~~the products of the sea, lakes and rivers,~~
~~the live stock or dead stock or the products thereof,~~
~~the grain,~~
the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of..... Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30 shaved or sap peeled spruce and fir pulpwood

..... and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere situated.....

Dated at Fredericton, N. B. the.....27th.....day of December 1934

(Sgd) Ewart C. Atkinson (Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40 seal must be affixed.

No. 39 Continued

SCHEDULE A

Exhibits.

Plaintiff's
Document.

Date of Note		Promissor	Endorser	When Payable	Amount	
	July 17/34	E. C. Atkinson		Demand	\$ 325.	20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 39. 27th Decem- ber, 1934— <i>continued.</i>
	24	do.		"	1,000.	
	28	do.		"	1,000.	
	Aug. 2	do.		"	1,000.	
	4	do.		"	500.	
	13	do.		"	500.	
10	24	do.		"	500.	
	29	do.		"	500.	
	31	do.		"	500.	
	Sept. 11	do.		"	490.	
	14	do.		"	525.	
	18	do.		"	100.	
	Oct. 9	do.		"	100.	
	26	do.		"	100.	
	31	do.		"	100.	
	Nov. 17	do.		"	100.	
20	Dec. 7	do.		"	200.	
	Dec. 13	do.		"	250.	
	27	do.		"	200.	
					8,000.	

Exhibits. No. 40.

Plaintiff's Document.

Form 303 - Security under Sec. 88 for one or more Promissory Notes
4-22

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 40.
11th January, 1935.

IN CONSIDERATION of an advance of Eight Thousand.....00/100.....
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30
shaved or sap peeled spruce and fir pulpwood

.....
and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere

situated

Dated at Fredericton, N. B. the.....11th.....day of January 1935

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40
seal must be affixed.

No. 40 Continued

SCHEDULE A

Exhibits.
Plaintiff's
Document.

Date of Note		Promissor	Endorser	When Payable	Amount	20.
July	17/34	E. C. Atkinson		Demand	\$ 255.55	Security under
	24	do.		"	1,000.00	Section 88
	28	do.		"	1,000.00	for one
Aug.	2	do.		"	1,000.00	or more
	4	do.		"	500.00	Promissory
	13	do.		"	500.00	Notes,
10	24	do.		"	500.00	Nos. 1 to 41
	29	do.		"	500.00	inclusive—
	31	do.		"	500.00	<i>continued.</i>
Sept.	11	do.		"	490.00	No. 40.
	14	do.		"	535.00	11th Janu-
	18	do.		"	100.00	ary, 1935—
Oct.	9	do.		"	100.00	<i>continued.</i>
	26	do.		"	100.00	
	31	do.		"	100.00	
Nov.	17	do.		"	100.00	
20 Dec.	7	do.		"	200.00	
	13	do.		"	250.00	
	27	do.		"	200.00	
Jan.	11/35	do.		"	69.45	
					<u>8,000.00</u>	

Exhibits. **No. 41.**

Plaintiff's Document.

Form 303 Security under Sec. 88 for one or more Promissory Notes
4-22

20.
Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive—*continued.*
No. 41.
29th January, 1935.

IN CONSIDERATION of an advance of Eight Thousand.....00/100.....
.....dollars made by THE ROYAL BANK OF CANADA to the undersigned, for which the said Bank holds the following bills or notes :

Rule out the classes of products, etc., not to be covered.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

10

mentioned below ^{are}/_{is} hereby assigned to the said Bank as security for the payment of the said bills or notes, or renewals thereof or substitutions therefor and interest thereon.

This security is given under the provisions of Section 88 of the Bank Act, and is subject to the provisions of the said Act.

The said

Rule out the classes of product, etc., not covered by this assignment.

- ~~the products of agriculture,~~
- the products of the forest,
- ~~the products of the quarry and mine,~~
- ~~the products of the sea, lakes and rivers,~~
- ~~the live stock or dead stock or the products thereof,~~
- ~~the grain,~~
- the goods, wares and merchandise

20

^{are}/_{is} now owned by the undersigned and ^{are}/_{is} now in the possession of.....
.....Ewart C. Atkinson.....

and ^{are}/_{is} free from any mortgage, lien, or charge thereon (except previous assignments to the Bank) and are the following all the rough or drawn 30
shaved or sap peeled spruce and fir pulpwood

.....
and are in the Lawrence flowage on New River Stream in the County of Charlotte or elsewhere
situated.....

Dated at Fredericton, N. B. the.....29.....day of Jan.....1935.....

(Sgd) Ewart C. Atkinson

(Seal)

N.B.—The bills or notes and the property assigned may be set out in schedules annexed. If the customer is an incorporate company the corporate 40
seal must be affixed.

No. 41 Continued

SCHEDULE A

Date of Note		Promissor	Endorser	When Payable	Amount	Exhibits. Plaintiff's Document. 20. Security under Section 88 for one or more Promissory Notes, Nos. 1 to 41 inclusive— <i>continued.</i> No. 41. 29th Janu- ary, 1935— <i>continued.</i>
July	17/34	E. C. Atkinson		Demand	85.55	
	24	do.		"	1,000.00	
	28	do.		"	1,000.00	
Aug.	2	do.		"	1,000.00	
	4	do.		"	500.00	
	13	do.		"	500.00	
10	24	do.		"	500.00	
	29	do.		"	500.00	
	31	do.		"	500.00	
Sept.	11	do.		"	490.00	
	14	do.		"	535.00	
	18	do.		"	100.00	
Oct.	9	do.		"	100.00	
	26	do.		"	100.00	
	31	do.		"	100.00	
Nov.	17	do.		"	100.00	
20 Dec.	7	do.		"	200.00	
	13	do.		"	250.00	
	27	do.		"	200.00	
Jan.	11/35	do.		"	69.45	
	29	do.		"	170.00	
					<u>8,000.00</u>	

Plaintiff's Document.

27.

27.—Cheque from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada for \$5,350.00.

Cheque from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada for \$5,350.00, 15th February, 1934.

Void unless countersigned by
ANTOINE J. LACROIX
Manager or Treasurer

No. 4505 FAIRVILLE, N. B. February 15th, 1934.
PORT ROYAL PULP & PAPER CO., LTD.

Pay to the order of Royal Bank of Canada,
Fredericton, N. B. \$5,350.00
Fifty Three Hundred Fifty Dollars Dollars

10

To PORT ROYAL PULP & PAPER CO. LTD.
THE BANK OF NOVA SCOTIA (Sgd) Adelard Gilbert
Fairville, N. B. Treasurer

Countersigned

No. 27

by (Sgd) Antoine J. Lacroix

Manager

J H B

Nov. 19/36

Endorsements

New Lepreau Limited
(Sgd) Ewart C. Atkinson
President
for The Royal Bank of Canada
FREDERICTON, N. B.
(Sgd) H. S. Murray
Manager.

20

DETAILS
Payment in full of advances to New Lepreau Ltd. for operation of pulpwood 1933.

This coupon must not be detached.

5.—Letter from Port Royal Pulp & Paper Co. Ltd. to E. C. Atkinson.

Exhibits.

No. 5
J. H. B.
Nov. 17/36

Plaintiff's
Document.

5.

MILLS
SAINT JOHN, N. B.
CANADA.

Letter
from Port
Royal Pulp
& Paper
Co. Ltd. to
E. C.
Atkinson,
1st March,
1934.

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.,
March 1, 1934

10

E. C. Atkinson,
Fredericton, N. B.

Dear Sir :

Following our conversation and correspondence, we wish to advise that we will agree to change the contract for draw-shaved pulpwood, dated October 31, 1933, which is in the name of the New Lepreau Limited to E. C. Atkinson personal account. We are charging against that contract the advances already made on this particular contract. Trusting this is satisfactory, we are,

20

Yours very truly,

PORT ROYAL PULP & PAPER CO. LTD.

(Sgd) Antoine J. Lacroix
A. J. Lacroix

AJL:EM

Advanced

\$584.90 Total
Dec. 22/33



Exhibits.

6.—Assignment by E. C. Atkinson to The Royal Bank of Canada of interest in contract with Port Royal Pulp & Paper Co. Ltd. dated October 31st, 1933.

Plaintiff's Document.

Form Le 212 Revised 6-33

6.

Assignment by E. C. Atkinson to the Royal Bank of Canada of interest in contract with Port Royal Pulp & Paper Co. Ltd., dated October 31st, 1933, 10th March, 1934.

(In the case of an Assignment of Moneys Due under an Agreement for Sale, Form Le 235 should be used)

No. 6
J. H. B.
Nov. 17/36 10

(1) FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, the undersigned hereby assigns, transfers and sets over unto THE ROYAL BANK OF CANADA (hereinafter called the " Bank ") all moneys, claims, rights and demands whatsoever which the undersigned may now, or at any time hereafter, have or be entitled to under or by virtue of or in respect of or incidental to a certainContract.....(hereinafter called the " instrument ") dated the 31st day of...October...1933, made between the undersigned and..... PORT ROYAL PULP & PAPER CO. LTD...(hereinafter called the " debtor "), securing and/or covering1000 to 4000 cords of Draw 20 shaved or rossed spruce and fir pulpwood.....

the said moneys, claims, rights and demands or any of them, or any part or parts thereof, being hereinafter referred to as the " debt."

(2) The undersigned agrees that the debt shall be held by the Bank as general and continuing collateral security for the fulfilment of all obligations, present or future, of the undersigned to the Bank, whether arising from 30 dealings between the Bank and the undersigned or from any other dealings by which the Bank may be or become in any manner whatsoever a creditor of the undersigned, and whether such obligations were or be incurred alone or jointly with another or others, and whether as principal or surety, and whether matured or not, and whether absolute or contingent.

(3) The undersigned expressly authorizes the Bank to collect, demand, sue for, enforce, recover and receive the debt and to give valid and binding receipts and discharges therefor and in respect thereof, the whole to the same extent and with the same effect as if the Bank were the absolute owner thereof and without regard to the state of accounts between the 40 undersigned and the Bank.

(4) All moneys received by the undersigned from the collection of the debt shall be received in trust for the Bank.

(5) The Bank may sell either by public or private sale or otherwise dispose of the debt in such manner, upon such terms and conditions, for such consideration and at such time or times as may seem to it advisable

and without notice to the undersigned and without any liability for any loss resulting therefrom.

(6) The Bank may apply any money received by it against any obligation of the undersigned to the Bank as to the Bank seems best or hold the same in a separate collateral account for such time as it may see fit and then apply the same as aforesaid, the whole without prejudice to its claim for any deficiency.

10 (7) The Bank may compound, compromise, grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the debtor, the undersigned and others, and with the debt and other securities as the Bank may see fit, without prejudice to the liability of the undersigned or the Bank's right to hold and realize this security.

