

25, 1934

1100 F1933

In the Privy Council

No. of 1933.

**ON APPEAL FROM THE SUPREME COURT
OF CANADA**

BETWEEN

G. A. P. BRICKENDEN (Defendant by Counterclaim) - *Appellant*

AND

THE LONDON LOAN AND SAVINGS COMPANY OF
CANADA, THE HURON AND ERIE MORTGAGE
CORPORATION, THE CANADA TRUST COMPANY
and THE LONDON LOAN ASSETS LIMITED
(Plaintiffs by Counterclaim) - - - - - *Respondents*

RECORD OF PROCEEDINGS

THORP, SAUNDERS & THORP,
79, Salisbury House,
London Wall,
London, E. C. 2.

For the Appellants.

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

For the Respondents.

PRINTED BY
A. TALBOT & CO. LIMITED
LONDON, ONTARIO

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RECORD OF PROCEEDINGS

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IN THE SUPREME COURT OF ONTARIO

(Writ issued July 9th, 1929)

*In the
Supreme
Court of
Ontario.*
—
No. 1
Statement
of Claim,
27th Septem-
ber, 1929.

BETWEEN:

WALTER HERBERT BIGGS AND EVA VIOLA BIGGS
Plaintiffs
and
THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
AND THE CONSOLIDATED TRUSTS CORPORATION,
Defendants.

10

No. 1

STATEMENT OF CLAIM.

1. The Plaintiff Walter Herbert Biggs is an accountant residing at the City of London and the Plaintiff Eva Viola Biggs is his wife. The Defendant The London Loan and Savings Company of Canada (hereinafter called the London Loan Company) is a loan company having its Head Office at the City of London, and the Defendant, The Consolidated Trusts Corporation, is a Trust Company controlled by the London Loan Company and having its head office at the City of London.

20 2. In the Autumn of 1922, the Plaintiff Walter Herbert Biggs applied to the Defendant The London Loan Company for a loan of \$18,000.00, to be secured by a mortgage on lands owned by him at the corner of Elmwood avenue and Cathcart Street, in the City of London, upon which he proposed to erect a modern apartment house.

3. The London Loan Company agreed to make the loan and a Mortgage dated the 14th day of November and registered as Number 16914 was given by the Plaintiff, Walter Herbert Biggs as mortgagor, the Plaintiff, Eva Viola Biggs, joining to bar dower, to the London Loan Company as Mortgagee.

The lands covered by the said Mortgage (hereinafter called parcel "A") were as follows:

All and singular that certain parcel or tract of land and premises situate, lying and being in the City of London, in the County of Middlesex, and being composed of Part of Lot Number Eleven, in Block "B," according to Plan registered as Number 343, for the City of London, which said part of said lot may be more particularly described as follows:—COMMENCING at the Southeast angle of said Lot: THENCE Northerly along the Easterly limit of said Lot, being the Westerly boundary of Cathcart Street, 94 feet, 6 inches; THENCE Westerly parallel with the Southerly limit of the said lot, 45 feet: THENCE Southerly parallel with Cathcart Street, 94 feet, 6 inches, more or less to the Southerly limit of the said lot, being the Northerly boundary of Elmwood avenue: THENCE Easterly along the said Southerly limit, 45 feet more or less to the place of beginning. 10

4. A bonus of \$450.00 was charged, and paid by the Plaintiff, Walter Herbert Biggs, to the Mortgagee in connection with the Mortgage mentioned in the preceding paragraph of this statement of claim and the said mortgage did not contain a statement showing the amount of principal money and the rate of interest chargeable thereon. 20

5. While the apartment house above mentioned was in course of construction the London Loan Company asked the Plaintiff Walter Herbert Biggs for further security for the loan of \$18,000.00 aforesaid, and the Plaintiff Walter Herbert Biggs, the Plaintiff Eva Viola Biggs joining to bar dower, gave to the London Loan Company a collateral Mortgage for \$3,000.00, dated December 11th, 1922, and registered December 11th, 1922, as Number 17013. The lands covered by the said Mortgage for \$3,000.00 (hereinafter called parcel "B") were as follows:

All and Singular that certain parcel or tract of land and premises situate, lying and being in the City of London, in the County of Middlesex, and being part of Lot Number Eleven, Block "B," Plan 343, for the City of London, which part of said lot may be more particularly described as follows:—COMMENCING at the Southwest angle of said Lot: THENCE Easterly along the Southerly limit of said Lot, being the Northerly limit of Elmwood Avenue, 39 feet: THENCE Northerly parallel with the Westerly limit of said lot, 94 feet 6 inches: THENCE Westerly parallel with Elmwood Avenue 39 feet to the Westerly limit of said Lot: THENCE Southerly along said Westerly limit 94 feet 6 inches, more or less, to the place of beginning. 30

6. No moneys were ever advanced under the said mortgage for \$3,000.00. 40

7. In January, 1923, the Plaintiffs applied to the London Loan Company for a loan of \$12,000.00, to be secured by a mortgage on lands on Ridout Street in the City of London which the Plaintiffs proposed to obtain by exchange and to improve.

8. The London Loan Company agreed to make the loan and a

mortgage for \$12,000.00 was given by the Plaintiff Eva Viola Biggs to the London Loan Company, dated January, 1923, and registered February 6th, 1923, as Number 17155. The lands covered by the said Mortgage for \$12,000.00 (hereinafter called parcels "C" and "D") were as follows:—

All and Singular that certain parcel or tract of land and premises situate, lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers 18 and 19 on the West side of Ridout Street South (formerly Queen Street) in the said City of London according to registered Plan Number 399, save and except the Westerly 60 feet of lot Number 19.

10

9. A bonus of \$300.00 was charged and paid by the plaintiff, Eva Viola Biggs, to the Mortgagee in connection with the mortgage mentioned in the preceding paragraph of this statement of claim and the said bonus was not disclosed in the said mortgage and the said mortgage did not contain a statement showing the amount of the principal money and the rate of interest thereon.

10. In November, 1924, the London Loan Company agreed to assume a certain mortgage given by the Plaintiff, Walter Herbert Biggs, to one Brickenden and to make an additional loan to the Plaintiffs and a mortgage for \$13,500.00 dated November 8th, 1924, and registered November 8th, 1924, as Number 19476, was given by the Plaintiff, Walter Herbert Biggs, the Plaintiff, Eva Viola Biggs, joining to bar dower, to the London Loan Company. The lands covered by the said Mortgage were those hereinbefore referred to as Parcels "A" and "B", and also that referred to as Parcel "C", as follows:—

All and singular that certain parcel or tract of land and premises situate, lying and being in the City of London, in the County of Middlesex, and Province of Ontario, and being composed of part of lot Number 19 on the West side of Ridout Street South (formerly Queen Street) according to registered plan Number 399 which part of said lot may be more particularly described as follows: COMMENCING at the Northeast angle of said lot: THENCE Southerly along the Easterly limit thereof, being the Westerly boundary of Ridout Street, 31 feet 4 inches: THENCE Westerly parallel with Emery Street 105 feet: THENCE Northerly parallel with Ridout Street 31 feet 4 inches: to the Northerly limit of said lot: THENCE Easterly along the said Northerly limit 105 feet more or less to the place of beginning.

30

11. A bonus of \$1,000.00 was charged, and paid by the Plaintiff, Walter Herbert Biggs, to the mortgagee in connection with the mortgage mentioned in the preceding paragraph of this statement of claim and the said bonus was not disclosed in the said mortgage and the said mortgage did not contain a statement showing the amount of the principal money and the rate of interest chargeable thereon.

12. The \$13,500.00 loan mentioned in paragraph 10 of this Statement of Claim was collaterally secured by a Mortgage dated November 8th, 1924,

*In the
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No. 1
Statement
of Claim,
27th Septem-
ber, 1929.

—continued.

registered as Number 19477. The lands herein called parcel "D," covered by the said collateral mortgage were as follows:

All and Singular that certain parcel or tract of land and premises situate, lying and being in the City of London, in the County of Middlesex, and being composed of Lots Number 18 and 19 on the West side of Ridout Street South (formerly Queen Street) in the said City of London according to Registered Plan Number 399 SAVE AND EXCEPT the Westerly 60 feet of Lot Number 19 and SAVE ALSO AND EXCEPT that portion of the said lands heretofore conveyed to W. H. Biggs.

13. In December, 1927, the London Loan Company requested the 10
Plaintiffs to sign new mortgages to the defendant The Consolidated Trusts Corporation to replace the mortgages for \$18,000.00 and \$12,000, hereinbefore mentioned, registered as Numbers 16914 and 17155 respectively, and the plaintiffs thereupon at the request of the London Loan Company executed a mortgage for \$13,600.00 dated December 1st, 1927, and registered January 4th, 1928, as Number 23114, made between the Plaintiffs as Mortgagees and the Defendant, The Consolidated Trusts Corporation, as Mortgagee and also a mortgage for \$20,000.00 dated December 1st, 1927, and registered January 4th, 1928, as Number 23113, made between the Plaintiff, Walter Herbert Biggs, as Mortgagee, and the Defendant, The Consolidated 20
Trusts Corporation, as Mortgagee.

14. The \$13,600.00 Mortgage mentioned in the preceding paragraph covered the lands hereinbefore referred to as Parcels "C" and "D" and the \$20,000.00 mortgage mentioned in the preceding paragraph covered the lands hereinbefore referred to as Parcel "A."

15. Under and by virtue of the mortgages hereinbefore mentioned the Plaintiff, Walter Herbert Biggs, is entitled to the equity of redemption in the lands hereinbefore referred to as Parcels "A", "B" and "C" and the Plaintiff, Eva Viola Biggs, is entitled to the equity of redemption in the lands hereinbefore referred to as Parcel "D." 30

16. The Plaintiffs reside at 319 Ridout Street South, on part of the lands referred to as Parcel "D."

17. On or about the 6th day of July, 1929, the London Loan Company served on the Plaintiffs a notice to vacate the premises occupied by them at 319 Ridout Street South, or to pay double rent to the London Loan Company, and they also served notice on tenants of the mortgaged premises, Parcels "A," "B," "C" and "D" to pay the rents to them as mortgagees.

18. The Plaintiffs plead the provision of the Interest Act, section 6. The Plaintiffs claim as follows:

1. Upon payment of the moneys due and chargeable under the Mortgages aforesaid the Plaintiff, Walter Herbert Biggs, claims to redeem 40
Parcels "A," "B" and "C" of the mortgaged property and to have a re-conveyance made to him, and the Plaintiff, Eva Viola Biggs, claims to redeem Parcel "D" of the said mortgaged property and to have a re-conveyance of the said property made to her.

2. For the purposes aforesaid all proper directions be given and accounts taken.
 3. In the alternative, the Plaintiff, Walter Herbert Biggs, claims the return of the bonus moneys charged in connection with the \$18,000.00 mortgage and \$13,500.00 mortgage and interest thereon and the Plaintiff, Eva Viola Biggs, claims the return of the bonus moneys charged in connection with the \$12,000.00 mortgage and interest thereon.
 4. The costs of this action.
 5. Such further and other relief as the nature of the case may require.
- The Plaintiffs propose that this action shall be tried at London.
DELIVERED the 27th day of September, 1929.

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Supreme
Court of
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—
No. 1
Statement
of Claim,
27th Septem-
ber, 1929.
—continued.

EVELYN HARRISON,
Bank of Toronto Chambers, London.
Solicitor for the Plaintiffs.

No. 2.

STATEMENT OF DEFENCE.

Amended by Order of The Honourable Mr. Justice Wright bearing date the 1st day of November, 1929, this 14th day of November, 1929.

(sgd.) H. S. BLACKBURN,
Depy. Regr. Mddx.

20

1. The Defendants admit paragraphs 1, 2, 3, 14 and 16 of the Plaintiffs' statement of claim, but save as aforesaid deny all other allegations therein contained:

2. The defendants deny the allegations contained in paragraph 4 of the Plaintiff's statement of claim that a bonus of \$450.00 was charged and paid as therein stated by the Plaintiff, Walter H. Biggs, or that the said mortgage did not contain a statement showing the amount of principal money and the rate of interest chargeable thereon. On the contrary the defendants say that the plaintiffs were aware of all the circumstances in connection with the said loan and the extent of the liability under the said mortgage, and were not misled or deceived by the form of the said mortgage.

3. The defendants deny the allegations contained in paragraphs 5 and 6 of the plaintiffs' statement of claim, and say that the said collateral mortgage referred to in the said paragraphs was intended to be security for all moneys then owing or thereafter owing by the plaintiffs to the defendant loan company.

4. The defendants say in reply to paragraphs 7 and 8 of the plaintiffs' statement of claim that the said loan therein referred to was procured through fraud and misrepresentation on the part of the plaintiffs. The said trans-
action and exchange was grossly misrepresented and the money received

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10th October,
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Statement
of Defence,
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—continued.

by the plaintiffs from the defendant loan company instead of being used for the purpose of improving the said property, as set forth in said paragraphs, was partly used to liquidate liabilities of the plaintiffs which had no connection with the said property, with the result that instead of the property being improved to the extent of \$12,000 only a small portion of the said moneys were actually applied on the said property, and the security held by the defendant loan company was thereby greatly impaired.

5. The defendant loan company denies that a bonus of \$300 was charged and paid, as set forth in paragraph 9 of the plaintiffs' statement of claim, in connection with the mortgage referred to in paragraph 8 of the plaintiffs' statement of claim, or that the said mortgage received by the plaintiffs did not contain a statement showing the amount of principal money and the rate of interest chargeable thereon. 10

6. The defendant loan company denies the allegations contained in paragraphs 10 and 11 of the plaintiffs' statement of claim, and says that the said mortgage for \$13,500 therein referred to was procured by fraud and misrepresentation on the part of the said plaintiffs and one G. A. P. Brickenden, who acted as solicitor for both the plaintiffs and the defendant loan company, by misrepresenting the purposes for which the said loan was required and the value of the security therefor. The said loan was represented to the said defendant as being required for improvements, whereas the said loan was procured and used for the purpose of liquidating a number of second mortgages upon the said property said to be owing by the plaintiffs to the said G. A. P. Brickenden, amounting to approximately \$10,000, and that the plaintiffs conspired with the said G. A. P. Brickenden and assisted the said G. A. P. Brickenden by procuring the said loan, the said G. A. P. Brickenden and the plaintiffs well knowing at the time the said loan was obtained that there was a very small saleable equity in the said property and that the proceeds of the said loan was not being used to improve the said property; and the plaintiffs paid to the said G. A. P. Brickenden large sums of money from time to time in connection with this transaction and other transactions in procuring the loans referred to in the plaintiffs' statement of claim, which resulted and will result in heavy losses to the defendant loan company, and had the true facts in connection with the said loans been properly disclosed to the said defendant company the said loan would not have been accepted. 20 30

7. The said collateral mortgage referred to in paragraph 12 of the plaintiffs' statement of claim was only a subterfuge on the part of the plaintiffs and the said G. A. P. Brickenden to make it appear that the defendant loan company was receiving further security for the said loan of \$13,500, referred to in paragraph 10 of the plaintiffs' statement of claim, and was part of the fraudulent scheme on the part of the plaintiffs and the said G. A. P. Brickenden to make it appear that the said plaintiffs were giving further security when as a matter of fact the said collateral mortgage was a third mortgage on the said property without any value or security thereunder. 40

8. The defendants say in reply to paragraph 13 of the plaintiffs'

statement of claim that the new mortgage therein referred to which was given to the defendant Trust Company was given for the purpose of paying off the said mortgages for \$18,000 and \$12,000 referred to in paragraph 12 of the plaintiffs' statement of claim, and before the said defendant trust company would accept the said mortgages the Board of Directors of the said trust company required the defendant loan company to guarantee payment of the said mortgages registered as Numbers 23114 and 23113 and described in the said paragraph of the plaintiffs' statement of claim. The said defendant trust company says that the plaintiffs are indebted to it for the amount of the said mortgage plus interest, taxes and insurance premiums made up as follows:

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Statement
of Defence,
10th October,
1929.

—continued.

Re Mortgage 474:			
	Instalment interest due June 1/29.....	\$	442.00
	Balance principal.....		13,600.00
			<hr/>
			14,042.00
	Interest on above to October 10/29.....		327.56
	Oct. 3/28: Insurance premium.....	\$	77.50
	Interest on above to Oct. 10/29.....		5.12
			<hr/>
			82.62
20	Total.....	\$	14,452.18
Re Mortgage 475:			
	Instalment of interest due Dec. 1/28.....	\$	724.74
	Extra interest to June 1/29.....		24.28
	Instalment interest due June 1/29.....		650.00
			<hr/>
		\$	1,417.02
	Balance principal.....		20,000.00
			<hr/>
		\$	21,417.02
	Interest on above to Oct. 10/29.....		499.23
	Oct. 3/28: Insurance premium.....	\$	24.00
30	Interest on above to Oct. 10/29.....		1.59
			<hr/>
	Total.....	\$	21,941.84
	Amount due under Mortgage 474 as above.....	\$	14,452.18
	Amount due under Mortgage 475 as above.....		21,941.84
			<hr/>
	Total amount owing.....	\$	36,394.02

9. The defendants say that there is no equity in the lands referred to as parcels "a," "b" and "c," but if any equity remains after payment of the

*In the
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—continued.

defendants' claim as mortgagees that the defendants are entitled to the said equity.

10. The defendants say in reply to paragraph 17 of the plaintiffs' statement of claim that the plaintiffs were in March, 1929, several thousand dollars in arrears for interest and taxes due in respect of the said properties covered by the aforesaid mortgages, and that the plaintiff Walter H. Biggs had issued cheques in favour of the Tax Collector of the City of London in payment of the taxes owing in respect to the said properties for which there were no funds, and the said Tax Collector of the City of London threatened to take possession of the said properties covered by the said mortgages, and collect the rents until the said taxes were paid. The plaintiffs thereupon made an arrangement with the defendants to allow the defendants to receive the rents and profits of the said lands and to apply same on the taxes, interest and principal owing on the mortgages held by the defendants. The said arrangement was carried out for several months when the plaintiffs, without notice to the defendants, collected and converted to their own use the rentals of the said properties, and the defendants in order to prevent the plaintiffs from further collecting rents, notified the tenants of the said properties to pay the rents to them, and also served notice upon the plaintiffs to vacate the portion of the said properties occupied by them. The plaintiffs thereupon brought this action and asked for an injunction restraining the defendants from collecting the said rents, and The Canada Trust Company was appointed to receive the said rents until the trial of this action. 10

11. The defendants say that the provisions of the Interest Act referred to in paragraph 18 of the plaintiffs' statement of claim are ultra vires, and that said section 6 therein referred to has no application to the matters in dispute herein as the plaintiffs were aware of all circumstances in connection with obtaining the said loan. The said Mortgages fully set out all particulars and circumstances with the said loan as required by the said Interest Act, and the plaintiffs were not misled or deceived by any alleged misstatements of the mortgage account. 30

12. The defendants also say that if bonuses were charged and collected from the plaintiffs, as alleged in the plaintiffs' statement of claim, that the matter of the giving of the said bonuses was a contract separate and apart from the giving of the mortgage and the Interest Act of Canada, Section 6, is not in any event applicable to the said bonus contract between the plaintiffs and the defendants.

13. The defendants say that any claim for the return of the bonuses or other payments claimed by the plaintiffs herein in connection with any of the mortgages made by the plaintiffs in favour of the defendants are barred by the Statute of Limitations, R.S.O. 1927, Chapter 106, Sections 48 and 49. 40

14. The Defendants submit that the plaintiffs' claim should be dismissed with costs.

DELIVERED this 10th day of October, 1929, by B R A D E N & McALISTER, of the City of London in the County of Middlesex, Solicitors for the Defendants.

IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
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Ontario.*

No. 3
Order of Mr.
Justice Wright
1st November,
1929.

The Honourable Mr. Justice Wright } Friday, the First day of
November, 1929.

BETWEEN:

WALTER HERBERT BIGGS and EVA VIOLA BIGGS,
Plaintiffs,

and

(seal)
THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION,
Defendants.

10

No. 3.

THIS ACTION coming on this day for trial at the London Assizes in the presence of counsel for all parties, and upon reading the pleadings herein, and upon hearing what was alleged by counsel aforesaid.

1. THIS COURT DOTH ORDER AND DIRECT that it be referred to the Local Master of this Court at London to take account of the moneys due in respect of the mortgages in the pleadings mentioned, and to report to this Court at London at the next non-jury sittings thereof: and that the trial of the other issues and disposal of all other matters herein be and the same are hereby postponed until the next non-jury sittings of this court at London, with the liberty to the defendants to add such parties as they may be advised in respect of their counterclaim herein, and with liberty to the plaintiffs and defendants to amend their pleadings herein as they may deem advisable:

20

2. AND THIS COURT DOTH FURTHER ORDER that any appeal from or any motion to vary or confirm the accounting or report aforesaid of the Local Master shall be brought on before and shall be heard at the trial hereinbefore directed by the presiding Judge thereof:

3. AND THIS COURT DOTH FURTHER ORDER that the order made by the Honourable Mr. Justice Jeffery on the 25th day of April, 1929,

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*In the
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No. 3
Order of Mr.
Justice Wright,
1st November,
1929.

—continued.

be and the same is hereby continued in full force and effect until the next non-jury sittings at London.

4. AND THIS COURT DOTH FURTHER ORDER AND DIRECT that all proceedings herein, including the trial of the counterclaim, be expedited.

Judgment entered this 4th November, 1929.

"H. S. BLACKBURN."
Depy. Regr. Mddx.

Entered in J. B. No. 3 Fol. 427
this 4th day of November, 1929.
No. 44 for 1929.

"H. S. Blackburn,"
Dep. Reg. Middlesex.

IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*
—
No. 4
Notice of
Counterclaim,
14th Novem-
ber, 1929.

BETWEEN:

WALTER HERBERT BIGGS AND EVA VIOLA BIGGS,
Plaintiffs,
and

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION,
Defendants,

and

10 BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and CONSOLIDATED TRUSTS CORPORATION,

(seal)

Plaintiffs
by counterclaim,

and

WALTER HERBERT BIGGS, EVA VIOLA BIGGS,
G. A. P. BRICKENDEN, G. A. P. BRICKENDEN &
COMPANY, and GEORGE G. McCORMICK,

Defendants
by counterclaim.

20

No. 4.

GEORGE THE FIFTH, by the Grace of God, of Great Britain, Ireland,
and the British Dominions beyond the Seas, King, Defender of the
Faith, Emperor of India.

To:

G. A. P. BRICKENDEN, G. A. P. BRICKENDEN & COMPANY
and GEORGE G. McCORMICK, all of the City of London, in the County
of Middlesex:

WHEREAS in this action the defendants The London Loan and Savings
Company of Canada and The Consolidated Trusts Corporation have filed
30 a counterclaim against the plaintiffs and you the said G. A. P. Brickenden,
G. A. P. Brickenden & Company and George G. McCormick,

*In the
Supreme
Court of
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—
No. 4
Notice of
Counterclaim,
14th Novem-
ber, 1929.

—continued.

WE COMMAND YOU within ten days after service upon you of this summons and of the statement of claim and statement of defence and counterclaim to be served herewith, you do cause an appearance to be entered for you, and your defence, if any, to the said counterclaim to be delivered:

AND TAKE NOTICE that in default of your so doing the plaintiffs by counterclaim may proceed thereon without further notice to you, and you will be deemed to admit the statements in the said counterclaim, and judgment will be given accordingly.

Your appearance may be entered and defence filed at the Deputy Registrar's Office at London, Ontario. 10

WITNESS the Right Honourable SIR WILLIAM MULOCK, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Chief Justice of Ontario, at London, the 14th day of November in the year of our Lord 1929.

(Sgd.) H. S. BLACKBURN,
Deputy Registrar Middlesex.

Issued from the office of the Deputy Registrar
at the City of London in the County of Middlesex.

(Sgd.) H. S. Blackburn,
Deputy Registrar Middlesex.

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IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*
—
No. 5
Counterclaim,
14th Novem-
ber, 1929.

BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
CONSOLIDATED TRUSTS CORPORATION, THE HURON AND
ERIE MORTGAGE CORPORATION, THE CANADA TRUST
COMPANY, and LONDON LOAN ASSETS LIMITED,

Plaintiffs
by Counterclaim

and

10 WALTER HERBERT BIGGS, EVA VIOLA BIGGS,
G. A. P. BRICKENDEN, G. A. P. BRICKENDEN
& COMPANY and GEORGE G. McCORMICK,

Defendants
by Counterclaim.

No. 5.

COUNTERCLAIM.

1. The plaintiff by counterclaim, The London Loan and Savings Company of Canada (hereinafter called the Loan Company) is a company incorporated under the laws of the Province of Ontario. The plaintiff by counterclaim, Consolidated Trusts Corporation (hereinafter called the Trust
20 Company) is a company incorporated under the laws of the Dominion of Canada. The plaintiff by counterclaim, The Huron and Erie Mortgage Corporation, is a loan company incorporated under the laws of the Dominion of Canada, and under an agreement in writing bearing date July 3rd, 1929, made between the said The Huron and Erie Mortgage Corporation, London Loan and Savings Company of Canada and London Loan Assets Limited, which was assented to by the Lieutenant-Governor in Council by Order in Council bearing date August 29th, 1929, under the provisions of R.S.O. 1927, Chapter 223, acquired (subject to the terms of the said agreement which the plaintiffs
30 by counterclaim crave leave to produce and more fully refer to at the trial of this action) the assets of the Loan Company and all rights of action connected with the said assets which were capable of assignment; and the said plaintiff by counterclaim The Huron and Erie Mortgage Corporation did under the said agreement sell to the plaintiff by counterclaim London Loan Assets, Limited, certain of the said assets so acquired from the Loan Company, among which were the mortgages hereinafter referred to, with

*In the
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Counterclaim,
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—continued.

all rights of action connected therewith. The plaintiff by counterclaim The Canada Trust Company, by Agreement bearing date November 6th, 1929, and made between the said The Canada Trust Company and The Consolidated Trusts Corporation and assented to by the Lieutenant-Governor in Council by Order in Council bearing date January 21st, 1930, under the provisions of R.S.O. 1927, Chapter 223, acquired (subject to the terms of the said agreement which the Plaintiffs by counterclaim crave leave to produce and more fully refer to at the trial of this action) the business and assets of the plaintiff by counterclaim Consolidated Trusts Corporation. The defendant by counterclaim, W. H. Biggs (hereinafter called W. H. Biggs) is an accountant residing at the City of London, in the County of Middlesex. The defendant by counterclaim, Eva Viola Biggs (hereinafter called Eva Viola Biggs) is the wife of the said W. H. Biggs. The defendant by counterclaim, George G. McCormick (hereinafter called McCormick) was on the dates herein mentioned and until the month of February, 1929, President of the Loan Company and President of the Trust Company. The defendant by counterclaim, G. A. P. Brickenden (hereinafter called Brickenden) was on the dates herein mentioned and until the said month of February, 1929, solicitor for both the Loan and Trust Companies, and is a son-in-law of the said McCormick. The defendant by counterclaim, G. A. P. Brickenden & Company, is a legal firm controlled by the said Brickenden.

1a. The plaintiffs by counterclaim, The Huron and Erie Mortgage Corporation, The Canada Trust Company and London Loan Assets Limited, say, and the fact is, that Consolidated Trusts Corporation and the London Loan and Savings Company of Canada are the proper parties to maintain this action, and are entitled to the relief herein claimed, but if the said The London Loan and Savings Company of Canada and Consolidated Trusts Corporation are not so entitled by reason of the said amalgamations heretofore mentioned, or otherwise, then the said plaintiffs by counterclaim The Huron and Erie Mortgage Corporation, The Canada Trust Company and London Loan Assets Limited, hereby join in the said action with the said Loan Company and the said Trust Company for the purpose of having before this Honourable Court all necessary or proper parties who might be entitled to any of the relief claimed in this action, and the said plaintiffs by counterclaim The Huron and Erie Mortgage Corporation, The Canada Trust Company and London Loan Assets Limited, join with the Loan Company and the Trust Company in the allegations hereinafter set forth and concur in the claims made by the said Loan Company and the said Trust Company.

1b. The plaintiffs by counterclaim further say that under paragraph 4, Section 1, and paragraph 8, Section 1, of the said amalgamation agreement of July 3rd, 1929, any rights of action so far as the plaintiff Loan Company is concerned are enforceable either by the Loan Company or by the plaintiff by counterclaim The Huron and Erie Mortgage Corporation: and that so far as the Trust Company is concerned this action may under the terms of the said amalgamation agreement hereinbefore mentioned be enforced either

by the Trust Company or the plaintiff by counterclaim The Canada Trust Company, and that in any event any rights of action on the part of either the plaintiff Loan Company or the plaintiff Trust Company are preserved by the terms of the Loans and Trusts Corporations Act, R.S.O. 1927, Chapter 223.

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ber, 1929.

2. On or about the 14th day of November, 1922, the said W. H. Biggs obtained a loan from the Loan Company for \$18,000.00 on certain lands and premises known as No. 116 Elmwood Avenue, in the City of London, and gave the Loan Company a mortgage upon the said lands, which mortgage
10 bears date the 14th day of November, 1922, and was registered in the Registry Office for the Registry Division of the City of London as Number 16914.

—continued.

3. In or about the month of January, 1923, the said W. H. Biggs and Eva Viola Biggs obtained a loan from the Loan Company on premises known as Numbers 309, 311, 313, 315, 317 and 319 Ridout Street in the said City of London for the sum of \$12,000.00, and gave the Loan Company a mortgage on the said premises, which mortgage bears date the 27th day of January, 1923, and was registered in the Registry Office for the said City of London as Number 17155.

4. The said mortgages referred to in paragraphs 2 and 3 hereof were
20 obtained by the said W. H. Biggs and Eva Viola Biggs through the fraud, misrepresentation, conspiracy and collusion of, with and by all the defendants by counterclaim, by misrepresenting to the Loan Company the purposes of the said loan, the financial standing of the said W. H. Biggs and Eva Viola Biggs, the security of said loans, and by paying the said Brickenden and McCormick large sums of money by way of commissions, bonuses and exorbitant legal fees.

5. The said W. H. Biggs and Eva Viola Biggs represented through their co-defendants Brickenden and McCormick that the moneys required for the said loans were being used in the construction, erection, alteration or
30 improvement of the buildings which were erected or being erected upon the said lands; the said representations as aforesaid were false and fraudulent, as it was only intended to use a portion of the proceeds of the said loans in the alteration, erection and improvement of the lands described in the said mortgages. The said Brickenden and McCormick knew that the security offered was grossly inadequate and that the amount of the loans were greatly in excess of the value of the lands and buildings and could not be obtained through legitimate sources.

6. The said W. H. Biggs and Eva Viola Biggs did not have any equity in the lands and buildings described in the said mortgages and could not
40 have obtained the said loans from the Loan Company without the co-operation, assistance and collusion of their co-defendants Brickenden and McCormick.

7. The Loan Company was forced by the said McCormick and Brickenden to accept the said loans without applications being signed or submitted in accordance with the rules and regulations of the Loan Company; without adequate and proper inspections and valuations being made of the

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Counterclaim,
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—continued.

security for the said loans; and without disclosing to the independent members of the Board of Directors of the Loan Company the fact that bonuses and commissions were being paid to the said Brickenden and McCormick; large legal fees were being charged by the said Brickenden, and that the said W. H. Biggs and Eva Viola Biggs were not financially able to pay the said loans and were not putting any of their own money into the said properties.

8. The said W. H. Biggs and Eva Viola Biggs only applied a portion of the moneys advanced by the said Loan Company on the security of the said mortgages in connection with the said lands and buildings described 10 therein, and used the balance for real estate speculations and for the purpose of liquidating claims of creditors of the said W. H. Biggs and Eva Viola Biggs, and in paying bonuses and commissions to the said Brickenden and McCormick.

9. The said Brickenden was the solicitor for the said W. H. Biggs and Eva Viola Biggs, and when the said loans were applied for and while the same were being placed, acted as their solicitor and also as solicitor to the Loan Company, and acted improperly, illegally, fraudulently and in breach of his duty to the Loan Company and the said Brickenden was careless and negligent in the discharge of his duties as solicitor for the Loan Company in 20 the preparation and completion of the said mortgages by failing to protect and advise the Loan Company of the provisions of the Interest Act of Canada, of its liability thereunder, and by fraudulently and corruptly accepting and taking from his said co-defendants W. H. Biggs and Eva Viola Biggs secret commissions, bonuses and exorbitant legal fees and by making incorrect and misleading reports on the title of the said lands, thereby causing heavy loss and damage to the loan Company.