(8) The Bank shall not be liable or accountable for any failure to collect and/or enforce the debt and the Bank shall not be bound to institute proceedings for the purpose of collecting and/or enforcing the same or for the purpose of preserving any rights of the Bank, the undersigned or any other person, firm or corporation in respect of the same.

20 (9) The Bank may charge on its own behalf and also pay to other persons, firms and corporations reasonable sums for services rendered and for expenses incurred in collecting or attempting to collect and/or enforcing or attempting to enforce the debt and may add the amount of such sums to the indebtedness of the undersigned and/or retain the said amount out of the moneys received by the Bank.

30 (10) The undersigned covenants and agrees with the Bank that all of the obligations of the undersigned and others concerned under or in virtue of the instrument and all other agreements incidental or ancillary thereto shall be fulfilled, and the undersigned shall from time to time forthwith on the Bank's request furnish to the Bank all writings and information requested relating to the obligation in respect of which the debt is payable and the Bank shall be entitled from time to time to inspect any books, papers, documents or records evidencing or relating to such obligation and make copies thereof and for such purpose the Bank shall have access to all premises occupied by the undersigned.

(11) The undersigned agrees that on payment of the full amount secured by the instrument, the undersigned, at the request of the Bank, will do, make and execute such deeds, documents, acts, matters and things as the Bank may deem necessary to evidence the release and discharge of the instrument.

40 (12) The undersigned covenants and declares that neither the debt nor the instrument has been assigned to or pledged or encumbered in favour of any other person, firm or corporation and the undersigned covenants and agrees with the Bank not to assign, pledge or encumber the debt or the instrument so long as this agreement remains in force, to or in favour of any other person, firm or corporation without the written consent of the Bank.

Exhibits.

Plaintiff's Document.

6.

Assignment by E. C. Atkinson to The Royal Bank of Canada of interest in contract with Port Royal Pulp & Paper Co. Ltd., dated October 31st, 1933, 10th March, 1934—*continued.*

Exhibits.
Plaintiff's Document.

6.
Assignment by E. C. Atkinson to The Royal Bank of Canada of interest in contract with Port Royal Pulp & Paper Co. Ltd., dated October 31st, 1933, 10th March, 1934—*continued.*

(13) For the purpose of enforcing all rights of the undersigned in or under the instrument, the undersigned hereby nominates, constitutes and appoints the Manager for the time being of the branch of the Bank at which the account of the undersigned is being carried, the true and lawful attorney of the undersigned, irrevocable, with full power of substitution, for and in the name of and on behalf of and at the expense of the undersigned to act in relation to the instrument and in securing the enforcement of all the rights of the undersigned therein and thereunder as fully and effectually in all respects as the undersigned could do, and, without limiting the generality of the foregoing, to institute and prosecute any action or proceedings in respect of the instrument as said attorney may deem advisable and to execute on behalf of the undersigned a discharge of the instrument in favour of the debtor. 10

(14) The present assignment is given in addition to and not in substitution for any similar assignment heretofore given to and still held by the Bank and is taken by the Bank as additional security for the fulfilment of the aforesaid obligations of the undersigned to the Bank and shall not operate as a merger of any simple contract debt or in any way suspend the fulfilment of, or prejudice or affect the rights, remedies and powers of the Bank in respect of, the said obligations or any securities held by the Bank for the fulfilment thereof. 20

(15) This agreement shall be binding on the undersigned and the heirs, executors, administrators, successors and assigns of the undersigned and shall enure to the benefit of the Bank and its successors and assigns.

IN WITNESS WHEREOF this agreement has been executed under seal at Fredericton, N. B.....this.....tenth.....day of..... March.....19...34

In the presence of
(Sgd) H. S. Murray
(Sgd) D. R. Currie

(Sgd) Ewart C. Atkinson (L.S.) 30
..... (SEAL)

N.B.—If this document is signed by an incorporated company its corporate seal must be affixed.



7.—Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co., Ltd.

No. 7
J. H. B.
Nov. 17/36

FREDERICTON, N. B., March 12, 1934.

Port Royal Pulp & Paper Co. Ltd.,
SAINT JOHN, N. B.

Dear Sirs :—

Re E. C. ATKINSON.

10 We enclose herewith for your files copy of Assignment from Mr. E. C. Atkinson of the contract dated October 31st, 1933, for the purchase of 1,000 to 4,000 cords of draw shaved or rossed spruce and fir pulpwood. Please acknowledge receipt of this assignment and in future send all cheques in payment direct to this bank.

In your letter of the 1st instant you advised the changing of the contract from the name of New Lepreau Ltd. to E. C. Atkinson. Kindly advise us what payments you have made to date on this contract.

Yours truly,
Manager.

Exhibits.
—
Plaintiff's
Document.
—
7.

Letter from
Royal Bank
of Canada
to Port
Royal Pulp
& Paper
Co. Ltd.,
12th March,
1934.

20 8.—Letter from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada.

No. 8
J. H. B.
Nov. 17/36

MILLS
SAINT JOHN, N. B.
CANADA.

PORT ROYAL PULP & PAPER CO. LIMITED.

Saint John, N. B.
March 16, 1934.

8.
Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
Royal Bank
of Canada,
16th March,
1934.

30 Royal Bank of Canada,
Fredericton, N.B.

Gentlemen :

We acknowledge receipt of assignment of the contract for 1000 to 4000 cords of draw shaved pulpwood, dated October 21, 1933. The advances on this contract during the winter were \$484.90, plus an amount of about \$4000 over advanced on the other contract which we have with him, and which he has asked us to charge against this new contract.

Yours very truly,
PORT ROYAL PULP & PAPER CO. LTD.
(Sgd) Antoine J. Lacroix
A. J. Lacroix

40 AJL : EM

Exhibits.

9.—Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co. Ltd.

Plaintiff's
Document.No. 9
J. H. B.
Nov. 17/36

9.

Letter from
Royal Bank
of Canada
to Port
Royal Pulp
& Paper
Co. Ltd.,
20th March,
1934.THE ROYAL BANK OF CANADA
Incorporated 1869.PLEASE ADDRESS
ALL COMMUNICATIONS
TO THE MANAGER
Cable Address "ROYALBANK "

10

FREDERICTON, N. B., March 20, 1934.
Port Royal Pulp & Paper Co. Ltd.,
SAINT JOHN, N. B.
ATTENTION MR. A. J. LACROIX

Dear Sirs :—

Referring to your letter of the 16th instant in which you advise that \$484.90 has been paid against the contract dated October 21st, 1933, with Mr. E. C. Atkinson, we note that you have a claim against him of \$4,000 on the previous contract which has not yet been completed owing to pulp to be shipped. We have advanced him \$3,000 on the contract dated 20 October 21st, under Section 88 Security, and therefore shall expect our advances in this connection to be repaid before your claim of \$4,000 mentioned.

We shall be glad to hear from you regarding this matter.

Yours truly,

(Sgd) H. S. Murray.
Manager.

A.—Letter from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada.

Exhibits.

A

Defendant's
Document.

MILLS
SAINT JOHN, N. B.
CANADA

J. H. B.
Nov. 18/36

A.
Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
Royal Bank
of Canada,
26th March,
1934.

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.,
March 26, 1934.

10 Royal Bank of Canada,
Fredericton, N. B.

Attention Mr. Murray, Manager

With further reference to our letter of the 16th, and in reply to yours of the 20th, inst., we are sorry to advise that our head office do not want to release their first claim on advances to E. C. Atkinson on contract for draw shaved wood, dated October 21, 1933. We are quite willing to agree to protect your advances as much as possible after our amount has been taken care of, consisting of \$4,000, in addition to the amount of \$484.90, making a total of \$4484.90, which we hold as advances against this contract.

20

Yours truly,

PORT ROYAL PULP & PAPER CO. LIMITED.

(Sgd.) Antoine J. Lacroix

A. J. Lacroix

AJL : EM

Plaintiff's Document.

10.—Contract between E. C. Atkinson and Port Royal Pulp & Paper Co. Ltd.

No. 10
J H B
Nov 17/36

10.
Contract between E. C. Atkinson and Port Royal Pulp & Paper Co. Ltd., 26th April, 1934.

PORT ROYAL PULP & PAPER CO., LTD.
PEELED PULPWOOD CONTRACT
MILL DELIVERY

Quantity.

THIS AGREEMENT made this 26th day of April, A.D. 1934 between Mr. E. C. Atkinson, of Fredericton, and Province of New Brunswick, hereinafter called "the Seller" of the First Part, and Port Royal Pulp & Paper Co., Limited, hereinafter called "the Company" of the Second Part. WITNESSETH THAT the Seller for and in consideration of the sum of One Dollar (\$1.00) to him in hand this day paid by the Company, the receipt of which is hereby acknowledged, doth hereby agree to sell and deliver to the Company, and the Company agrees to purchase and accept:— 10,000 Cords of Peeled Spruce & Fir Pulpwood.

Quality.

The Pulpwood hereby contracted for shall be cut from fresh, sound, live trees, and shall contain not less than eighty (80%) percent Spruce. The said Pulpwood hereby contracted for shall not contain any fire killed or burnt wood and must be reasonably straight and free from knots, which must be trimmed flush with the body of the stock, and all outer and inner bark must be thoroughly removed from the stock. It must be free from all mildew, stain, worm holes, fungus, dozy spots, sap rot, heart rot, red heart, or any other imperfections of any description. No pine, cat, skunk, pasture or tamarack spruce will be accepted. If any car or other shipment of pulpwood delivered under this Contract is of such inferior quality and not in accordance with the specifications of this Contract, so as to render it, in the opinion of the Company, unfit for use in the manufacture of pulp for paper at the mill of the Company to which it is consigned, or such other mill as the said company may designate, such car or other shipment as aforesaid may be rejected by the Company and all freight charges, demurrage and expenses in connection with the said shipment shall be borne by the Seller and shall be charged by the Company against the Seller when final settlement is made.

Marking of Pulpwood.

The Pulpwood is to be cut from lands owned or controlled by the Seller and situated: in Charlotte County N. B.

Location.

Specifications.

All Pulpwood to be delivered under this Contract must be four (4) feet in length and four (4) inches and upwards in diameter at the small end, of which not over 10 per cent shall be four (4) inches. All Pulpwood delivered under this Contract must be sawn square at each end. No axe-made Pulpwood will be accepted.

Shipments.

All Pulpwood under this contract is to be shipped from New River Station, Charlotte County, N. B. consigned to Port Royal Pulp & Paper Company, Limited, Fairville or to such other points as the Company may designate. Freight to any other point than Fairville, N. B. to be equalized on Fairville freight rate. On the date of shipment of each car of Pulpwood

under this Contract, the Seller shall forward to the Company the original bill of lading and a notice stating the name, number and contents (both kind and quantity) of each car. It is distinctly understood and agreed that all Pulpwood delivered under this Contract is to be loaded by the Seller, compactly, in full carload lots, to the satisfaction of the Company. Shipments under this Contract shall begin in March 1935 and shall continue as directed by the Company until all pulpwood covered by this Contract has been shipped to the Company.