10. The said Brickenden and McCormick fraudulently allowed, permitted, aided and abetted their co-defendants, W. H. Biggs and Eva Viola Biggs, in defrauding the Loan Company of the interest and other charges due 30 in respect of the said mortgages by permitting and allowing the interest on said mortgages to remain in arrear, thereby causing the securities of the plaintiff company to be further impaired. The said Brickenden and McCormick received and applied moneys from the rentals of the properties described in the said mortgages, in payment of debts said to be owing to the said Brickenden and McCormick by the said W. H. Biggs and Eva Viola Biggs in respect to other lands and premises owned by the said Brickenden and McCormick or by their relatives at a time when the said Brickenden and McCormick knew that their co-defendants were in arrears with respect to 40 payment of interest and other charges under the said mortgages and that the said Loan Company would lose a large sum of money.

11. The said Brickenden and McCormick used their influence and power as president and solicitor respectively of the said Loan Company to prevent proceedings being taken against their co-defendants, W. H. Biggs and Eva Viola Biggs, thereby resulting in further loss and damage to the Loan Company.

12. The said W. H. Biggs and Eva Viola Biggs executed mortgages in favour of the said Brickenden as follows:

- (a) Mortgage made by W. H. Biggs (his wife Eva Viola Biggs joining therein to bar her dower) to the said Brickenden, bearing date the 13th day of July, 1923, and registered in the Registry Office for the Registry Division of the City of London as No. 17783 on lands and premises known as Nos. 114 and 116 Elmwood Avenue and 309, 311 and 313 Ridout Street in the City of London, for an alleged consideration of \$5,000.00:
- 10 (b) Mortgage made by W. H. Biggs (his wife Eva Viola Biggs joining therein to bar her dower) to the said Brickenden, bearing date the 24th day of August, 1923, and registered in the Registry Office for the Registry Division of the City of London as No. 17944 on lands and premises known as Nos. 114 and 116 Elmwood Avenue, 309, 311 and 313 Ridout Street and part of Lot No. 45 on the east side of St. George Street in the City of London, for an alleged consideration of \$2,000.00:
- 20 (c) Mortgage made by W. H. Biggs (his wife Eva Viola Biggs joining therein to bar her dower) to the said Brickenden, bearing date the 13th day of January, 1924, and registered in the Registry Office for the Registry Division of the City of London as No. 18495 on lands and premises known as Nos. 114 and 116 Elmwood Avenue, 309, 311 and 313 Ridout Street, and part of Lot No. 45 on the east side of St. George Street, in the City of London, for an alleged consideration of \$1,200.00:
- (d) Mortgage made by Eva Viola Biggs to the said Brickenden, bearing date the 13th day of July, 1923, and registered in the Registry Office for the Registry Division of the City of London as No. 17782 on lands and premises known as Nos. 315, 317 and 319 Ridout Street in the City of London, for an alleged consideration of \$5,000.00;
- 30 (e) Mortgage made by Eva Viola Biggs to the said Brickenden, bearing date the 24th day of August, 1923, and registered in the Registry Office for the Registry Division of the City of London as No. 17945, on lands and premises known as Nos. 309, 311, 313, 315, 317 and 319 Ridout Street in the City of London, for an alleged consideration of \$2,000.00:
- (f) Mortgage made by Eva Viola Biggs to the said Brickenden bearing date the 13th day of January, 1924, and registered in the Registry Office for the Registry Division of the City of London as No. 18494, on lands and premises known as Nos. 309, 311, 313, 315, 317 and 319 Ridout Street in the City of London, for an alleged consideration of \$1,200.00:
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all of which said mortgages were second or third mortgages on the lands described therein. The said mortgages were worthless to the knowledge of the said Brickenden and his co-defendants: the moneys alleged to be secured thereby were not advanced in connection with the lands described

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in the said mortgages, and the said Brickenden and McCormick knew that the said W. H. Biggs and Eva Viola Biggs would never be able to pay the said alleged mortgages or to arrange new mortgages to take the place of the said alleged mortgages through an independent source, by reason and on account of the lack of security and the weak financial condition of the said W. H. Biggs and Eva Viola Biggs, and in order to obtain payment of the said mortgages to the said Brickenden and of other moneys alleged to be owing by the said W. H. Biggs and Eva Viola Biggs to him the said Brickenden with the aid of his co-defendant McCormick, and with the intention of defrauding the Loan Company, obtained a mortgage from the Loan Company for \$13,500.00, bearing date the 8th day of November, 1924, and registered in the Registry Office for the Registry Division of the City of London as No. 19476, said mortgage being a sixth mortgage on No. 116 Elmwood Avenue and a third mortgage on Nos. 309, 311 and 313 Ridout Street. 10

13. The said mortgage referred to in the preceding paragraph hereto was forced upon the said Loan Company by the said Brickenden and McCormick without written applications being signed or submitted to the Loan Company as required by the rules and regulations of the said Loan Company and without adequate and proper inspection and valuation being made of the lands and buildings described in the said mortgage and without disclosing to the independent members of the Board of the said Loan Company that the proceeds of the said loans were being used to liquidate claims of the said Brickenden and by the said Brickenden and McCormick misrepresenting the extent and nature of the said security. 20

14. The said Brickenden and McCormick were guilty of breach of trust to the said Loan Company by reason of their using their office and power to the detriment of the said Loan Company and the shareholders of the same, and instead of protecting the said Loan Company as it was the duty of the said Brickenden and McCormick to do they assisted their co-defendants W. H. Biggs and Eva Viola Biggs in obtaining, and enabled them to obtain, from the said Loan Company a security which was not fit or proper for the said Loan Company to have. 30

15. The said Brickenden and McCormick, for the purpose of carrying out the said fraudulent scheme of obtaining moneys from the Loan Company on inadequate security and in order to satisfy members of the Board of the said Company who were objecting to the said loans being accepted, the said Brickenden and McCormick represented to the Directors of the said Loan Company that collateral security had been taken from time to time. The said collateral security consisted of a fourth mortgage made by the said W. H. Biggs (his wife Eva Viola Biggs joining therein to bar her dower) on premises No. 116 Elmwood Avenue, bearing date the 11th day of December, 1922, and registered in the Registry Office for the Registry Division of the City of London as No. 17013, and a third mortgage made by the said Eva Viola Biggs on premises Nos. 309, 311, 313, 315 and 317 Ridout Street, bearing date the 8th day of November, 1924, and registered in the said Registry Office as No. 19477. The said collateral mortgages were to the 40

knowledge of the said Brickenden and McCormick absolutely worthless and without any security for the same. The said W. H. Biggs and Eva Viola Biggs also arranged through their co-defendants Brickenden and McCormick to provide the Loan Company with additional collateral security for the moneys owing to the said Loan Company by giving to the Loan Company life insurance upon their lives and the said W. H. Biggs and Eva Viola Biggs agreed to pay and keep paid the premiums due on the said policies during the currency of the said loans of the said company. The said W. H. Biggs, pursuant to the said agreement, assigned to the Loan Company policy No. 10 97346 in the London Life Assurance Company for \$10,000.00, and policy No. 145063 in the London Life Insurance Company for \$10,000.00, and policy No. 410633 for \$3,000.00 in the Great West Life Insurance Company, and the said Eva Viola Biggs assigned to the Loan Company two policies of insurance on her life in the Great West Life Insurance Company, the said policies being for \$2,000.00 and \$10,000.00 respectively. Neither of the said W. H. Biggs and Eva Viola Biggs paid the premiums due on the said policies of insurance, and they allowed the said policies of insurance to lapse, thereby causing loss and damage to the Loan Company.

16. The arrangements aforesaid concerning the said life insurance 20 policies were made by the said W. H. Biggs and Eva Viola Biggs directly and through their co-defendants Brickenden and McCormick, although the said W. H. Biggs and Eva Viola Biggs knew that they were unable to pay the premiums due in respect to the said insurance, and their co-defendants Brickenden and McCormick also knew that the said security was worthless.

17. On or about the 1st day of December, 1928, the said mortgage No. 16914 for \$18,000.00, made in favour of the Loan Company, and referred to in paragraph 2 hereof, was in arrear with respect to interest payments of over \$2,000.00, and mortgage No. 17155 for \$12,000.00 referred to in paragraph 3 hereof, made in favour of the said Loan Company, was in arrear 30 with respect to interest payments of \$1,600.00. In addition the said W. H. Biggs and Eva Viola Biggs owed large sums of moneys for taxes, insurance premiums and other charges in relation to said property.

18. By reason and on account of improvident, improper and badly advised investments made at the instance of the said Brickenden and McCormick the Loan Company was unable to provide for its current dividend payable on the 1st day of January, 1928. The said Loan Company was being criticized also by the Registrar of Loan and Trust Companies of the Province of Ontario in respect to the said mortgages hereinbefore referred to and other investments made on behalf of the said Loan Company at the instance 40 of the said Brickenden and McCormick, and in order to free the records of the company from the said mortgages Nos. 16914 and 17155, and to enable the company to pay the usual quarterly dividend the said Brickenden and McCormick wrongfully compelled the plaintiff Trust Company to pay the claims of the Loan Company in respect to the said two mortgages of \$18,000.00 and \$12,000.00 respectively, registered as Nos. 16914 and 17155. The said Brickenden and McCormick gave to the Trust Company two mortgages as

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follows—Mortgage No. 23113, dated the 1st day of December, 1927, and registered the 4th day of January, 1929, for \$20,000.00, on premises known as number 116 Elmwood Avenue, and mortgage number 23114, dated the 1st day of December, 1927, and registered on the 4th day of January, 1928, for \$13,600.00, on the premises known as numbers 309, 311, 313, 315 and 317 Ridout Street; and the moneys owing to the Loan Company under mortgage number 16914 for \$18,000.00, and mortgage number 17155 for \$12,000.00 were paid therewith.

19. The said mortgages referred to in the previous paragraph hereof as number 23113, for \$20,000.00, and number 23114 for \$13,600.00 were only accepted by the said Trust Company after protest by members (other than the said McCormick) of the Board of the Trust Company, and upon security being given to the said Trust Company in the amount of 100 shares of Huron & Erie Mortgage Corporation stock and an agreement on the part of the Loan Company to indemnify the Trust Company for any loss in respect to the said mortgages, which said agreement of indemnity bears date the 4th of January, 1928, which the Trust Company craves leave to more fully refer to at the trial of this action. 10

20. The said mortgages received by the said Trust Company and referred to in paragraph 18 hereof, No. 23113, is in arrear with respect to the payment of interest and taxes and amounts to upwards of \$22,000.00, including principal, interest and taxes, and mortgage No. 23114, referred to in said paragraph No. 18, is in arrear and amounts to upwards of \$14,500.00, including interest and taxes. In addition there are arrears of taxes and insurance premiums remaining unpaid of approximately \$1,000.00. The said W. H. Biggs and Eva Viola Biggs have allowed the buildings covered by the said mortgages to fall into disrepair, thus further impairing the security of the Trust Company. The said mortgages, Nos. 23113 and 23114—held by the Trust Company, were represented by the said Brickenden and McCormick to be first mortgages on the lands and premises described therein and to be good and sufficient for the purposes of the Trust Company for the moneys secured thereby. 20 30

21. The said mortgages are not first mortgages on the said lands described therein, and are not good and sufficient securities for the claim of the Trust Company. The said mortgages are for an amount in excess of the value of the lands and buildings covered by the mortgages of the Trust Company and the Trust Company will be unable to realize the amount of its claim from the said lands and buildings and will suffer further loss and damage.

22. The said McCormick misused his power and office as director of the said Trust Company, and the said Brickenden misused his office and power as solicitor for the said Trust Company to the detriment and loss of the said Trust Company. The said Brickenden acted as solicitor for his co-defendants W. H. Biggs and Eva Viola Biggs while occupying the office of solicitor for the Trust Company and gave the Trust Company misleading, inaccurate, incorrect and fraudulent reports and certificates of title in respect 40

to the lands referred to in the said mortgages 23113 and 23114 and showed bias and partiality in favour of his co-defendants W. H. Biggs and Eva Viola Biggs by failing and refusing to take proceedings to collect the arrears of interest and other payments due under the said mortgages 23113 and 23114, and by using the rentals received from his co-defendants W. H. Biggs and Eva Viola Biggs from the said mortgaged properties to liquidate claims of his own and those of his relatives.

23. On or about the 5th or 6th days of February, 1929, the control of the plaintiff companies was changed and the new Boards of Directors of the
10 said companies immediately took steps to secure the income from the mortgaged properties covered by the mortgages held by both companies. At that time the mortgages of the plaintiff companies were thousands of dollars in arrear. There were also moneys owing for unpaid taxes. The said W. H. Biggs had issued worthless cheques to the tax collector of the Corporation of the City of London and the tax collector of the said City of London threatened to take possession of the properties covered by the mortgages to the plaintiff companies, and to collect the rentals of the said properties, and upon the said W. H. Biggs and Eva Viola Biggs being pressed to
20 surrender control of the said properties to the representatives of the plaintiff companies, the said W. H. Biggs and Eva Viola Biggs made an agreement through their solicitor to allow the plaintiff companies to receive the rents and profits of the said lands and to apply same on the taxes, interest and principal owing on the mortgages held by the plaintiff companies, and in addition the said W. H. Biggs agreed to pay a certain portion of his salary every month towards the said indebtedness. The said agreement was continued for several months, when the said W. H. Biggs and Eva Viola Biggs without notice to the plaintiff companies or their representatives, collected the rentals of the said properties and converted the same to their own use. In order to hinder and delay the plaintiff companies the said W. H. Biggs,
30 and Eva Viola Biggs have taken action against the plaintiff companies and asked for an injunction to prevent the plaintiff companies from continuing to collect the rentals from the said properties. The said action was taken by the said W. H. Biggs and Eva Viola Biggs at the instance of their co-defendants, Brickenden and McCormick, and for the purpose of embarrassing and delaying the plaintiff companies from protecting their securities. The plaintiff companies have suffered loss and damage by reason of the unjustifiable conduct and breach of contract of the said defendants.

The plaintiff Loan Company, The Huron and Erie Mortgage Corporation and London Loan Assets Limited, therefore claims:

- 40 (a) A declaration of this Honourable Court that the said mortgages referred to in paragraphs 2, 3 and 12 hereof were obtained by fraud, misrepresentation, conspiracy and other wrong doing on the part of the defendants by counterclaim, or either of them:
- (b) A Declaration that the said Brickenden and McCormick and G. A. P. Brickenden & Company committed breaches of trust against the plaintiff Loan Company in connection with the matters hereinbefore

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alleged, and are liable to the Loan Company for all damages suffered by it, and judgment for the amount of the damages found due to said Plaintiff Loan Company.

(c) A declaration that the Loan Company is entitled to exercise the powers of sale and all other powers therein given to it under the terms of the said mortgages without hindrance or interference on the part of the defendants by counterclaim, or either of them, and that the principal of said mortgage is overdue and payable under the acceleration clauses in said mortgage by reason of the default on the part of W. H. Biggs and Eva Viola Biggs: 10

(d) A Declaration that the Loan Company is entitled to indemnity from the said Brickenden and McCormick against any claim on the part of its co-plaintiff the Consolidated Trusts Corporation by reason of any loss or damage sustained by its co-plaintiff by counterclaim, and for which its co-plaintiff may be entitled to claim against the plaintiff Loan Company by reason of said agreement of indemnity bearing date the 4th day of January, 1928:

(e) Judgment against the defendants W. H. Biggs and Eva Viola Biggs for the amount of its mortgage claim, as follows:

Dec. 7/28, Arrears of interest	\$ 4,099.10	
Extra interest to January 1/29	22.45	
Instalment interest due January 1/29	264.20	
	\$ 4,385.75	
Extra interest to April 1/29	87.71	
Instalment interest due April 1/29	264.20	
	\$ 4,737.66	
Extra interest to July 1/29	94.75	
Instalment interest due July 1/29	264.20	
	\$ 5,096.61	
Extra interest to October 1/29	101.93	30
Instalment interest due October 1/29	264.20	
	\$ 5,462.74	
Balance principal	13,210.00	
	\$ 18,672.74	
Interest on above to date	171.90	
Jan. 17/28, Taxes 1925-6	\$ 1,403.65	
Interest to date	204.59	1,608.24
	\$ 20,452.88	

(f) Or in the alternative \$25,000.00 damages:

(g) Its cost of this action:
 (h) Such further and other relief as to this Honourable Court may seem just:
 The plaintiff Trust Company and The Canada Trust Company therefore
 claims:

—continued.

- 10 (a) A Declaration of this Honourable Court that the said mortgages held by it were obtained by fraud, misrepresentation, conspiracy and other wrong doing on the part of the defendants by counterclaim, and were wrongfully and illegally forced upon it by the said Brickenden and McCormick:
- (b) A Declaration that the said Brickenden and McCormick and G. A. P. Brickenden & Company committed fraudulent breaches of trust in connection with the matters hereinbefore alleged, and are liable to the plaintiff Trust Company for all damages sustained by it on account of such breaches of trust, negligence and loss sustained by it:
- 20 (c) A Declaration that the said Trust Company is entitled to take all actions and proceedings given to it under the terms of the said mortgages free from any restraint on the part of the said W. H. Biggs and Eva Viola Biggs, and for judgment for the amount of its claim against W. H. Biggs and Eva Viola Biggs, made up as follows:

Re Mortgage 23114:

Instalment interest due June 1/29.....	\$	442.00	
Balance principal.....			13,600.00
			\$ 14,042.00
Interest on above to date.....			412.57
Oct. 3/28, Insurance premium.....	\$	77.50	
Interest on above to date.....		5.59	83.09
			\$ 14,537.66

30 **Re Mortgage 23113:**

Instalment of interest due Dec. 1/28.....	\$	724.74	
Extra interest to June 1/29.....			24.28
Instalment interest due June 1/29.....			650.00
			\$ 1,417.02
Balance principal.....			20,000.00
			\$ 21,417.02
Interest on above to date.....			629.28
Oct. 3/28: Insurance premium.....	\$	24.00	
		1.73	25.73
			\$ 22,072.03

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Amount due under Mortgage 474 as above... \$ 14,537.66
 Amount due under Mortgage 475 as above... 22,072.03

 Total amount owing.....\$ 36,609.69

- (d) Or in the alternative \$25,000.00 damages:
- (e) A declaration that the principal secured by said mortgages is overdue and payable under the acceleration clauses in said mortgages by reason of the default on the part of W. H. Biggs and Eva Viola Biggs.
- (f) Its costs of this action:
- (g) Such further and other relief as to this Honourable Court may seem 10
just.

The plaintiffs by counterclaim propose that this counterclaim be tried at the City of London in the County of Middlesex.

DELIVERED this 14th day of November, A.D., 1929, by BRADEN & McALISTER, of the City of London in the County of Middlesex, Solicitors for plaintiffs by counterclaim.

No. 6.

DEFENCE OF G. A. P. BRICKENDEN AND G. A. P. BRICKENDEN & COMPANY TO COUNTERCLAIM.

*In the
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—
No. 6.
Statement of
Defence to
Counterclaim.
28th Novem-
ber, 1929.

1. These defendants admit the allegations in paragraphs 1, 2 and 3 of the Plaintiff's counterclaim but save as is hereinafter expressly admitted 20
denies all other allegations contained therein.

2. These defendants were employed by the London Loan and Savings Company of Canada at the time the mortgages in connection with this action were completed by the mortgagors, Walter Herbert Biggs and Eva Viola Biggs, and the said Walter Herbert Biggs applied to these defendants for a building loan from the London Loan and Savings Company of Canada, one of the above-named Plaintiffs, and subsequently other loans were obtained by the said Biggs from the London Loan and Savings Company of Canada and in connection with the searching of titles and preparation, execution and registration of the mortgages these defendants were paid the ordinary legal 30
fees by the said Biggs and in addition to the legal fees so obtained these defendants received the usual commission for placing the loans

3. These defendants merely acted in their professional capacity as solicitors and obtained the usual commission allowed to solicitors under such circumstances and made no representations of any nature to the Loan Company beyond the giving to the Loan Company the information supplied to him by the said Biggs.

4. These defendants deny that the mortgages referred to in paragraphs

2 and 3 of this Counterclaim were obtained by the said Walter Herbert Biggs and Eva Viola Biggs through the fraud or misrepresentation or conspiracy or collusion of or with or by any defendants by counterclaim, and denies that there was any misrepresentation to the Loan Company as to the purposes of the loan or as to the financial standing of the said Walter Herbert Biggs and Eva Viola Biggs or as to the security of the said loans, and specifically denies that these defendants were ever paid any large sums of money by way of commission, bonuses and exorbitant legal fees, but on the other hand says that they only received commissions and legal fees, the particulars of which were known to the Loan Company at the time the said loans were entered into between the said Walter Herbert Biggs and Eva Viola Biggs and the Loan Company.

5. These Defendants say that there never was any representation made by these defendants that the money required for the loans were being used in connection with the construction, erection, alteration or improvement of the buildings which were erected or being erected upon the lands described in the mortgages and says that any information obtained by the Loan Company in connection with the property covered by the mortgages or as to where the funds were to be placed were obtained by the Loan Company's own representatives and were never obtained by these defendants and these defendants specifically deny that they made at any time any representations to the Loan Company which were false or fraudulent, and these defendants never had any knowledge as to where the money was to be spent or as to the intention of the said Biggs to use only a portion of the loan in the alteration, erection and improvement of the lands described in the mortgage, as is alleged by the plaintiffs by counterclaim, and these defendants deny that they knew that the security offered was grossly inadequate and that the amount of the loans were greatly in excess of the value of the lands and buildings and that the loans could not be obtained through legitimate sources and says that this is not a fact in any case, but that all information in connection with the loans was obtained by the Loan Company's own servants and agents other than these defendants, and before advancing or agreeing to advance money the Loan Company made such inquiries as it deemed necessary in connection with the material questions before the Company in order to decide whether the money would be advanced to the said Biggs or not.

6. These Defendants had no knowledge as to whether the said Walter Herbert Biggs or Eva Viola Biggs had any equity in the lands and buildings described in the said mortgages and deny that there was any co-operation, assistance or collusion of any kind between these defendants and the said Walter Herbert Biggs and Eva Viola Biggs and deny that there was any improper conduct of any nature used by these defendants in obtaining loans for the said Walter Herbert Biggs and Eva Viola Biggs.

7. These defendants do not know what papers the Loan Company required to be signed by the said Walter Herbert Biggs and Eva Viola Biggs beyond the mortgages and title papers which were drawn by these defendants and says that these defendants assumed that any other documents or papers

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required by the Loan Company would be obtained by its own officers, and further says that the Loan Company informed these defendants that inspections and valuations of the property were made before the loans were entered into by the Company's own valuator, and that the loan was duly approved by the Board of Directors of the Loan Company and any bonuses and commissions paid or charged in connection with the Loan was duly approved of by the Directors of the Loan Company and these defendants say that these defendants were not paid any large legal fees but was just paid the ordinary fees chargeable by solicitors in connection with such work, and these defendants say they were not aware, if it is a fact, that the said Walter Herbert Biggs and Eva Viola Biggs were not financially able to pay the said loans and were not putting all their money into the said properties. 10

8. These defendants have no knowledge as to what portion of the moneys advanced by the Loan Company on the securities of the mortgages in connection with the said lands and buildings described in the said mortgages were used by the said Walter Herbert Biggs and Eva Viola Biggs for building purposes, or otherwise, in connection with the properties, and have no knowledge as to whether or not the balance of the moneys was used by the said Walter Herbert Biggs and Eva Viola Biggs for real estate speculations for the purpose of liquidating claims of the creditors of the said Walter Herbert Biggs and Eva Viola Biggs, and say that as to any bonuses or commissions paid to these defendants such bonuses and commissions were arranged and approved of by the Loan Company at the time the loans were completed. 20

9. These defendants deny that they were solicitors for the said Walter Herbert Biggs and Eva Viola Biggs when the said loans were applied for and while same were being placed, but says in connection with the completion of the loans that at the request of the said Walter Herbert Biggs and Eva Viola Biggs, and at the request of the Loan Company these defendants did act as solicitors for both parties and acted properly, legally and without any fraud or breach of duty to the Loan Company, and these defendants deny that they were careless or negligent in the discharge of their duties as solicitors for the Loan Company in the preparation and completion of the said mortgages, and says that they were never requested to give any opinion as to the Interest Act of Canada or as to the Company's liability thereunder in any connection, and these defendants deny that they ever fraudulently or corruptly accepted or took from their co-defendants, Walter Herbert Biggs and Eva Viola Biggs, any secret commission or bonus or exorbitant legal fees, and these defendants deny they ever made any incorrect or misleading reports on the title of the said lands, and deny that any report of these defendants ever led the Loan Company to any loss or damage of any kind. 30 40

10. These defendants had nothing to do with allowing the interest on the mortgages to remain in arrear, if same were left to remain in arrear, and these defendants deny that they ever fraudulently allowed, permitted, aided or abetted their co-defendants, Walter Herbert Biggs and Eva Viola Biggs, to defraud the Loan Company of the interest or other charges due in respect of

the said mortgages, and these defendants deny that they ever caused the securities of the Plaintiff Companies to be impaired by any action of theirs in this connection. These defendants deny that they received or applied moneys from the rentals of the property subscribed in the said mortgages in payment of the debts said to be owing to these defendants by the said Walter Herbert Biggs and Eva Viola Biggs in respect to their lands and premises owned by these defendants, and these defendants say they did not know that their co-defendants were in arrear in respect to payment of interest or other charges under the mortgages, and did not know that the Loan Com-

10 company were losing any sum of money, but on the other hand say arrangements were made by these defendants whereby Herbert Walter Biggs and Eva Viola Biggs paid the rents on their properties into a special account with the Loan Company in order to protect the Loan Company, and that the said Walter Herbert Biggs and Eva Viola Biggs were not allowed to draw any money out of this rental account when same had been paid into such account unless the payment out was approved of by these defendants, and such arrangement was entered into with the knowledge and approval of the Loan Company for its protection and the Loan Company's instructions were fully carried out by these defendants.

20 11. These defendants deny that they ever used any influence or power as solicitors for the Loan Company to prevent proceedings being taken against their co-defendants, Walter Herbert Biggs and Eva Viola Biggs, and deny that anything done by these defendants has resulted in any loss or damage to the Loan Company.

12. In answer to paragraph 12 of the counterclaim these defendants say that the mortgages therein set forth were granted by Walter Herbert Biggs and his wife, Eva Viola Biggs, in favour of these defendants either as security for advances made or as collateral security for advances actually made by this defendant to the said Walter Herbert Biggs and Eva Viola

30 Biggs and denies that such mortgages were worthless to the knowledge of these defendants, and denies that the moneys thereby secured were not advances in the proper manner in connection with the mortgages, and these defendants deny they knew the said Walter Herbert Biggs and Eva Viola Biggs would never be able to pay the said mortgages or arrange new mortgages to take the place of the other mortgages through an independent source, and deny that there was any lack of security in connection with the said mortgages, and say they did not know of any weak financial condition of the said Walter Herbert Biggs and Eva Viola Biggs, and deny that there was any aid given

40 by these defendants to Walter Herbert Biggs and Eva Viola Biggs to obtain a loan from the Loan Company, and deny there was any intention to defraud the Loan Company, and specifically deny there was any fraud in connection with the obtaining by the said Walter Herbert Biggs and Eva Viola Biggs, of a mortgage from the Loan Company of \$13,500.00 bearing the date and other particulars as set forth in said paragraph 12 of the plaintiffs' counterclaim.

13. These defendants have no knowledge as to whether or not there

*In the
Supreme
Court of
Ontario.*

No. 6.
Statement of
Defence to
Counterclaim,
28th Novem-
ber, 1929.

—Continued.

*In the
Supreme
Court of
Ontario.*
—
No. 6,
Statement of
Defence to
Counterclaim,
28th Novem-
ber, 1929.

—continued.

was any written application signed or submitted to the Loan Company, but relied on the Loan Company's officers to see that the usual documents were obtained by the Loan Company before putting through this loan, all of which documents being entirely outside these defendants' sphere as solicitors, and deny that the Loan Company had in any way this mortgage forced upon the Loan Company and these defendants say they had nothing to do with inducing in any way the Loan Company to take such mortgage, and say in regard to the plaintiffs' allegation as to lack of adequate and proper inspection and valuation being made on the lands and buildings described in the mortgage that this was a matter for the Loan Company and its agents and officers to look after, and in fact these defendants believed that the proper valuation had been made before the mortgage was placed, and still believe that such is the case, and these defendants allege, as the fact is, that particulars of this loan were fully disclosed to the members of the Board of the Loan Company and discussed and approved at a Board meeting, and say that part of the proceeds of the loan was used to liquidate part of the claims and the mortgages held by these defendants from the said Walter Herbert Biggs and Eva Viola Biggs, but the Loan Company and its Board were fully aware of the fact that part of these defendants' claim against these said co-defendants was being paid off and deny that there was any misrepresentation as to the extent and nature of the security. 10 20

14. These defendants say they were not guilty at any time of any breach of trust in relation to the Loan Company and deny that they ever used their offices or power to the detriment of the Company and the shareholders of the same, and deny that instead of protecting the Loan Company as Solicitors, that they ever assisted their co-defendants, Walter Herbert Biggs and Eva Viola Biggs, in obtaining or enabling them to obtain from the Company loans on security which was not fit or proper for the Loan Company to pass and approve.

15. In answer to paragraph 15 of plaintiffs' counterclaim these defendants say that they never took part in any fraudulent scheme of any kind and made no representations to the members of the Board of the Loan Company which were fraudulent or improper or misleading, but on the other hand, say that any statements made to the Board in connection with these particular securities, were true statements and reports and further, that at the suggestion of these defendants collateral security was taken from time to time from the said Walter Herbert Biggs and Eva Viola Biggs, and such collateral security consisted of a fourth mortgage made by Walter Herbert Biggs and his wife on the premises set forth in paragraph 15 of the plaintiffs' counterclaim, and says that these defendants did not know that such collateral security was worthless, if in fact it was worthless, and says that if such collateral security was not proper security that this was a matter for the Loan Company's valuator and other officers to consider and report to the Board of Directors and is not a matter for a solicitor for the Company to report upon at all. These defendants allege, as the fact is, that further security by way of life insurance policies upon the lives of the said Walter 30 40

Herbert Biggs and Eva Viola Biggs were duly taken as further collateral security to said loans and such policies were duly assigned to the Company, and that at the time of such assignment such policies were approved of by the Company, and these defendants further say that if the defendants, Walter Herbert Biggs and Eva Viola Biggs, did not pay the premiums due on the said policies of insurance or allowed the said policies of insurance to lapse, thereby causing loss and damage to the Loan Company, that this was not a matter which concerned these defendants, and that these defendants had nothing to do with the payment of the premiums or the lapsing of the

10 policies.

16. These defendants say in answer to paragraph 16 of the plaintiffs' counterclaim that these defendants did not know that the said Walter Herbert Biggs and Eva Viola Biggs would not be in a position to pay the premiums due in respect of the said insurance policies and did not know that such security was worthless, if such security has turned out to be worthless.

17. These defendants have no knowledge of the facts set forth in paragraph 17 of the plaintiffs' counterclaim.

18. These defendants say, in answer to paragraph 18, that no action of theirs in connection with the taking of the said loans from the said Walter Herbert Biggs and Eva Viola Biggs had anything to do with the failure by

20 the Loan Company to pay its current dividend on the 1st of January, 1928, if the Loan Company failed to pay such dividend, and these defendants have no knowledge as to whether or not the Loan Company was being criticised by the Registrar of Loan and Trust Companies of the Province of Ontario in respect to the said mortgages or any other investments of the Loan Company, and these defendants deny that they had anything to do with the Trust Company paying the claims of the Loan Company in respect to said two mortgages, and say that if any arrangement as to paying off the said mortgages for \$18,000.00 and \$12,000.00 respectively were made it was

30 made between the Trust Company and the Loan Company after careful consideration of the circumstances by the Companies and had nothing whatever to do with these defendants and was not on the advice of these defendants.

19. The arrangements made between the Trust Company and the Loan Company, set forth in paragraph 19 of the plaintiffs' counterclaim, was an arrangement entered into after full consideration by the Boards of both Companies, and was for the protection of both companies, and if any loss arose through such arrangement that it was entirely a matter for the Trust Company and the Loan Company and that these defendants claim that they

40 have no responsibility whatever in connection with such arrangement, and such arrangements were not made on their advice.

20. These defendants deny that they ever represented to the Trust Company that mortgages Nos. 23113 and 23114 were first mortgages against the properties therein referred to and states that certificates of title to the said lands secured thereby were furnished to the said Trust Company showing the exact state of the said titles.

21. It was known to the Loan Company and the Trust Company that mortgages Nos. 23113 and 23114 were not first mortgages on the lands described therein, and there was no representation made by these defendants that such mortgages were good or sufficient security for the claim of the Trust Company. These defendants have no knowledge as to whether or not the Trust Company will be unable to realize the amount of its claim from the lands and buildings covered by such mortgages, and will suffer further loss and damage, but say that the time has not yet arrived when the Trust Company is in a position to know as to whether or not there will be any loss or damage in connection with such mortgages. 10

22. These defendants say they have never misused their alleged power and office as solicitors for the Loan Company, or their alleged power as solicitors for the Trust Company to the detriment and loss of the Trust Company. These defendants say they did not act as solicitors for their co-defendants, Walter Herbert Biggs and Eva Viola Biggs, while occupying the office as solicitors of the Trust Company, and deny that they gave the Trust Company misleading or inaccurate or fraudulent reports, but did give certificates of title in connection with the lands referred to in the said mortgages 23113 and 23114, and such certificates were correct, and deny that they ever showed any bias or partiality in favour of their co-defendants, 20
Herbert Walter Biggs and Eva Viola Biggs, and deny that they failed or refused to take any proceedings to collect the arrears of interest and other payments due under the said mortgages, and deny that they ever improperly used rentals received from their co-defendants, Herbert Walter Biggs and Eva Viola Biggs, from the mortgage properties to liquidate claims of his own and those of his relatives.

23. In answer to paragraph 23 of the plaintiffs' counterclaim these defendants say that they knew that Walter Herbert Biggs and Eva Viola Biggs were in arrear in connection with their mortgages and these defendants were doing everything in their power to help the plaintiff Company to make 30
collection from Walter Herbert Biggs and Eva Viola Biggs in order to prevent any loss if possible, but that the difficulties in collecting, as set forth in said paragraph, were not in any way brought on through any action of these defendants, and these defendants say that no action was ever started by them for Walter Herbert Biggs and Eva Viola Biggs for the purpose of embarrassing or delaying plaintiff companies from protecting their securities, and say that if any such action was taken by the said Herbert Walter Biggs and Eva Viola Biggs such action was instituted without the knowledge of these defendants, and that these defendants had nothing to do with any such action. 40

24. These defendants say that this action is frivolous and vexatious.

25. These defendants, as a further defence, say that the plaintiffs are not holders of the mortgages before referred to.

26. The defendant G. A. P. Brickenden is the sole partner of and constitutes the entire firm of G. A. P. Brickenden & Company.

These defendants therefore claim:

- (a) That this action be dismissed with costs.
- (b) Such further and other relief as to this Honourable Court may seem just.

DELIVERED at Toronto this 28th day of November, A.D., 1929, by MESSRS. SLAGHT & COWAN, 372 BAY STREET, TORONTO, Solicitors for the above named defendants, G. A. P. Brickenden and G. A. P. Brickenden & Company by counterclaim.

*In the
Supreme
Court of
Ontario.*

No. 6.
Statement of
Defence to
Counterclaim,
28th Novem-
ber, 1929.

—continued.

IN THE SUPREME COURT OF ONTARIO

In the
Supreme
Court of
Ontario.
—
No. 7.
Joinder of
Issue,
29th Novem-
ber, 1929.

BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and CONSOLIDATED TRUSTS CORPORATION,

Plaintiffs
By Counterclaim

—and—

WALTER HERBERT BIGGS, EVA VIOLA BIGGS, G. A. P.
BRICKENDEN, G. A. P. BRICKENDEN & COMPANY and
GEORGE G. McCORMICK,

Defendants
By Counterclaim.

10

No. 7

JOINDER OF ISSUE

The Plaintiffs by Counterclaim join issue on the Defence of the De-
fendants by Counterclaim G. A. P. Brickenden and G. A. P. Brickenden &
Company.

DATED at London, Ontario, this 29th day of November, A.D., 1929.

BRADEN & McALISTER,

301 Dundas Bldg.,

London, Ontario,

Solicitors for Plaintiffs by
Counterclaim.

20

TO:

MESSRS. SLAGHT & COWAN,

372 Bay Street,

Toronto, Ontario,

Solicitors for the Defendants by Counterclaim
G. A. P. Brickenden and G. A. P. Brickenden & Company.

IN THE SUPREME COURT OF ONTARIO

In the
Supreme
Court of
Ontario.
—
No. 8
Consent of
London Loan
Assets,
7th April, 1930.

BETWEEN:

WALTER HERBERT BIGGS and EVA VIOLA BIGGS,
Plaintiffs,
and

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and CONSOLIDATED TRUSTS CORPORATION,
Defendants

and

10 BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION,
Plaintiffs
By Counterclaim,

and

WALTER HERBERT BIGGS, EVA VIOLA BIGGS,
G. A. P. BRICKENDEN, G. A. P. BRICKENDEN & COMPANY
and GEORGE G. McCORMICK,

Defendants
By Counterclaim

20

No. 8

CONSENT

LONDON LOAN ASSETS LIMITED hereby consents to being added
as a party plaintiff to the counterclaim in the above mentioned action.

DATED at London, Ontario, this 7th day of April, A.D., 1930.

Witness:
M. MARKHAM.

LONDON LOAN ASSETS LIMITED,
WM. G. COLES,
President.

(Seal)

30

E. P. FLETCHER,
Secretary.

IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*

No. 9.
Report of Local
Master,
29th April,
1930.

No. 9

REPORT OF LOCAL MASTER

BETWEEN:

WALTER HERBERT BIGGS and EVA VIOLA BIGGS,
Plaintiffs

—and—

THE LONDON LOAN & SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION,
Defendants.

HAVING been directed by the Judgment of this Court bearing date the 10
First day of November, A.D. 1929, to take an account of the moneys due in
respect of the mortgages mentioned in the pleadings in this action, and to
report to this Court, I was attended by Counsel representing the Plaintiffs
and Counsel representing the defendants, and pursuant to an appointment
to hear and determine the matters referred to me by the said Judgment I pro-
ceeded on the 14th, 15th and 16th days of November, A.D. 1929, to hear evi-
dence tendered by the plaintiffs and the defendants.

Before dealing specifically with the result of the evidence taken before
me I think the facts as disclosed by the evidence, the exhibits filed, and found
by me, should be dealt with briefly: 20

1. The plaintiffs applied in October or November, 1922, to the defendant
Loan Company for a building loan on an apartment building known as 116
Elmwood Avenue in the City of London. It is rather doubtful whether there
was a written application, but in any event the application was for a larger
amount than the board of the defendant loan company cared to accept by
reason of the security not being sufficient. Finally a mortgage was prepared
to secure the sum of \$18,000.00. This mortgage was made by the plaintiffs
in favour of the defendant Loan Company and bears date the 14th day of
November, 1922, and was registered on the 15th day of November, 1922, as
Number 16914 and filed as Exhibit "1" on this reference. 30

2. There appears to have been objections raised to this loan being ac-
cepted at \$18,000.00 and according to the evidence of Thomas Baker, the Vice-
President of the defendant Company, which I accept on this point, further
collateral security had to be obtained and in the Minutes of the Board meet-
ing of the defendant Company of November 11th, 1922, the following state-
ment appears "Re Biggs; Solicitor reports extra security obtained for \$3000
loan confirmed"; see evidence of Baker at page 10 of evidence taken on
November 15th.

3. The collateral security obtained was a third mortgage on adjoining property owned by the Plaintiffs, and known as 114 Elmwood Avenue, (and filed on this reference as Exhibit No. 3); this property being subject to two mortgages for \$6,000.00 and \$1,000 respectively held by one Edwin Barrell registered as No. 16499 and 16590.

4. This loan of \$18,000 although collaterally secured was still open to objection and at the board meeting of the defendant Company on December 4th further discussion took place concerning it, and the following statement appears in the Minutes of the Directors' meeting of the defendant Company
10 "Pay no more money except on Mr. Gorwill's valuation to the extent of 50 per cent. on the building", (Gorwill being the defendant company's valuator).

5. The Plaintiff W. H. Biggs agreed to pay a bonus in connection with this loan of 2 per cent. which was charged and paid by W. H. Biggs. A further amount of \$360.00 was also charged by the company's solicitor, G. A. P. Brickenden, making a total of \$720.00 paid out in bonuses in connection with this loan.

6. The next mortgage transaction between the plaintiffs and the defendant Loan Company was an application not in writing in 1923 for a loan of \$12,000.00 on the security of a duplex house known as Nos. 315, 317 and
20 319 Ridout Street South, London, Ontario. This application was accepted, and a mortgage was given by the plaintiff Eva Viola Biggs to the defendant Loan Company to secure payment of the sum of \$12,000.00 and interest as therein mentioned. This mortgage bears date the 27th day of January, 1923, (and was registered in the Registry Office for the City of London as No. 17155 and is filed as Exhibit No. 2). In connection with this loan a bonus of 1½ per cent. was charged by the defendant company, (see evidence of Baker, page 20), in addition to solicitors' fees and commissions to the company's solicitor, Mr. G. A. P. Brickenden.

7. There was one further mortgage transaction between the defendant
30 Loan Company and the plaintiffs, but before dealing with this mortgage I might say that the plaintiffs gave three separate and distinct mortgages to Mr. G. A. P. Brickenden as follows:—

- (a) Mortgage bearing date the 17th day of July, 1923, and registered on the 17th day of July, 1923 as number 17783 to secure payment of \$5,000 and filed as Exhibit No. 13.
- (b) Mortgage bearing date the 24th day of August, 1923, and registered on the 31st day of August, 1923, to secure payment of \$2,000.00; filed as Exhibit No. 14.
- 40 (c) Mortgage bearing date the 13th day of January, 1924, and registered on the 11th day of February, 1924, to secure the payment of \$12,000.-00; filed as Exhibit No. 15.

These mortgages were blanket second, third and fourth mortgages covering lands and premises known as 311 and 313 Ridout Street South against which there was registered a first mortgage to The Huron & Erie Mortgage Corporation for \$10,000.00 (registered as No. 18685), and blanket fifth, sixth and seventh mortgages covering premises known as 114 and 116 Elmwood Avenue.

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—continued.

Against 116 Elmwood Avenue the defendant Loan Company already had a first mortgage for \$18,000.00 and a collateral second mortgage of \$3,000.00 against 114 Elmwood Avenue, and blanket third, fourth and fifth mortgages against property known as No. 315, 317 and 319 Ridout Street South, London, Ontario, which was already mortgaged to the defendant Loan Company to secure payment of \$12,000.00 already referred to.

8. On the 12th day of November, 1924, the Plaintiffs obtained a further mortgage from the defendant Loan Company for \$13,500.00 covering the same properties as are set forth in the three mortgages held by G. A. P. Brickenden, which included the equities in lands owned by both plaintiffs. This mortgage was accepted by the defendant Loan Company at its meeting of November 17th, 1924, as appears by the Minutes of the meeting of Directors of that date. The memorandum in the Minute Book of the defendant Loan Company is as follows: "Nov. 17th, 1924, E. and W. H. Biggs, lend \$13,500 at 8 per cent., bonus \$1000." It is significant that the mortgage was registered on the 12th of November, and the meeting of the Directors authorizing the loan did not take place until the 17th of November, 1924. (The mortgage in regard to this last transaction was registered on the 12th of November, 1924, as No. 19476 and is filed on this reference as No. "5").

9. This mortgage was also collaterally secured by a blanket mortgage made by the plaintiff Eva V. Biggs, bearing the same date and registered on the same date as No. 19477. This collateral mortgage covered premises known as No. 315, 317 and 319 Ridout Street S., London, Ontario, and was a third mortgage on this property until 1928. This mortgage is filed as Exhibit No. 4.

10. The proceeds of mortgage No. 19476, Exhibit "5", were used to pay off the three mortgages held by G. A. P. Brickenden, or whatever balance was owing on them, and certain debts of the plaintiffs. The Plaintiffs were also charged a bonus of \$1,000 which was paid by the separate cheque of the plaintiff W. H. Biggs.

11. Before going further I think it is just as well to refer to the bonuses which were paid in connection with the three Brickenden mortgages. According to Mr. Brickenden's evidence which appears on page 92 of the notes of evidence taken on this reference on the 15th day of November, 1929, Mr. Brickenden got a bonus with each of these loans, and later on was compelled to make a settlement with the plaintiff Biggs in connection with the bonuses and other matters; the amount paid in this connection being \$1,000. When this settlement was made a release was given (see form of release at page 100 to 103 of the evidence taken on November 15th, 1929). It was contended that the amount of \$1,000.00 paid in connection with this matter should be taken into consideration in making up the mortgage accounts and for that reason I am referring to it.

12. When this last mortgage of \$13,500 to the defendant Loan Company, Exhibit "5", was taken on the 8th day of November, 1924, the defendant Loan Company had the two first mortgages for \$18,000 and \$12,000 respectively as well as a collateral mortgage of \$3,000 to the \$18,000 mort-

gage and a collateral \$13,500 to the second mortgage of \$13,500, and out of the proceeds of the \$13,500 mortgage the defendant Loan Company received a bonus of \$1,000, and the three Brickenden mortgages were paid off.

13. It is admitted that the Plaintiffs were in arrears in respect to the two first mortgages of \$18,000 and \$12,000 respectively when the second mortgage of \$13,500 was accepted and that these mortgages had been in arrears for interest, insurance premiums and taxes practically from the time they were taken. This state of affairs continued until December, 1928. Any payments of importance that were made in respect to the two first mortgages of \$18,000 and \$12,000 were made from the proceeds of the \$13,500 mortgage.

14. In December, 1928, all three mortgages held by the defendant Loan Company were greatly in arrears and the Directors of the defendant Loan Company required the moneys secured by the mortgages for \$18,000 and \$12,000 respectively, and the defendant Trust Company was asked to take over these mortgages. There appears to have been considerable discussion about the matter, and some objection was made by some of the Directors of the defendant Trust Company and further security given. This arrangement was carried out. The plaintiff Biggs had been complaining about the rate of interest charged to him in respect to the mortgages given by him to the defendant Loan Company, and according to the evidence of Mr. Baker, which is uncontradicted and which I accept on this point, the new mortgages were taken by the defendant Trust Company at $6\frac{1}{2}\%$ instead of $7\frac{1}{2}\%$. This agreement being intended, and I so find, as a settlement of all differences and complaints in respect to any amounts charged for bonuses, interest or costs in regard to all the mortgages held by the defendant Loan Company. The \$18,000 mortgage had now amounted with interest and other charges to \$20,000.00 and the \$12,000.00 had now amounted with interest and other charges to \$13,600.00. Applications were signed and delivered to the defendant Trust Company by the defendant Biggs, filed as Exhibit 16 and 17 on this reference, and the claim of the defendant Loan Company was accordingly paid by the defendant Trust Company and new mortgages were given by the plaintiffs to the defendant Trust Company which are filed as Exhibits No. 6 and 7.

15. There were no bonuses paid or asked for in respect to these two loans by the defendant Trust Company.

16. When this last mentioned transaction was completed the defendant Trust Company was the absolute owner of the two first mortgages for \$20,000 and \$13,600, which were formerly held by the defendant Loan Company, and the defendant Loan Company still had on its hands the second blanket mortgage for \$13,500 which it still has.

17. When the taking of the evidence was completed I was informed that there was an appeal pending in respect to the decision of Meagher vs London Loan & Savings Company of Canada dealing with the law respecting the provisions of the Interest Act of Canada and the taking of bonuses and I refrained from making my report until this decision had been given.

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18. The appeal in the case of Meagher vs London Loan & Savings Company of Canada was finally heard by the Supreme Court of Canada, and judgment given holding that a bonus could be legally contracted for by a mortgagee and that the Interest Act of Canada had no application to a mortgage unless it was in the form as provided by the terms of the said Interest Act of Canada.

19. I am therefore of the opinion that the Interest Act of Canada has no application to any of the mortgages held by either of the defendants, as none of these mortgages violated the provisions of the Interest Act of Canada.

20. There was no fraud or overreaching charged against either of the defendant Companies. The plaintiffs admitted that they understood what they were doing when they agreed to pay bonuses, and if the decisions in *Singer v. Goldhar*, 1925; 55 O.L.R. 267; *Laster v. Poucher*, 1926; 58 O.L.R. 589; *Re Brown*, 1928; 61 O. L. R. 602 and other cases cited by Counsel for the Plaintiff have now no further application to this case by reason of the recent decisions of the Supreme Court of Canada in *Meagher v. London Loan & Savings Company of Canada*, it is not necessary for me to consider what effect the charging of bonuses would have on the different mortgages referred to in this action. In my opinion no allowance can be made in respect to the charging and collecting of bonuses by the defendant Loan Company, and the plaintiffs must pay the full amount set forth in each of the mortgages, with interest, less the amounts which have been paid and credited. I am further of the opinion and so hold that in any event the plaintiffs waived their rights to claim from the defendants the return of the bonuses paid and the interest due on the various mortgages by reason of the arrangements made and referred to in the evidence of *Thomas Baker* at the time the new mortgages were taken by the defendant Trust Company. The plaintiffs received a valuable consideration for entering into this arrangement by having the rate of interest reduced and their mortgage account put in good order.

21. I am also of the opinion that in view of the decision in *Meagher vs London Loan & Savings Company of Canada* that it makes no difference to the defendants whether Mr. Brickenden, who acted as solicitor for the plaintiffs and defendants throughout, received a bonus or not in respect to the three mortgages held by him and whether some of these bonus moneys were afterwards refunded to the Plaintiffs by Mr. Brickenden.

22. There were a great number of exhibits filed and much evidence taken in connection with the various mortgage accounts, and after sifting down the evidence taken I have tried to deal only with necessary material facts which might affect the taking of the accounts. It, therefore, only remains for me to find what is due or payable in respect to the mortgage for \$13,500 still held by the defendant Loan Company and the two mortgages held by the defendant Trust Company of \$20,000 and \$13,600 respectively.

23. In respect to these mortgages, statements of the amount claimed were filed by Miss Fletcher, a witness called by the defendant Loan Company. These statements being filed as Exhibits No. 23 and 24 on this reference. The figures set out in these statements were accepted by counsel

for the plaintiffs except in respect to an item of \$360.00 said to have been paid to Mr. Brickenden in regard to the \$18,000 loan to the defendant Loan Company. It was contended that instead of the bonus being shown as \$360.00 it should have been shown as \$720.00 and that an item in the Savings Bank account of the Plaintiff W. H. Biggs amounting to \$78.00 had not been credited to the mortgage account. In view of the opinion which I have expressed on the law respecting bonuses I think it makes no difference what the bonuses were so long as the plaintiffs agreed to them. I think the item of \$78.00 should be credited by the defendant Loan Company to the mortgage account, and the defendant Loan Company charged with that amount; otherwise I think the statements set forth in Exhibits No. 23 and 24 are substantially correct, except that these statements were made to take in interest and other charges to November 8th, 1929, instead of November 1st, 1929, being the date of the Order of Reference.

I therefore find the amount owing in respect to Mortgage dated November 15th, 1922, and registered as No. 16914, and filed on this reference as Exhibit "1", at the time same was paid off by the defendant, The Consolidated Trusts Corporation, on the 31st day of December, 1927, is made up as follows:—

20	Principal	\$ 18,000.00
	Interest	2,195.50
	Total	\$ 20,195.50

I also find the following payments of interest were made from time to time by the plaintiffs:—

	Feb. 21/24	\$ 260.45
	Sept. 6/24	700.90
	Nov. 13/24	699.68
	July 2/25	707.34
	April 28/26	724.25
	Dec. 31/26	681.50
30	June 14/27	300.00
	Aug. 5/27	300.00
	Nov. 1/27	300.00
		<u>\$ 4,674.12</u>

which were credited on the mortgage, leaving the above mentioned balance of principal and interest amounting to \$20,195.00 as of December 31st, 1927.

I find that the amount due in respect to mortgage dated January 27th, 1923, and registered in the Registry Office for the City of London as No. 17155, being a mortgage made by the plaintiff Eva Viola Biggs in favour of the defendant The London Loan & Savings Company for \$12,000.00 and subsequently paid off by the defendant Trust Company on December 31st, 1927, was as follows:—

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Principal.....	\$ 12,012.08
Interest.....	1,334.68
	<hr/>
	\$ 13,346.76

I also find that the following payments were made on account of interest from time to time:—

Oct. 4/23.....	\$ 342.00	
Nov. 13/24.....	936.46	
Sept. 16/25.....	471.80	
Nov. 2/25.....	461.05	
June 29/26.....	463.40	10
Sept. 28/26.....	456.85	
	<hr/>	
	\$ 3,131.56	

all of which payments were credited on the above mentioned mortgage and taken into consideration at the time the defendant Trust Company paid same off.

I find that there is now due in respect to mortgage dated November 8th, 1924, and registered on November 12th, 1924, as No. 19476 and made by the plaintiff Walter H. Biggs in favour of the defendant Loan Company to secure the sum of \$13,500.00 which mortgage is filed on this reference as No. "5" the following amount as of November 1st, 1929— 20

Principal.....	\$ 13,210.00
Taxes.....	1,403.65
Interest.....	5,525.39
Interest on taxes.....	214.60

Less amount on hand..... 78.00

\$ 20,275.64

after crediting the following payments of principal and interest:

Jan. 22/25, paid on principal.....	\$ 200.00	
Jan. 22/25, paid on interest.....	59.20	30
March 22/25, paid on principal.....	200.00	
March 22/25, paid on interest.....	58.20	
March 28/28, paid on interest.....	300.00	
Dec. 7/28, paid on interest.....	300.00	

\$ 1,117.40

I find that the sum of \$14,507.51 is owing up to November 1st, 1929, on mortgage dated December 1st, 1927, and registered January 4th, 1928, as Number 23113 and made by the Plaintiffs in favour of the Defendant Trust Company to secure the sum of \$13,600.00 and filed on this reference as Exhibit "6" made up as follows:— 40

Principal.....	\$ 13,600.00	
Int. from Dec. 31/27 to June 1/28 (152 days) on \$13,600 at 6½%.....		367.89
Int. on arrears to June 28/28.....		1.82
June 28/28, by cash on account of arrears.....	\$ 200.00	
Int. on balance of arrears \$169.71 from June 28/28 to July 19/28.....		75
July 19/28, by cash on account of arrears.....	168.33	
Interest on balance of arrears \$2.13 from July 19/28 to Nov. 1/28.....		30
Nov. 1/28, by cash on account of arrears.....	2.43	
Six months interest on \$13,600 due Dec. 1/28.....	442.00	
Paid for insurance, Oct. 3/28.....	77.50	
Interest on Insurance premium from Oct. 3/28 to Dec. 1, '28.....		2.04
Interest on arrears to Dec. 31/28.....		2.68
Dec. 31/28, by cash on account of arrears.....	446.72	
Interest on principal sum of \$13,600 from Dec. 1/28 to June 1/29.....		442.00
20 Interest on principal and arrears of interest from June 1/29, to Nov. 1/29.....		382.59
Interest on insurance premium from Oct. 3/28 to Nov. 1/29.....		5.42
	<hr/>	
	\$817.48	\$ 15,324.99
		817.48
Balance.....		<hr/>
		\$ 14,507.51

Summary

Principal.....	\$ 13,600.00
Insurance.....	77.50
30 Interest.....	830.01
	<hr/>
	\$ 14,507.51

I find that the sum of \$22,026.08 is owing up to November 1st, 1929, on mortgage dated December 1st, 1927, and registered January 4th, 1928, as Number 23114 and made by the plaintiffs in favour of the defendant Trust Company to secure the sum of \$20,000.00 and filed on this reference as Exhibit No. 7, made up as follows:—

Dec. 31/27, to amount of principal.....	\$ 20,000
Interest at 7½% on above from Dec. 31/27 to June 1st, 1928 (152 days).....	624.66
40 Interest on arrears of interest to June 28/28.....	3.46
June 28/28, by cash on account of arrears.....	\$300.00
Interest on arrears from June 28/28 to July 19/28.....	1.41

*In the
Supreme
Court of
Ontario.*
—
No. 9.
Report of Local
Master,
29th April,
1930.

—continued.

In the
Supreme
Court of
Ontario.
—
No. 9.
Report of Local
Master,
29th April,
1930.
—continued.

July 19/28, by cash on account of arrears	81.67	
Interest on arrears from July 19/28 to Aug. 11/28		1.17
Aug. 11/28, by cash on account of arrears	150.00	
Int. on arrears of int. \$99.03 from Aug. 11/28 to Nov. 1/28		97
Nov. 1/28, by cash on account	100.00	
(which pays arrears to June 1, 1928)		
Interest from June 1st, 1928, to Nov. 14/28 (166 days) on \$20,000 at 7½%		682.20
Int. from Nov. 14/28 to Dec. 1/28 (17 days) on \$20,000 at 6½%		60.55 10
Interest on arrears to June 1/29		24.14
Interest on \$20,000 for 6 months at 6½% to June 1/29		650.00
Interest on arrears of interest and on principal from June 1/29 to Nov. 1/29 at 6½%		583.51
Oct. 3/28, to amount paid for Insurance premium		24.00
Interest on same to Nov. 1/29		1.68
	<u>\$631.67</u>	<u>\$ 22,657.75</u>
		631.67
Balance		<u>\$22,026.08</u>

SUMMARY

Principal	\$ 20,000.00	
Insurance	24.00	
Interest on Insurance	1.68	
Interest on principal and arrears of interest	2,000.40	
Total	<u>\$ 22,026.08</u>	

20

I find that there were no moneys advanced on the collateral mortgages referred to in the evidence.

The amount, therefore, owing to the defendant Loan Company up to November 1st, 1929, as above set forth is the sum of \$20,355.64.

And the total amount owing to the defendant Trust Company up to November 1st, 1929, as above set forth is the sum of \$22,026.08 and \$14,507.51 making a total of \$56,887.23 owing to both defendants.

ALL which I humbly certify and submit to this Honourable Court.

Dated at London this 29th day of April, A.D. 1930.

H. S. BLACKBURN,
Local Master, Middlesex.

30

IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*
—
No. 10.
Consent of The
Canada Trust
Company,
1st May, 1930.

BETWEEN:

THE LONDON LOAN & SAVINGS COMPANY OF CANADA
AND THE CONSOLIDATED TRUSTS CORPORATION,
Plaintiffs by Counterclaim

—and—

WALTER HERBERT BIGGS, EVA VIOLA BIGGS,
G. A. P. BRICKENDEN, G. A. P. BRICKENDEN & COMPANY
and GEORGE G. McCORMICK,

10

Defendants by Counterclaim.

No. 10

CONSENT

THE CANADA TRUST COMPANY hereby consents to being added
as a party Plaintiff in this action along with The London Loan & Savings
Company of Canada and The Consolidated Trusts Corporation.

WITNESS the Corporate Seal of the said The Canada Trust Company
this 1st day of May, 1930.

Witness: }
20 A. S. KENT. }

H. CRONYN, President.

CHAS. J. CLARKE, Treasurer.

(Seal)

IN THE SUPREME COURT OF ONTARIO

In the
Supreme
Court of
Ontario.
—
No. 11.
Consent of The
Huron & Erie
Mortgage Cor-
poration,
1st May, 1930.

BETWEEN:

THE LONDON LOAN & SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION
Plaintiffs by Counterclaim

—and—

WALTER HERBERT BIGGS, EVA VIOLA BIGGS,
G. A. P. BRICKENDEN, G. A. P. BRICKENDEN & COMPANY
and GEORGE G. McCORMICK,
Defendants by Counterclaim. 10

No. 11

CONSENT

THE HURON AND ERIE MORTGAGE CORPORATION hereby con-
sents to being added as a party Plaintiff in this action along with The London
Loan & Savings Company of Canada and The Consolidated Trusts Corpora-
tion.

WITNESS the Corporate Seal of the said The Huron and Erie Mort-
gage Corporation this 1st day of May, 1930.

Witness: } H. CRONYN, President. 20
A. S. KENT. } CHAS. J. CLARKE, Treasurer. (Seal)

AMENDED STATEMENT OF DEFENCE OF DEFENDANTS,
G. A. P. BRICKENDEN AND G. A. P. BRICKENDEN AND
COMPANY, DEFENDANTS BY COUNTERCLAIM.

*In the
Supreme
Court of
Ontario.*
—
No. 12.
Amended
Statement of
Defence to
Counterclaim,
14th May,
1930.

1. The defendants by counterclaim, G. A. P. Brickenden and G. A. P. Brickenden & Company, deny all the allegations contained in the Amended Statement of Claim of the plaintiffs by counterclaim, except the allegations with respect to the incorporation of the various plaintiffs by counterclaim.
2. These defendants further say that the plaintiffs by counterclaim are
10 not holders of the mortgages referred to in such counterclaim, and which are the subject of this action.
3. These defendants, as a further defence, say that the defendants were never employed by any of the plaintiffs by counterclaim, other than The London Loan and Savings Company of Canada, and further, that except with such last named plaintiff by counterclaim these defendants had no dealings, relationship, privity of contract or contact whatsoever.
4. These defendants, as a further defence, rely upon the Statute commonly known as The Statute of Limitations, and say that the alleged claim
20 of each of the several plaintiffs by counterclaim was and is barred by the said Statute, being The Limitations Act, Chapter 106, Revised Statutes of Ontario, 1927.
5. These defendants further say with reference to the alleged claim of such of the plaintiffs by counterclaim as alleged that they have become interested in the mortgages in question by assignment, that such plaintiffs by counterclaim have never given to these defendants, prior to action brought, any notice in writing of their alleged assignment, and these defendants rely upon the lack of such notice in writing as a further defence to the counterclaim.
6. These defendants further say that the plaintiffs by counterclaim
30 have none of them sustained or suffered any loss or damage by reason of the matters put forward in said counterclaim.

DELIVERED pursuant to leave granted by the Honourable Mr. Justice Raney, at Toronto, this 14th day of May, A.D., 1930, by MESSRS. SLAGHT & COWAN, 372 Bay Street, Toronto, Ontario, Solicitors for the above-named defendants by counterclaim, G. A. P. Brickenden and G. A. P. Brickenden & Company.

IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
Court of
Ontario.*
—
No. 13
Opening
Proceedings
at Trial,
7th May, 1930.

BEFORE THE HONOURABLE MR. JUSTICE RANEY

BIGGS v. LONDON LOAN

BIGGS v. McCORMICK and BRICKENDEN

Tried at London, May 7th and 9th, 1930, without a jury.

S. L. SPRINGSTEEN and
E. HARRISON

Counsel for Plaintiffs.

GEORGE T. WALSH, K.C.

Counsel for London Loan and Savings
Company and companies added as
co-plaintiffs.

10

SIR ALFRED MORINE and
A. S. FERGUSON

Counsel for McCormick.

A. G. SLAGHT, K.C.

Counsel for Brickenden.

MR. SLAGHT: I am for Mr. Brickenden in his personal capacity and also for Brickenden and Company which in reality is Mr. Brickenden again.

MR. WALSH: I would take it, your Lordship, this is the first time there has been a division amongst these defendants on counter-claim, Brickenden and Company and G. A. P. Brickenden and Mr. McCormick.

HIS LORDSHIP: Yes.

MR. WALSH: So I take it, your Lordship, having divided now there is not two cross-examinations—and I take it they have had a continuity of interest up until now.

MR. SLAGHT: That is not correct at all. We have had two separate solicitors throughout.

MR. WALSH: You have attended for them through all the examinations, the examinations show it.

MR. SLAGHT: When I started as Counsel, they had separate defences. They are sued in different capacities, and their defences are distinct and apart.

10 HIS LORDSHIP: I would not expect Counsel for Mr. McCormick, for instance to cover the same ground as covered by the other Counsel in cross-examination, but if there is anything differentiating their interests.

MR. SLAGHT: We are always in your Lordship's hand.

HIS LORDSHIP: Very well then.

MR. SPRINGSTEEN: The facts in this case, my Lord, are rather involved—would your Lordship like me to outline them as briefly as possible before calling any evidence? It is briefly an action, one of those mortgage bonus cases. Two of the mortgages in question will probably fall within the principle of Meagher v. London Loan; the third mortgage I would contend
20 would not fall within that principle.