10 All Pulpwood delivered under this Contract shall be measured, inspected and classified on delivery at the Company's mill at Fairville or at such other mill as the said Pulpwood may be delivered to, by some competent person appointed by the Company, whose measure, inspection and classification shall be final and binding upon the parties hereto. All Pulpwood under this Contract shall be measured and scaled on the basis of 128 cubic feet per cord. It is distinctly understood and agreed that no scale shall be allowed the Seller for any Pulpwood under this Contract measuring less than four (4) inches in diameter at the small end, and not in accordance with any and all other specifications of this Contract.

20 The Company agrees to pay to the Seller seven Dollars and twenty-five cents (\$7.25) per cord for Pulpwood cut under this Contract and advances and payments to be made as follows:

Payments.

Advances on the said Pulpwood shall be made by the said Company to the Seller at the rate of:—

a) \$1.25 per cord when wood has been peeled;

b) Further advance of \$1.25 per cord when the wood has been sawed and piled in the forest ready for scaling.

To make these advances, the Company's estimation will be used and the wood stamped with the Company's mark;

30 c) A further advance of \$1.00 when the wood has been hauled to the river ready for driving;

d) A further advance of 50 cents a cord when the wood has been driven down the river to New River station;

e) The balance to be paid on the twentieth (20) of each month for all pulpwood delivered to and accepted by the Company during the previous month. Also, if there are any incumbrances or Government dues on said wood, company shall deduct same from remittance to the Seller.

Boat or Rail freight to Mill be paid by Seller.

Signed and delivered by the Parties hereto.

(Sgd) Alice Dugas

(Sgd) Ewart C. Atkinson
Seller.

40 Witness to Signature of
Seller.

Approved this 26th day of April A. D. 1934
PORT ROYAL PULP & PAPER CO. LTD

(Sgd) Alice Dugas
Witness to signature of
Company.

(Sgd) Ed. Lacroix

Exhibits.
—
Plaintiff's
Document.
—

11.—Assignment by E. C. Atkinson to the Royal Bank of Canada of interest in contract with Port Royal Pulp & Paper Co. Ltd., dated April 26th, 1934

No. 11

J. H. B.

Nov. 17/36

11.
Assignment
by E. C.
Atkinson to
the Royal
Bank of
Canada of
interest in
contract
with Port
Royal Pulp
& Paper
Co. Ltd.
dated
April 26th,
1934.
27th May,
1934.

Form Le 212
Revised 6-33

(In the case of an Assignment of Moneys Due under an Agreement for Sale, Form Le 235 should be used)

(1) FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, the undersigned hereby assigns, transfers and sets over unto THE ROYAL BANK OF CANADA (hereinafter called the "Bank") all moneys, claims, rights and demands whatsoever which the undersigned may now, or at any time hereafter, have or be entitled to under or by virtue of or in respect of or incidental to a certain

.....Contract.....(hereinafter called the "instrument") dated the.....
26th...day of.....April.....19...34..., made between the undersigned and
...Port RoyalPulp & Paper Co. Ltd..... (hereinafter called the
"debtor"), securing and/or covering10,000 cords of Peeled spruce
and fir pulpwood.....

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
the said moneys, claims, rights and demands or any of them, or any part or parts thereof, being hereinafter referred to as the "debt."

(2) The undersigned agrees that the debt shall be held by the Bank as general and continuing collateral security for the fulfilment of all obligations, present or future, of the undersigned to the Bank, whether arising from dealings between the Bank and the undersigned or from any other dealings by which the Bank may be or become in any manner whatsoever a creditor of the undersigned, and whether such obligations were or be incurred alone or jointly with another or others, and whether as principal or surety, and whether matured or not, and whether absolute or contingent.

(3) The undersigned expressly authorizes the Bank to collect, demand, sue for, enforce, recover and receive the debt and to give valid and binding receipts and discharges therefor and in respect thereof, the whole to the same extent and with the same effect as if the Bank were the absolute owner thereof and without regard to the state of accounts between the undersigned and the Bank.

(4) All moneys received by the undersigned from the collection of the debt shall be received in trust for the Bank.

(5) The Bank may sell either by public or private sale or otherwise dispose of the debt in such manner, upon such terms and conditions, for

such consideration and at such time or times as may seem to it advisable and without notice to the undersigned and without any liability for any loss resulting therefrom.

(6) The Bank may apply any moneys received by it against any obligation of the undersigned to the Bank as to the Bank seems best or hold the same in a separate collateral account for such time as it may see fit and then apply the same as aforesaid, the whole without prejudice to its claim for any deficiency.

10 (7) The Bank may compound, compromise, grant extensions, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the debtor, the undersigned and others, and with the debt and other securities as the Bank may see fit, without prejudice to the liability of the undersigned or the Bank's right to hold and realize this security.

(8) The Bank shall not be liable or accountable for any failure to collect and/or enforce the debt and the Bank shall not be bound to institute proceedings for the purpose of collecting and/or enforcing the same or for the purpose of preserving any rights of the Bank, the undersigned or any other person, firm or corporation in respect of the same.

20 (9) The Bank may charge on its own behalf and also pay to other persons, firms and corporations reasonable sums for services rendered and for expenses incurred in collecting or attempting to collect and/or enforcing or attempting to enforce the debt and may add the amount of such sums to the indebtedness of the undersigned and/or retain the said amount out of the moneys received by the Bank.

30 (10) The undersigned covenants and agrees with the Bank that of all the obligations of the undersigned and others concerned under or in virtue of the instrument and all other agreements incidental or ancillary thereto shall be fulfilled, and the undersigned shall from time to time forthwith on the Bank's request furnish to the Bank all writings and information requested relating to the obligation in respect of which the debt is payable and the Bank shall be entitled from time to time to inspect any books, papers, documents or records evidencing or relating to such obligation and make copies thereof and for such purpose the Bank shall have access to all premises occupied by the undersigned.

(11) The undersigned agrees that on payment of the full amount secured by the instrument, the undersigned, at the request of the Bank will do, make and execute such deeds, documents, acts, matters and things as the Bank may deem necessary to evidence the release and discharge of the instrument.

40 (12) The undersigned covenants and declares that neither the debt nor the instrument has been assigned to or pledged or encumbered in favour of any other person, firm or corporation and the undersigned covenants and agrees with the Bank not to assign, pledge or encumber the debt or the instrument so long as this agreement remains in force, to or in favour of any other person, firm or corporation without the written consent of the Bank.

Exhibits.
—
Plaintiff's
Document.

11.
Assignment
by E. C.
Atkinson to
the Royal
Bank of
Canada
of interest
in contract
with Port
Royal Pulp
& Paper
Co. Ltd.
dated
April 26th,
1934,
27th May,
1934—con-
tinued.

Exhibits.
 ———
 Plaintiff's
 Document.
 ———

11.
 Assignment
 by E. C.
 Atkinson to
 the Royal
 Bank of
 Canada
 of interest
 in contract
 with Port
 Royal Pulp
 & Paper
 Co. Ltd.
 dated
 April 26th,
 1934,
 27th May,
 1934—con-
 tinued.

(13) For the purpose of enforcing all rights of the undersigned in or under the instrument, the undersigned hereby nominates, constitutes and appoints the Manager for the time being of the branch of the Bank at which the account of the undersigned is being carried, the true and lawful attorney of the undersigned, irrevocable, with full power of substitution, for and in the name of and on behalf of and at the expense of the undersigned to act in relation to the instrument and in securing the enforcement of all the rights of the undersigned therein and thereunder as fully and effectually in all respects as the undersigned could do, and, without limiting the generality of the foregoing, to institute and prosecute any action or proceedings in respect of the instrument as said attorney may deem advisable and to execute on behalf of the undersigned a discharge of the instrument in favour of the debtor. 10

(14) The present assignment is given in addition to and not in substitution for any similar assignment heretofore given to and still held by the Bank and is taken by the Bank as additional security for the fulfilment of the aforesaid obligations of the undersigned to the Bank and shall not operate as a merger of any simple contract debt or in any way suspend the fulfilment of, or prejudice or affect the rights, remedies and powers of the Bank in respect of, the said obligations or any securities held by the Bank for the fulfilment thereof. 20

(15) This agreement shall be binding on the undersigned and the heirs, executors, administrators, successors and assigns of the undersigned and shall enure to the benefit of the Bank and its successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed under seal at ...Fredericton.... this....27th....day of.....May.....19....34.

In the presence of

(Sgd) H. S. MURRAY

(Sgd) Ewart C. Atkinson (L.S.)

(Sgd) O. V. Stevenson

.....(SEAL)

N.B.—If this document is signed by an incorporated company its corporate seal must be affixed.

13.—Letter from Port Royal Pulp & Paper Co. Ltd. to E. C. Atkinson.

Exhibits.

No. 13
J. H. B.
Nov. 17/36

Plaintiff's
Document.

13.

Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to E. C.
Atkinson,
14th July,
1934.

MILLS
SAINT JOHN, N. B.
CANADA

PORT ROYAL PULP & PAPER CO. LIMITED.

Saint John, N. B.,
July 14th, 1934.

10

E. C. Atkinson,
Fredericton, N. B.

Dear Sir :

Regarding our contract dated April 26 we beg to advise that we agree to alterate this contract to read " whatever shipment you may have this summer up to a quantity of three thousand cords we will take care of this shipment on the terms in this contract."

Yours very truly,

PORT ROYAL PULP & PAPER CO. LTD.

(Sgd) Antoine J. Lacroix

Antoine J. Lacroix

20

AJL : EM

14.—Application for Credit and promise to give Bills of Lading, warehouse receipts or security under Sec. 88.

14.

Application
for Credit
and promise
to give Bills
of Lading,
warehouse
receipts or
security
under
Section 88,
16th July,
1934.

Supplementary to application
and promise dated Jan. 24/34

No. 14
J. H. B.

Form 302. Rev. 8-19.

Nov. 17/36

Application for credit and promise to give bills of lading,
warehouse receipts or security under section 88.

30

Fredericton, N. B. July 16th, 1934 To the Manager

THE ROYAL BANK OF CANADA,

Fredericton, N. B.

Dear Sir :

The Bank is hereby requested by the undersigned to grant and continue during the current season (which shall be considered to terminate...Twelve months after the date hereof) a revolving line of credit for my/our...pulp-wood business of \$...10,000....., and to make advances to the undersigned

Exhibits.
—
Plaintiff's
Document.
—
No. 14.
Application
for Credit
and promise
to give Bills
of Lading,
warehouse
receipts or
security
under
Section 88,
16th July,
1934—con-
tinued.

thereunder on the security of all theRough or draw shaved or sap
peeled spruce and fir pulpwood.
.....
(hereinafter referred to as " goods ") which are now owned or which may be
owned by the undersigned from time to time while any advances made under
this credit remain unpaid, and which are now or may hereafter be in
...the.....Lawrence flowage on New River Stream in the County of Charlotte
.....
situated ... or elsewhere 10

And the undersigned promise and agree to give the said Bank from
time to time and as often as required security and further security for the
said advances by way of assignments under Section 88 of The Bank Act,
covering all the said goods or part thereof, and/or bills of lading and/or
warehouse receipts for goods of the above kinds or some of them; and you
or the Acting Manager for the time being are hereby appointed the Attorney
of the undersigned, to give from time to time to the Bank the security and
further security above mentioned and to sign the same on behalf of the
undersigned.

The Bank may from time to time take from the undersigned bills 20
and/or notes representing the advances in whole or part. Such bills and/or
notes shall not extinguish or pay the indebtedness created by such advances
but shall represent the same only.

This undertaking is to apply to all advances made to the undersigned
under the said line of credit, the intention being that all said goods which
the undersigned may from time to time have in said place or places shall
from time to time be assigned and further assigned as often as required to
the Bank under Section 88 as security for all advances, and that all bills of
lading or warehouse receipts covering goods of the above kinds which the
undersigned may receive from time to time shall be given to the Bank as 30
such security, and that no security taken shall be merged in any subsequent
security or be taken to be substituted for any former security.

Yours truly,

(Sgd) Ewart C. Atkinson (L.S.)
(SEAL)



15.—Agreement as to powers of The Royal Bank of Canada in relation to all advances and securities held therefor.

Form 301.
Rev. 11-19.

No. 15
J. H. B.
Nov. 17/36.

Exhibits.
—
Plaintiff's
Document.
—
15.

Agreement as to Powers of The Royal Bank of Canada in relation to all Advances and Securities held therefor.

Agreement
as to powers
of The
Royal Bank
of Canada
in relation
to all
advances
and securi-
ties held
therefor,
16th July,
1934.

To The Royal Bank of Canada :—

In consideration of any advance or advances which may be made by
10 THE ROYAL BANK OF CANADA (hereinafter called the " Bank ")
including any advance or advances upon the security of warehouse receipts
or bills of lading or upon any promise to give security or upon security
under Section 88 of The Bank Act, the undersigned (hereinafter called the
" Customer ") consents, promises and agrees with the Bank as follows :—

1. All warehouse receipts, bills of lading or securities under The Bank
Act (hereinafter referred to as " the securities ") covering all goods, wares
and merchandise as defined in The Bank Act, live stock and dead stock
and grain as defined in The Bank Act, and crops (hereinafter referred to as
20 the " goods "), together with all other securities now or hereafter acquired
by the Bank from the Customer (including any securities which the Bank
may allow to be substituted from time to time therefor or for any part
thereof), and all proceeds thereof, together with all products of the goods
and the proceeds of all sales of the goods shall at the option of the Bank
be held as continuing collateral security for the payment of all advances
so made and of all liabilities of the Customer to the Bank now or hereafter
incurred and due or to become due and interest, including all costs, charges
and expenses incurred in connection therewith or with the security taken
therefor and interest thereon (all of which are hereinafter referred to as the
" liabilities ").

30 2. Any surplus resulting from the realization of such collateral security
remaining after payment of the liabilities may be applied by the Bank in
payment of or held by it as continuing collateral security for any and
every other liability of the Customer to the Bank, due or to become due,
heretofore, now or hereafter incurred, and interest and costs, charges and
expenses in connection therewith or with the security therefor (all of which
are hereinafter referred to as " additional liabilities ").

40 3. The interest above provided for shall be paid at the rate of seven
per cent. per annum so long as anything remains due in respect of the
liabilities and additional liabilities unless otherwise provided or agreed on
and the liabilities and additional liabilities including such interest the
Customer expressly agrees to pay.

4. The Customer shall upon demand from time to time deliver to the
Bank additional securities or make payments on account to its satisfaction
and on default or on default in respect of any of the terms of this agreement,

Exhibits.
 —
 Plaintiff's
 Document.
 —

15.
 Agreement
 as to powers
 of The
 Royal
 Bank of
 Canada in
 relation to
 all advances
 and securi-
 ties held
 therefor.
 16th July,
 1934—con-
 tinued.

all the said liabilities and additional liabilities shall, at the option of the Bank be payable forthwith, and without any demand, and the Bank is hereby authorised to sell all or any of the securities of the Customer and the goods and any part thereof and all products of the goods or any part thereof, if, and as, and when, and where the Bank, in its absolute discretion shall think proper, without notice to the Customer or any other person, without advertisement and without selling at public auction and to apply the proceeds in reduction of the liabilities and additional liabilities as the Bank may, from time to time see fit without prejudice to its claim for any deficiency and free from any right of redemption on the part of the Customer which is hereby waived and released, the Customer expressly waiving all and every formality prescribed by custom or by law in relation to any such sale. 10

5. If the Customer shall sell the goods or any part thereof the proceeds of any such sale, including cash, bills, notes, evidences of title and securities, and the indebtedness of any purchaser in connection with such sales shall be the property of the Bank to be forthwith paid or transferred to the Bank and until so paid or transferred to be held by the customer in trust for the Bank. Execution by the Customer and acceptance by the Bank of an assignment of book debts shall be deemed to be in furtherance of this declaration and not an acknowledgement by the Bank of any right or title on the part of the Customer to such book debts. 20

6. If the Bank shall surrender to the Customer any of the securities from time to time for the purpose of enabling the Customer to obtain possession of the goods, the Customer shall receive possession of the securities, and the goods as bailee for and on behalf of the Bank and deal with the same as the Bank may direct from time to time and shall give to the Bank securities under the Bank Act covering said Goods.

7. The Customer shall keep the goods insured against damage by fire and if demanded by the Bank against any other loss or damage to their full insurable value in companies approved by the Bank, which shall be entitled to the benefit of all such insurance and shall assign to the Bank all policies evidencing the same or have the loss made payable to, and deliver the policies to the Bank, and upon default the Bank shall be entitled but not bound to effect insurance on the goods to such extent as it sees fit and the customer will pay on demand the premiums and interest thereon. 30

8. The Customer shall at all times duly and seasonably pay and discharge the wages, salaries and other remuneration of all persons employed by the Customer in connection with the business of the Customer, and shall from time to time if so requested by the Bank obtain such waivers of prior liens for salaries, wages or other remuneration as may be necessary to secure to the Bank a first lien on the goods. 40

9. Any promissory note or bill of exchange received by the Bank together with any security and/or documents attached thereto or received

therewith shall be subject to the terms of this agreement and the Bank and/or holders for the time being of such bill or note may at any time before or after the maturity thereof and whether or not the same has been dishonoured accept payment and deliver the security or documents or accept partial payment from time to time and thereupon release a proportionate part of the security or the goods covered thereby.

10 10. The Bank may itself or by an agent, from time to time, without any demand, forcibly open, enter upon or into and occupy and use free of charge and to the exclusion of all others including the Customer, the premises and property (real and personal, immovable and movable) of or used by the Customer in connection with the goods (not being the premises of a warehouseman or carrier) until the goods shall be fully realized upon and may from time to time appoint a receiver or agent to act for the Customer, who alone shall be responsible for his acts and such agency the Customer shall not have any power to revoke or determine. Such agent or receiver shall have the powers hereby granted to the Bank (including entry and use as above provided) and in addition the right from time to time in the name of the Customer to exercise all rights, powers, and privileges of the Customer of every kind and to do all acts and things that the Customer could do if acting, for the purpose of completing, selling, shipping or otherwise dealing with the goods in such manner as the Bank may think proper to enable the goods to be realized upon.

30 11. The Bank may release, compromise, settle and adjust any claim, dispute or difference which may arise in respect of the securities the goods and proceeds thereof and any collateral security and may use any Clearing House established by the Canadian Bankers' Association and in all dealings with the Customers' accounts and with Bills of Exchange and presentment for payment thereof may act under and in accordance with the rules and regulations under which such Clearing Houses are operated and shall not be responsible for any loss occasioned by acting hereunder, nor for any neglect, failure or delay in exercising or enforcing any of its powers or rights nor for any act, default or misconduct of any agent, broker, officer, employee or servant of the Bank, and the Bank shall be accountable only for such moneys as it shall actually receive. It shall not be necessary for the Bank to give notice of this agreement or of the securities taken hereunder to any person, and the Bank shall not be responsible for any failure to give notice, nor for granting any extension of time or indulgence.

40 12. The Customer shall from time to time execute, draw, endorse, and deliver the securities and the notes for such advances and all notes, bills of exchange, agreements, contracts, leases assignments or other documents which may from time to time in the opinion of the Bank be necessary or expedient for the purpose of carrying into effect any of the provisions hereof and of perfecting the title of the Bank to the securities the goods and proceeds thereof and of securing the payment to the Bank of the said liabilities and additional liabilities and hereby appoints the Bank and any of its managers or acting managers the Attorney and Attorneys of the

Exhibits.
—
Plaintiff's
Document.
—

15.
Agreement
as to powers
of The
Royal Bank
of Canada
in relation
to all
advances
and securi-
ties held
therefor,
16th July,
1934—con-
tinued.

Exhibits.
 ———
 Plaintiff's
 Document.
 ———

15.
 Agreement
 as to powers
 of The
 Royal Bank
 of Canada
 in relation
 to all
 advances
 and securi-
 ties held
 therefor,
 16th July,
 1934—con-
 tinued.

Customer, with full power of substitution from time to time for and in the name of the Customer to do any and all of the aforesaid acts, and this appointment being made in consideration of such advances shall be irrevocable so long as any part of the liabilities and additional liabilities remains unpaid and notwithstanding the death of the Customer, and every power, right and discretion conferred upon the Bank by this agreement or by the Bank Act may be exercised on the part of the Bank by the General Manager, or Assistant General Manager, or by any Inspector of the Bank, or any person from time to time nominated by the Bank as well as by the Manager or any person acting as such for the time being of any Branch of the Bank where the Customer may keep an account. 10

13. The provisions hereof shall be in addition to all other legal remedies of the Bank, and to all rights under agreements heretofore given.

14. Any notice to the Customer shall be sufficiently given if sent by mail addressed to the Customer at the address subjoined hereto.

15. The benefit of all rules of law or equity inconsistent with any of the provisions hereof is hereby waived by the Customer.