The action is an action for redemption of the mortgages, and the defendants are claiming against the defendants by counter-claim that they are liable in damages to the defendants for negligence, conspiracy and fraud in inducing the defendants to become mortgagees under these mortgages contending that the security is not as represented to them, and that there was in fact no security for these mortgages. I think that is the substance of the defence on counter-claim.

HIS LORDSHIP: I suppose the onus is on the company, is it to begin?

MR. SPRINGSTEEN: I think not, my Lord, so far as our claim for a
30 declaration that the bonus, that one mortgage comes within the Interest Act, I think the onus is on us in that regard.

HIS LORDSHIP: Was not that one of the questions that was referred to the Master?

MR. SPRINGSTEEN: I think not, my Lord. There was a reference to the Master to determine the amount owing under the mortgages. The Master determined the amount owing without any reference to the Interest Act at all.

I do not understand that it was for him to determine whether the Interest Act applied or not.

40 HIS LORDSHIP: I think he determined that fact. I read his report this morning, and I think he determined that question following the Meagher case.

MR. SPRINGSTEEN: I do not so understand it, my Lord.

MR. WALSH: My understanding is your Lordship's understanding of the matter. This matter was pretty fully gone into before His Lordship the Honourable Mr. Justice Wright.

*In the
Supreme
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No. 13.
Opening
Proceedings
at Trial,
7th May, 1930.
—continued.

HIS LORDSHIP: I understand the idea was to get the liability of the plaintiffs determined and then afterwards to ascertain the responsibility of the defendants by counter-claim.

MR. WALSH: That is it, your Lordship. As a matter of fact, it would be impossible for Mr. Blackburn to determine the amount without determining first the Law applicable with the matter, because that is linked up.

HIS LORDSHIP: Mr. Springsteen says there was a difference between the first two and the third mortgages—the third mortgage is still held by the London Loan.

MR. WALSH: I do not blame my learned friend for trying to hang on to that. It is just what he is trying to hang on to. He cannot now distinguish it. The decision in the Supreme Court of Canada set the matter at rest so far as this matter is concerned. 10

MR. SPRINGSTEEN: I am very —

MR. WALSH: I do not know how far you wish to carry it, but we are satisfied *Meagher v. London Loan* is satisfactory.

Mr. Blackburn heard this matter, heard all the evidence concerning the matter. He had two days or three days of evidence, the evidence has been transcribed and together with the evidence is before your Lordship and made the report which summarizes the facts in connection with each and every mortgage on this property and an examination of that report, will help your Lordship to understand all the evidence in the case for Mr. Blackburn certainly went into the matter with the minutest detail. I think if we were to read the matter to your Lordship— 20

HIS LORDSHIP: Read, Mr. Springsteen, from the report what you claim is in the report.

MR. SPRINGSTEEN: We have had, my Lord, no notice that the report has been filed. I have what purports to be a copy of the report, but I do not know whether it has been filed. We have received no notice of filing.

HIS LORDSHIP: I have it here, marked "filed April 30th." 30

MR. WALSH: Miss Harrison received a copy and the procedure is provided for by Mr. Justice Wright in his order, instead of that being ordinarily a report, which would have to be proceeded in the single court and if not there satisfied, Mr. Justice Wright realizing the difficulties in that matter, as it is inseparably connected with the counter-claim, he provided for the procedure of that report.

HIS LORDSHIP: Did the order by Mr. Justice Wright—?

MR. WALSH: Your Lordship will find a copy in the record.

HIS LORDSHIP: Did the order of Mr. Justice Wright provide for an appeal to the trial Judge? 40

MR. WALSH: Yes, your Lordship will see it embodied in the order.

MR. SPRINGSTEEN: We have not received any notice of filing of the report. We surely cannot appeal until that time. My contention is the learned Master determined questions which should be determined by the trial Judge, viz., whether the interest could pass or not pass at all.

HIS LORDSHIP: Surely it was necessary for him to determine that

question in order to decide what the liability of the mortgagees were. Have you not seen the report?

MR. SPRINGSTEEN: Yes, my Lord, I just got it last night.

HIS LORDSHIP: Tell me in what respect you suggest the third Mortgage—is the third mortgage?

MR. SPRINGSTEEN: Yes, my Lord.

HIS LORDSHIP: In point of date.

MR. SPRINGSTEEN: Both in point of date and in point of priority.

HIS LORDSHIP: How did the report distinguish between that mortgage
10 and the other two, so far as these questions.

MR. SPRINGSTEEN: I believe the report does not distinguish—I see the terms of redemption of the mortgage does place it within the terms.

HIS LORDSHIP: Is that not a question that you might appeal from the Master's report? I take it to be that, so there should be a Master's report and then each party might appeal from that report, and then a trial would come on as to the liability of the added defendants on the counter-claim, and then the whole matter would be open for an Appellate Court.

MR. SPRINGSTEEN: I suppose we could treat this as an appeal from the Master's report.

20 HIS LORDSHIP: If that is so you get back to the question of the onus I suppose—on this counter-claim I suppose the onus is on you. Mr. Walsh, is it not?

MR. WALSH: On the counter-claim?

HIS LORDSHIP: Yes.

MR. WALSH: Yes, my Lord, and I am willing to take the onus on.

HIS LORDSHIP: I suppose so. How does the order of Mr. Justice Wright read?

30 MR. WALSH: The order of Mr. Justice Wright is as follows, "I direct that it be referred to the Local Master at London to take account of the moneys due in respect of the mortgages referred to in the pleadings and postponing the trial of the other issues until the next non-jury sittings at London with the liberty to the defendants to add such parties as they may be advised in respect of their counter-claim and with liberty to both parties to amend their pleadings. Injunctions to be continued meanwhile. All proceedings to be expedited November 1st, 1929—"

HIS LORDSHIP: When was the Injunction?

MR. WALSH: The order states the Injunction is to be continued meanwhile. It appointed the Canada Trust Company receiver of all the rents to pay off this indebtedness.

40 MR. SPRINGSTEEN: I am asking for a continuation of that Injunction, my Lord.

MR. WALSH: The last order is that all proceedings, including trial of the counter-claim be expedited.

HIS LORDSHIP: The onus is now on the companies, on the counter-claim. I will proceed to take evidence on the counter-claim.

You will, Mr. Springsteen say whether you wish to proceed under the order

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MR. SPRINGSTEEN: I do want to, my Lord.

HIS LORDSHIP: Then serve notice to-day.

MR. WALSH: I would ask your Lordship to hear the report.

HIS LORDSHIP: You need not bother with that now. Go on with your evidence.

Plaintiffs'
Evidence.
No. 14.
J. A. E.
Braden,
Examination
7th May, 1930.

MR. WALSH: I will call Mr. Braden.

JOHN A. ERNEST BRADEN: Sworn

Examined by Mr. Walsh.

Q. Mr. Braden, what is your profession or business? A. Barrister and solicitor. 10

Q. Where do you carry on business, Mr. Braden? A. At the City of London.

Q. And you occupy a position with the London Loan and Savings Company, or the Consolidated Trust Corporation? A. Yes, I was Vice President of the London Loan from about the month of February until September, 1929, and I was also a Director.

HIS LORDSHIP: From February until what date? A. Until September, 1929.

MR. WALSH: Q. Yes? A. And I was also a Director of the Consolidated Trust Company during the same period of time. 20

Q. Director of it? A. Yes, a Director.

Q. Now what happened since those dates? A. By an agreement bearing date the 3rd day of July, 1929, the business of the London Loan and Savings Company became amalgamated with the Huron & Erie Mortgage Company.

HIS LORDSHIP: Agreement dated the 3rd day of July?

WITNESS: With the Huron & Erie Mortgage Corporation.

Q. That is the Huron & Erie? A. Took over the London Loan and Savings Company.

MR. SLAGHT: If that is a fact, it is covered by an agreement, and the agreement should be put in. 30

MR. WALSH: I do not think it is relevant. They sue, and if coincide under the agreement we have been sued under those names, your Lordship.

WITNESS: Then I was mistaken in saying that I was a Director for the Consolidated Trust for the same period of time, I think I continued to be a Director in the Consolidated Trust until probably November of 1929, and then the Consolidated Trust Company was taken over by the Canada Trust Company.

MR. SLAGHT: That is subject to the same observation.

MR. WALSH: It is the same matter, your Lordship understands. 40

HIS LORDSHIP: If, Mr. Slaght, there is anything relevant in these transactions, you may of course ask for the papers.

MR. SLAGHT: Thank you, my Lord.

MR. WALSH: Q. Then, what was the result, Mr. Braden, of these amalgamations? A. The result of the amalgamations was that the business of both the Consolidated Trust Company and the London Loan and Savings Company of Canada was taken over by the Huron & Erie Mortgage Company and the Canada Trust Company.

HIS LORDSHIP: I suppose these two last companies are affiliated?
A. Yes, my Lord.

Q. As I suppose the London Loan and the Consolidated Trust were
10 affiliated? A. Yes, my Lord. The Huron & Erie controls the Canada Trust Company. I may say that the Huron & Erie agreed to take over the London Loan and Savings of Canada, the London Loan and Savings held practically all the stock in the Consolidated Trust Company and one amalgamation involved the amalgamation of both companies.

MR. SLAGHT: I object to that evidence. I suggest that it should be struck out or proven by the production of the stock register.

HIS LORDSHIP: This does not seem to be of any consequence. They are all subsequent to these actions.

MR. WALSH: They are not subsequent in that sense.

20 HIS LORDSHIP: Go on then. Mr. Slaght, if he wants these documents will be entitled to have them. Go on.

MR. WALSH: Q. Was any other company created before that? A. A Company called the London Loan and Assets Limited.

Q. What connection had that with the matter? A. The London Loan Assets had the handling of the assets of the London Loan & Savings of Canada.

HIS LORDSHIP: Do we need any more explanation at present? That looks as if there was a liquidation in process of the London Loan, and that is being done by the London Loan Assets,—just let us leave it there and get on
30 with something that has to do with the case.

MR. WALSH: The reason I mention that is this, the plaintiff has not raised any objection to this matter, but if there is I want to add the London Loan Assets and also the Huron & Erie as parties to this litigation. If there is any objection made to it.

HIS LORDSHIP: Let that stand at the present.

MR. WALSH: I wish to add them if there are any objections.

MR. SLAGHT: So far as I am concerned, I say I am not prepared to meet any case at this eleventh hour and fifty-ninth minute of any new status of the case.

40 MR. WALSH: There is not any fifty-ninth minute of an eleventh hour. We have had correspondence.

HIS LORDSHIP: Get on with the examination.

MR. WALSH: Q. The London Loan Assets is a liquidated concern?
A. Yes.

Q. And have they any interest in the mortgage in question in this action?

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Plaintiffs'
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No. 14.
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Braden,
Examination
7th May, 1930.
—continued.

MR. SLAGHT: That is objected to.

HIS LORDSHIP: Get on. Let us see.

MR. WALSH: Q. What position do you occupy? A. I am Vice-President of the London Loan Assets.

Q. Vice President of that concern? A. Yes.

Q. Now, Mr. Braden, you say you were elected a Director of the London Loan & Savings Company, one of the companies plaintiff by counter-claim, and what date now? A. It was in February, 1929. I cannot give you the exact date. It was around the 15th or 16th.

Q. Around the month of February last year? A. It was in February. 10

Q. Of 1929? A. Yes.

Now, when did these Biggs—what I call the Biggs mortgages, either the one to the London Loan or to the Consolidated Trust Company first come up before the Board when you were connected with it? A. The loans came up before the Board of the London Loan and Savings Company very soon after I became a Director.

HIS LORDSHIP: They were existing loans at that time? A. Yes, my Lord, they were.

Q. Yes? A. And they were one of the first matters that was referred to the Board. 20

MR. WALSH: Q. Yes? A. The Mortgages were greatly in arrears and Biggs was not making any payments and I received instructions to take proceedings and collect the rents and—

Q. What else were you going to say? Did I interrupt you? A. Yes, I was going to say, I attempted to do that on behalf of the London Loan and Savings Company.

HIS LORDSHIP: You were also solicitor, were you? A. Yes, my Lord.

Q. Yes? A. And Miss Harrison representing Biggs came to me and said that it was not necessary to take these proceedings.

HIS LORDSHIP: You had instructions? A. From the Board of the 30 London Loan Company.

HIS LORDSHIP: To take proceedings on these mortgages? A. On these mortgages.

Q. The three mortgages referred to in the pleadings? A. Yes, my Lord. I had instructions from both companies.

MR. SLAGHT: What do you mean by both companies? A. The Consolidated Trust Company and the London Loan and Savings Company.

MR. WALSH: Q. All right, Mr. Braden, get on. A. And Miss Harrison representing Mr. Biggs made an arrangement with me to—

MR. SLAGHT: I want to say, my Lord, and perhaps this will do for 40 the future, that anything between the witness and Miss Harrison does not affect the defendant Brickenden and Brickenden and Company, for whom I appear.

HIS LORDSHIP: Of course not.

MR. SLAGHT: I object to its acceptance as against us.

HIS LORDSHIP: It is not against you.

WITNESS: Miss Harrison stated it would be very embarrassing to Mr. Biggs if we notified the tenants and Mr. Biggs should pay so much a month out of his salary, and Mr. Biggs would also collect the rents.

HIS LORDSHIP: And she, I supposed represented Mrs. Biggs, as well?

SIR ALFRED MORINE: I would like, my Lord, to take the same objection.

HIS LORDSHIP: It is not necessary.

Q. Miss Harrison representing Biggs suggested that the money should be directed—? A. Collected by Mr. and Mrs. Biggs and turned over to
10 the London Loan and Savings Company. They did not want to have anything to do with the Consolidated Trust. I suggested all the moneys we had paid there, and Mr. Biggs was to pay up the sixty dollars a month out of his salary. There was some correspondence between Miss Harrison and myself, I have not got it here, and that arrangement was carried out for some time, a month or two, and Mr. Brickenden also saw me at the same time and said that Mr. Biggs was a friend of his—

HIS LORDSHIP: Who is this? A. Mr. Brickenden, and he suggested we be easy on Mr. Biggs, and Mr. Biggs would pay everything.

HIS LORDSHIP: How would this come in here?

20 MR. SLAGHT: Yes, my Lord, anything Mr. Biggs said.

MR. WALSH: Unfortunately, my Lord, he came in it many years earlier.

HIS LORDSHIP: We will get the story? A. Anyway that arrangement was carried out for a time, a month or two, and suddenly without any notice to the Consolidated Trust Company or the London Loan or myself, Mr. Biggs instead of turning the rents over proceeded to use the rents himself, and I think that was followed up with a notice from Miss Harrison that Mr. Biggs intended to sue for bonuses and some commissions charged from the time when the loans were obtained.

30 HIS LORDSHIP: He refused to return the rentals and went on collecting them? A. Yes, he collected it for months, and then decided he would not go any further in the arrangement made by Miss Harrison.

HIS LORDSHIP: Then he brought his action for redemption? A. And asked for an Injunction restraining the two companies from collecting the rents.

MR. WALSH: Q. That was all before the Interim Receiver was appointed to collect the rents? A. Yes, everything was in arrears, insurance premiums, taxes—

Q. What else? A. Interest.

40 Q. Can you give us also any idea of the amount of taxes in arrear? A. I think about \$1,800 taxes and thousands of dollars interest—I know that,—and that last mortgage which the London Loan had in fact, was the only one the London Loan now has or did have at the time of the amalgamation at \$13,800 has now gone up to over \$20,000 with interest and other charges.

HIS LORDSHIP: Then this litigation started? A. Yes, that is when this litigation started. That is what started this litigation.

*In the
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Plaintiffs'
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No. 14.

J. A. E.
Bruden,
Examination
7th May, 1930.

—continued.

*In the
Supreme
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—
Plaintiffs'
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Braden,
Examination
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—continued.

MR. WALSH: Q. Now, Mr. Braden, having been appointed a Director of this company, holding office in the company, and also a solicitor in the company, did you get any Abstract or make any search of the title? A. Yes, I did, I made searches in connection with the title. In fact, I might say that it had been arranged that the London Loan should take over what is called the Barrell mortgages, that matter was arranged before I became a Director of the company—and the matter came before the Board shortly after the new Board took office. I might say there was a fight and the new Board took office—

HIS LORDSHIP: You were one of the new Board? A. I was one of 10 the new board, and the taking over of this Barrell mortgage came up, and I insisted on having a valuation of the property before I took over the Barrell Mortgage, and we had a valuation and found the Barrell mortgage was much more than the value of the property.

MR. SLAGHT: I object to that. He must prove that, without any cross-examination.

HIS LORDSHIP: Mr. Walsh will have that evidence here, I suppose.

WITNESS: So then I made an investigation in regard to all the mortgages.

MR. WALSH: Q. Just before that, you say before you became a 20 Director an arrangement had been made for the payment on this Barrell mortgage? A. Yes.

HIS LORDSHIP: Arranged with whom? A. I think there was something said between Mr. McCormick and Mr. Biggs.

HIS LORDSHIP: Was Barrell the name of the mortgagor? A. No, the mortgagee. He had a first mortgage on premises known as the first and second mortgage.

HIS LORDSHIP: And the suggestion is that somebody should pay off that mortgage? A. Yes, sir.

Q. So as to put your security in? A. As the first. 30

Q. In good order? A. Yes, we had a third on that, \$13,500—in fact, this third mortgage covered a number of properties.

HIS LORDSHIP: Never mind that now. The suggestion is this first mortgage of Barrell, amounting to how much? A. \$7,500 and interest.

Q. Would be paid off, so as to put your third mortgage? A. In better position.

Q. And was that carried out? A. It was not carried out because I asked the mortgagor to have a valuation made of the property and the report I got was—

MR. SLAGHT: Now, I object, my Lord. 40

MR. WALSH: Q. As a result of that report, we will get the result? A. We did not take over the Barrell mortgage. There was nothing there, from our advice.

HIS LORDSHIP: It is no harm.

MR. SLAGHT: This witness is a lawyer, my Lord.

HIS LORDSHIP: Lawyers cannot stop talking.

MR. SLAGHT: I do not mind if they talk within the rules of evidence, but the witness is lawyer enough to know it is ill advised and should not try to run it in.

HIS LORDSHIP: You wish to put in the Abstract, Mr. Walsh?

MR. WALSH: I wish to put in first the Abstract on 114—that is 114 Elmwood Avenue.

Q. Have you a survey of this? This is—I ask you if you have a survey of the Elmwood Avenue property? A. It is in that case over there.

Q. Would you come and get it, Mr. Braden, please? A. May I go
10 down, my Lord?

HIS LORDSHIP: Yes.

MR. SPRINGSTEEN: Might I ask leave to serve notice of appeal in connection with the report.

HIS LORDSHIP: I will hear it. You can take leave to hear short notice. I do not think I will hear the evidence until after the evidence is in in this case.

MR. SLAGHT: That is an Abstract of which property?

MR. WALSH: An Abstract of 114 Elmwood Avenue.

HIS LORDSHIP: That is the property upon which the Barrell mortgage was.

20 MR. WALSH: Yes, your Lordship.

HIS LORDSHIP: That will be Exhibit what number?

MR. WALSH: Exhibit "A".

If your Lordship will just look at this survey. When we read the Abstract—it is quite a material part of this case, and your Lordship, in the Abstract will not be able to follow unless you look at the survey and see the measurement of the property.

HIS LORDSHIP: Which is the 114 Elmwood?

WITNESS: Marked in red pencil, my Lord.

MR. WALSH: Your Lordship will see west thirty-nine feet of that—
30 perhaps I can show it to your Lordship, it is the corner.

HIS LORDSHIP: The one marked "duplex"?

MR. WALSH: Yes, my Lord.

HIS LORDSHIP: That is 114 Elmwood Avenue?

A. Yes, my Lord.

HIS LORDSHIP: I do not understand this—what are you seeking to prove now, Mr. Walsh?

MR. WALSH: I am just seeking to prove there are three mortgages at least, more than that, on the property, your Lordship. In going into the evidence your Lordship will have to go into these mortgages, I find, and what
40 was done with the proceeds and the commissions to secure this, and the terms in which they were brought in.

HIS LORDSHIP: How would it help me to identify the property on the plan?

MR. WALSH: I would not bother your Lordship but to me it was of the greatest assistance and I thought it would be to your Lordship.

If your Lordship can follow the Abstract without it, it will be of no interest.

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HIS LORDSHIP: Can you not give me the bones of it? What are you seeking to prove now?

MR. WALSH: What I am seeking to prove is the condition of these properties at the time the respective mortgages were put on, and what was done with the proceeds, and then when they came to put on the big mortgages—

HIS LORDSHIP: I will let Mr. Braden tell the story, and then he can be subjected to cross-examination.

MR. WALSH: Q. Will you tell His Lordship, take each property—you can tell them in any order you want, 114 Elmwood, 116 Elmwood and 309 10 311 and 313 Ridout—yes, they run up to 319½.

MR. WALSH: There are five different properties, your Lordship.

WITNESS: The first mortgage the London and Loan took was \$18,000.

HIS LORDSHIP: On what? A. On 116 Elmwood which was a construction loan.

MR. WALSH: Do you want that mortgage referred to on this trial, of the claim?

HIS LORDSHIP: No, I think the better way would be—they are all there—they do not need to be marked as Exhibits.

MR. SLAGHT: The only trouble is we were not parties at that time, so 20 if they are referred to in this case, I suggest they had better be marked as Exhibits now, or on their introduction, because my clients were not parties to them.

MR. WALSH: They were present, Mr. Slaght.

HIS LORDSHIP: These mortgages are here, I take it? A. Yes, they are.

HIS LORDSHIP: It is rather confusing to have a lot of Exhibit marks on papers. If you will just give the mortgage, introducing the mortgage give the number on the reference, and it can be referred to as number so and so? A. They are all here on the table, down there.

MR. SLAGHT: Why do you not give the registered number of the 30 mortgage?

HIS LORDSHIP: The only difficulty is there are so many figures.

WITNESS: In the Master's report, they are all referred to there, my Lord.

HIS LORDSHIP: Mr. Walsh, you are setting out now, are you, to try to prove that certain mortgages were taken by the London Loan Company on properties that were illusory—is that the point?

MR. WALSH: Yes, my Lord, most of them were illusory.

MR. SLAGHT: I am afraid my friend will mislead the Court if he says that, when he says illusory, they are all existing securities, all registered on 40 real land.

HIS LORDSHIP: Yes, go on—the first mortgage? A. For \$18,000.

HIS LORDSHIP: On which property? A. On 116 Elmwood.

HIS LORDSHIP: Now, tell the story of that? A. Now, that mortgage was obtained after a considerable amount of discussion at the meeting of the old Board. I looked at the Minutes and I—

SIR ALFRED MORINE: I object to that, my Lord.

MR. SLAGHT: I object to that, my Lord.

HIS LORDSHIP: Mr. Walsh will understand—I want to get the story—Mr. Walsh will understand he has to prove these things.

MR. WALSH: I will undertake to prove it, my Lord.

HIS LORDSHIP: They are not known as facts, to this witness. He is giving the result of his inquiry, Mr. Slaght, and if the proof is not made by first hand evidence, it is no evidence at all.

MR. SLAGHT: I want to object to his giving the result of an inquiry
10 because there is to be an issue and I have no objection to the witness pointing out to the witness anything that appears in the minutes, but your Lordship will appreciate the importance—he is now starting to describe what occurred three or four years before he had any connection with this company.

HIS LORDSHIP: I understand that.

MR. SLAGHT: Therefore I am fearful of getting in to the Record any sort of a summary of his on the Record in an action against us, as a result of his investigation, quite unconsciously Mr. Braden may have absorbed some ideas and give voice to them. Anything that is evidence I will be glad to
20 have brought out, but I am fearful of anything such as that suggested.

HIS LORDSHIP: Are you clear enough on this transaction to tell the story through, Mr. Walsh?

MR. WALSH: I have no objection. I think Mr. Braden could tell it shorter and more to the point and I will undertake to call the evidence—if I do not call it, I have lost the effect of it.

HIS LORDSHIP: After that I think I will allow the witness.

SIR ALFRED MORINE: I object on this ground. Take the last answer. "There was a considerable amount of discussion"—he does not say who were present and the minutes clearly would not show any such language, and he
30 gets it in by stating to your Lordship and fails to prove it afterwards. It certainly is not a fair way of proceeding.

WITNESS: I am going by the minutes, the minutes show that, my Lord.

HIS LORDSHIP: Could you confine your statement to matters that are of record in the Minutes? A. Yes, my Lord, not depending on hearsay.

Q. Yes? A. I won't give opinions at all.

HIS LORDSHIP: And not giving anything that can be anybody's statement? A. Of course, I will go by the minutes. I had given it—some of the old Directors—

HIS LORDSHIP: Tell the story as it appeared by the minutes of the
40 Company. Never mind referring to the minutes at the moment, referring now to 116 Elmwood Avenue? A. According to the minutes the loan was first accepted, I think for \$18,000, and then there was some question raised about the matter apparently, because after the mortgage was registered—

MR. SLAGHT: There, I object. "apparently some question was raised"? A. The matter again came before the Board as is shown in the Board Minutes of the 3rd of September, two or three months—moneys were to be paid out

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of the ledger, and not more than fifty percent of the value—and it also shows there was a bonus declared with reference to that particular mortgage, and I also looked at the cheques and Mr. Brickenden was paid legal fees in connection with these mortgages.

MR. SLAGHT: I object to that, my Lord.

HIS LORDSHIP: Your objection covers all this.

MR. SLAGHT: Might I point this out, the language of the minutes is important here that the Court should see. Here is a gentleman, from recollection speaking of a series of minutes and speaking of the books showing about facts. I would suggest that the best evidence of that be adduced or nothing at all. This stuff is not admissible, I submit the best proof is the books and the wording and the wording is important in each instance in my view of I cannot cross examine this gentleman on his recollection, and I do suggest that my friend should prove facts according to rules of evidence. 10

HIS LORDSHIP: All right, if you want it done strictly.

MR. SLAGHT: It will shorten it in the long run.

HIS LORDSHIP: Get your minute book here and tell your story.

WITNESS: I might say, my Lord, the minute book is not here, but in Mr. Blackburn's report is an extract from the minutes appearing in that, and I might just refer to that and read it to your Lordship. 20

MR. SLAGHT: No, I was not there. I am not accepting that.

WITNESS: I can swear, my Lord.

MR. SLAGHT: There is a minute book. It is in that.

MR. WALSH: We will get it, Mr. Slaght, I find the biggest row is put up over the smallest things.

HIS LORDSHIP: Get past the minute book.

WITNESS: There was collateral security required in connection with this loan of \$18,000 and the collateral security obtained was a third mortgage on premises known as 114 Elmwood Avenue.

SIR ALFRED MORINE: My Lord, I do not wish to be contentious about the matter, this is either a minute— 30

HIS LORDSHIP: I am going to hear this story. I have your objection.

MR. SLAGHT: Might I make this objection, the witness is in that dual capacity. He is a solicitor in Court and if he will step from the witness box and make any statement informing the Court what the facts are I think would be quite free from objection, but to have them justified under oath, and to have it go into the record under oath which I will have to justify and which I believe are inaccurate and he would never use it if he checked himself by the wording of the minutes, I suggest that is not proper.

HIS LORDSHIP: Mr. Braden, if you will step down for the moment—you are not under oath. 40

MR. WALSH: Pardon me, my Lord, if I may say something, your Lordship will not want to hear a duplicate of this, I am going to bring it in evidence, question by question, what you would have got from Mr. Braden in a detailed statement which would have been much better.

HIS LORDSHIP: You will do what?

MR. WALSH: By asking Mr. Braden question by question, I would have got under oath the statement. Your Lordship would not want to hear a duplicate of that again from the witness box.

HIS LORDSHIP: Come back again, Mr. Braden.

MR. WALSH: It is coming out.

Q. Mr. Braden, we will take the one, you mentioned Barrell first, that is on the Abstract first. Now on 113 Elmwood Avenue—I now produce this Abstract—an Abstract, your Lordship, of the southerly ninety-four feet six inches of lot 11, block D., plan 343 and the first entry on it, your Lordship is
10 a mortgage from Walter H. Biggs and Wife to Edwin Barrell for \$6,000 on the westerly thirty-nine feet of the southerly ninety-four feet six inches of that lot.

HIS LORDSHIP: For \$6,000.

MR. WALSH: For \$6,000.

MR. SLAGHT: Mr. Walsh has jumped away from the \$18,000 mortgage—perhaps you would tell His Lordship that.

HIS LORDSHIP: I understand that.

MR. WALSH: The next, your Lordship, of interest on the property is a grant, registered on the 3rd of August, 1922, from Thomas H. Robinson and
20 wife to Walter H. Biggs, Jr., being the south half of that lot.

Then the next entry is a mortgage dated the 25th of July, 1922, and registered on the 25th of August, 1922, Walter H. Biggs, Jr. and wife to Edwin Barrell, consideration \$1,000 on the westerly thirty-nine feet of the southerly ninety-four feet six inches of said lot.

Q. Now, Mr. Braden, when you were referring His Lordship a few minutes ago, in your evidence, to there being an arrangement made at the time you took over to pay Mr. Barrell \$7,000 or \$7,500, what mortgage did that have reference to? A. These two mortgages you have just read out.

Q. That I am just referring to? A. Yes.

30 MR. WALSH: Q. Now, the next entry I notice on this Abstract is a mortgage dated the 14th of November, 1922, and registered on the 15th of November, 1922, from Walter H. Biggs and wife, to the London Loan and Savings Company of Canada for \$18,000 on the easterly forty-five feet of the southerly ninety-four feet six inches.

HIS LORDSHIP: Never mind telling about the description—it is on the same property.

MR. WALSH: No, on different property, my Lord? A. That is 116 Elmwood, my Lord.

MR. WALSH: The easterly forty-five feet.

40 Q. Now, will you tell His Lordship, having regard to the survey of the property what street number of Elmwood was that? A. The \$18,000 mortgage covered——?

Q. Yes? A. It covered 116 Elmwood Avenue.

HIS LORDSHIP: What property was covered by the Barrell mortgage?

A. Number 114 Elmwood.

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MR. WALSH: Now, your Lordship, as I go along may I put this in—
Abstract "A"

EXHIBIT A. Abstract dated 5th May, 1930 of southerly ninety-four feet six inches of lot 11, block B in plan 343 since and including number 16499—4th division only.

MR. WALSH: Then I will put in this survey as Exhibit B.

HIS LORDSHIP: Does that survey cover these two numbers?

MR. WALSH: Yes, my Lord, covers them both.

HIS LORDSHIP: Covers 114 and 116 Elmwood Avenue? A. Yes.

EXHIBIT B.—Plan showing numbers 114 and 116 Elmwood Avenue 10 property.

MR. WALSH: Now the \$18,000 mortgage, Mr. Braden, looking through this, would you hand that to me, Mr. Slaght wants it marked that it may be referred to?

WITNESS: Yes, I am sure it is among them.

MR. SLAGHT: I do not suppose anything turns on it—whose survey is that? Who is it made by, and what time?

WITNESS: It was drawn by Mr. Farncomb.

MR. SLAGHT: There is no name on it.

MR. WALSH: I just want your Lordship to understand it when we come 20 to examine the Abstract, that they may be able to identify the property.

MR. SLAGHT: If it is for that purpose.

MR. WALSH: I could use either mortgage but that one—

WITNESS: No.

HIS LORDSHIP: Are you looking for the \$18,000 mortgage?

A. Yes, my Lord. I know it was filed. It evidently does not appear to be amongst these papers, here it is. It is Exhibit 1 on the reference.

HIS LORDSHIP: Very well, that will be Exhibit 1 on the reference.

—EXHIBIT 1-R. Mortgage W. H. Biggs to London Loan and Savings Co. dated 14th November, 1922, number 16,914 for \$18,000. 30

MR. WALSH: That is Exhibit 1-R a mortgage W. H. Biggs to London Loan and Savings Co., dated 14th November, 1922, and was registered on the 15th November, 1922, as number 16914, being from William Herbert Biggs to the London Loan and Savings Company of Canada and his wife, Eva Viola joining in to bar her dower for \$18,000 the principal sum, and it describes this property as I have given it on the Abstract, your Lordship, forty-five feet. Then this is the redemption clause. "On payment of \$18,000 at 7½ per cent. interest per annum as follows: \$250 on account of principal to become due and paid on the 14th day of May and November in the years 1924, 1925, 1926, 1927; two hundred and fifty dollars on the 14th day of 40 May, 1928, and the balance of the principal sum on the 14th day of November, 1928.