16. This is to be a continuing consent and agreement and all the provisions hereof shall extend to all advances now presently made or hereafter to be made by the Bank to the Customer and to all securities from time to time held by the Bank therefor, and the proceeds thereof; and every advance or loan hereafter made shall be deemed to be made upon the consents, promises and agreements herein contained. 20

17. The word "Customer" shall mean and include the undersigned and the executors, administrators, successors and assigns of the undersigned.

Signed and Sealed at Fredericton, N. B. this 16th day of July 1934

Signature (Sgd.) Ewart C. Atkinson (L.S.)
 P. O. Address Fredericton, N. B.

12.—Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co. Ltd.

No. 12
J. H. B.
Nov. 17/36

Exhibits.
—
Plaintiff's
Document.
—

FREDERICTON, N. B., July 17, 1934.

Port Royal Pulp & Paper Co. Ltd.,
SAINT JOHN, N. B.

Dear Sirs :

Re E. C. Atkinson

10 We enclose herewith our form Le 212, being an assignment of monies due or becoming due under your contract with Mr. Atkinson, dated April 26th, 1934, for 10,000 cords of peeled spruce and fir pulpwood, of which you will take delivery of 3,000 cords this summer as advised in your letter of the 14th instant to Mr. Atkinson.

Please acknowledge receipt of this letter and advise the amount you have advanced him on pulpwood not delivered.

Yours very truly,

Manager.

12.
Letter
from Royal
Bank of
Canada to
Port Royal
Pulp &
Paper Co.
Ltd.,
17th July,
1934.

20 21.—Promissory Notes for advances made under an agreement to give security,
Nos. 21 to 41 inclusive.

No. 21.
Form 325 A
3-25

No. 21
J. H. B.
Nov. 17/36

21.
Promissory
Notes for
advances
made under
an agree-
ment to
give
security,
Nos. 21 to 41
inclusive.

(Promissory Note to be given for advances made under an agreement to furnish security.)

\$1,000.00..... Fredericton, N. B. ... July 17 ... 1934...
25/975 200/775 250/525 200/325 69.45/255.55 170/85.55

No. 21.
17th July,
1934.

30 THE ROYAL BANK OF CANADA at its office in Fredericton, N. B.....
On demand ... I ... promise to pay to
The sum of One thousand..... Dollars
with interest at the rate of 7 per cent. per annum from date
until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the "Application for credit and promise to give bills of lading, warehouse receipts or security

Exhibits.
 Plaintiff's
 Document.

under section 88 " made by the undersigned to the Bank, and dated the
 Jany 24th & July 16th day of
 1934... and the undersigned hereby promises to give the said Bank, from
 time to time as required by the Bank, security and further security for the
 foregoing Note by way of assignments and further assignments under
 Section 88 of the Bank Act, upon the " goods " mentioned in the said
 Application and promise, or by way of Warehouse Receipts or Bills of
 Lading for the same or part thereof, and no security taken hereunder shall
 be merged in any subsequent or taken to be substituted for any prior
 security, and the Manager of the said Bank, or the Acting Manager for the
 time being, is hereby appointed the Attorney of the undersigned to give
 from time to time to the Bank the security or further security above men-
 tioned and to sign the same on behalf of the undersigned.

21.
 Promissory
 Notes for
 advances
 made under
 an agree-
 ment to give
 security,
 Nos. 21 to 41
 inclusive—
 continued.

No. 21.
 17th July,
 1934—con-
 tinued.

Dated at Fredericton, N. B. this17th day of ... July
 1934.....

The property of the
 Royal Bank of Canada,
 Fredericton, N. B.
 Loan 930

The borrower to (Sgd) Ewart C. Atkinson.
 sign here also.....

N

July 31 1934 Interest	2.68	C S	\$25	a/c	Nov 17/1934	n
Interest Aug 31 1934	5.94	C S	200	,,	Dec 7	n
Interest Sep 30 1934	5.75	C S	250	,,	14	n
Interest Oct 31 1934	5.94	C S	200	,,	Dec 27	n
Interest Nov 30 1934	5.94	S C	69.45		Jan 11	n
Interest Dec 31 1934	4.05	S H	170.		Jan 29	n
Interest Jan 31 1935	1.58	H S				

Charge 25c interest on
 L 899\$75. pd Nov 17

6c stamp

10

20

30

Exhibits. **No. 23.**
 ——— Form 325 A
 Plaintiff's Document. 3-25

21. (Promissory Note to be given for advances made under an agreement to furnish security.)
 Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41, inclusive—*continued.*
 No. 23.
 28th July, 1934.

70. Fredericton, N. B.....July 28 1934...
 \$1,000.0040.46

110.46 Feb. 24/36 On demand ... I ... promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B. the sum of One thousand .. 00/..... 10
 Dollars with interest at the rate of ... 7 ... per cent. per annum from date until paid, for value received.

(Sgd) Ewart C. Atkinson

the borrower
 to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the.....
 24th Jany & 16th Julyday of 20
 1934 and the undersigned hereby promises to give the said Bank from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or 30
 further security above mentioned and to sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this.....28th.....day of.....July.....1934...

Property of The Royal Bank
 of Canada, Fredericton, N. B.
 Loan 972

N The borrower to (Sgd) Ewart C. Atkinson
 sign here also

34 days	Interest Nov 30 1934	5.75	S C	
Interest Aug 31 1934	6.52	S C	Interest Dec 31 1934	5.94 S H 40
Interest Sep 30 1934	5.75	S C	Interest Jan 31 1935	5.94 H S
Interest Oct 31 1934	5.94	C S		6c stamp



No. 24.
Form 325 A
3-25

Exhibits.
Plaintiff's
Document.

(Promissory Note to be given for advances made under an agreement to furnish security.)

21.
Promissory
Notes for
advances
made under
an agree-
ment to give
security,
Nos. 21 to 41
inclusive—
continued.
No. 24.
2nd August,
1934.

70.
\$1,000.00.....39.50 Fredericton, N. B.....Aug. 2...1934...

10 109.50 Feb. 24 ... On demand ... I ... promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B., the sum of One thousand.....00/..... Dollars with interest at the rate of ... 7 ... per cent per annum from date until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the
20 Jany 24 & July...16.....day of...1934 and the undersigned hereby promises to give the said Bank from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the "goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned.

30 Dated at Fredericton, N. B., this...2nd.....day of.....Aug.....1934...

Property of The Royal Bank of
Canada, Fredericton, N. B.

Loan 1004

N The borrower to (Sgd) Ewart C. Atkinson.
sign here also.....

Interest Aug 31 1934 5.56 C S Interest Dec 31 1934 5.49 S H
Interest Sep 30 1934 5.75 C S Interest Jan 31 1935 5.94 H S
Interest Oct 31 1934 5.94 C S 6c stamp
Interest Nov 30 1934 5.75 S C

Exhibits. **No. 25.**
 ——— Form 325 A
 Plaintiff's Document. 3-25

(Promissory Note to be given for advances made under an agreement to furnish security.)

21.
 Promissory Notes for advances made under an agree- ment to give security, Nos. 21 to 41 inclusive—
continued.

\$500.00..... 35. Fredericton, N. B. ... Aug. 4 ... 1934 ...
 54.56 Feb. 24/36 On demand.....promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N.B.....the sum of... Five hundred...00/..... 10
 Dollars with interest at the rate of ...7...per cent. per annum from date until paid, for value received.

No. 25.
 4th August, 1934.

The borrower (Sgd) Ewart C. Atkinson to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the 24th Jany ... & ... 16th Julyday of..... 20
 1934... and the undersigned hereby promises to give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assign- ments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned. 30

Dated at Fredericton, N. B. this4th.....day of...Aug....19...34

Property of The Royal Bank of Canada, Fredericton, N. B.
 Loan 1021

N The borrower to (Sgd) Ewart C. Atkinson sign here also

Interest Aug 31 1934	2.58	C S	Interest Dec 31 1934	2.97	S H
Interest Sep 30 1934	2.87	C S	Interest Jan 31 1935	2.97	H S
Interest Oct 31 1934	2.97	C S			6c stamp
Interest Nov 30 1934	2.87	S C			

No. 26.
Form 325 A
3-25

Exhibits.
Plaintiff's
Document.

(Promissory Note to be given for advances made under an agreement to furnish security.)

\$500.00.....35. Fredericton, N. B., ... Aug. 13 ...1934...

21.
Promissory
Notes for
advances
made under
an agree-
ment to give
security.
Nos. 21 to 41
inclusive—
continued.
No. 26.
13th August,
1934.

10 53.69 Feb. 24/36 On demand...I...promise to
pay to THE ROYAL BANK OF CANADA at its office in Fredericton,
N. B.....the sum of Five hundred...00 /
Dollars with interest at the rate of ...7...per cent. per annum from date
until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for
an advance made to the undersigned under the terms of the " Application for
credit and promise to give bills of lading, warehouse receipts or security
under section 88 " made by the undersigned to the Bank, and dated the
24th Jany...&...16th July.....day of.....1934...
20 and the undersigned hereby promises to give the said Bank, from time to
time as required by the Bank, security and further security for the foregoing
Note by way of assignments and further assignments under Section 88 of
the Bank Act, upon the " goods " mentioned in the said Application and
promise, or by way of Warehouse Receipts or Bills of Lading for the same
or part thereof, and no security taken hereunder shall be merged in any
subsequent or taken to be substituted for any prior security, and the
Manager of the said Bank, or the Acting Manager for the time being, is
hereby appointed the Attorney of the undersigned to give from time to
time to the Bank, the security or further security above mentioned and to
30 sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this.....13th.....day of ...Aug.....1934

Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 1049

N The borrower to (Sgd) Ewart C. Atkinson
sign here also

Interest Aug 31 1934	1.72	C S	Interest Dec 31 1934	2.97	S H
Interest Sep 30 1934	2.87	C S	Interest Jan 31 1935	2.97	H S
Interest Oct 31 1934	2.97	C S			6c stamp
40 Interest Nov 30 1934	2.87	S C			

Exhibits. **No. 27.**
 ———— Form 325 A
 Plaintiff's Document. 3-25
 (Promissory Note to be given for advances made under an agreement to furnish security.)

21. Promissory Notes for advances made under an agree- ment to give security, Nos. 21 to 41 inclusive—*continued.*
 35. \$500.00.....17.64 Fredericton, N. B....Aug. 24...19...34

562.64 Feb. 24/36 On demand...I...promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B.....the sum of Five hundred...00/..... 10
 Dollars with interest at the rate of ...7...per cent. per annum from date until paid, for value received.

No. 27. The borrower (Sgd) Ewart C. Atkinson
 24th August, 1934. to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the 24th Jany...&...16th July.....day of.....19..... 20
 and the undersigned hereby promises to give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned. 30

Dated at Fredericton, N. B. this...24th.....day of.....Aug....1934...