"The mortgagor is to have the privilege of paying an additional two

hundred and fifty dollars on account of principal on each of the said days, interest at the rate aforesaid is to become payable half yearly on the 14th day of May and November in each and every year both before and after default"—the first payment is to be made on the 14th day of May, 1924, and there was just another clause, I will read here, your Lordship, having regard to the question of bonus—"Any bonus charged in connection with this loan shall draw interest from date of mortgage at said rate."

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HIS LORDSHIP: Any bonus?

10 MR. WALSH: Yes, your Lordship, I do not know whether after that that had any efficacy.

HIS LORDSHIP: Any bonus shall bear interest?

MR. WALSH: Yes, "Any bonus charged in connection with this loan shall draw interest from date of mortgage at said rate."

HIS LORDSHIP: What does that mean?

MR. WALSH: I never saw much good anyway, but the solicitors of that day thought it was, it would be efficacious.

HIS LORDSHIP: The bonus would be paid by the mortgagor.

MR. WALSH: It is deducted from the mortgage, that is the way they work it.

20 HIS LORDSHIP: All right, go on.

MR. WALSH: That is that mortgage, that is 1-R.

Q. Now, Mr. Braden, have you got the minutes there and tell us what are the entries in your minutes? A. Miss Fletcher was asked to see they were brought up here. She misunderstood my instructions. She has gone to get them, but I can read from the Master's Report, where I know the extract is the same.

MR. WALSH: Are you satisfied until they arrive?

HIS LORDSHIP: I see no objection to that. They will be available.

WITNESS: Would you let me have the Master's Report?

30 HIS LORDSHIP: Here is the report.

WITNESS: Now, at page 2, paragraph 4 of the Master's Report, the following statement appears. "This loan of \$18,000 although collaterally secured was still open to objection and at the Board meeting of the defendant Company on December 4th further discussion took place concerning it, and the following statement appears in the minutes of the Directors' meeting of the defendant Company 'pay no more money except on Mr. Gorwill's valuation to the extent of fifty per cent. on the building'" (Gorwill being the defendant Company's valuator).

40 MR. WALSH: Q. Before you come to that, I want the first minute that appears on the books of this company? A. November 11th.

MR. WALSH: The minutes of the Directors'—

MR. SLAGHT: Just there, I think my friend started to put one in. He has read into this case an extract from the Master's Report which I am not bound by.

HIS LORDSHIP: Score that out, Mr. Henderson, the last answer, and

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the witness will read just the extract from the Minute book as it appears with reference to this.

MR. WALSH: I have a copy, my Lord, and will read from mine.

HIS LORDSHIP: As it has reference to this \$18,000 mortgage.

MR. WALSH: Q. What is the first entry that appears? A. The first entry is entered November 13th, 1922, W. H. Biggs Loan, \$18,000 at 7½ per cent. at six years.

SIR ALFRED MORINE: Where are you reading from, please? A. I am reading from a copy of the minutes of the meeting of Directors of the London Loan and Savings Company of Canada held on the 13th November, 1922, 10
"Amount \$18,000 at seven and one-half per cent. at six years, with two per cent bonus and no commission".

Then the next Board meeting in which the Biggs matter was discussed was on December 4th, 1924.

HIS LORDSHIP: Still the \$18,000 mortgage? A. Yes, my Lord, the one covering 116 Elmwood, "Pay no more money save on Mr. Gorwill's valuation to the extent of fifty per cent. on buildings".

Then December 11th, 1922. "Re Biggs, re Taxes, W. H. Biggs. Solicitor reported extra security for \$3,000, Loan confirmed".

MR. WALSH: Now, just at that point, until we come to the next item? 20
A. Now that is all in connection with the loan of \$18,000.

MR. WALSH: You then had extra security, \$3,000 upon that.

Now I see a mortgage number 17013, the next item in the Abstract dated 11th November, 1922, registered on the 11th November, 1922, from Walter H. Biggs and wife to the London Loan and Savings Company for \$3,000, covering the westerly thirty-nine feet of the south ninety-four feet six inches of said lot—

This \$3,000? A. That covered 114 Elmwood Avenue.

HIS LORDSHIP: That is the collateral mortgage.

MR. WALSH: Yes, my Lord, that is the one, that apparently had a first 30
and second mortgage there, also covered a little more land which was afterwards released.

HIS LORDSHIP: Just one moment, that is 114 Elmwood Avenue, \$3,000—is that expressed to be a third mortgage?

MR. WALSH: I am just putting that in now. I will put them in in their order.

Will you give us that mortgage, Mr. Braden? A. What is that?

MR. WALSH: The mortgage of the 11th December, 1922, for \$3,000? A. I suppose I had better take all these mortgages out, there are so many of them —yes, here it is, it is filed on the Reference as number 3—it will be Exhibit 3R 40
the collateral mortgage.

HIS LORDSHIP: If that is not marked on the Reference?

MR. WALSH: It was number 3 on the Reference, your Lordship, I can tell it, your Lordship, by the date, on the 14th November—

HIS LORDSHIP: Exhibit 3R.

—EXHIBIT 3R. Mortgage dated 11th December, 1922, (collateral) Walter

Herbert Biggs and wife to the London Loan and Savings Company for \$3,000, part of lot number 11, block B, plan 343 and registered as number 17013, and covers the thirty-nine feet described in Mr. Barrell's mortgage.

MR. WALSH: That is all it covers, nothing discharged from it whatever?

A. I think you are wrong there, Mr. Walsh, I think it covered a little more.

MR. WALSH: Q. I may be wrong? A. A mortgage at eight per cent. the principal payable on the 11th December, 1927, the interest half yearly on the 11th days of June and December. Then this clause, "The mortgage is given as collateral security to a mortgage from Walter Herbert Biggs and
10 wife to the London Loan and Savings Company of Canada, dated the 14th day of November, 1922, and registered in the Registry office for the Registry Division of the City of London as number 16914.

"It is hereby agreed that no interest is to be paid under this mortgage unless and until default is made under mortgage 16914 aforesaid and the mortgagee will discharge this mortgage upon the request of the mortgagor at any time after the completion of the building now started to be built on the adjoining property covered by mortgage number 16914".

HIS LORDSHIP: Nothing said about the prior mortgage?

MR. WALSH: Nothing, whatever, your Lordship.

20 Q. Now, Mr. Braden, laying down the minutes, will you tell me the next, will you tell His Lordship the next item?

HIS LORDSHIP: Still dealing with the \$18,000 loan?

MR. WALSH: Yes, your Lordship. Read them on, just down, I want that read so your Lordship will know.

WITNESS: Does your Lordship want just that I read those with relation to the \$18,000? The next mortgage is \$12,000 which is referred to in the minutes of the meeting of the Board of Directors on January 22nd, 1923.

Q. Before that was applied for, were there any other minutes there which are material? A. I think I did read the prior entry, December 4th,
30 "re Biggs Loan. Pay no more money except on Mr. Gorwill's valuation to the extent of fifty per cent. on the building".

HIS LORDSHIP: The next one?

WITNESS: December 11th. Solicitor reported covering \$3,000 loan confirmed.

The next is January 22nd, 1923, "W. H. Biggs and Mrs. E. V. Biggs loan \$12,000 at seven and one-half per cent., bonus one and one half per cent., no commission".

Q. Bonus how much? A. One and one-half.

Q. Mortgage how much? A. \$12,000.

40 MR. WALSH: Now, your Lordship I—

HIS LORDSHIP: What property is that on?

MR. WALSH: Will you get that mortgage, Mr. Braden?

WITNESS Yes, that is the one covering numbers 315, 317 and 319 Ridout Street South, and this is the mortgage—

HIS LORDSHIP: How is that mortgage made? A. It is marked as Exhibit 2 on the Reference.

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HIS LORDSHIP: That will be 2-R.

MR. WALSH: The mortgage, your Lordship, is dated the 27th of January, 1923, Eva Viola Biggs of the first part, the London Loan and Savings Company mortgagee of the second part, \$12,000 and being composed of lots Nos. 18 and 19 on the West side of Ridout Street, formerly Queen Street in the City of London, according to registered plan 399 save and except the westerly sixty feet of lot No. 19. For \$12,000, at seven and one half per cent. interest, one hundred and fifty dollars to become due on account of principal on the 27th of July, 1924, and one hundred and fifty dollars on the 27th days of January and July, 1925, 1926 and 1927 and the balance of the principal sum on the 27th day of January, 1928, with interest half yearly on the 27th days of January and July in each and every year. 10

That is Exhibit 2R.

Q. Now, that mortgage, Mr. Braden, for \$12,000 covered? A. 315, 317, and 319 Ridout Street South, these three properties.

MR. WALSH: Now, your Lordship, I ask to put in another Abstract—

HIS LORDSHIP: Abstract of Ridout Street properties?

MR. WALSH: One of them, yes, your Lordship, just one minute.

HIS LORDSHIP: Mr. Registrar, instead of numbering these, if you will number the Exhibits in figures, the Exhibits that were used on the reference 1R, 2R, and so on; and the other Exhibits we will number A, B, and C, etc. 20

The Abstract that you have already marked as Exhibit 1, mark that "A" and the survey you have marked Exhibit 2, mark that "B" and any that are independent mark them with the letters of the Alphabet.

HIS LORDSHIP: Then this will be Exhibit C, Abstract of Ridout properties.

MR. WALSH: It was in that lot—I am numbering them A, B, C—these are all independent and are coming in first now.

MR. SLAGHT: I am instructed that this covers more than the three street numbers you gave His Lordship. 30

MR. WALSH: We will come to that just in a minute.

MR. SLAGHT: His Lordship made a note of what this \$12,000 mortgage covered. It covered 315, 317, 319, I have now 311 and 313 street numbers on Ridout Street? A. I believe it did, it was a second or third mortgage on 311 and 313.

SIR ALFRED MORINE: I think you are incorrect, Mr. Braden. I think it was first on all of them? A. It was first on 315, 317, and 319.

SIR ALFRED MORINE: Was it not first also on 311 and 313? A. Oh no, it was second, the Huron and Erie had a first on 311 and 313.

SIR ALFRED MORINE: Pardon me. 40

HIS LORDSHIP: Get along now.

MR. WALSH: Q. Mr. Braden, I have just read that mortgage, and I have it in Abstract, Exhibit C—now in Abstract "C" I notice it says "All of lot number 19 except the west sixty feet thereof, and the part conveyed to W. H. Biggs, and I notice the mortgage is here. The first entry, your Lordship, I might say is a grant dated 3rd February, 1923, and registered on the

6th of February, 1923, from Frederick E. Stevens and wife to Eva Biggs and the next is the item I have just read, Eva V. Biggs, mortgage for \$12,000 to the London Loan and Savings.

HIS LORDSHIP: That was a first mortgage so far as 315, 317 and 319 were concerned? A. Yes, my Lord.

MR. WALSH: What numbers do you say it covered? A. 315, 317, and 319.

Q. 315, 317 and 319—is that what you call it? A. Yes.

Q. And the second mortgage? A. Was on 309, 311 and 313.

10 HIS LORDSHIP: Was that a second or a third mortgage? A. It was second on that land, the Huron & Erie Corporation held the first mortgage.

HIS LORDSHIP: Yes, all right.

MR. WALSH: Q. Now, Mr. Braden, that \$12,000 mortgage? A. Yes.

Q. Do you know what was advanced on that mortgage? A. Well, everything was advanced.

Q. What do the records show about that? A. The records, the cheque shows that everything was advanced on that mortgage.

HIS LORDSHIP: These cheques will be produced and marked Exhibits and be open for inspection. A. It is unnecessary to give evidence about
20 that.

HIS LORDSHIP: In the meantime, the minute book is here now? A. Yes, my Lord.

HIS LORDSHIP: Never mind now, the Minute Book—was that produced before the Master? A. Yes, my Lord, the original minutes were produced before him.

HIS LORDSHIP: How was that marked, the Minute Book? A. They were just read into the notes and it was not marked.

HIS LORDSHIP: It will be marked now, the minute book will be marked Exhibit "D".

30 MR. WALSH: If your Lordship will just take the page, it is a loose leaf ledger, Miss Fletcher can remove them and hand in the pages—that is what we did before the Master.

HIS LORDSHIP: Have her do that, and these different pages can be marked by a letter.

MR. WALSH: Q. Now, Mr. Braden, are there any more minutes dealing with that mortgage? A. What do you mean, the \$12,000?

Q. Yes, the \$12,000 mortgage which is a first mortgage on 315, 317 and 319? A. Oh yes, I read the minute of January 22nd, 1923.

40 Q. Yes? A. And I do not see anything referring specifically to that one.

MR. WALSH: Q. All right, the \$12,000.

Now, Mr. Braden, were there any other mortgages taken by the London Loan and Savings Company after the \$12,000 mortgages? A. Yes, there was a further loan of \$13,500 asked for on November 11th, 1924.

Q. What date? A. November 11th, 1924.

Q. Is there any Minute regarding that? A. I might say before that

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time there was an increase asked for, "re W. H. Biggs on the 12th of June, 1923, asked increase, declined to increase the present loan"—I do not know which one is referred to there, it does not say.

Q. Go on, I want that date? A. "June 12th, 1923. W. H. Biggs asked increase, declined to increase present loan".

Q. What is the next entry?

MR. SLAGHT: You say it has reference to another one.

HIS LORDSHIP: It is just going in as an entry, that is all.

MR. SLAGHT: I object to it.

WITNESS: "September 4th, 1923, W. H. Biggs, \$6,500 declined for this 10 amount"—it does not say what property that application was made for.

HIS LORDSHIP: Just the Minute? A. Just the Minute declining the application.

And then we come to "November 11th, Eva and W. H. Biggs, \$13,500 wanted, laid over," and then on November 17th, 1923, "E. and W. H. Biggs, loan \$13,500 at eight per cent., bonus \$1,000".

MR. WALSH: Q. Anything else? A. And then on June 15th, 1926, "W. H. Biggs, and Mrs. E. V. Biggs, statement of arrears on mortgages B46 B47 and 78 submitted, laid over until next meeting". That will refer to 20 three mortgages—

MR. SLAGHT: Excuse me, what year was that? I did not catch that?

A. That was 1926, on June 15th.

MR. WALSH: Q. Now, Mr. Braden, an entry for the mortgage \$13,500?

A. Yes.

Q. Will you just read the date of that meeting? A. "November 11th, 1924, \$13,500 wanted. Laid over", and on November 17th, six days afterwards, "E and W. H. Biggs, loan \$13,500 at eight per cent., bonus \$1,000".

HIS LORDSHIP: Had you that mortgage? A. Yes, my Lord.

I have a mortgage here, this is the one.

HIS LORDSHIP: How is it marked? A. It is marked Exhibit Number 5 30 on the reference.

HIS LORDSHIP: That will be 5R.

MR. WALSH: Now, your Lordship, this mortgage is dated 8th November, 1924, your Lordship will notice that it is registered on the 12th of November, 1924, as number 19476, and the authority for that, your Lordship, is some-time afterwards.

HIS LORDSHIP: Go on.

MR. WALSH: Walter H. Biggs and wife, mortgagee to the London Loan and Savings Company \$13,500.

Now, your Lordship, it covers this Elmwood property that is the first— 40

HIS LORDSHIP: The Elmwood? A. It covers 116 Elmwood Avenue.

HIS LORDSHIP: That is the same mortgage? A. That is the same as the \$18,000 loan covered, that was mentioned, 114 and 116 Elmwood were both covered.

MR. WALSH: Your Lordship will see from what I read in that Abstract,

Abstract lettered "A", it said the westerly thirty-nine feet and the easterly forty-five feet.

HIS LORDSHIP: This covers 116 Elmwood?

MR. WALSH: Yes, your Lordship, that is just the first description, lots 114 and 116 Elmwood. It covers other properties which will be very material, secondly "being composed of part of lot number 19 on the west side of Ridout Street South, (formerly Queen Street) registered plan number 399, commencing at the north east angle of said lot—

HIS LORDSHIP: Do not give us all this. What street number is it?

10 MR. WALSH: This covers the property at the corner of Ridout and Emery Streets.

MR. SLAGHT: Why don't you put in the street numbers?

WITNESS: Numbers 315, 317 and 319 Ridout—

HIS LORDSHIP: Which were also mortgaged—

MR. WALSH: Pardon me, this does not cover the same properties as the \$12,000 according to the description. I may be wrong in reading that.

HIS LORDSHIP: It does cover the Ridout Street properties? A. The two Elmwood properties.

20 Q. And the Ridout Street properties too? A. It covers some of the Ridout Street properties.

MR. WALSH: It covers a Ridout Street property which I have not referred to, but which Sir Alfred Morine referred to. It is absolutely on the corner of Ridout Street and Cathcart, and it has a frontage of thirty-one feet four inches with a depth of one hundred and five feet, that is what it is according to this, your Lordship.

Now, that is the description, at any rate.

HIS LORDSHIP: That mortgage covers 114 and 116 Elmwood, which were covered already by—

30 MR. WALSH: By Barrell's mortgages, and the London Loan mortgage of \$18,000.

HIS LORDSHIP: And the only property not covered by the former mortgage was the corner of Ridout and Cathcart.

MR. WALSH: And being numbers 309, 311 and 313 Ridout.

HIS LORDSHIP: Those numbers were not included in the \$12,000 mortgage.

MR. WALSH: I am not saying anything, your Lordship, about relying on the Abstract? A. That is the property, that is correct, that is the Huron & Erie have the mortgage on.

40 MR. WALSH: I am coming to that, 309, 311 and 313. "The mortgage is at eight percent \$250 payable on the 8th of each month, such payment being blended in payment of principal and interest, not in advance; interest is to be reckoned on the principal owing the last payment day and is to be deducted from each monthly payment and the balance applied on principal and the interest at the rate aforesaid payable on the 8th day of each month in each and every year before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The

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first payment of blended interest and principal to be made on the 8th day of December next."

"Interest is to be calculated on the principal owing on the preceding interest date, mortgagor is to have the privilege of paying the whole or any part of principal sum on any interest date.

"Mortgagee is to assume the present mortgage for \$5,000 on the property registered as Number 17783 and is to pay off the same at the date of its maturity from the proceeds of this mortgage."

Now if your Lordship will just look at that survey, you will see the Ridout properties, that is one on the corner. There is the 315—

HIS LORDSHIP: You will have some evidence of value, and I will go into that then.

MR. WALSH: On the \$13,500 mortgage is there anything in the Minutes there to indicate that that loan was approved by the Board, that it was a second mortgage? A. Nothing to show that it was a second mortgage.

HIS LORDSHIP: Is there anything in the mortgage itself to show it is a second mortgage?

MR. WALSH: No, my Lord, the only thing that is on that mortgage to show it is that they are to pay off, to assume the present mortgage of \$5,000 registered on the property.

HIS LORDSHIP: Who was the mortgagee in that mortgage? A. The defendant Brickenden.

MR. WALSH: Q. The defendant Brickenden. I want to refer to those mortgages now. I will come to them.

HIS LORDSHIP: That would be part of the mortgage moneys they would be discharged with, then it would be a first mortgage? A. No, it would not be a first mortgage on paying off Mr. Brickenden, it was a second mortgage or third straight through.

MR. WALSH: Q. You mean first mortgage on all the property?

HIS LORDSHIP: No. Go on.

MR. WALSH: Q. Now, a paragraph of the Master's report, paragraph 7, he says there was one other mortgage transaction between the defendant Loan Company and the plaintiffs, but before dealing with this mortgage I may say that the plaintiffs obtained three separate and distinct mortgages from G. A. P. Brickenden. I am just coming to them.

HIS LORDSHIP: What does that mean? Obtaining three separate?

MR. SLAGHT: It means they obtained loans and gave mortgages, the thing is not carried through.

HIS LORDSHIP: That is what I assumed it meant.

MR. WALSH: Now, on Exhibit "A," your Lordship, the Abstract of the Elmwood Avenue property, 114 and 116, that is Exhibit "A" right after the London Loan Mortgage of \$18,000 there is this entry, 17013 mortgage, 11th December, 1922, registered on the 11th December, 1922, William H. Biggs to the London Loan and Savings Company, \$3,000—that was that collateral mortgage.

Then the next item is mortgage 17783, dated 13th July, 1923, registered

on the 17th July, 1923, Wm. H. Biggs to George A. P. Brickenden in trust, \$5,000 on the southerly ninety-four feet six inches of said lot. That is, covers both of these, your Lordship, both the Elmwood properties, and that mortgage, your Lordship, was also registered on the Ridout property, on the corner Ridout property which I will put in.

Q. Now, will you give me that mortgage, Mr. Braden, of \$5,000? A. The \$5,000, the July mortgage.

Q. July, 1923? A. Yes, here it is. It is marked as Exhibit Number 13 on the Reference—Exhibit 10—that will be 10R.

10 HIS LORDSHIP: That mortgage is made by whom?

MR. WALSH: By Eva Viola Biggs to——

HIS LORDSHIP: To whom?

MR. WALSH: Pardon me, just a minute, your Lordship;

Q. Mr. Braden, I want the mortgage 17783, this 17782? A. Mortgage 17783?

Q. Yes? A. To Mr. Brickenden?

Q. Yes, to Mr. Brickenden? A. Here it is, dated July 13th, 1923.

HIS LORDSHIP: Biggs to Brickenden, \$5,000?

MR. WALSH: Yes, your Lordship, Walter Herbert Biggs and wife——

20 HIS LORDSHIP: Dated? A. 13th July, 1923.

MR. WALSH: Walter Herbert Biggs to George Arthur Porte Brickenden in trust, solicitor, in trust, \$5,000, and as your Lordship will see it covers all the Elmwood Avenue property, 114 and 116, and then secondly, your Lordship, it covers 309, 311 and 313 Ridout Street.

HIS LORDSHIP: Somebody was exercising himself to make a chinese puzzle.

MR. WALSH: It unfolds itself.

WITNESS: Then that mortgage was collateral secured by another mortgage from Mrs. Biggs.

30 MR. WALSH: The mortgage, your Lordship, bearing the same date, the 13th day of July, 1923.

HIS LORDSHIP: Mr. Walsh, in the Master's Report he has that \$5,000 mortgage which you have just referred to as Exhibit Number 13.

MR. WALSH: That is the one I am putting in now, my Lord.

HIS LORDSHIP: You put it in a moment ago.

MR. WALSH: I did, but withdrew it.

HIS LORDSHIP: You said it was Exhibit 10, and it is not Exhibit 10——

These three Brickenden mortgages are numbered, in the Master's Report, 13, 14 and 15.

40 MR. WALSH: I have another one.

HIS LORDSHIP: What one are you putting in now? What is the date of it?

MR. WALSH: Dated 13th July, 1923, and is 10R, mortgage by Walter H. Biggs and wife, registered number 17783.

I am now putting in one, a mortgage by the wife on other property, dated the same date, your Lordship, registered the same day, and it is in the Master's Report as Number 13R.

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HIS LORDSHIP: For \$5,000?

MR. WALSH: Yes, your Lordship, registered as number 17782.

WITNESS: I can explain how that was, your Lordship, if you wish me to.

HIS LORDSHIP: All right? A. Mr. Biggs owned 309, 311, and 313 Ridout and Mrs. Biggs owned 315, 317 and 319 and Mr. Brickenden evidently desired to have both securities in, and he put on separate mortgages.

HIS LORDSHIP: So this 13R was on 315, 317 and 319? A. Yes, my Lord, that property stood in Mrs. Biggs' name.

HIS LORDSHIP: That is clear.

—EXHIBIT 10R. Mortgage dated 13th July, 1923, W. H. Biggs and wife 10 to G. A. P. Brickenden in trust, \$5,000, registered number 17783.

—EXHIBIT 13R. Mortgage dated 13th July, 1923, Eva V. Biggs to G. A. P. Brickenden in trust for \$5,000, registered number 17782.

MR. WALSH: That is clear.

Now this mortgage, your Lordship, is from Eva Viola Biggs, to George Arthur Porte Brickenden, solicitor, in trust, for \$5,000 and it is on the property on Ridout Street South, lots 18 and 19 on the west side of Ridout Street South, formerly Queen Street according to registered plan number 399, save and except the westerly sixty feet of lot number nineteen and save also that portion of the said land heretofore conveyed to W. H. Biggs, and as Mr. 20 Braden explained that is the property covered in the preceding mortgage, your Lordship.

Now that mortgage is at eight percent., the principal is payable on the 13th of July, 1925, and the interest quarterly on the 13th day of July, October, January and April in each and every year, and then there is the privilege—I want your Lordship to please note, the mortgagor is to have the privilege of paying the whole or any part on any interest date. Both mortgages have that privilege, your Lordship, and both are at eight per cent. and both have the privilege of being paid off, and there is a clause, your Lordship, in the mortgage from the wife, "This mortgage is collateral to a mortgage of even 30 date from Walter Herbert Biggs to George Arthur Porte Brickenden, in trust."

WITNESS: Exhibit 13R was collateral to Exhibit number 10R.

MR. WALSH: Then, my Lord, Mr. Brickenden I notice registered by the next entry in the Abstract, following this \$5,000, a mortgage for \$2,000, number 17944, a mortgage dated the 24th of August, 1923, and registered on the 31st of August, 1923, Walter H. Biggs and wife to George A. P. Brickenden, in trust for \$2,000 on the south ninety-four feet six inches of said lots.

WITNESS: Yes, it is here, and it is filed on the Reference as Exhibit Number 11R.

HIS LORDSHIP: Would that not be 14R? Is that a mortgage of the 24th 40 August, 1923?

WITNESS: Yes, there are two of them, my Lord, one of them is 14 and one Exhibit 11, a similar case to the other. The real mortgage is Exhibit 11, and the collateral is 14, now 14R—14R is from Eva Viola Biggs and 11R is from Wm. Herbert Biggs—so I may as well hand these two over to Mr. Walsh.

HIS LORDSHIP: 11R and 14R, is that right? A. Yes, my Lord.

—EXHIBIT 11R. Mortgage dated 24th August, 1923, Walter Herbert Biggs and wife to George A. P. Brickenden, in trust for \$2,000, registered as number 17944.

—EXHIBIT 14R. Mortgage dated 24th August, 1923, Eva Viola Biggs to George A. P. Brickenden, in trust for \$2,000 and registered as number 17945.

MR. WALSH: This, my Lord, is one month afterwards.

MR. SPRINGSTEEN: I suppose they cover the same properties?

MR. WALSH: No, they seem to have different descriptions in these.

10 HIS LORDSHIP: Are these on the same properties, the Elmwood property and the Ridout property? A. Yes, I think they cover both.

MR. SLAGHT: Yes, my Lord, both mortgages cover both Elmwood and both Ridout, between them.

MR. WALSH: The mortgage, my Lord, is dated the 24th of August, 1924, Walter Herbert Biggs to George Arthur Porte Brickenden, in trust, \$2,000, eight per cent. interest, payable one hundred dollars on account of principal on the 13th day of October, 1923, and on the 13th day of each and every month thereafter until the 13th of September, 1924, and balance on the 13th
20 the principal owing on the preceding interest date, and this clause, "The mortgagor is to have the privilege of paying off the whole or any part of the principal sum on any interest date".

HIS LORDSHIP: Anything said about prior mortgages?

MR. WALSH: Not in this. The mortgage from the wife is drawn in the same way.

HIS LORDSHIP: That is collateral.

MR. WALSH: As collateral to the other.

The next one, your Lordship, I want to refer to is a mortgage in the following year, 1924, registered number 18495, dated 13th day of January, 1924,
30 and registered on the 13th day of February, 1924, Walter H. Biggs to G. A. P. Brickenden in trust for \$1,200.

HIS LORDSHIP: Are there two mortgages here again?

WITNESS: I think there was only one in this case, my Lord.

HIS LORDSHIP: By whom? A. It is by Eva Viola Biggs—I may be wrong.

HIS LORDSHIP: 15R—mortgage Mrs. Biggs, \$1,200—what property is that? Is it on this Ridout Street property again? A. Yes, it is on the Ridout Street property.

HIS LORDSHIP: That is 315, 317 and 319? A. Yes, 315, 317 and 319.

40 HIS LORDSHIP: What were the particulars of that?

WITNESS: This 15R—there was no collateral with that as I know it. Oh, yes, here is a collateral.

HIS LORDSHIP: It is too bad if there was not a collateral? A. I was looking for its running mate.

HIS LORDSHIP: What is this running mate? A. It bears date of the 13th of January, 1924, and it is the collateral in this case.

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HIS LORDSHIP: All three of these mortgages are on the same properties?

MR. WALSH: Yes, your Lordship.

MR. SLAGHT: They cover all the Elmwood properties, and the Ridout.

MR. WALSH: On the properties, husband and wife—

MR. SPRINGSTEEN: There is the May mortgage, and it is collateral to these last two.

MR. WALSH: Mr. Blackburn thinks this has never been on the Record.

HIS LORDSHIP: Mark it 4R, otherwise we will have confusion.

MR. SLAGHT: There is a file 4R.

HIS LORDSHIP: Attach those two together and mark them 15R. 10

—EXHIBIT 15R, Mortgage dated 15th January, 1924, W. H. Biggs and wife to George A. P. Brickenden for \$1,200 registered number 18495 and attached to it mortgage dated 13th January, 1924, Eva Viola Biggs to George A. P. Brickenden in trust for \$1,200 registered number 18494.

MR. WALSH: Now the mortgage is dated 13th January, 1924, from Walter Herbert Biggs to George Arthur Porte Brickenden, in trust covering the same land owned by him, viz. 114 and 116 Elmwood, and 309, 311 and 313 Ridout Street, interest at eight per cent. with one hundred dollars payment on account of principal on the 13th of April, 1924, and one hundred dollars on the 13th of each and every month thereafter until the 13th of February, 1925, and the balance to be due on the 13th of March, 1925, interest quarterly, interest to be calculated on the principal owing on the preceding interest date. The mortgagor is to have the privilege of paying the whole or any part of the principal sum on any interest date. 20

And as part of that Exhibit, your Lordship, Exhibit 15R is a mortgage from Mrs. Biggs to Mr. Brickenden of the same date, covering 315, 317 and 319 Ridout Street.

HIS LORDSHIP: I see this \$5,000 mortgage, Exhibit 10R, is apparently the mortgage that the Loan Company was to pay off.

MR. WALSH: Yes, your Lordship, which was done, sir. 30

Has your Lordship 5R in front of you—what is the date of the maturity of that mortgage, may I ask?

The \$5,000 mortgage, your Lordship, was payable on the 13th of July, 1925, and our second mortgage, or whatever it was, was paid on the 12th November, 1924, and that drew eight per cent. on that, up to the maturity of it, that was the idea of it, your Lordship, although there is the provision in the mortgage it can be paid off at any time.

Now the next items on the Abstract, your Lordship, are two discharges of mortgages, 19469, a discharge of the \$2,000 Brickenden Mortgage—that was registered on the 12th November, 1924. 40

Then, your Lordship, the next item on the Abstract is the discharge of mortgage 18495, registered on the 12th November, 1924, from Mr. Brickenden to Walter H. Biggs, being a discharge of the \$1,200 mortgage.

HIS LORDSHIP: When were these mortgages discharged?

MR. WALSH: They were discharged on the same date as the third mortgage was registered, viz. 12th November, 1924.

HIS LORDSHIP: These three mortgages were discharged all at that time?

MR. WALSH: Out of the \$13,500.

HIS LORDSHIP: The \$2,000 and \$1,200 were paid off, and the company was to pay Brickenden the \$5,000.

MR. WALSH: On the maturity of the mortgage.

HIS LORDSHIP: \$8,200 out of the \$13,500 to go to Brickenden?

MR. WALSH: Your Lordship will note these discharges bear date as of the registration of the \$13,500 mortgage—perhaps it would be well to give you now the date of the discharge of the \$5,000 Brickenden mortgage.

10 HIS LORDSHIP: On the same date—when was the \$5,000 mortgage discharged?

MR. WALSH: I will give you that now, your Lordship. The date of that discharge is the 22nd day of January, 1925, but it was not registered, your Lordship, until the 5th day of January, 1928.

HIS LORDSHIP: Yes.

MR. WALSH: Now, your Lordship, the next entry on the Abstract after the \$13,500 mortgage is another mortgage number 19546 dated the 1st of August, 1924, registered 3rd December, 1924, Walter H. Biggs and Eva Biggs, his wife, to Whitfield Lancaster for \$900. That mortgage, your Lord-
20 ship, is registered on all the properties—

HIS LORDSHIP: What have we to do with that?

MR. WALSH: It comes in, I have to now come to the Consolidated Trust Mortgages, and that is registered ahead of the \$20,000 mortgage to the Consolidated Trust. Your Lordship has to know it exists, anyway.

HIS LORDSHIP: What is that Exhibit?

MR. WALSH: Number "A"—the Lancaster mortgage is dated the 1st of August, 1924, registered on the 3rd December, 1924, Walter H. Biggs and Eva V., his wife, to Whitfield Lancaster for \$900—that covers all of 114 and 116 Elmwood Avenue, and it covers the property on Ridout Street, the mort-
30 gage being signed by both Mr. Biggs and Mrs. Biggs.

Now, your Lordship, before I come to the Consolidated Trust Mortgage, your Lordship did not get the Abstract, but that is put in as Exhibit Number "C". That is the Abstract of 315, 317 and 319.

—EXHIBIT "C," Abstract dated 5th May, 1930, covering numbers 315, 317, 319 Ridout Street, being lot 19 in plan 499, 4th Division, except westerly sixty feet and part conveyed to W. H. Biggs being north thirty-one and one-third feet frontage of east one hundred and five feet of said lot.

MR. WALSH: Now, on Exhibit "C," your Lordship, that is the Abstract of 315, 317 and 319 Ridout Street, that is the property that has the mortgage
40 to the London Loan and Savings Company for \$12,000 and the next three entries to that are the three mortgages to Mr. Brickenden; the next entry is the mortgage to Mr. Lancaster for \$1,100 which is discharged, that is now one I had never got, because it was discharged.

Then the next item on the Abstract is the \$13,500 mortgage to the London Loan and Savings Company. Then follows, your Lordship, the new mortgage to Mr. Lancaster for \$900 that I referred to before, and then the

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last item on Exhibit "C" is the mortgage to the Consolidated Trust Corporation for \$13,600.

Your Lordship, before I deal with the two Consolidated Trust mortgages, I would like to complete the Ridout Street titles showing the first mortgage to the Huron & Erie Mortgage Corporation—your Lordship will recall that the \$13,500 mortgage on the property, Mr. Braden said it was not regular, I think he said it was a third mortgage on some of the properties, and I want to put in an Abstract covering 309, 311 and 313 Ridout Street properties, the Huron & Erie have a mortgage on.

That will be Exhibit "E."

10

—EXHIBIT "E," Abstract dated 5th May, 1930, covering street numbers 309, 311 and 313 Ridout Street being the northerly thirty-one feet and four inches front of easterly one hundred and five feet of lot nineteen on plan 399.

MR. WALSH: Now Exhibit "E", your Lordship, covers the northerly thirty-one feet and four inches of the easterly one hundred and five feet of lot number 19 and as Mr. Braden says, that is street numbers 309, 311 and 313 Ridout Street; according to the Abstract, your Lordship, there appears on that property a mortgage, an undischarged mortgage to the Huron & Erie Mortgage Corporation dated the 3rd day of April, 1924, number 18685, and registered on the 15th day of April, 1924, Walter H. Biggs and wife to the Huron & Erie Mortgage Corporation, \$10,000.

HIS LORDSHIP: So the \$13,500 mortgage so far as the Ridout Street properties were concerned, was subject to a \$10,000 mortgage? A. Subject to the \$10,000 mortgage and subject to a mortgage for \$7,000 to the Barrells—no, the Barrells was not the Ridout.

MR. WALSH: That was on the Elmwood, subject to a first mortgage of \$12,000 to the London Loan and Savings? A. Yes, \$12,000—that is the Ridout properties 309, 311 and 313 were subject to the \$10,000 to the Huron and Erie and 315, 317 and 319 were subject to a mortgage for \$12,000 to the London Loan and Savings.

30

HIS LORDSHIP: What we have to do is to take these properties, 309, 311 and 313, and 315, 317 and 319 Ridout Street, and the properties 114 and 116 Elmwood and make statements in respect to each of these properties, or groups of properties—

MR. WALSH: I can summarize them now—

HIS LORDSHIP: Just do it to-night in the form of a statement. It is all here now, but it is impossible—

MR. SLAGHT: When my friend submits that to us, we can probably agree on the position and it will give your Lordship concise information.

MR. WALSH: Your Lordship will find it in the Report.

40

HIS LORDSHIP: It is all there in the report, but just take it out and indicate what was against each property, and what was discharged, if anything was discharged.

MR. WALSH: Q. Now, Mr. Braden, when you became a Director of the London Loan and Savings Company will you just tell us what the London

Loan held at that time? A. At that time the London Loan and Savings Company held one mortgage of \$13,500.

Q. Yes? A. That is the second mortgage on some properties and third on some others; that is the mortgage that went to discharge the three mortgages that Mr. Brickenden held.

HIS LORDSHIP: What had been done with the \$18,000 mortgage and the \$12,000 mortgage? A. Those two mortgages had been taken over prior to that time by the Consolidated Trust Corporation.

HIS LORDSHIP: By the Trust Corporation? A. Yes.

10 MR. WALSH: Your Lordship will see on Abstracts "A," "C" and "E" the two mortgages to the Consolidated Trust, and I am through with this part of the case. The mortgages to the Consolidated Trust, your Lordship, are as follows—a mortgage—

HIS LORDSHIP: Suppose you just leave that there now, and make up this statement and submit it to Mr. Slaght and he will probably agree to it, and we will get it in a nutshell, and it is all on the record now, or anything that is not on the statement—

MR. SLAGHT: I have not seen any indication anywhere where we differ from the story that has been unfolded.

20 HIS LORDSHIP: You cannot differ on the Registrar's Abstract.

MR. WALSH: Your Lordship, I have a survey of these lots on Ridout Street that explains how the property was handled.

HIS LORDSHIP: Show it to Mr. Slaght, and see if he has any objection.

MR. SLAGHT: Who made this?

WITNESS: Mr. Murray, the Architect.

MR. SLAGHT: What date was that plan made, Miss Harrison wants to know?

MR. WALSH: Q. When was that made? A. It was made very recently, within the last two or three days.

30 MR. SLAGHT: Will that plan go in as Exhibit "F"—"E" was the Abstract of the Ridout Street property. I understand, Mr. Walsh, you have to prove this—it leaves out some garages and does not show the true story at all, nor does it show the accurate contour or layout of the buildings.

MR. WALSH: We will have it fixed. If it is wrong we will have it changed.

HIS LORDSHIP: Anything else from this witness?

MR. WALSH: Yes, my Lord.

Q. Mr. Braden, you are an officer of the Plaintiff companies, can you tell his Lordship if there is any—as to the state you found these mortgages in at the time you took over your office—

40 HIS LORDSHIP: He said that. He said there were thousands of dollars of arrears of taxes and interest and insurance premiums.

MR. WALSH: Q. And how was the security? A. The security was more than exhausted.

MR. SLAGHT: Is this man a real estate man?

HIS LORDSHIP: You can call somebody who will show what the claims against the properties were. You can put in a statement of that and then show the balance.

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MR. WALSH: I was just going to ask this witness, as an officer of the company, was there any loss—

HIS LORDSHIP: Just a moment, I have ruled it out.

MR. WALSH: I cannot ask this witness whether there was any loss? Whether the company said there was going to be any loss to the company?

HIS LORDSHIP: No, you cannot ask him what the company states—I suppose these securities are still extant, are they?

MR. WALSH: Yes, your Lordship.

MR. SLAGHT: They have never been enforced.

HIS LORDSHIP: You can bring evidence to show what the balance 10 on these properties is, and you can have it shown now these mortgages are not first securitees—it is not what the company says, the company does not say anything except through its officers and they only speak from what they learn from valuers.

MR. SLAGHT: As I started out, interrupting, I want to make it clear that if my friend would qualify this judgment by what he knows is the necessary course to qualify, and then wants to give evidence of value, that is another matter.

HIS LORDSHIP: If Mr. Braden says he knows property values even if only semi-expert, why that is all he can do, I suppose; I do not know that 20 he knows something of property values. If he knows what they are worth?

WITNESS: I refrained from looking at them myself. I depended on the valuers.

HIS LORDSHIP: Mr. Walsh will call others as to that.

MR. WALSH: Yes, my Lord.

Q. Now, Mr. Braden, have you had from your knowledge—may I put it this way—from your knowledge of the affairs of the London Loan & Savings Company, can you tell His Lordship what commissions were payable in respect to these loans, or were received by Mr. Brickenden?

MR. SLAGHT: I object to that unless he speaks from the document. 30

WITNESS: I heard Mr. Brickenden give his own evidence.

Q. Do you know anything apart from that?

HIS LORDSHIP: That is evidence. He heard Brickenden give his evidence? A. I heard Brickenden give his evidence on Examination for Discovery.

HIS LORDSHIP: In this action? A. Yes, my Lord.

HIS LORDSHIP: Of course, that only binds Brickenden? A. Yes.

HIS LORDSHIP: And so far as Brickenden is concerned, Mr. Walsh can use that Examination. It does not get him any further.

MR. WALSH: Q. Do you know beyond that? A. I do not know beyond 40 that except—

Q. Except Mr. Brickenden's account? A. We have here the account, previous matters in the account of the London Loan, the account of the bonuses he got and other moneys that he got in his account, and enquiries were made from the employees of the company.

HIS LORDSHIP: There are some employees of the company can be called

to say that is his account, and they can give that evidence. I do not suppose you can, you do not know it? A. I do not know anything personally about the books.

MR. WALSH: Mr. Braden, when the new Board came in to the London Loan and Savings, took over the London Loan and Savings, can you tell His Lordship what you found to be the condition?

SIR ALFRED MORINE: I object.

HIS LORDSHIP: I will hear the question.

MR. WALSH: Was the principal found—what was found to be the condition of the mortgage securities, the title of the securities they had, and their nature? A. They were—

SIR ALFRED MORINE: I object to that question.

HIS LORDSHIP: I will let him answer that question subject to objection.

WITNESS: I went to Toronto and other places and looked at the securities. I went to Toronto and other places and looked over the mortgages and other securities—

HIS LORDSHIP: What were the securities doing? A. We have mortgages there as well as here—we found our losses were going to be tremendous.

HIS LORDSHIP: You must confine yourself to these particular things we have been talking about. You cannot go into generalities, you know.

MR. WALSH: Your Lordship, I just want to show it was the same management, you know, the same President and every person in control, and I think, your Lordship, that is relevant evidence in this.

MR. SLAGHT: How is that?

SIR ALFRED MORINE: What is relevant to this?

HIS LORDSHIP: Wait until I hear what Mr. Walsh has to say. What are you going to offer?

MR. WALSH: I am going to offer it practically all the mortgage securities they had. They were all in the same condition as this mortgage was, your Lordship.

HIS LORDSHIP: No.

MR. WALSH: And there was just one lot after another, and commission after commission.

HIS LORDSHIP: We are just dealing now in this action with specific matters, and we will not enlarge on these matters.

MR. SLAGHT: Besides my learned friend's statement is absolutely incorrect.

MR. WALSH: It is absolutely true and can be proved to the hilt.

SIR ALFRED MORINE: Whether it is true or not, you have no right to make statements of that kind obviously irrelevant.

MR. WALSH: When His Lordship rules, I will take his ruling.

HIS LORDSHIP: I have ruled, and that closes the discussion.

MR. WALSH: It does, my Lord.

Q. Mr. Braden, who was the Manager or President of this company before you became connected with it? A. Mr. George G. McCormick.

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Q. And do you know how long he had been President of the company?
A. For a great many years, for over ten years to my knowledge.

Q. Had he been President during this time of the Biggs matters? A. Yes, and Mr. Brickenden was the solicitor, Mr. Brickenden was the son-in-law of Mr. McCormick.

Q. Now, will you tell his Lordship on the dates of these loans or mortgages, put it, who were on the Board of Directors? A. Yes, there was Mr. Kent—what are his initials? Mr. M. J. Kent.

Q. He is now deceased? A. Yes.

Q. Yes? A. And Mr. McCormick was President, Mr. James Baker, 10
Vice-President and Messrs. Robinson and Hunt were Directors, and later on Mr. Howe came on the Board in 1926, and he was on the Board at the time that we took over control of the London Loan.

HIS LORDSHIP: Was there a new Board of Directors elected? A. Colonel Coles, William Gorman and myself were the new directors.

Q. And was Mr. McCormick a new director? A. No, he was put out of it in 1929.

Q. At the election of 1929? A. At the election of 1929.

Q. Was Mr. Brickenden a Director? A. No, he was not a Director, 20
just solicitor.

Q. Then he ceased to be solicitor and you became solicitor? A. Yes, Our firm became solicitors.

MR. WALSH: Q. Now, on the new Board of 1929, you said there was Colonel Coles, yourself? A. Mr. Gorman, Mr. Hunt and Mr. Robinson. Mr. Hunt and Mr. Robinson were on the old Board of Directors. Mr. Hambly was also on the old Board of Directors, and he continued on as Manager and Secretary of the Company.

Q. He continued on? A. Yes.

Q. Now, will you tell when Mr. Kent ceased his connection with the Company? A. Mr. Kent ceased his connection with the company I think 30
in 1927, either one or two years prior to that he had not been very active. He had broken his hip and was confined to his house most of the time. Mr. Hambly came in in 1926, I believe, to take over his duties as Manager.

Q. Will you tell His Lordship about the date of Mr. Kent's death?
A. Mr. Kent died about the end of December, 1929.

HIS LORDSHIP: Had he been a Director until his death? A. No, he had been a Director until the end of 1926 or 1927.

Q. He was replaced by whom? A. Mr. Hambly.

Q. And what position did Mr. Kent have in the company? A. Mr. 40
Kent was Managing Director.

Q. Now, Mr. Braden, at the time these Biggs Mortgages were put on, who was the solicitor at that time? A. Mr. Brickenden.

HIS LORDSHIP: He told us that.

MR. WALSH: Q. Now, did Mr. Kent have any—was there any difficulty or trouble between the London Loan and Mr. Kent? A. Yes—

MR. SLAGHT: Just a moment, my Lord.

SIR ALFRED MORINE: I object.

HIS LORDSHIP: If there was any trouble of that kind, in fact, Kent had ceased to be the Managing Director and had ceased to be a Director before you came on the Board? A. Yes, my Lord.

Q. You would only know by hearsay? A. I was Mr. Kent's solicitor.

HIS LORDSHIP: You would know it only through Mr. Kent? A. I knew it through Mr. McCormick.

HIS LORDSHIP: If you know it through Mr. McCormick you can tell it?
10 A. Because I had conversation with Mr. McCormick at the time Mr. Kent retired.

HIS LORDSHIP: If it has to do with this case. A. Yes.

MR. WALSH: Q. Do you know if Mr. Kent ever made any objection to these mortgages? A. He did, very—

MR. SLAGHT: I object.

SIR ALFRED MORINE: I object.

HIS LORDSHIP: If you have statements from Mr. McCormick concerning differences with Mr. Kent about these Biggs Loans, you can tell it? A. I can say this, my Lord, Mr. Kent in 1927 failed to get control of the com-
20 pany—

Q. Are you telling something that Mr. McCormick told you? A. I was at the meeting, and Mr. Kent was there, and Mr. McCormick, and I was there.

Q. You were there as a shareholder? A. Yes.

HIS LORDSHIP: I do not understand that, you were where? A. I was at the annual meeting of the London Loan and Savings Company.

Q. What year? A. In 1927, and—

Q. And Mr. McCormick was there? A. Mr. McCormick was there.

Q. And Mr. Kent? A. Mr. Kent, and also Mr. Brickenden.
30

HIS LORDSHIP: If what took place then had anything to do with these matters that are in issue in this action you may tell about it? A. Yes, my Lord, Mr. Kent—

MR. SLAGHT: A moment, before the witness testifies I would like the other witnesses to step out, the other witnesses to be excluded.

HIS LORDSHIP: The other witnesses in this case are to be excluded only on this point.

MR. SLAGHT: I think they ought to be excluded throughout, my Lord.

HIS LORDSHIP: All the witnesses except those to be named, some you do not want to be excluded, are to go into the witness room.

MR. WALSH: May I suggest, I take it that includes Mr. Brickenden
40 and Mr. McCormick, coming at this later date—wait until the trial is pretty well started.

HIS LORDSHIP: In the meantime that does not include Mr. Brickenden or Mr. McCormick. I do not see why they should be excluded. They are parties.

MR. WALSH: They are to be called as witnesses.

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HIS LORDSHIP: You cannot exclude parties.

MR. WALSH: Letting it go three hours before they realize they should have the witnesses out.

HIS LORDSHIP: Get on.

WITNESS: This Biggs Loan was objected to at that meeting by Mr. Kent through me and Mr. Walsh who was there at that time.

Q. Yes. A. And other loans of a similar nature that had been taken by the company were objected to very strongly at that meeting and Mr. Kent endeavored to obtain control of that company and—

MR. SPRINGSTEEN: I object, that is not evidence against Biggs—it may 10 be evidence against Mr. Brickenden.

HIS LORDSHIP: It may not be evidence against Mr. Brickenden—Get on.

WITNESS: There was a vote taken, and Mr. Kent was not successful in obtaining control. Mr. McCormick was able to retain his control of the company.

HIS LORDSHIP: One of the complaints against McCormick at that time was that he was responsible for the Biggs' loans? A. Yes, along with a great many others that were brought up.

Q. That is another matter? A. Yes. 20

Q. And was the question of the solicitor's responsibility also discussed at that time? A. Yes, it was discussed generally.

Q. I mean in respect to these Biggs loans? A. The Biggs loans were referred to along with a great many others. There were a great many referred to that day.

MR. WALSH: Now, having regard to His Lordship's ruling, now could you say anything else about that that is admissible, could you say anything else with regard to Mr. Kent's position? A. This Biggs Loan, along with the others, was the cause of the trouble between Mr. Kent and Mr. McCormick. 30

MR. WALSH: Is there anything else with regard to that, having regard to His Lordship's ruling? A. Not any more than Mr. Kent objected at that meeting very strenuously to these loans and to guard the security of the company steps were taken from time to time. He sent different letters to my knowledge.

HIS LORDSHIP: Anything else, Mr. Walsh?

MR. WALSH: Q. Mr. Braden, was it the policy—may I put it this way—by the London Loan and Savings Company, was it their policy to loan second mortgages?

MR. SLAGHT: I object to that. 40

SIR ALFRED MORINE: No—what have we to do with that case?

HIS LORDSHIP: If the witness knows what the policy of the Directors was as to second mortgage loans he may answer the question.

MR. SLAGHT: At that time. If he knows at that time.

HIS LORDSHIP: At the time that these loans were made? A. I have asked Mr.—

HIS LORDSHIP: I do not know if he knew.

WITNESS: I enquired of the Directors, and he said they did not know about it being a second mortgage and——

MR. SLAGHT: I want that struck out.

HIS LORDSHIP: What is the use of bringing this secondary evidence? He was only a shareholder and he would only know the policy of the Directors by what the Directors told him unless the question of the policy was discussed at a shareholders' meeting, and the policy settled upon then. A. It was discussed at that meeting.

10 HIS LORDSHIP: In what year? A. The policy was criticized in 1927.

HIS LORDSHIP: That was after these mortgages were given.

SIR ALFRED MORINE: I would point out, this was years after these loans were all had.

HIS LORDSHIP: I think Counsel are a little touchy. These things are not doing any harm, anyway, but this is not evidence, it will not influence anybody, unless it is supported.

Was there anything more, Mr. Walsh?

MR. WALSH: No, my Lord.

20 HIS LORDSHIP: Very well, is there any cross-examination of this witness?

Cross-Examined by MR. SLAGHT.

Q. Now, Mr. Braden, let me ask you, just what official positions in the various companies that have been named you occupy, in the London Loan you are what? A. I have explained that I was Vice-President of the London Loan.

Q. Are you still? A. Well, the London and Loan disappeared after the amalgamation.

Q. And what road did it disappear by? A. It was taken over by the Huron & Erie Mortgage Corporation.

30 Q. So you are no longer Vice-President, because the London Loan is no longer existent? A. That is true.

Q. And will you tell me what you are doing as a solicitor on the record in bringing an action for a non-existing company? A. According to the amalgamation agreement, any right of action that was vested in the London Loan could still be brought in the name of the London Loan. If you will look at clause four, I gave you a copy of that this morning.

HIS LORDSHIP: Has the London Loan surrendered its charter? A. No, my Lord, I am not clear about it. I think probably it is——

40 MR. SLAGHT: I am instructed it has. A. It was taken over by the Huron & Erie and it was approved by the Lieutenant-Governor-in-Council and had these terms in it.

MR. SLAGHT: The London Loan have surrendered, will you tell me on what authority you purport to bring an action against my client on counter-claim, through your notice and dating that on the 14th November, and pro-

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ceeding with an action by a company that has surrendered its charter? A. Well, according to the agreement there, there was a right to bring, the Huron & Erie granted a right to bring an action in the name of the London Loan, and that agreement was approved by the Governor-in-Council, so therefore I think this is correct.

HIS LORDSHIP: Where is that agreement?

MR. SLAGHT: I have it here, my Lord. I am going to put it right in.

WITNESS: If your Lordship looks at clause four, any rights of action may be continued in the name of the company.

HIS LORDSHIP: How does clause four read? 10

MR. SLAGHT: The clause four reads in this way. I will give Your Lordship a copy, I have another copy here.

I will put that in now, the agreement, which is dated the 3rd day of July, 1929, between the London Loan & Savings Company of Canada and the Huron & Erie Mortgage Corporation, the London Loan and Assets Limited—that is this agreement, witness, to which you refer? A. Yes.

MR. SLAGHT: And now is Exhibit "G"—your Lordship has the copy certified from the Registry Office, the agreement having been registered, Mr. Braden, as you are aware? A. Yes, I understand it was registered.

MR. SLAGHT: That copy is certified by the registrar as a true copy. 20

HIS LORDSHIP: It will be Exhibit "G".

—EXHIBIT "G", Agreement dated 3rd July, 1929, between London Loan & Savings Company and Huron & Erie Mortgage Corporation, and London Loan Assets Limited.

MR. SLAGHT: Q. Now, you indicated to my friend, Mr. Walsh, that the only mortgage that the London Loan as such complain of against the defendants in this action is the \$13,500 mortgage—I am not now severing the complaint of the London Loan from that of the Consolidated Trust, is it not? A. Well, the complaint would come from both companies I would say, Mr. Slaght. 30

Q. Never mind what comes from both.

MR. WALSH: Look at the pleadings—we complain about all these, your Lordship, the \$18,000 and the \$12,000—we complain about them all.

MR. SLAGHT: And the London Loan Company by the agreement of the 3rd of July sold their assets to the Huron & Erie? A. Yes.

Q. Including the \$13,500 mortgage? A. Yes, that is correct.

Q. As of the 3rd of July, 1929, is that correct? A. That is right.

Q. And that agreement was, that we may be just clear about the legal position, was to become definite and vital in law upon the consent of the Governor-in-Council being secured? A. Yes. 40

Q. And the Attorney General of Ontario? A. Yes.

Q. And I suggest to you that in Exhibit "G", which has just gone in, it would appear that the consent to that agreement was secured shortly afterwards from these officials? A. Yes, it was secured some time in September I believe.

Q. Finally the Attorney General consent secured on the 27th day of

September, as appears in the schedule in Exhibit G? A. I do not know the date.

HIS LORDSHIP: That was after the action was brought.

MR. SLAGHT: No, my Lord, not as far as I am concerned.

WITNESS: Yes.

Q. You will agree with me on the 14th of November, 1929, you first, on behalf of the London Loan and the Consolidated Trust, initiated proceedings against my client, Brickenden—or to shorten it, against Mr. McCormick, by serving a third party notice, dated the 14th of November, adding them as
10 parties. That is so, is it not? A. I think so. I am not clear as to date.

Q. Therefore your cause of action, or your bringing them before the Court was first taken on the 14th of November, 1929? A. I presume so.

Q. Then, will you suggest to His Lordship—first let us see what the London Loan got for this mortgage for assets they sold, by way of Exhibit “G”, to the Huron & Erie and received moneys for consideration, \$700,000 in money, didn't they? A. \$720,000.

Q. \$720,000, thank you for the correction? A. Yes.

Q. And they also received a covenant from the Huron & Erie to give to the London Loan 20,000 shares in another corporation known as the
20 London Loan Assets Limited. A. Yes.

Q. And these considerations have been fully paid to the London Loan?
A. To the London Loan.

Q. Yes? A. Yes.

Q. So that they have not any title whatever in the \$13,500 mortgage which has gone, as you have indicated? A. It has vested in the Huron & Erie Mortgage Corporation.

Q. Who are not parties to this action? A. Yes.

HIS LORDSHIP: Have the assets of the London Loan been distributed among the shareholders? A. No, my Lord, the \$700,000 was distributed
30 amongst the shareholders—that was given over in accordance with the terms of the agreement whereby the Huron & Erie were to give the London Loan seventy per cent. of the par value in money, and in consideration of doing that they were to have a lien on all the assets until that \$720,000 was paid.

HIS LORDSHIP: Are there any assets still to be distributed to the shareholders of the London Loan? A. Well, no, the Huron & Erie has paid this \$720,000, then the old shareholders of the London Loan & Savings Company get what is left.

HIS LORDSHIP: And they are now represented by the London Loan Assets? A. Yes, and every shareholder of the London Loan & Savings
40 Company received one share London Loan Assets for every share of the London Loan.

HIS LORDSHIP: Have you a charter of the London Loan Assets? A. It is in my office.

HIS LORDSHIP: You had better bring that? A. Yes sir.

MR. SLAGHT: Will you be good enough to put in a copy? A. Yes, I will produce the original.

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HIS LORDSHIP: You can produce the original and have a copy go in?
A. Yes.

MR. SLAGHT: Q. Then that is the \$13,500 mortgage you complain of against my client—let us see what the legal plight of the two other mortgages complained of in the pleadings, it is a counter-claim or statement of claim by way of counter-claim against us. They are, to describe them shortly, they are two mortgages of \$20,000 and \$13,600 respectively, made by Biggs to the Consolidated Trust Corporation? A. Yes.

Q. And are you an officer in the Consolidated Trust? A. I was.

Q. You were, down until what date? A. I think it was November, 1929. 10

Q. And solicitor for them? A. Yes.

Q. And you are today? A. Well, the Consolidated Trust were taken over by the Canada Trust Company.

Q. That is just what I am coming to. Until they met with their decease, you were their solicitor for the Consolidated Trust Company Limited? A. Yes.

Q. Then, how did they come to their death? A. I beg pardon?

Q. How did they come to their death? A. The London Loan & Savings Company held the majority of the stock.

Q. I do not want the details—they made a contract with the Canada 20 Trust Company, did they not? A. Yes.

Q. And under that contract with the Canada Trust Company they sold all their assets, their business, their rights, their properties, their mortgages, their good will and everything under the sun they had and agreed in that very agreement to distribute their assets amongst their shareholders—I am speaking of the Consolidated Trust—is that right? A. Yes.

Q. I will show you what I have procured from the Registry Office, and have certified by the Registrar, and it is in as Exhibit 8, the agreement I have just referred to, dated 6th November, 1929, between the Consolidated Trust Corporation vendors of the first part, and the Canada Trust Company 30 purchaser of the second part, which in turn was to become effective after it received assent, and attached to the certificate is the assent of the Lieutenant-Governor and that of the Attorney General, the Attorney General's consent dated 29th January, 1930, and then the final consent of the Registrar of Loan Corporations dated the 31st January, 1930, so that on that date this agreement became finally effectual, did it not? A. I would imagine so, I do not know anything about that.

HIS LORDSHIP: What is the date of it?

MR. SLAGHT: The date of the certificate is the 6th November, 1929.

WITNESS: I understand, Mr. Slaght, what happened after the Huron 40 & Erie took over the London Loan & Savings Company, they asked the Board of Directors of the Consolidated Company to resign—

Q. Do not let us go into what somebody asked somebody. A. They put in their Board in charge of the Head—the Trust Company—

MR. SLAGHT: I am not concerned, Mr. Braden, for the moment with the Boards, but I do want to know if you consent to my suggestion that the

Exhibit "H" just filed whereby the Consolidated Trust sold out all their assets, even their good will including both these mortgages which you now assert claims on their behalf against my client, and on the 31st of January that became legally vital, irrevocable and final—what do you say? A. I do not know anything about that.

Q. What? A. You are asking me—

Q. You were an Officer of the Consolidated Trust? A. If you will just wait until I explain my position, you will understand what I mean.

10 Q. If you could understand my question? A. Then I tell you I do not know.

HIS LORDSHIP: You are asking the witness to put a construction on a lengthy document. You put the document in, and it speaks for itself.

MR. SLAGHT: I will not press it further.

Q. Then, if you will just tell me this. You told me you were an officer in the Consolidated Trust down to the time it disappeared? A. I was attempting to explain to you, Mr. Slaght, how I left the Board of the Consolidated Trust. The Consolidated Trust Company was still in existence when I resigned.

20 MR. SLAGHT: Q. You went out before the 31st of January? A. Yes I went out, and then the Huron & Erie put in their own Board of Directors, and then the new Board of Directors put in their officers.

MR. SLAGHT: Q. Then you were not there on the final—

MR. WALSH: What final was this—on the 22nd?

MR. SLAGHT: No, this was January, 1930.

Q. Then let me ask you this, as solicitor on the record for the Consolidated Trust Corporation who are plaintiffs on counter-claim against my clients? A. Yes.

30 Q. You were of course aware of the existence of the agreement, of selling out, of its approval by these authorities? A. Yes, I was aware of that because I had drawn discharges of mortgage made before the time.

Q. And you were aware of that prior to your notice of trial against my client? A. Yes, I was aware of that.

Q. Then after the Consolidated Trust Corporation have sold these assets and parted with them—let me pause there to show that it would appear to us the consideration they got for these mortgages and others was \$394,755.30 in cash? A. I do not know anything about that, what they got.

40 Q. Solicitor for the company, you did not know about it? A. I told you before I was not connected with the Consolidated Trust when that was prepared.

Q. Do you mean you came to this action without finding out whether the Consolidated Trust had sold these mortgages out, and did not turn them over, and had not paid for them? A. I did not say I know it, that—

MR. SLAGHT: I think the questions you are putting to me are more or less technical. These Biggs mortgages—

Q. We are speaking of the two, do not let us get back into others. A.

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The two Biggs' mortgages which are still registered in the name of the Consolidated Trust Company.

Q. Both sold? A. Just wait until I finish what I am going to say—these mortgages and about eleven or twelve others were objected to by the Huron & Erie Mortgage Corporation at the time the Huron & Erie Mortgage Corporation entered into the agreement with the London Loan & Savings Company, and the London Loan & Savings owned practically all the stock of the Consolidated Trust Company, and it was arranged that the London Loan & Savings Company should take over these twelve or thirteen, and amongst them the two Biggs Mortgages. 10

Q. If there is anything on record of that, I want you to produce it.
A. I will prove that by a member of the staff of the Huron & Erie.

Q. No, you don't prove that? A. This part of the transaction was done in a very informal way. The memoranda was signed, and Miss Fletcher, who has just gone out, I think has the memoranda.

HIS LORDSHIP: Produce that—the Huron & Erie did not know these mortgages really belonged to the London Loan & Savings Company.

In other words, as I gather from the Master's report, when this trouble broke, the London Loan & Savings Company ran for cover, it had to get into a position to pass the Provincial Inspectors, otherwise there was liable to be exposure, and it negotiated with the Canada Trust Company to take over two of these Biggs' mortgages and gave the Trust Company a guarantee against any loss? A. Yes, sir, they did. 20

Q. Which virtually left the situation as it was before? A. Yes.

Q. But it was safer for the Plaintiffs? A. Yes.

Q. Sufficiently to throw the Provincial Officers off the track? A. Yes.

Q. If I am not putting it too raw? A. The Government was objecting to this too.

HIS LORDSHIP: I do not suppose the Government was informed about the condition under which the Trust Company took over these two mortgages? A. No. 30

Q. It had the appearance of being a transaction of sale of these mortgages to the Trust Company? A. Yes.

Q. And it actually was not, the Trust Company had security in the way of the Huron & Erie stock which belonged to the Loan Company for the full amount of the loan, and the Manager of the Huron & Erie would not allow the transaction to go through until he did secure security—he knew these mortgages were lacking securities.