Property of The Royal Bank
 of Canada, Fredericton, N. B.
 Loan 1083

N The borrower to (Sgd) Ewart C. Atkinson
 sign here also.....

Interest Aug 31 1934	.67	C S	Interest Dec 31 1934	2.97	S H
Interest Sep 30 1934	2.87	C S	Interest Jan 31 1935	2.97	H S
Interest Oct 31 1934	2.97	C S			6c stamp
Interest Nov 30 1934	2.87	C			

No. 28.
Form 325 A
3-25

Exhibits.
Plaintiff's
Document.

(Promissory Note to be given for advances made under an agreement to furnish security.)

21.

\$500.00.....17.16 Fredericton, N. B.....Aug. 29...1934...

Promissory
Notes for
advances
made under
an agree-
ment to give
security,
Nos. 21 to 41,
inclusive—
continued.

10 52.16 Feb. 24/36 On demand...I...promise to
pay to THE ROYAL BANK OF CANADA at its office in...Fredericton,
N. B.....the sum of ...Five Hundred...00/.....
Dollars with interest at the rate ofper cent. per annum from date
until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

No. 28.
29th August,
1934.

The foregoing note is given to THE ROYAL BANK OF CANADA for
an advance made to the undersigned under the terms of the " Application for
credit and promise to give bills of lading, warehouse receipts or security
under section 88 " made by the undersigned to the Bank, and dated the.....
24th Jany...&...16th...July.....day of.....19...
20 and the undersigned hereby promises to give the said Bank, from time to time
as required by the Bank, security and further security for the foregoing
Note by way of assignments and further assignments under Section 88 of
the Bank Act, upon the " goods " mentioned in the said Application and
promise, or by way of Warehouse Receipts or Bills of Lading for the same or
part thereof, and no security taken hereunder shall be merged in any
subsequent or taken to be substituted for any prior security, and the Manager
of the said Bank, or the Acting Manager for the time being, is hereby
appointed the Attorney of the Undersigned to give from time to time to
30 the Bank the security or further security above mentioned and to sign the
same on behalf of the undersigned.

Dated at Fredericton, N. B. this ...29th.....day of.....Aug.....19...34

Property of The Royal Bank
of Canada, Fredericton, N. B.

Loan 1103

N The borrower to (Sgd) Ewart C. Atkinson
sign here also.....

	33 days				Interest Dec 31 1934	2.97	S H
	Interest Sep 30 1934	3.16	C S		Interest Jan 31 1935	2.97	H S
	Interest Oct 31 1934	2.97	C S				6c stamp
40	Interest Nov 30 1934	2.87	S C				

Exhibits. **No. 29.**
 ——— Form 325 A
 Plaintiff's 3-25
 Document. (Promissory Note to be given for advances made under an agreement to furnish security.)
 ———
 21. Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41 inclusive—
continued.
 No. 29. 31st August, 1934.

35.

 Fredericton, N.B.....Aug. 31...19...34
 51.97 Feb. 24/36 On demand.....I.....promise to
 pay to THE ROYAL BANK OF CANADA at its office in Fredericton, 10
 N. B. the sum of Five hundred...00/.....
 Dollars with interest at the rate of...7...per cent. per annum from date
 until paid, for value received.
 The borrower (Sgd) Ewart C. Atkinson.....
 to sign here

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the..... 24th...Jany...&...16th...July.....day of..... 20
 19..... and the undersigned hereby promises to give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to 30
 sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this.....31st.....day of.....Aug.....19...34

The property of The Royal Bank
 of Canada, Fredericton, N.B.

Loan 1110

N The borrower to (Sgd) Ewart C. Atkinson
 sign here also.....

Interest Sep 30 1934	2.87	C S	Interest Dec 31 1934	2.97	S H
Interest Oct 31 1934	2.97	C S	Interest Jan 31 1935	2.97	H S
Interest Nov 30 1934	2.87	S H		6c stamp	40

No. 30.
Form 325 A
3-25

(Promissory Note to be given for advances made under an agreement to furnish security.)

\$490.00.....34.30
15.60

Fredericton, N. B....Sep. 11...1934...

10 pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B.....the sum of Four hundred ninety...00/..... Dollars with interest at the rate of ...7...per cent. per annum from date until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

20 The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the..... 24th...Jany.....&.....16th.....July.....day of.....19...34... and the undersigned hereby promises to give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned.

30 Dated at Fredericton, N.B. this..... ...11th... day of...Sep...1934...

Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 1154

N The borrower to (Sgd) Ewart C. Atkinson
sign here also

Interest Sep 30 1934	1.78	C S	Interest Dec 31 1934	2.91	S H
Interest Oct 31 1934	2.91	C S	Interest Jan 31 1935	2.91	H S
Interest Nov 30 1934	2.81	S C			6c stamp

Exhibits.
—
Plaintiff's Document.
—
21.
Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41 inclusive—
continued.
No. 30.
11th September, 1934.

Exhibits. **No. 31.**
Plaintiff's Form 325 A
Document. 3-25

21. (Promissory Note to be given for advances made under an agreement to furnish security.)

Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41 inclusive— <i>continued.</i>	\$535.00.....	37.45	16.72	Fredericton, N. B.,...Sep...14...19...34...
		54.17	Feb.24/36	On demand...I...promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N.B.....the sum of Five hundred thirty five..... Dollars with interest at the rate of.....per cent. per annum from date until paid, for value received.

No. 31.
14th September, 1934.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the "Application for credit and promise to give bills of lading, warehouse receipts or security under section 88" made by the undersigned to the Bank, and dated the24th...Jany...&...16th...July.....day of.....1934 ...and the undersigned hereby promises to give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the "goods" mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this.....14th.....day of.....Sep.....19...34
Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 1164

N The borrower to (Sgd) Ewart C. Atkinson
sign here also.....

Interest Sep 30 1934	1.63	C S	Interest Dec 31 1934	3.17	S H
Interest Oct 31 1934	3.17	C S	Interest Jan 31 1935	3.17	H S
Interest Nov 30 1934	3.07	S C			6c stamp

No. 32.

Form 325 A
3-25

(Promissory Note to be given for advances made under an agreement to furnish security.)

Fredericton, N. B.

\$100.00 7.
 3.04

Sept 18th.....1934...

10 pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N.B.....the sum of...One hundred...00/100..... Dollars with interest at the rate of...7...per cent. per annum from date until paid, for value received.

10.04 Feb. 24/36 On demand...I... promise to

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the... 20 24th...January...&...16...July.....day of.....1934..... and the undersigned hereby promises to give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the 30 time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this.....18th.....day of.....Sept.....19...34

Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 1173

S The borrower to (Sgd) Ewart C. Atkinson
 sign here also.....

Interest Sep 30 1934 .23 C S Interest Dec 31 1934 .59 S H
Interest Oct 31 1934 .60 C S Interest Jan 31 1935 .59 H S
40 Interest Nov 30 1934 .57 S C 3c stamp

Exhibits.
Plaintiff's Document.
21.
Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41 inclusive—
continued.
No. 32.
18th September, 1934.

Exhibits. **No. 33.**

Plaintiff's Document. **Form 325 A
3-25**

21.

(Promissory Note to be given for advances made under an agreement to furnish security.)

Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41, inclusive—*continued.*
No. 33.
9th October, 1934.

\$100.00..... 7.

2.64

Fredericton, N. B....Oct. 9.....1934...

9.64 Feb. 24/36

On demand....I...promise to

pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B.....the sum of One hundred 00/ 10
Dollars with interest at the rate of7....per cent. per annum from date until paid, for value received. 10

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, and dated the.....24th..Jany....&....16th July day of 1934.... and the undersigned hereby promises to 20
give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the 30
undersigned.

Dated at Fredericton, N. B. this.....9th.....day of.....Oct.....1934

Property of The Royal Bank of
Canada, Fredericton, N. B.
Loan 1257

N The borrower to (Sgd) Ewart C. Atkinson
sign here also.....

Interest Oct 31 1934 .42 C S Interest Jan 31 1935 .59 H S
Interest Nov 30 1934 .57 S C 3c stamp
Interest Dec 31 1934 .59 S H 40

Exhibits. **No. 35**
— Form 325 A
Plaintiff's Document. 3-25

(Promissory Note to be given for advances made under an agreement to furnish security.)

21.
Promissory Notes for advances made under an agreement to give security,
Nos. 21 to 41 inclusive—
continued.

7. Fredericton, N. B.
\$100.00.....2.22 Feb. 24/36Oct. 31st.....19...34...

9.22 On demand...I...promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B.....the sum ofOne hundred 00/100..... 10
Dollars with interest at the rate of ...7...per cent. per annum from date until paid, for value received.

No. 35.
31st October, 1934.

The borrower (Sgd) Ewart C. Atkinson to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the " Application for credit and promise to give bills of lading, warehouse receipts or security under section 88 " made by the undersigned to the Bank, dated the 24th January & 16th July.....day of1934 and the undersigned hereby promises to give the said Bank, from time to 20
time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the " goods " mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned. 30

Dated at Fredericton, N. B. this31st.....day of.....Oct.....19...34

The Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 1342

The borrower to (Sgd) Ewart C. Atkinson sign here also.....

N

Interest Nov 30 1934 .57 S C Interest Jan 31 1935 .59 H S
Interest Dec 31 1934 .59 S H 3c stamp

No. 36.

Form 325 A
3-25

Exhibits.
Plaintiff's Document.

(Promissory Note to be given for advances made under an agreement to furnish security.)

\$100.00.....7. Fredericton, N. B....Nov. 17...1934...
1.89

21.
Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41 inclusive—
continued.
No. 36.
17th November, 1934.

8.89 Feb. 24/36 On demand.....promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B.....the sum of...One hundred...00/..... Dollars with interest at the rate of ...7... per cent. per annum from date until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the "Application for credit and promise to give bills of lading, warehouse receipts or security under section 88" made by the undersigned to the Bank, and dated the..... 24th Jany...&...16th July.....day of.....1934...

20 and the undersigned hereby promises to give the said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the "goods" mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and
30 to sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this.....17th.....day of...Nov.....1934

The Property of The Royal Bank of Canada, Fredericton, N. B.
Loan 1408

N The borrower to (Sgd) Ewart C. Atkinson sign here also.....

Interest Nov 30 1934 .25 S C
Interest Dec 31 1934 .59 S H
Interest Jan 31 1935 .59 H S
3c stamp

Exhibits. **No. 37.**
Form 325 A
Plaintiff's 2-20
Document.

(Promissory Note to be given for advances made under an agreement to furnish security.)

21.
Promissory
Notes for
advances
made under
an agree-
ment to give
security,
Nos. 21 to 41
inclusive—
continued.
No. 37.
7th Decem-
ber, 1934.