SIR ALFRED MORINE: I object to that.

WITNESS: It came out in the evidence. I know that myself. 40

MR. SLAGHT: It comes back to the present situation as we find ourselves today, the Consolidated Trust Corporation sold to the Canada Trust Company under Exhibit 8, that we have here, all the assets and all the good will? A. That was just an incident of the amalgamation of the Huron & Erie and the London Loan & Savings Company, that is all. It is nothing of importance beyond that.

Q. Then, will you produce for me, please, the report, any report by the solicitor as to the title, and any report by valuator and any reports connected with the first of the three controversial mortgages, that is the \$18,000 mortgage? A. I think there are solicitors' reports attached to each of those mortgages, if you look at them.

Q. I do not see any attached to them. A. There are solicitor's reports.

HIS LORDSHIP: There is one here, a report.

MR. SLAGHT: Is that the \$18,000 one?

10 HIS LORDSHIP: I think this is the \$13,500 mortgage.

MR. SLAGHT: I think I had better deal with them as offered by Mr. Walsh.

HIS LORDSHIP: This is the \$13,500.

MR. SLAGHT: Q. The \$18,000 mortgage first. A. There were applications put through in the usual way for these two mortgages that the Consolidated Trust has. If we take first the \$18,000 mortgage, that is it, your Lordship found the report there.

HIS LORDSHIP: This is the \$13,500.

MR. SLAGHT: Q. There is the \$18,000—1R.

20 HIS LORDSHIP: No, I was wrong, this Report attached to the face of this mortgage, Mr. Slaght, is apparently Brickenden Company's report on the title.

MR. SLAGHT: That would be what I want.

Q. You had these various reports on title, they come, in your capacity as solicitor in this matter? A. I do not know, there was so much came under my custody, there was a whole bushel of papers, one thing and another.

Q. There is not a report of the solicitor on title attached to the \$18,000 mortgage which I hold in my hand, that is the report I want first from you?

30 A. I do not know that I can give it to you, whatever there was is here.

HIS LORDSHIP: It ought to be attached to that mortgage? A. It should be, it might have got misplaced. There was a reference of three days before Mr. Blackburn and these papers were shuffled back and forth.

MR. SLAGHT: I understand, but I would like—? A. If I can find it I will certainly let you have it.

Q. Take the \$12,000, or before we leave that we have to clean that up—let me have the valuator's report. You had their own valuator at the time the \$18,000 mortgage was put on? A. Now there is a valuation by Mr. Clewes at the time.

40 Q. Do not take me along with that. At the time the \$18,000 mortgage was put on in November, 1922? A. I do not see that amongst these papers, I have not had time to go through them.

HIS LORDSHIP: You will have time to find that to-night—what else do you want? Mr. Slaght?

MR. SLAGHT: Q. Who was the valuator in 1922? A. Mr. Gorwill, I think was the valuator, I think I had some difficulty in finding these valua-

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tions, and I think I got Mr. Gorwill to come in and give me a statement of these things.

Q. Did you get Mr. Gorwell to give you a duplicate of the report he made at the time? A. No, I do not think Mr. Gorwell had the duplicate of it.

Q. You tell me that has been mislaid, the report that the valuator Gorwell made at the time? A. I do not know whether there was a report made at the time or not, Mr. Slaght.

MR. SLAGHT: Made at the time—have you not before bringing this action examined these files so as to know whether there were valuator's reports and solicitor's reports made at the time these mortgages which are attached were given? A. Yes, there are some reports referred to

Q. What are you producing then? A. I am producing whatever we found.

Q. Are you producing any valuator's reports for the \$12,000 mortgage? A. There is a statement here, Mr. Gorwell did value properties at certain prices.

Q. That is not what I am asking you. A. That is all I can give you, what appears amongst the papers.

Q. Is this something you are producing that purports to be a document of that Order?

HIS LORDSHIP: Made at that time?

MR. SLAGHT: Q. I do not want something Mr. Gorwell has been taking there. A. Here is one with Mr. McCormick's signature on it, which says the \$13,500—

MR. SLAGHT: Q. We are not at that for the moment—do not let us get confused. I am concerned about the documents you are going to produce to me from the custody of the company, the reports on the \$12,000 mortgage and what you are not going to. A. Well, Mr. Slaght, if there are such reports available—I know I have difficulty in finding it in the original, there seem to be copies of the statements. Mr. Gorwell valued the property at a certain price.

Q. And you have that, on the \$12,500 mortgage? A. It makes no difference, I will have that for you in the morning if it be possible to find it.

HIS LORDSHIP: Here is the \$13,500—

HIS LORDSHIP: Suspend the \$18,000 and the \$12,000 mortgage matters.

WITNESS: There was so much filed before the reference.

MR. SLAGHT: Q. Then in regard to the \$13,500 mortgage, I find here, attached to that, what purports to be the report on title from Mr. Brickenden?

A. Yes.

Q. And just a line from that, he says it is subject to the two Barrell Mortgages of \$6,000 and \$1,000—? A. It may show that but what significance is there to that?

Q. Just leave that to me, if you do not mind, the solicitor reported to the company at the time that this security—

MR. WALSH: After the money had been advanced.

MR. SLAGHT: This \$13,500 was subject to the two Barrell Mortgages, \$6,000 and \$1,000.

MR. WALSH: After the money had been advanced.

HIS LORDSHIP: The date is the 12th of November, 1924? A. That was before the loan was accepted, according to the Directors' Minutes.

HIS LORDSHIP: That is what Mr. Slaght wants.

MR. SLAGHT: 12th November, 1924.

A. Do you want the payments with dates?

Q. This is a matter of title I am discussing with you now. A. What do you want me to answer?

Q. Whether this appears here? A. This would appear.

Q. Convenient for his Lordship? A. Yes.

Q. The two Barrell mortgages are referred to by the solicitor, and the \$13,500 mortgage is subject to those? A. That appears on there, according to that statement.

Q. And it is also subject to the \$18,000 mortgage to the London Loan?

A. Yes.

MR. SLAGHT: And the \$3,000 mortgage?

HIS LORDSHIP: That only goes to show that Brickenden was apparently telling the management of the amount of security they were accepting.

MR. WALSH: After the money had been advanced.

HIS LORDSHIP: That is not so, before.

MR. WALSH: No, no. Look on the report on title.

HIS LORDSHIP: The 12th November.

WITNESS: The Company had accepted it on the 17th but it was a week after the company had accepted the loan.

MR. SLAGHT: Q. What do you mean by a week after? A. The 17th, the Directors all say they did not know that was a second mortgage, they thought it was a first.

HIS LORDSHIP: They knew of it, and did not make any row about it after they heard about it? A. They did not know. I made the investigation.

MR. SLAGHT: Why do you say that, you are a lawyer? A. They told me when I asked them specifically.

Q. You know as a lawyer, you have not a right to make that statement? A. I do not know, I am a witness just now.

Q. But you cannot throw off the cloak of a profession and you—or have you any grudge against Mr. Brickenden, my client? A. Any grudge against him?

Q. Yes? A. What do you mean?

Q. What the word signifies. A. Spite work.

Q. I did not say spite.

HIS LORDSHIP: Have you any ill-feeling towards him? A. I have not any ill-feeling beyond the ill-feeling that might arise from my investigation, when I found mortgage after mortgage on properties for far more than the properties were worth and commissions being received on the loan by Mr. Brickenden, my opinion of Mr. Brickenden is not very high, I must confess.

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MR SLAGHT: I must confess that last statement is not true.

HIS LORDSHIP: You see, Mr. Slaght, on cross-examination you may ask the witness a general question, and he has a wide license in making his answers.

MR. SLAGHT: I just asked him.

HIS LORDSHIP: And he answered, I would not call that a grudge.

HIS LORDSHIP: You have a different opinion——? A. I would not call that a grudge.

Q. Of his connections with the transactions? A. I must say that I have, my Lord. 10

MR. SLAGHT: Q. Now what valuation do you say, do you propose to introduce, taken by anybody at the time of the taking of the \$13,500? A. What valuation do I propose——

Q. To bring? A. I tried to find applications for these loans, and I have not been able to find anything except something similar to this, nothing signed up by Mr. Biggs.

Q. Now this is relative to the \$13,500 mortgage? A. Yes, Mr. Biggs said he did not sign any application at all.

Q. Do not talk about that, please, you are asked to produce, I asked you what valuations, if any, you are going to let me have, first from the records of the company regarding the \$13,500 loan? A. There does not appear to have been any definite valuation so far as I can find out. 20

Q. Do you say that you have never found any? A. I have seen statements of Mr. Gorwell, he valued the property at so and so.

Q. Let me have that in regard to the \$13,500 mortgage or tell me you cannot have it for the moment, and you will produce it tomorrow? A. If it is available I will have it tomorrow.

HIS LORDSHIP: So far as the three properties are concerned, you will get all the documents you can have? A. Yes, if there are any papers pertaining to any of these mortgages, I will be glad to produce them. 30

HIS LORDSHIP: If you will parcel them up separately, bearing on these three mortgages.

MR. SLAGHT: Q. The witness tells me there was something by Mr. Gorwell in relation to the \$13,500 mortgage—now, you do produce a document unsigned? A. Yes.

Q. From the records which I will put in, and which appears to deal with the \$13,500 mortgage, and will be Exhibit "I"——

HIS LORDSHIP: A memo?

WITNESS: It is filed as Exhibit 5 on the reference.

HIS LORDSHIP: Then that will be 5R. 40

MR. SLAGHT: Q. And this appears to show that Mr. Gorwell values the property as follows, first \$31,800; 2nd, \$14,500; 3rd, \$2,000—total \$48,300—

And what do you understand there by the 1st property and the 2nd property? A. I do not know what that is, Mr. Slaght. There were half a dozen properties covered by that \$13,500.

HIS LORDSHIP: Mr. Slaght, I think we will break off here. That memorandum will go in as Exhibit 5R.

Is this case likely to take the whole of tomorrow?

MR. SLAGHT: I would not be surprised. I won't be long with Mr. Braden, I am almost through with him.

HIS LORDSHIP: Just a moment, Mr. Walsh. You made some suggestion about adding parties?

MR. WALSH: Yes, my Lord.

HIS LORDSHIP: After your examination of Mr. Braden?

10 MR. WALSH: Yes, my Lord.

HIS LORDSHIP: And you make a Motion?

MR. WALSH: Yes, so far as I am concerned, your Lordship said you would let it stand for the minute.

HIS LORDSHIP: I think I ought not to let it stand.

MR. WALSH: I have a consent here.

HIS LORDSHIP: What do you want to do?

MR. WALSH: So far as I am concerned, I have the consent of the London Loan Assets Limited, and then your Lordship proposed also there should be added the Huron & Erie Mortgage Company, and the Canada Trust Com-
20 pany.

HIS LORDSHIP: Are you representing them?

MR. WALSH: I have been representing them on this. I use their names whenever I feel it is necessary.

MR. SLAGHT: They each have got Boards of Directors, and I suggest there is not a Board of Directors has authorized this gentleman—

HIS LORDSHIP: Mr. Walsh has the instructions to add the London Loan Assets Limited—and are you suggesting, Mr. Walsh, that the Huron & Erie and the Canada Trust Company should also be added?

MR. WALSH: I think, as a matter of fact, the agreement is sufficient.

30 HIS LORDSHIP: I do not care—I want to know what you want.

MR. WALSH: I will add them.

HIS LORDSHIP: You cannot add them unless they are consenting. You cannot add them and ask to deliver pleadings, and so on. Anybody that is to be added must be added with their consent and come in on the record as it is now.

MR. WALSH: I want to dispose of the whole matter, my Lord.

HIS LORDSHIP: Have you and Mr. Braden any instructions, or can you get any instructions between now and tomorrow morning?

MR. BRADEN: I can have a talk with the General Manager, I always
40 understood I had authority.

HIS LORDSHIP: What is your attitude in regard to the adding of the London Loan Assets.

MR. SLAGHT: I object to it, my Lord.

HIS LORDSHIP: Why?

MR. SLAGHT: Because this case was commenced on the 14th of November, we were served with notice of trial and were ready to go on before Mr.

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Justice Wright, and we came here the second time before Mr. Justice Kelly. We proposed to go on then. He had to adjourn it, then we come here again ready to go on with the record as it now stands and charges of fraud and conspiracy, and the nastiest kind of charges, and if in the middle of the trial these parties ask the indulgence of the Court to add Corporations whom we have had no opportunity of having pleadings from, examine their documents or anything of that kind, and of perhaps making counter-claims against them if they stand behind matters of this kind, would be grossly unfair to us, I submit, at such a stage, if they have cause of action against us let them bring these actions on their own, but for this gentlemen to get Directors together and authorize them to come into Court to back up proceedings of this kind against us in such a casual way, I do not think would be fair. 10

HIS LORDSHIP: Are you ready, Mr. Morine?

SIR ALFRED MORINE: I want to make the same objection.

HIS LORDSHIP: What is yours, Mr. Springsteen?

MR. SPRINGSTEEN: I also object.

HIS LORDSHIP: You make it unanimous. Mr. Walsh, you had better make up your mind definitely between now and tomorrow what motion you desire to make, and you had better make it in writing and serve notice of motion. 20

MR. WALSH: I may say, my Lord, the London Loan & Savings—

HIS LORDSHIP: I will hear your argument in the morning, Mr. Walsh. In the meantime I want you to put yourself regular, make yourself regular and make any kind of motion you are instructed to make on behalf of one or more of these corporations. There is no use now of making a Motion to add anybody without their consent unless they are prepared to come in now, or unless you are content to have the case go over.

MR. WALSH: So far as I am concerned, my Lord, I think the policy of the Court is to have it through with at once, and if the defence consents I will stand or fall on it. 30

MR. SPRINGSTEEN: Before your Lordship rises, might I have it clearly understood that if my understanding is correct, that at the conclusion of this case we can argue the appeal. I will serve notice of Motion upon my learned friend tomorrow.

HIS LORDSHIP: You serve your Notice of Motion in order tomorrow, and we will discuss it then.

MR. SPRINGSTEEN: Might I also have leave to serve short notice of Motion for continuance of the Injunction?

HIS LORDSHIP: Yes.

—Court adjourned until ten o'clock tomorrow, at six o'clock P. M. 40

No. 15.
Motion during
Trial to Add
Parties as
Plaintiffs,
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Thursday, May 8th, 1930, Court resumed ten o'clock A.M.

HIS LORDSHIP: Well, Mr. Walsh?

MR. WALSH: Your Lordship asked me to serve a formal notice of motion.

HIS LORDSHIP: If you intended to ask leave to amend?

MR. WALSH: Yes, my Lord, to add as party plaintiffs—my motion is to add the London Loan Assets, the Huron & Erie Mortgage Corporation and the Canada Trust Company as party plaintiffs.

HIS LORDSHIP: Have you consent?

MR. WALSH: Yes, my Lord, and I have the release—

HIS LORDSHIP: The other parties oppose that from what was said last night—

10 And this is just because of things that transpired, re-organization proceedings?

MR. WALSH: Yes, my Lord. That is the only reason I do not think it is absolutely necessary, having regard to the provisions of the Act, but I do not want any doubt, and that is why I am doing it.

HIS LORDSHIP: I do not see any objection.

MR. SLAGHT: If your Lordship would hear me.

HIS LORDSHIP: I thought I heard you last night.

MR. SLAGHT: Only in part, my Lord. The Motion is to add these parties, and the first we have heard of it is just about the close of the Court last evening, at five-thirty last evening. In the course of the trial, formal
20 notice of motion was served on me this morning, just now, and it contains no material, no statement of the Motion other than the consent, the alleged consent in writing of the three Corporations proposed to be added.

In addition to the history of the matter that I gave your Lordship, viz, that we had been brought to trial by these plaintiffs by counter-claim as they now stand on the record on two previous occasions when they found it necessary to ask the Court to postpone the trial, and in view of the fact of correspondence that ensued between Mr. Walsh and myself on the question of joinder or non-joinder of parties, I submit under no circumstances ought the defendants that I represent be put in a position of having to answer
30 a case at the instance of three new plaintiffs at this stage.

The correspondence to which I referred is a letter written by Mr. Walsh to me, or rather to my firm, on the 5th of March, 1930, a copy of which I have, and it reads as follows, it is addressed to my firm at Toronto, "London Loan v. Biggs and Brickenden"—

MR. WALSH: If my friend will produce all the correspondence I have no objection.

MR. SLAGHT: There are only two letters.

MR. WALSH: I refer to my last letter in addition to that.

HIS LORDSHIP: Never mind, all the correspondence can be attached
40 together and put in.

MR. SLAGHT: I have only two letters. If you have a further one, put it in, if it was sent. This is Mr. Walsh's letter to us: "As arranged with you this case has now been adjourned to be tried at the London non-jury sittings, commencing on May 5th, 1930, my clients are very anxious to proceed on this date, and if your clients have any objection to the parties to the action and there should be any parties dropped, or added, or if there should be any other

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amendment to be made, I would be obliged if you would let me know now, so that all necessary steps can be taken. We consider all parties are before the Court and everything is in order that justice may be done. If you have any objections, please let me know now, as I do not want any adjournment. If I do not hear from you, you, I will assume are quite satisfied as matters stand."

The reply is written on the 7th of March, by my firm to Mr. Walsh, and reads as follows, "Re London Loan v. Brickenden. I have your letter of the 5th. You must take the responsibility of what parties you have before the Court or fail to have there, and we do not propose to make any sugges- 10
tion to you in this regard. We leave the full responsibility for the constitu-
tion of your action upon you, and this letter, of course, is not a waiver of any
rights we may have by mis-joinder or non-joinder of parties".

My friend says there is another letter. I have not got it.

MR. WALSH: I wrote you another letter after that saying that I wanted you to tell me definitely one way or the other—I have telephoned for it. I have not a copy of it here.

HIS LORDSHIP: It can be marked as an Exhibit.

MR. SLAGHT: There is a copy of Mr. Walsh's first letter, and a copy of my reply—there is an extract of it which I sent advising the people here. 20

MR. WALSH: I will get the letter along with the other letter.

HIS LORDSHIP: This correspondence will be Exhibit "I".

—EXHIBIT "I". Letter dated 5th March, 1930, George T. Walsh to Slaght & Cowan together with copy of letter dated 8th March, 1930, from A. G. Slaght to George T. Walsh.

MR. SLAGHT: Now, in addition to that, I suggest to the Court that in the absence of the allegations that these proposed new plaintiffs intend to make against us, and in the absence on our part to require them to make production of anything they have or purport to have against us, and in the absence of an opportunity of examination for Discovery the officers of these 30
defendants, and of the adding of a defence of the Statute of Limitations,
because their action, if they had any against us today would be the date of
commencement of any cause of action they might have, I suggest to the Court
it would be prejudicial, unfair and improper after two occasions when the
case was on the list for trial, after a warning letter written to my friend before
he had even served notice of trial, that his record, if it be an improper
record, that this is not a case, in the absence of any affidavit or any disclosure
to the Court heretofore of the correspondence I have now disclosed warning
him he must have his proper parties before the Court before proceeding with
this action, and he must take the responsibility of deciding if he has a case 40
or has not one—there is no authority in practise which would authorize
or suggest the propriety of the exercise of the discretion under rule 134 to
add at the middle of the trial, at this stage, three new corporations as plaintiffs
on counter-claim, particularly where there are allegations of fraud and mis-
conduct and conspiracy against the defendants. Nothing likely to be dealt
with by a Court, particularly in view of the standing of Mr. McCormick and

Mr. Brickenden. It is another thing to rush on two men of good character, at the instance of three corporations without any of the safeguards that I have indicated, that always surround defendants who have to come to meet such claims.

HIS LORDSHIP: Have you anything, Mr. Morine?

SIR ALFRED MORINE: I desire to be associated with that objection.

MR. SLAGHT: And no affidavit showing the excuse for not having been previously added and no disclosure in the Motion seeking to do that, and the correspondence which warned them that all responsibility for that and
10 defences now prevailing would be insisted upon, and that is the position.

HIS LORDSHIP: I express no opinion, of course, as to the necessity of adding these other Corporations to the end there may not be a mis-trial. I have no opinion about that until I have heard more about the case, but it would be lamentable to go on and try this case and have it turn in appeal in case a judgment should be for the plaintiff, on a technical question for want of parties. What Mr. Slaght says as to the need for protecting the interest of his client and these remarks of course apply to the other defendants by counter-claim, is of course entirely apt, and the interests of the defendants by counter-claim must be protected. This is not a jury case, is a
20 non-jury case. As I conceive the situation nothing is likely to develop to change the merits of the matter in controversy owing to the addit on of these parties, but I am not going to do anything that will shut out the defendants by counter-claim from having all the rights and privileges to which they would have been entitled had these parties been added in the earlier stage. The plaintiff companies, the plaintiffs by counter-claim will of course have to amend their pleadings. The defendants by counter-claim may make any amendments they see fit. It may not be necessary that there should be delay on account of these amendments, but if any delay should be necessary, if it develops that the defendants by counter-claim desire time for examination
30 for discovery for production, for other purposes, they may make application, and I will see that they are protected. In the meantime I think we ought to go on with the case. That is the defendants on counter-claim will have heard the plaintiff's case, not only the pleadings, but the evidence, and then if they are not ready to go on, when they have heard that evidence, and if there is proper case made for delay, the application may be made then, assuming there is a proper case made. The parties may be added and the pleadings amended to correspond with the facts, and then the defendants on counter-claim may amend also.

MR. SLAGHT: May I see the proposed consents?

40 HIS LORDSHIP: I am disposed to—I think I cannot go behind the statement of Counsel, Mr. Slaght. Of course, the consents have to be filed. That is a right. I assume they are regularly filed. I cannot go behind these.

MR. WALSH: And the corporate seals are on them.

MR. SLAGHT: Before I proceed with my cross-examination may I make this enquiry of my learned friend from the Court, but I am immediately embarrassed, and I suggest my clients are immediately prejudiced by just so

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far as Mr. Brickenden and Brickenden and Company are concerned. They had no privity whatever with the Huron & Erie, The Canada Trust, or the London Loan Assets Limited—the three new Corporations which are about to be added, and had nothing to do with them in connection with any of these transactions, and for a moment I am at a loss to know what the character of the claim had against Mr. Brickenden is by these three new corporations, and if my friend will state I perhaps can continue my cross-examination with some intelligence, and perhaps with some profit.

HIS LORDSHIP: What do you say to that, Mr. Walsh?

MR. WALSH: My friend must know what it is.

10

HIS LORDSHIP: Just state?

MR. WALSH: I am simply adding them party plaintiffs.

HIS LORDSHIP: Is that simply because they are assignees?

MR. WALSH: That is all.

HIS LORDSHIP: They are so made under the documents, the assignees of certain assets?

MR. WALSH: They have no knowledge, the officials on examination can give my learned friend no assistance. They have no documents to produce or anything of that kind. It is only a formal matter.

HIS LORDSHIP: I understand that the interests of these three corporations when added, are merely the interest taken, if they have any, by reason of agreements made between the two original defendants in the action, the London Loan and Savings Company and the Consolidated Trust Company, agreements between these two companies, and these three other corporations, and all of these transactions, whatever they were between these corporations had grown. The present application to add these three new corporations, was altogether subsequent to the merits of the matter.

MR. SLAGHT: That being so, I am still in the dark as to what it is suggested these three new corporations received from my clients and what kind of claim they may suggest they have against Mr. Brickenden.

30

HIS LORDSHIP: I understand, Mr. Walsh, that it may be as a matter of law that legal claims have been transferred from the two original plaintiffs to these corporations, or one of them, or two of them, and he wants to guard that situation, is that right?

MR. WALSH: That is it, my Lord.

MR. SLAGHT: I wonder if it will be proper for him to state what character of claim against Brickenden has been transferred to these corporations. I mean to say it is a further "pig in a poke" for me. It is hard to conceive what sort of claim they would put forward against Mr. Brickenden.

HIS LORDSHIP: If Brickenden was indebted to one or other of these original defendants, it may be, I do not know anything about it, it may be by reason of these documents, the other companies, the companies that are being brought in, may have claims arising from the assignments against him. I express no opinion on the point at all. I understand that is the sole basis of the additions of these parties. I thought that was rather obvious. They have no independent claims, of course.

40

MR. SLAGHT: Now, if your Lordship will appreciate, with the greatest respect and deference I am protesting against proceeding under such circumstances as have arisen.

HIS LORDSHIP: Very well.

SIR ALFRED MORINE: I join with my friend.

MR. SLAGHT: Your Lordship made it clear, I do not know at what stage, but I suppose at some stage or other it is open to the defendants on the counter-claim, the defendants set up counter-claim and against whom these added parties become plaintiffs by counter-claim to rely upon all defences that a Judge might find available to them, had such defences been pleaded in the formal way.

HIS LORDSHIP: Certainly, and you will then amend your pleadings in a formal way after the pleadings have been revised by these defendants on counter-claim.

MR. WALSH: I have no objection to my friend—

HIS LORDSHIP: Of course, you could not have any objection. It cannot make any difference if you had.

HIS LORDSHIP: Now, Mr. Braden.

MR. BRADEN: I think your Lordship asked me to give a memorandum on each property separately. I gave copies to Mr. Slaght and the others.

HIS LORDSHIP: These memoranda have reference only to the mortgages that are now before the Court.

MR. BRADEN: Yes, my Lord.

MR. SLAGHT: The memoranda are being checked by us. They are subject to being found accurate.

HIS LORDSHIP: At some stage it may be found convenient to put them in as Exhibits, just as memoranda.

MR. SLAGHT: Yes, my Lord.

Cross-Examined by MR. SLAGHT.

30 Q. Now, Mr. Braden, the company kept, the London Loan Company kept books, of course? A. Oh yes.

Q. And during the period that the loans, which are the subject of the claim on counter-claim, were made, Mr. Kent, you told us, was the Managing Director and General Manager.

MR. WALSH: Pardon me, your Lordship, you want the witnesses excluded.

MR. SLAGHT: The same rule as yesterday would apply today.

Q. During the period that these securities were entered into or begun?

A. Was Mr. Kent the Manager.

40 Q. Managing Director and General Manager of the Company? A. Yes, I believe he was.

Q. I am just asking you that, because you have been over the Minute Books? A. Yes.

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Q. And that is a short way to say poring through the minutes year by year? A. I might say that he had not been active for the last two years on account of his injuries and his health. His health had been very poor and he was unable to give the affairs of the company much attention.

Q. What do you mean by the last two years, because these securities were all taken more than two years? A. I would say about 1923, the time he was injured, from that time on.

Q. You suggest that he was not active from 1923 on? A. I would not say that he was not active, he was not as active as before, because he was unable to get around and I understand he was unable to get around from 10 the house.

HIS LORDSHIP: He was not active as as he had been? A. No, my Lord, a broken hip.

HIS LORDSHIP: How old a man was he? A. At that time I think he would be around seventy years of age.

MR. SLAGHT: Q. And I think you told me from your examination of the record you thought Mr. Kent was the largest individual shareholder? A. He was, I think the largest, leaving aside Mr. McCormick and his wife and family.

Q. Aside from that, Mr. Kent was the largest individual shareholder 20 in the company.

MR. WALSH: Apart from the McCormicks.

HIS LORDSHIP: Apart from the McCormick family? A. Mr. McCormick had a large number of shares in his name, as had Mrs. McCormick, and the other members of the family. Mr. McCormick's family had many more shares than the others.

MR. SLAGHT: Q. Are you mistaken as to the date of the injury—I am instructed that Mr. Kent's accident happened in 1927? A. I had not become associated with Mr. Kent until 1927, and his health was very poor 30 then.

Q. Will you swear the accident which you assign as the cause of his ill health was before 1927? A. Yes, because he was at the meeting of 1927.

Q. And when was the meeting? A. In February.

Q. Will you swear how long before? A. No, I will not, I am only giving you the estimate of what my recollection is.

Q. Well, let us now take for a moment the two loans made by the Consolidated Trust? A. Yes.

Q. For \$20,000 and \$13,600 respectively? A. Yes.

HIS LORDSHIP: Those were loans made to the Biggs to enable them to take up the \$18,000 and the \$10,000 mortgages? 40

MR. SLAGHT: The \$12,000 mortgage. Yes, my Lord, and I just wanted to get into the record what occurred at that time.

Q. Now, when these loans were made, let us see what the Consolidated Trust got by way of security, as we heard yesterday they got these—

HIS LORDSHIP: What year were those loans made? A. They were made at the end of 1927, my Lord, at the end of the year.

MR. SLAGHT: December 1st, 1927, is the date of the transaction on the document, my Lord, December 1st, 1927.

Q. In addition to the several mortgages that the company secured covering altogether all the property we have been discussing of Biggs? A. Yes.

Q. What other security—there were some life insurance policies of Biggs given to the Consolidated Trust as collateral security, were there not? A. They were either given to the Consolidated Trust or the London Savings, they did not amount to anything.

10 Q. Will you answer the question and not argue?

HIS LORDSHIP: If you will answer the questions, Mr. Walsh will get an explanation.

MR. SLAGHT: Q. Were there four life insurance policies on the life of Biggs given by him as a borrower to the Consolidated Trust, amounting in the aggregate to \$12,000, as collateral security for the loans—I am shortening up because you and I have been over this before? A. I am not going to say definitely what the amounts are, or the amounts payable to the Consolidated Trust. They were either payable to the Consolidated Trust or the London Loan.

20 HIS LORDSHIP: At all events, there were insurance policies given as collateral to these two mortgages? A. Yes, my Lord.

Do you want the policies, Mr. Slaght?

MR. SLAGHT: Q. I will remind you of what you said on Discovery and it puts it into convenient form? A. They didn't amount to anything, any-way.

MR. SLAGHT: Q. You will be allowed to show that.

30 Questions 197 and 198 when you were examined, you assented to it, "Then you produce four policies, three in the Great West, and one in the London Life, aggregating \$12,000 on their face"—that would be correct, would it not? A. I suppose it was.

Q. So that \$12,000 is the amount, and then perhaps for your convenience, you want to tell the Court they did not amount to anything—you are deciding that question for us, as because, for one reason or other, the company did not compel Biggs, or Biggs did not keep up but few premiums on them—is that it? A. I understand he did not pay the first premium. He gave notes and did not pay them.

Q. You understand that, you know you have the policies there, that the company received existing valid policies from Biggs, endorsed to them as collateral for the loan at the time? A. I believe so.

40 Q. And then might I suggest the reason why you suggest they did not amount to anything was that later on the policies expired for non-payment of premiums? A. Yes, they are cancelled, because, I understand the premiums were not paid.

Q. And did you know when the policies became expired or were cancelled, or did you? A. I did not know definitely. Mr. Hambly told me the notes were not paid, and that was the end of the policies.

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Q. You know, however, the policies were given, and later on you suggest they lapsed or were cancelled?

Now then, you did not tell the Court anything about a further collateral security that was given by Biggs to the Consolidated Trust, or given to the Consolidated Trust and put up by the London Loan as security to the Consolidated Trust for its loan—tell us now? A. I never heard of Mr. Biggs having any other security.

Q. It is not news to you, and you did not disclose it yesterday, that the Consolidated Trust Corporation received collateral security which was of the value of \$16,500? A. That was from the London Loan & Savings. 10

Q. Is that a fact? A. It is a fact, Mr. Biggs did not put that up, it was not collateral security Mr. Biggs gave.

MR. SLAGHT: Will you reserve the argument? A. You make the suggestion Mr. Biggs gave it.

HIS LORDSHIP: Mr. Slaght, that is always the misfortune of having a lawyer in the witness box.

If you were there yourself, you would be doing some of it.

MR. SLAGHT: I have no doubt, my Lord.

Q. But, Mr. Braden, if your legal mind will allow you for a minute to look at the position of the Consolidated Trust as mortgagees, only leave out the London Loan for a moment—I want to see if you will agree with me that in addition to the two mortgages we have heard discussed and in addition to the two life insurance policies, whatever happened to them later, they received additional security which they were entitled to hold, although it came from the London Loan, a hundred shares of stock of the Huron & Erie—is that correct at the time the loans were made? A. Yes. 20

Q. Now, you will probably agree with me, we have been over this on Discovery, and I think you can shorten it—at a later stage the Consolidated Trust, the holders of that hundred shares of collateral to the loan, handed it back voluntarily to the London Loan from whom they had received it? A. The London Loan paid cash for the debt, paid cash for it or paid off the loans, paid the Consolidated Trust all that was owing them, when the amalgamations went through the Huron & Erie insisted on these loans being taken off the books. 30

HIS LORDSHIP: I rather suspect this was a shuffle of the Consolidated Trust and the London Loan to befog the Provincial Inspectors.