Due.....
\$200.00.....14. Fredericton, N. B....Dec. 7th.....1934...
3.03

17.03 Feb. 24/36 On demand...I...promise to
pay to THE ROYAL BANK OF CANADA at its office in Fredericton, 10
N. B.....the sum of.....Two hundred...00/100.....
Dollars with interest at the rate of...7...per cent. per annum as well after as
before maturity for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here

The foregoing note is given to THE ROYAL BANK OF CANADA for
an advance made to the undersigned under the terms of the " Application for
credit and promise to give bills of lading, warehouse receipts or security
under section 88 " made by the undersigned to the bank, and dated the 20
.....24th...January...&...16th...July.....day of.....
1934... and the undersigned hereby promises to give the said Bank, from
time to time as required by the Bank, security and further security for the
foregoing Note by way of assignments and further assignments under
Section 88 of the Bank Act, upon the " goods " mentioned in the said
Application and promise, or by way of Warehouse Receipts or Bills of
Lading for the same or part thereof, and no security taken hereunder shall be
merged in any subsequent or taken to be substituted for any prior security,
and the Manager of the said Bank, or the Acting Manager for the time
being, is hereby appointed the Attorney of the undersigned to give from
time to time to the Bank the security or further security above mentioned 30
and to sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this.....7th ... day of December.....19...34

The Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 28

N The borrower to (Sgd) Ewart C. Atkinson
sign here also

Interest Dec 31 1934 .92 S H
Interest Jan 31 1935 1.18 H S
two 3c stamps

Exhibits. No. 39.
Form 325 A
Plaintiff's Document. 3-25

(Promissory Note to be given for advances made under an agreement to furnish security.)

21.
Promissory Notes for advances made under an agreement to give security, Nos. 21 to 41 inclusive—*continued.*
No. 39.
27th December, 1934.

S...200.00..... 14 Fredericton, N. B....Dec...27...1934...
2.26

16.26 Feb 24/36 On demand.....promise to pay to THE ROYAL BANK OF CANADA at its office in Fredericton, N. B.....the sum of...Two hundred..... 10 Dollars with interest at the rate of...7...per cent. per annum from date until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for an advance made to the undersigned under the terms of the "Application for credit and promise to give bills of lading, warehouse receipts or security under section 88" made by the undersigned to the Bank, and dated the.....24th.....Jany...&...16th...July day of..... 1934...and the undersigned hereby promises to give 20 said Bank, from time to time as required by the Bank, security and further security for the foregoing Note by way of assignments and further assignments under Section 88 of the Bank Act, upon the "goods" mentioned in the said Application and promise, or by way of Warehouse Receipts or Bills of Lading for the same or part thereof, and no security taken hereunder shall be merged in any subsequent or taken to be substituted for any prior security, and the Manager of the said Bank, or the Acting Manager for the time being, is hereby appointed the Attorney of the undersigned to give from time to time to the Bank the security or further security above mentioned and to sign the same on behalf of the undersigned. 30

Dated at Fredericton, N. B. this.....27th..... day of..... Dec.....19...34

The Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 87

N The borrower to (Sgd) Ewart C. Atkinson
sign here also.....

Interest Dec 31 1934 .15 H S
Interest Jan 31 1935 1.18 H S
two 3c stamps

No. 40.

Form 325 A
3-25

Exhibits.
Plaintiff's
Document.

(Promissory Note to be given for advances made under an agreement to furnish security.)

S...69.45..... 4.75 Fredericton, N. B....Jan. 11.....1935...
.59

21.
Promissory
Notes for
advances
made under
an agree-
ment to give
security.
Nos. 21 to 41
inclusive—
continued.
No. 40.
11th Janu-
ary, 1935.

5.34 Feb 24/36 On demand...I...promise to

10 pay to THE ROYAL BANK OF CANADA at its office in Fredericton,
N. B.....the sum of...Sixty nine 45/.....
Dollars with interest at the rate of...7...per cent. per annum from date
until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

ECA

The foregoing note is given to THE ROYAL BANK OF CANADA for
an advance made to the undersigned under the terms of the " Application
for credit and promise to give bills of lading, warehouse receipts or security
under section 88 " made by the undersigned to the Bank, and dated
20 the.....24...Jany...&...16th...Julyday of 1934
.....1934.....and the undersigned hereby promises to give the
said Bank, from time to time as required by the Bank, security and further
security for the foregoing Note by way of assignments and further assign-
ments under Section 88 of the Bank Act, upon the " goods " mentioned in
the said Application and promise, or by way of Warehouse Receipts or Bills
of Lading for the same or part thereof, and no security taken hereunder shall
be merged in any subsequent or taken to be substituted for any prior security,
and the Manager of the said Bank, or the Acting Manager for the time
30 being, is hereby appointed the Attorney of the undersigned to give from
time to time to the Bank the security or further security above mentioned
and to sign the same on behalf of the undersigned.

Dated at Fredericton, N. B. this...11th.....day of.....Jany.....
19...35

Property of The Royal Bank
of Canada, Fredericton, N. B.

Loan 129

The borrower to (Sgd) Ewart C. Atkinson
sign here also.....

Interest Jan 31 1935 .26 H S

40

3c stamp

Exhibits. No. 41.
Form 325 A
Plaintiff's 3-25
Document.

(Promissory Note to be given for advances made under an agreement to furnish security.)

21.
Promissory Notes for advances made under an agree-
ment to give security, Nos. 21 to 41 inclusive—
continued.
No. 41.
29th January, 1935.

\$...170.00.....11.90
.85
Fredericton, N. B....Jan. 29...1935...

12.75 Feb 24/36 On demand.....promise to
pay to THE ROYAL BANK OF CANADA at its office in Fredericton,
N. B.the sum of One hundred seventy 00/..... 10
Dollars with interest at the rate of...7...per cent. per annum from date
until paid, for value received.

The borrower (Sgd) Ewart C. Atkinson
to sign here.....

The foregoing note is given to THE ROYAL BANK OF CANADA for
an advance made to the undersigned under the terms of the " Application
for credit and promise to give bills of lading, warehouse receipts or security
under section 88 " made by the undersigned to the Bank, and dated the.....
24...Jany...&...16th...July.....day of..... 1934 20
and the undersigned hereby promises to give the said Bank, from time
to time as required by the Bank, security and further security for the fore-
going Note by way of assignments and further assignments under Section 88
of the Bank Act, upon the " goods " mentioned in the said Application and
promise, or by way of Warehouse Receipts or Bills of Lading for the same
or part thereof, and no security taken hereunder shall be merged in any
subsequent or taken to be substituted for any prior security, and the
Manager of the said Bank, or the Acting Manager for the time being, is
hereby appointed the Attorney of the undersigned to give from time to
time to the Bank the security or further security above mentioned and to
sign the same on behalf of the undersigned. 30

Dated at Fredericton, N. B. this...29th.....day of.....Jany.....1935.

The borrower to (Sgd) Ewart C. Atkinson
sign here also.....

Property of The Royal Bank
of Canada, Fredericton, N. B.
Loan 194

N
two 3c stamps

16.—Letter from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada.

Exhibits.

No. 16
J. H. B.
Nov. 17/36

Plaintiff's
Document.

MILLS
SAINT JOHN, N. B.
CANADA

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.,
July 19, 1934.

16.
Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
Royal Bank
of Canada,
19th July,
1934.

10

Royal Bank of Canada,
Fredericton, N. B.

Gentlemen :

We acknowledge receipt of assignment of money due or becoming due on the contract we have with E. C. Atkinson, of Fredericton, N. B. The amount of advances to Mr. Atkinson on pulpwood from our company is \$10,975.62.

Yours very truly,

PORT ROYAL PULP & PAPER CO. LTD.

(Sgd) Antoine J. Lacroix
Antoine J. Lacroix

20

AJL : LG

17.—Letter from Port Royal Pulp & Paper Co. Ltd. to A. C. Atkinson.

17.

No. 17
J. H. B.
Nov. 17/36

Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to A. C.
Atkinson,
24th July,
1934.

MILLS
SAINT JOHN, N. B.
CANADA

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.,
July 24, 1934.

30

A. C. Atkinson,
Fredericton, N. B.

Dear Sir :

Regarding advances on your contract for this years contract of Pulpwood, we are going to make all the effort possible to provide further advances of three thousand for August 6, if at all possible.

Yours very truly,

PORT ROYAL PULP & PAPER CO. LTD.

(Sgd) Antoine J. Lacroix
Antoine J. Lacroix

40

AJL : LG

Exhibits.

22.—Letter from Port Royal Pulp & Paper Co. Ltd. to E. C. Atkinson.

Plaintiff's
Document.No. 22
J. H. B.
Nov. 18/3622.
Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
E. C.
Atkinson,
13th Sept-
ember,
1934.MILLS
SAINT JOHN, N. B.
CANADA

PORT ROYAL PULP & PAPER CO. LIMITED

E. C. Atkinson,
New Lepreau, Ltd.,
Fredericton, N. B.Saint John, N. B.,
Sept. 13th, 1934.

10

Dear Sir :

In order for us to continue further advances for your operations, as discussed at the office of Mr. Murray, Manager of the Royal Bank of Canada at Fredericton, we are enclosing three copies of bill of sale which will have to be signed by the Bank, yourself and all others concerned in the matter.

If you will please attend to this matter promptly, it will simplify the further advances you need for your operation.

The original has been sent to Mr. Murray, and this, as well as the three copies, will have to be duly executed.

20

Yours truly,

PORT ROYAL PULP & PAPER CO. LTD.

(Sgd.) Antoine J. Lacroix
Antoine J. LacroixA.J.L. : EM
Enc.

23.—Letter from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada.

Exhibits.

MILLS
SAINT JOHN, N. B.
CANADA

No. 23
J. H. B.
Nov. 18/36.

Plaintiff's
Document.

23.

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.
Sept. 13th, 1934.

Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
Royal Bank
of Canada,
13th Sept-
ember,
1934.

10 Mr. Murray, Manager,
Royal Bank of Canada,
Fredericton, N. B.

Dear Sir :

With further reference to our conversation in your office on September 10, 1934, we are including with this letter bill of sale for the New Lepreau Limited, E. C. Atkinson, jointly with the Royal Bank of Canada and the Port Royal Pulp & Paper Co. Ltd. This is in line with the writer's proposition, and we can only make further advances for the continuation of Mr. Atkinson's operations if this bill of sale is duly signed by all the parties, and returned to us in as short a time as possible.

20 We have sent Mr. Atkinson three copies, as we need four, and are sending you the original. You will be able to get the other three copies from Mr. Atkinson.

Yours truly,

PORT ROYAL PULP & PAPER CO. LTD.

AJL : EM

(Sgd.) Antoine J. Lacroix

Enc.

Antoine J. Lacroix

Exhibits.

25.—Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co. Ltd.

Plaintiff's Document.

No. 25
J. H. B.
Nov. 18/36

25.

Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co. Ltd., 14th September, 1934.

THE ROYAL BANK OF CANADA
Incorporated 1869

PLEASE ADDRESS
ALL COMMUNICATIONS
TO THE MANAGER
CABLE ADDRESS "ROYALBANK"

FREDERICTON, N. B., Sept. 14, 1934.

10

Without prejudice to our position.
The Port Royal Pulp & Paper Co., Ltd.,
SAINT JOHN, N. B.

ATTENTION ANTOINE J. LACROIX

Dear Sirs :

We have received your letter of the 13th inst., also the document. As advised during our conversation, we cannot see any reason why the bank should release our Section 88 Security and join with you in a Bill of Sale on a pro rata basis of our debts; nor to accept settlement on the same basis. We might possibly be willing to accept payment of our debt at the rate of \$3 per cord as the pulpwood is delivered to you but this proposition would have to be approved by our Head Office. 20

As mentioned above, we at this time cannot see any reason why we should relinquish our first security on the pulpwood and shall be glad to hear from you further regarding the matter.

Could you not now arrange to pay our loan of \$8,000 to E. C. Atkinson on the pulpwood contract and naturally you would then have full control of the pulpwood as our security under Section 88 would then be released.

We observe on page No. 2 of the Document, under the paragraph "shipments," that shipments will begin in March 1935. You apparently have overlooked your letter stating that you would take delivery of 3,000 cords this year. 30

Yours truly,
(Sgd.) H. S. Murray
Manager.



24.—Letter from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada.

Exhibits.
—
Plaintiff's
Document.
—

No. 24
J. H. B.
Nov. 18/36

MILLS
SAINT JOHN, N. B.
CANADA

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.,
Sept 15th, 1934.

24.
Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
Royal Bank
of Canada,
15th Sept-
ember,
1934.

10 H. S. Murray, Manager,
Royal Bank of Canada,
Fredericton, N. B.

Dear Sir :

We have your letter of September 14th, and as the writer has represented to you unless we have some security on the New Lepreau, we are going to have to discontinue all advances entirely. As you know, this places E. C. Atkinson in a state of bankruptcy, and someone will have to step in and complete the operations, and both of us will stand considerable
20 loss. We have represented plainly to you that on the strength of the letter you have written him it is not our intention to advance any more money to increase your security under Section 88. Unless a prompt decision is arrived at, we are going to drop out of the picture all together and take our own chances regarding the advances we have made.

On the paper which we sent you to be signed, you will find reference permitting you to hold present guarantee under Section 88, which you now have, until fully paid. If you think that this does not cover you fully, just as much as you are now, we do not see what else we can do, but unless
30 our own company is receiving some security, we are going to drop the matter entirely. We regret to advise that we have no other proposition to make. This is our final decision in the matter.

The operations are at the stage at the present time where it is time for us to come to a decision of discontinuing advances or not, and we do not want to go any further.

If you decide not to give us the security we are asking for, you had better make arrangements to finish the operations. The market on pulp-wood has dropped enough to enable us to turn around and purchase wood to make up for the loss we may have to stand on this contract with E. C. Atkinson.

40 Yours very truly,

PORT ROYAL PULP & PAPER CO. LTD.

(Sgd.) Antoine J. Lacroix
Antoine J. Lacroix

AJL : EM

Exhibits.

18.—Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co. Ltd.

Plaintiff's
Document.No. 18
J. H. B.
Nov. 17/36

18.

Letter from
Royal Bank
of Canada
to Port
Royal Pulp
& Paper
Co. Ltd.,
13th Decem-
ber, 1934.THE ROYAL BANK OF CANADA
Incorporated 1869PLEASE ADDRESS
ALL COMMUNICATIONS
TO THE MANAGER
CABLE ADDRESS "ROYALBANK "

FREDERICTON, N. B., December 13, 1934. 10

Port Royal Pulp & Paper Co. Ltd.
SAINT JOHN, N. B.

Dear Sirs :

We have today received from Mr. Atkinson cheque for \$250.00 which is being credited on his account and we understand that it is for supplies and accounts now due.

We would like to have, when convenient, a statement of the pulpwood delivered to you this fall including the quantity recently shipped, which, we understand, was approximately 1,775 cords and in connection with the latter we shall expect shortly a cheque at the rate of \$2 per cord, to be applied on Mr. Atkinson's pulpwood advances now amounting to \$8,000. 20

Thanking you for your attention to this matter.

Yours truly,

(Sgd) H. S. Murray
Manager

19.—Letter from Port Royal Pulp & Paper Co Ltd. to Royal Bank of Canada.

Exhibits.

No. 19
J. H. B.
Nov. 17/36

Plaintiff's
Document.

19.

Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
Royal Bank
of Canada,
21st Decem-
ber, 1934.

MILLS
SAINT JOHN, N. B.
CANADA

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.,
December 21, 1934

10

Royal Bank of Canada,
Fredericton, N. B.
Attention N. S. Murray, Manager.

Dear Sir :

Referring to your letter of December 13th, we wish to advise that E. C. Atkinson delivered during November and December 1772 cores of peeled spruce pulpwood.

Trusting this is the information you require,

Yours very truly,

20

PORT ROYAL PULP & PAPER C. LTD.

(Sgd) Antoine J. Lacroix
Antoine J. Lacroix

AJL : EM

Exhibits.

B.—Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co. Ltd.

Defendants' Document.

B.
Letter from Royal Bank of Canada to Port Royal Pulp & Paper Co. Ltd., 27th December 1934.

B
J. H. B.
Nov. 18/36

THE ROYAL BANK OF CANADA
Incorporated 1869

PLEASE ADDRESS
ALL COMMUNICATIONS
TO THE MANAGER
CABLE ADDRESS "ROYALBANK"

10

FREDERICTON, N. B., December 27, 1934.

The Port Royal Pulp & Paper Co. Ltd.,
SAINT JOHN, N. B.

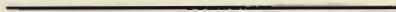
Dear Sirs :

Referring to your letter of the 21st inst. advising that you have received from Mr. Atkinson 1772 cords of pulpwood, according to your agreement you should send us upon receipt payment at the rate of \$2 per cord and we must now ask you to forward the amount by return mail.

We might mention that Head Office has been advised that a payment would be made this month and if it is not forthcoming it will place us in a somewhat awkward position with them. 20

Thanking you for your attention to this matter.

Yours truly,
(Sgd) H. S. Murray
Manager.



C.—Letter from Port Royal Pulp & Paper Co. Ltd. to Royal Bank of Canada.

Exhibits.

C
J. H. B.
Nov. 18/36

Defendants'
Document.

C.

Letter from
Port Royal
Pulp &
Paper Co.
Ltd. to
Royal Bank
of Canada,
28th Decem-
ber, 1934.

MILLS
SAINT JOHN, N. B.
CANADA

PORT ROYAL PULP & PAPER CO. LIMITED

Saint John, N. B.,
December 28, 1934.

10

Royal Bank of Canada,
Fredericton, N. B.
Attention N. S. Murray, Manager.

Dear Sir :

We have your letter of December 27th, and are sorry to advise that we have never agreed to apply \$2.00 per cord for the Royal Bank of Canada on E. C. Atkinson's contract for pulpwood. We have made you a proposition, as a kind of settlement under the circumstances, which you and your head office did not seem to approve of, as you came back with a proposition of \$2.00 per cord, which was never agreed to by us. We feel now that as we had to carry the advances for the continuation of Atkinson's account, the Port Royal Pulp & Paper Co. Ltd. is entitled to deducting the first money in the amount of their own advances before any other money goes out of that operation or out of that pulpwood. As the Port Royal advances represent the labour, stumpage, etc., and as Mr. Atkinson was getting advances from Port Royal at all times, according to the terms of the contract, we feel that we have filled our obligations entirely, and that we have first right to the deduction of our advances before anybody else.

20

Yours very truly,

PORT ROYAL PULP & PAPER CO. LIMITED.

30

AJL:EM

(Sgd.) Antoine J. Lacroix
Antoine J. Lacroix

Exhibits.

26.—Letter from Royal Bank of Canada to E. C. Atkinson.

Plaintiff's
Document.Ident
J. H. B.
No. 26
J. H. B.
Nov. 18/3626.
Letter from
Royal Bank
of Canada
to E. C.
Atkinson,
15th May,
1935.THE ROYAL BANK OF CANADA
Incorporated 1869PLEASE ADDRESS
ALL COMMUNICATIONS
TO THE MANAGER
CABLE ADDRESS "ROYALBANK "

10

FREDERICTON, N. B., May 15, 1935.

E. C. Atkinson, Esq.,
Fredericton, N. B.

Dear Sir :

Referring to our conversation of today and letter dated the 13th instant to you from the Port Royal Pulp & Paper Co. Ltd., the proposition submitted by the Company is not satisfactory to the Bank and we again notify you that none of the pulpwood is to leave the shipping point until our advances of \$8,000 are repaid. 20

Last year when the Company could not advance any more funds to carry on the operation, the Bank came to your assistance, and also theirs, by granting advances which were made under Section 88 of the Bank Act.

We wish to avoid taking legal action under our security to seize the wood but unless payment is forthcoming at any early date, we shall be forced to take this step. Please therefore give this your immediate attention.

Yours truly,

(Sgd.) H. S. Murray
Manager. 30

Exhibits. <hr/> Defendants' Document. <hr/> D. Statement of Account as between Port Royal Pulp & Paper Co. Ltd. and E. C. Atkinson— <i>continued.</i>	Credit for wood received from F. A. Taylor & others Details of Stumpage, Taxes, etc. Royal Bank of Canada 1/2 renewal of mileage License of New Lepreau Ltd. 1934 Provincial Treasurer—Stumpage & Interest thereon Workmen's Compensation Board Hanson, Doherty & West—Stumpage (Frasers) Department of Lands & Mines—1/2 renewal of mileage License of New Lepreau Ltd., 1935	701.66 <hr/> 4,482.31 D 3 J. H. B. Nov. 19/36 409.20 4,790.49 724.11 1,044.68 408.08 <hr/> 7,376.56
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In the Privy Council.

No. 75 of 1939.

ON APPEAL FROM THE SUPREME COURT
OF CANADA

BETWEEN

PORT ROYAL PULP AND PAPER COM-
PANY LIMITED (DEFENDANT)

Appellant

AND

THE ROYAL BANK OF CANADA (PLAIN-
TIF)

Respondent

RECORD OF PROCEEDINGS.

NORTON, ROSE, GREENWELL & CO.,

of 116, Old Broad Street, E.C.2.

Solicitors for the Appellant

LAWRENCE JONES & CO.,

of Lloyd's Building,

Leadenhall Street, E.C.3.

Solicitors for the Respondent.