A. That is what it was to my opinion—it threatened their dividend payment, and they had to get money from somewhere, and they persuaded the Consolidated Trust to take over these mortgages and the Consolidated Trust did. 40

HIS LORDSHIP: And gave the Consolidated Trust a guarantee of this stock? A. A guarantee, and also gave the further security by way of the stock.

HIS LORDSHIP: A written guarantee? A. Yes, my Lord.

I have the written guarantee here.

HIS LORDSHIP: By the way, Mr. Walsh, I should have made it a con-

dition before, that you should put in in connection with your application to add parties, the documents that gave these Corporations some claim or possibility that they may have a claim.

MR. WALSH: I will undertake to do that, my Lord.

HIS LORDSHIP: Put in these three.

MR. SLAGHT: Undertake to do it, I am supposed to cross-examine and protect my clients and imagine what is going to come by way of documents.

MR. WALSH: If you make any more dramatic statements like that, Mr. Slaght, I will have to tell what transpired.

10 HIS LORDSHIP: Never mind, just put in the documents.

MR. WALSH: I will, my Lord.

MR. SLAGHT: Q. Now, Mr. Braden, let us see what did happen, referring to the Huron & Erie collateral stock, one hundred shares? A. Yes.

Q. When you were examined for Discovery, I am now referring to "213.

Q. When were they returned by the Consolidated Trusts to the London Loan? A. Last summer; the time the amalgamation took place"—by last summer, you mean the summer of 1929? A. Yes.

Q. And they were received by the Consolidated Trusts, as we have heard, in the year 1927? A. Yes.

20 Q. Then the next question is, "214. Q. Then the Consolidated Trusts Corporation simply gave them up", and your answer was "yes"—is that correct? A. Didn't I say further on that the Consolidated Trusts were paid all their money?

Q. Another question: "215 Q. What did they receive in return? A. Well, the Consolidated Trusts Corporation were to be paid cash for these loans by the new company formed, by the London Loan Assets Company Limited". A. I was mistaken there, I meant the London Loan.

Q. You were mistaken? A. Yes, the agreement speaks for itself, it is all set out in that agreement.

30 MR. SLAGHT: Q. And nothing about these collateral shares. You say that answer was not correct? A. It was the London Loan who paid off.

Q. Is this correct, "216. Q. Have the one hundred shares been turned over to the London Loan Assets Company Limited? A. No, they have since been sold"—is that correct? A. Yes, the London Loan sold them.

Q. "217. Q. By whom? A. By the London Loan Company". A. That is correct.

"Q. And what did they realize? A. I think \$165 a share"? A. That is correct.

40 A. Yes. Q. "219. Q. That would be \$16,500? A. Yes"—that is correct?

Q. Now then, do you assent to this, that the Consolidated Trusts Company in 1929, in the summer, voluntarily returned or returned to the London Loan Company \$16,500 collateral security instead of continuing to hold it against Biggs, or instead of realizing upon in ease of the debt of Biggs to them? A. Well, what I would say to that was, that in accordance with the understanding with the Consolidated and Erie Corporations, the London Loan

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were to take them up, the Consolidated Trusts Company taking over the amount of these mortgages, then the Consolidated Trusts would have the money and the London Loan would have the mortgages and the security put up—that is my understanding.

Q. I want it made clear here, because the Court may have to pass upon the rights of the Consolidated Trusts as against us, or the rights of the London Loan, and I want to see if it is not clear, dealing with the Consolidated Trusts, if they have no complaint, because they are going to make a loss on two loans they made to Biggs, they have voluntarily, so far as they are concerned, let go of \$16,500 that they could have retained to reduce the amount they would have to ultimately import on the two mortgages against the Biggs property? A. I do not agree with you there, Mr. Slaght, I would say in accordance with the arrangement of the London Loan & Savings, they asked the London Loan & Savings to take over these mortgages which the London Loan did, and then the London Loan were entitled to get the mortgages back. 10

HIS LORDSHIP: I understand the original transaction was for the convenience of the London Loan & Savings? A. Yes, it was.

MR. SLAGHT: If that is material in the record—did you negotiate the original transaction? A. The original transaction? 20

Q. The one His Lordship has just referred to. A. You know I did not negotiate the loan.

HIS LORDSHIP: Had in mind another transaction between the London Loan and the Consolidated Trusts? A. Yes, I looked after that end of it.

Q. The original transaction? A. I was not connected with the company at that time.

Q. So you have no personal knowledge of what that was—

HIS LORDSHIP: He was reading between the lines? A. I got the information from the Manager.

HIS LORDSHIP: You are going to sea, beyond his depth, so far as his personal knowledge is concerned—his knowledge as to these transactions between 1927, I suppose, is the result of his enquiries, partly perhaps the examination of the papers and partly what some of the parties told him, and partly the exercise of his common sense. 30

MR. SLAGHT: Q. Then the difference between \$33,600, total loan, and the \$16,500 that this collateral was actually sold for, the \$17,100 which the Consolidated Trusts retained, the collateral they had given up, that is a matter of arithmetic—I have just asked the question to see if you assent to it as a convenient way of getting it on the record.

MR. WALSH: Read questions 220 and 221, Mr. Slaght. You stopped at question 219. 40

MR. SLAGHT: Yes, I will read those at the request of my friend if he wants me to.

“220. Q. What right had the Consolidated Trust Corporation to give up collateral security which they held and then sue Mr. Brickenden and Mr.

McCormick for loss they sustained? A. That had nothing to do with Mr. Brickenden and Mr. McCormick.

"221. Q. I am making the complaint that the Consolidated Trusts Company, if they are going to suffer the loss, and I suggest they gave up the \$16,500 which would have gone to ease what you claim against Mr. Brickenden and Mr. McCormick? A. The London Loan would have lost it"—those are the questions my friend wanted read. I have read them at the request of my friend.

10 Now, will you produce for me, please, the application for the new mortgages made by Biggs to the Consolidated Trusts, they were Exhibits 6 and 7 on the Examination for Discovery? A. Here, the Insurance Policies, if you want them.

MR. SLAGHT: I do not want the Insurance Policies? A. Yes, here are the two applications you mentioned, now they are marked sixteen and seventeen on the Reference—

MR. SLAHT: They will be 16R and 17R.

Applications by Biggs to Consolidated Trusts. 16R will be for the \$20,000 loan and 17R for the Loan for \$13,600; and then—just while we are on that.

20 WITNESS: There is a letter given in connection with this too.

Q. Yes, let us get that in at the same time? A. Yes.

Q. There is also a receipt given to Biggs? A. That is Exhibit No. 11.

HIS LORDSHIP: Is this the letter?

MR. SLAGHT: This will be 20R.

—EXHIBIT 16R. Application for Loan, December 27th, 1927, \$20,000, Eva Viola Biggs and W. H. Biggs for loan on 116 Elmwood Avenue.

—EXHIBIT 17R. Application for Loan, \$13,600, 27th December, 1927, on Numbers 315 to 319 Ridout Street, by W. H. Biggs, to Consolidated Trusts Corporation.

30 MR. SLAGHT: This letter will be 20R.

The letter is dated December 30th, 1927, from both Mr. and Mrs. Biggs to the Consolidated Trusts Corporation. "Dear Sirs:—We have today executed two mortgages to your company for \$20,000 and \$13,600 respectively. This is your authority to pay out of the proceeds of the said mortgages \$33,542.26 to the London Loan & Savings Company of Canada for a discharge of their mortgages numbers 16914, and 17155, and to pay the balance of the proceeds (\$57.74) of our mortgages to G. A. P. Brickenden & Company for fees and disbursements in connection with the mortgages, and we authorize you to hold the discharges of the above mentioned mortgages to
40 the London Loan & Savings Company unregistered until such time as the second and third mortgages on my property are paid off or postponed so that the mortgages now given to you will become first mortgages"—that is signed by both the Biggs? A. Evidently.

Q. That clears up what we heard yesterday, that they took over discharges of the \$18,000 and the \$12,000 mortgages and the mortgagors authorized them to hold them because they were still intervening mortgages

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that the earlier ones would be ahead of, but that the new ones would be in behind if done that way—is that your understanding? A. I presume that was what was done, but I think assignments were given. I think there are assignments among my papers.

Q. Assignments?

HIS LORDSHIP: Why should there be both assignments and discharges—the discharge is not to be used? A. Until the old mortgage was paid off.

MR. SLAGHT: They might have taken assignments in abundance of precaution but I do not think it was necessary. A. Well, they took assignments. 10

MR. SLAGHT: They took everything they could get.

MR. WALSH: No, because there was that Lancaster Mortgage I spoke of yesterday, and that was a means of circumventing that mortgage, my Lord.

WITNESS: Here it is.

HIS LORDSHIP: Was that put in before the Master?

WITNESS: No, my Lord.

London Loan to the Consolidated Trusts Corporation dated December 31st, 1927, the Elmwood property—that is one of the assignments.

Here is the other, London Loan to the Consolidated Trusts, dated 20 31st December, 1927, Ridout Street property—these are unregistered documents.

MR. SLAGHT: I think we will put these in.

WITNESS: This is evidently in duplicate if you put in one of them.

MR. SLAGHT: We will put in one of each.

I first put in assignment of mortgage dated 31st December, 1927, between the London Loan and Consolidated Trusts, an agreement to assign or postpone prior mortgages—that will be Exhibit—

HIS LORDSHIP: Mark it K.

—EXHIBIT K. Agreement to assign mortgages dated 31st December, 1927. 30
London Loan & Savings Company to the Consolidated Trusts Corporation.

MR. SLAGHT: Then we put in an assignment of mortgage dated 31st December, 1927, from the London Loan to the Consolidated Trusts of mortgage 16914, which is the \$20,000 mortgage on the Elmwood property.

HIS LORDSHIP: That will be Exhibit L. That is an actual assignment.

MR. SLAGHT: That is an actual assignment of mortgage.

WITNESS: Is that for the \$20,000 mortgage, Mr. Slaght?

MR. SLAGHT: Yes. This is a duplicate—there is no need of putting in a duplicate.

Q. Give me the assignment of the \$12,000 mortgage. 40

HIS LORDSHIP: We do not want to lose that, that is a valuable document.

MR. SLAGHT: You are keeping the duplicate original.

Then as Exhibit M. An assignment of mortgage from the London Loan to the Consolidated Trusts Corporation—

HIS LORDSHIP: This is the \$12,000 mortgage?

MR. SLAGHT: \$13,346.76.

HIS LORDSHIP: That is Exhibit M.

MR. SLAGHT: Now let me have the cheque from the Consolidated Trust to the London Loan for \$33,542.26—you produced that on Discovery?

A. Yes.

Q. It was Exhibit 15 on your Examination, Mr. Braden, if that will help you.

HIS LORDSHIP: How much is that cheque for?

MR. SLAGHT: \$33,542.26, dated December 31st, 1927, being the cheque
10 of the Consolidated Trusts Corporation payable to the London Loan & Savings Company and marked "In full proceeds of two loans made to W. H. Biggs and Eva Biggs as follows: \$20,000, \$13,542.26", sets out more detail, and it appears to have been endorsed for deposit by the London Loan & Savings Company and gone in to their account. That will be Exhibit N.

—EXHIBIT N. Cheque dated 31st December, 1927, Consolidated Trusts Corporation to London Loan and Savings Company for \$33,542.26.

WITNESS: Here is a cheque to Mr. Brickenden, do you want to put that in, it completes that, finished the transaction.

MR. SLAGHT: Cheque for \$57.74 to G. A. P. Brickenden & Company,
20 dated December 31st, 1927, and endorsed by Mr. Brickenden. That will be Exhibit O.

—EXHIBIT O. Cheque dated 31st December, 1927, for \$57.74.

Consolidated Trusts Corporation to G. A. P. Brickenden & Co.

MR. SLAGHT: These two amounts, your Lordship will note, make \$33,600 and are disposed of in accordance with the signed order from the Biggs family.

Q. Now, while we are at this, let us have the ledger sheet, showing the valuation by Mr. Clewes with Mr. Gorwell for the Consolidated Trusts when these loans were made. That was Exhibit 13 on your examination?

A. Is this it?

MR. SLAGHT: Put this aside—they are not what I am at now.

A. Yes, here is what you want.

Q. Just lay those by, we will want those in a moment.

You produce two ledger sheets taken from, apparently, some book of record of the Consolidated Trusts Corporation—from what books were they taken? A. These look to me like copies of the original. I think the Huron & Erie gave us those copies and we put them in instead of the originals so that there would be no danger of anything happening the original.

HIS LORDSHIP: Are these sheets of the Biggs' Account? A. Yes, my Lord, in connection with the Consolidated Trusts Corporation.

MR. SLAGHT: And these are two sheets which will be Exhibit "P," we
40 will fasten the two sheets together and where is the notation on these sheets of the valuation by Mr. Clewes?

WITNESS: Will you let me see those, Mr. Slaght, the ones you had—here is the valuation in the corner, 1927, December 21st, inspected by H. R. Clewes. He values everything there, 315, 317, 319 Ridout Street with the garage, at \$16,010.00.

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—
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No. 14.

J. A. E.
Braden,
Cross-
Examination
by Mr.
Slaght,
8th May, 1930.

—continued.

*In the
Supreme
Court of
Ontario.*

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—continued.

HIS LORDSHIP: These are copies, are they? A. Yes, my Lord.

Q. And would these show the initials of the valuator?

MR. SLAGHT: Yes, my Lord, the column here. Well, they are copies, I am taking instead of my requiring the production of the original book. I am assuming they are true copies.

WITNESS: These would not be initialed. They would simply be inserted in the book the same as it is there. I think that is correct.

MR. SLAGHT: Q. This is marked "Inspected by H. R. C." (Clewes)?
A. I think that is put on the ledger sheet.

HIS LORDSHIP: I think it is probably an original paper signed by him. 10

MR. SLAGHT: Q. That is what I want. I want Mr. Clewes' valuation?
A. I do not remember—

MR. SLAGHT: As a matter of convenience I will call the attention of the Court. He valued 315 and 317 and 319 at \$16,010 on the first page and then he values—this is 116 Elmwood Avenue property, he values it at \$33,892?

A. Yes.

HIS LORDSHIP: I do not suppose any purpose will be served by getting the original paper.

MR. SLAGHT: So long as I have the consent of the witness.

MR. WALSH: I am glad to put in the original. 20

HIS LORDSHIP: I have no doubt the ledger sheet represents the valuation on which the Consolidated Trusts Company acts.

WITNESS: Mr. Clewes gave evidence on the Reference.

HIS LORDSHIP: These two sheets will be attached together and marked Exhibit T.

MR. SLAGHT: In addition to finding them in the record books of the company, Mr. Clewes assented to these values at that time? A. I think Mr. Clewes said he and Mr. Gorwell fixed the value together.

—EXHIBIT T. Two loose sheets from records Consolidated Trusts Corporation number D12 and D13 in relation to 116 Elmwood Avenue and 315- 30 319 Ridout Street, London.

MR. WALSH: I think it also shows, in the books of the company, it shows "collateral: 100 shares Huron & Erie Mortgage Corporation fully paid off, certificate number 1247".

MR. WALSH: \$16,000 worth of London stock.

MR. SLAGHT: There is nothing about that.

HIS LORDSHIP: Never mind that; It is of no consequence—one hundred shares Huron & Erie stock.

MR. SLAGHT: Q. I am told you produced a very complete later written valuation, made by Mr. Clewes on the Reference—let us have that? A. I 40 do not remember whether there was such a written report produced on the reference or not.

MR. WALSH: It was on the Examination. I know, Mr. Slaght, they went into it fully. A. On the examination for Discovery.

MR. WALSH: And it was marked as an Exhibit.

MR. SLAGHT: And that it was not just a casual valuation? A. It should be among these Exhibits. I put everything together.

MR. SLAGHT: I appreciate your difficulty in finding everything.

HIS LORDSHIP: The valuation of these two properties, was it?

MR. SLAGHT: Yes, my Lord.

HIS LORDSHIP: Suppose we just make that a reserve number for that and when Mr. Braden finds it—

MR. SLAGHT: Take a note of that—Clewes' original valuation is to be put in, and attached to Exhibit "T".

10 MR. SLAGHT: Q. Now, who was Mr. Clewes? A. Mr. Clewes was the Manager of the Consolidated Trusts Company.

Q. And who was Mr. Gorwell who accompanied him and with whom you say he conferred in making his valuation? A. Mr. Gorwell was a valuator of the London Loan & Savings until the control changed?

Q. At that time, at the time the valuation was made? A. Oh yes.

Q. Now then, will you come with me to the \$18,000 and produce what you were to get yesterday, the report on title and the valuation? A. Here are the different documents relating to valuation, Inspection Department.

HIS LORDSHIP: What mortgage are you referring to now?

20 MR. SLAGHT: The \$18,000 mortgage.

HIS LORDSHIP: The original \$18,000 mortgage.

MR. SLAGHT: The original \$18,000 mortgage. Yes, my Lord.

In the shape we are in now, with the pleadings lacking on the file, I have to cross-examine pretty fully on these various ones, because I do not know how my friend is going to argue, and ask you the story of it.

HIS LORDSHIP: I cannot see how this touches it at all. I had no thought of its introducing all these parties, other than to preserve the right of action of some one in regard to these matters if there is any question about that matter.

30 MR. SLAGHT: Q. Now, you were good enough to produce for me here a memorandum from the custody of the company—we are now back to the London Loan & Savings. A. Yes.

Q. From the custody of the London Loan records, dated July 2nd, 1926, showing a valuation by Mr. Gorwell, re Mortgage B87—that is the \$17,000 mortgage I take it? A. Yes.

Q. And he values the first property at \$31,800 and the second \$14,500, the garages at \$2,000, a total valuation of \$48,300—

MR. WALSH: Pardon me, your Lordship, we are not admitting these. We simply found these, we do not know who they are by.

40 WITNESS: That one just read is not signed by anybody.

MR. WALSH: There is no objection to presenting them, but I do not assent to them.

HIS LORDSHIP: You find these amongst the papers relating to this matter.

MR. SLAGHT: There is another report by Mr. Gorwell, evidently, sent here.

Q. Let us have this? A. October 6th.

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—continued.

MR. SLAGHT: It says, "I have today examined the properties of Mr. W. H. Biggs of this city. The two properties, numbers 114 and 116 Elmwood"—Looks as if that was the first inspection made.

MR. SPRINGSTEEN: Are you putting in that memorandum? What are you reading?

HIS LORDSHIP: They might go in for what they are.

MR. SLAGHT: They are from the records of the company, and we are accused of—

HIS LORDSHIP: I think they are all right.

MR. SLAGHT: The next thing you produce is a valuation, two sheets? 10
A. Of all the properties, signed by Mr. Gorwell, dated October 26th, 1925, addressed to the London Loan and Savings Company—

HIS LORDSHIP: One valuation you have to get, of this Ridout Street property? A. \$31,500.

HIS LORDSHIP: What of the Elmwood Avenue? A. \$14,800.

HIS LORDSHIP: That is just \$300 difference from those—and what about the garage?

MR. SLAGHT: \$2,000? A. That is just the same.

HIS LORDSHIP: Attach those to what you had in your hand, the signed valuation? A. I do not know whether that is Mr. Gorwell's signature. 20

MR. SPRINGSTEEN: Last night there was a valuation went in as Exhibit 5R, my Lord.

HIS LORDSHIP: Is Mr. Gorwell the valuator—he will be a witness? A. He is supposed to be a witness.

MR. SPRINGSTEEN: He is outside.

MR. WALSH: There is a letter accompanied that. It says, "As promised I now enclose you a report from Mr. Gorwell as to the values of the properties in our mortgages from W. H. Biggs. I also enclose you a list of the encumbrances against said properties, who show a surplus of \$21,290 in value above the indebtedness. Yours truly". (sgd.) M. J. Kent, Manager. 30

MR. SLAGHT: In what capacity are you putting that in?

WITNESS: They were on the file.

HIS LORDSHIP: Fasten them all together. They are all together? A. These are all referred to.

MR. SPRINGSTEEN: The letter going in with that as well.

HIS LORDSHIP: This is the \$18,000? A. It covers it, your Lordship.

MR. SLAGHT:

Q. I want to call His Lordship's attention—he puts 114 Elmwood Avenue at \$13,700? A. Whatever he says there.

Q. And 116 Elmwood Avenue at \$31,800? A. Yes. 40

Q. 311 and 313 Ridout Street at \$14,800? A. Yes, because, while we have been taking them three at a time, that is the two-storey red brick building.

Q. Then 315 and 317 Ridout Street at \$14,500, and 319 Ridout Street at \$5,500, and at the back of 319 is a garage which is made into apartments for five cars. He valued that a thousand dollars? A. Evidently he does.

MR. SLAGHT: We are not assenting to the wisdom or otherwise. I just want to get into the record the amount—what is the total?

MR. WALSH: It is all totalled in the letter.

HIS LORDSHIP: How much?

MR. SLAGHT: \$81,500

HIS LORDSHIP: As security for these two loans, \$18,000 and \$12,000—what date is this?

MR. SLAGHT: And the \$13,500, my Lord—there was a net surplus evidently of about \$31,000.

10 That is Exhibit "Q".

—EXHIBIT "Q". Letter dated October 6th, 1925, S. G. Gorwell giving valuations and other valuations attached.

MR. SLAGHT: Q. What is this—it looks like a separate valuation. This is a valuation evidently at the time the \$13,500 was taken up. I see it refers to the securities and valuation of Mr. Gorwell, and the hand of Mr. McCormick. I think this was a valuation made at the time it was suggested the Barrell Mortgage should be taken over by the London Loan and Savings.

MR. SLAGHT: Mr. Walsh can put it in if he wants to.

HIS LORDSHIP: Never mind, if Mr. Slaght is through with it.

20 MR. WALSH: What is that?

WITNESS: It has not been put in.

Q. What does it say on the back? A. It says on the back, "Mortgage \$13,500, payable \$250 monthly, interest eight per cent. monthly."

HIS LORDSHIP: Do not let us be cumbering the record with things that are of no consequence.

MR. WALSH: I want that put in, my Lord, because it has a bearing. It is the paying off of the Barrell Mortgage.

30 HIS LORDSHIP: What do you call it? A. It is a report by S. G. Gorwell and on the other side is a report to the President as to the Barrell mortgages, signed by Mr. McCormick, it says, "Pay off first mortgage to E. Barrell (sgd.) George McCormick"——

HIS LORDSHIP: This will be Exhibit R—what is the date of that, Mr. Braden?

THE CLERK OF THE COURT: 19th April, 1927, my Lord.

—EXHIBIT R: Memorandum of valuation dated April 19th, 1927, by S. G. Gorwell and endorsed on back by Mr. McCormick.

40 MR. SLAGHT: Q. Now what further reports of valuers are there, if any, at the time the \$13,500 mortgage was taken? Have you any further report there? A. That is all I have, Mr. Slaght. I think there was some more put in the reference.

Q. That is what I want. I want to put all the reports in? A. I want to go through the papers, I should perhaps have made a memorandum.

MR. SLAGHT: Q. I wanted you to get reports and letters of the solicitor? A. I did. I was at the office until after twelve o'clock last night.

Here is a further report as to title—what letters did you ask me for?

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- Q. A report on value? A. I do not know of any other report on value.
- MR. WALSH: There is an application there for the \$12,000.
- MR. SLAGHT: I will put in this report of Brickenden dated 5th January, 1928.
- HIS LORDSHIP: Report of Brickenden?
- MR. SLAGHT: Report of Brickenden & Company to the Consolidated Trusts Corporation, dated 5th January, 1928.
- WITNESS: There is another certificate.
- HIS LORDSHIP: Is this also a report from Brickenden and Company to the Consolidated Trusts? 10
- What date is that?
- MR. SLAGHT: Also of the 5th January, 1928.
- HIS LORDSHIP: Is that on all the property?
- MR. SLAGHT: That is on the Ridout Street property in regard to Mortgage number 23114.
- HIS LORDSHIP: And that will be Exhibit S.
- MR. SPRINGSTEEN: Does that cover both properties?
- MR. SLAGHT: Just one.
- This shows it was subject to the \$12,000 London Loan mortgage and subject to the \$13,500 and that it is subject to the \$900 Lancaster Mortgage. 20
- HIS LORDSHIP: This was preliminary, apparently, to the loan by the Consolidated Trusts.
- MR. WALSH: That was put in? A. It was completed, not before.
- A. Yes, there is an application you mentioned. It was referred to before, that is in regard to the loan for \$12,000.
- EXHIBIT S. Certificate of title dated 5th January, 1928, in the matter of part of lot 11, G. A. P. Brickenden & Co.
- MR. SLAGHT: This is an application by the Biggs of date 22nd January, 1923, and it will be Exhibit T.
- EXHIBIT T. Application for loan by Mrs. Eva Viola Biggs for \$12,000, 30
Ridout Street buildings numbers 315-319.
- Then you also gave me a certificate of title by Brickenden & Company dated 6th February, 1923.
- HIS LORDSHIP: Of what date?
- MR. SLAGHT: The 6th February, 1923, to the London Loan and Savings Company.
- HIS LORDSHIP: In respect to this \$12,000 mortgage?
- MR. SLAGHT: Apparently so, my Lord.
- HIS LORDSHIP: That will be Exhibit U.
- MR. SLAGHT: Q. Now, let us clean up the certificates— 40
- HIS LORDSHIP: There is another one there about the other Consolidated Trusts loan. You only have one for the Consolidated Trusts, and there is another one you will find.
- WITNESS: Here is one certificate of title by G. A. P. Brickenden & Company.

MR. SLAGHT: I will put this in, from G. A. P. Brickenden & Company to the London Loan and Savings Company, dated 11th December, 1922, with regard to the \$3,000 Biggs mortgage.

WITNESS: I did not know what you were referring to.

HIS LORDSHIP: That will be Exhibit V.

—EXHIBIT U: Certificate of title by G. A. P. Brickenden and Company, dated 6th February, 1923, in the matter of lots 18 and 19 west side Ridout Street.

10 —EXHIBIT V. Certificate of title by G. A. P. Brickenden and Company dated 11th December, 1922, in the matter of part of lot 11, block B, and \$3,000 mortgage.

MR. WALSH: There were three mortgages.

WITNESS: Here is the valuation by H. R. Clewes of 21st December, 1927, covering 116 Elmwood and 315-319 Ridout Street south, W. H. Biggs.

MR. SLAGHT: That has been produced, and now becomes part of Exhibit P.

MR. SPRINGSTEEN: Have you got what the title—

WITNESS: Here is the other one you are thinking of, Mr. Walsh, \$15,800—

20 MR. WALSH: There is the certificate of the second Consolidated Trusts mortgage.

Look at these, Mr. Slaght, these are copies, and see if these are all in. There is one that should be, and there is another, see if these are all put in.

HIS LORDSHIP: Perhaps we might shorten it, by suggesting that Counsel might agree on further exhibits and they may go in.

MR. SLAGHT: We can do that now. We will put in any copies, the five special certificates of title from time to time, attaching them together, the first one dated 11th December, 1922.

HIS LORDSHIP: What certificates are these?

30 MR. SLAGHT: Certificates by Brickenden and Company, and one of the 6th of February, 1923—

Where are the originals, of these?

And one of 5th January, 1928, and a second one of the 5th of January, 1928.

HIS LORDSHIP: That will be Exhibit W.

—EXHIBIT W. Copies. Certificates of title, G. A. P. Brickenden and Company, four in number.

MR. SLAGHT: That is Exhibit W. And then I will put in a letter of January 11th, 1928, from Brickenden and Company to the Consolidated Trusts Corporation, which is enclosing a number of documents.

40 HIS LORDSHIP: That will be Exhibit X.

MR. SLAGHT: "Re Biggs and London Loan. We have now completed the two loans from Mr. and Mrs. Biggs to your company and enclose herewith:—

1. Mortgage W. H. Biggs to the Consolidated Trusts number 23113.
2. Eva V. and W. H. Biggs to Consolidated Trusts, number 23114.

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3. Agreement in duplicate from the London Loan to the Consolidated Trusts Corporation.

4. Mortgage Eva Viola Biggs to the London Loan number 17555.

5. Mortgage W. H. Biggs to the London Loan number 16914.

6. Mortgage W. H. Biggs to Brickenden in trust, discharged.

7. Mortgage E. V. Biggs to Brickenden in trust, discharged.

8. Mortgage George to Chilton, discharged.

9. Vouchers by W. H. and Eva Biggs for loans of \$2,000 and \$13,600 respectively.

10. Application for loans (2). 10

11. Order E. V. and W. H. Biggs to Consolidated Trusts as to paying out of moneys.

12. Certificates of title (2).

We have not searched taxes because these are being taken care of by the London Loan and Savings Company. Insurance policies are in the possession of the London Loan and transfer of these is being arranged with your Mr. Clewes".

—EXHIBIT X. Letter dated 11th January, 1928, G. A. P. Brickenden & Co. to Consolidated Trusts Corporation.

MR. SLAGHT: Now, then, I want to go to the books of the London Loan 20 for the purpose of showing the book entries regarding the disposition of the mortgage moneys, the \$18,000 one. You suggested to me—

WITNESS: I think there were copies filed on the Reference. They should be in here.

MR. SLAGHT: We can take the copies filed on the Reference, perhaps, subject to checking with the books to see they are accurate? A. This copy evidently was prepared and filed on the Reference supposed to be taken from the books and made up from the books, but I will have the original ledger sheet brought up here if it is required.

MR. SLAGHT: Q. This is London Loan Assets? 30

A. London Loan Assets have the London Loan books.

The London Loan Assets are collecting all these moneys and looking after the business.

HIS LORDSHIP: What do you want to do? Do you want to put in copies of Ledger sheets?

MR. SLAGHT: Copies of ledger sheets of the original London Loan Company showing disposition in their books of the moneys they loaned the Biggs? A. There are the other Exhibits 23 and 24.

HIS LORDSHIP: On the Reference? A. Yes, they were used on the Reference. 40

HIS LORDSHIP: Copies of Ledger sheets.

MR. SPRINGSTEEN: I should suggest the originals be produced and we have the copy examined.

WITNESS: I have that here.

MR. SLAGHT: I do not know that it would be safe. These are headed,

"London Loan Assets," and there are notes written on here recently "The company received the following payment," that would be a clerk's work?

A. These are the original sheets, anyway.

Q. Turn up? A. The \$12,000 first?

MR. SLAGHT: No, the \$18,000 first. A. Here is the \$18,000 loan.

Q. All right, just let us have that sheet? A. Yes.

Q. And you produce as Exhibit "Y" the loose leaf ledger sheet in the ledger of the London Loan and Savings company in the account of William Biggs.

10 HIS LORDSHIP: Of the \$18,000 loan?

MR. SLAGHT: Touching the \$18,000 loan.

HIS LORDSHIP: Very well, that will be Exhibit "Y".

MR. SLAGHT: Q. Now, that discloses that the company apparently began to disburse money on taxes in November, 1922, and carried on for a period of months, in various amounts? A. Yes.

Q. Paid to him from time to time? A. That is the way it looks to me.

Q. Who was the Manager during that period, Mr. Kent, I believe?

A. Mr. Kent.

Q. Until we find the total of \$18,000; there now in that connection
20 there was a deposit paid by Mr. Kent in Mr. Brickenden's account of \$360—let me have that deposit slip.

A. Do you want the deposit slip itself?

Q. Yes, it was an Exhibit.

MR. WALSH: It was put in on the Reference? A. Yes, I believe you would get on better with Mr. Hambly, asking these things. My only familiarity with this end of the business was in going through the Reference.

Q. You are having these now? A. I only got them from Mr. Brickenden's office yesterday. Prior to that time they were in the hands of the company.

30 HIS LORDSHIP: It is a deposit slip? A. Yes, I think that was up this morning.

Q. What happened to Mr. Grant for the London Loan? Here it is, \$360, and is in Mr. Kent's handwriting.

A. No, I do not know whose, it is not Mr. Kent's.

Q. Anyway, that is the deposit slip made out in the London Loan and Company's account? A. Yes, that is made out to Mr. Brickenden's account, a \$360 deposit to the credit of Brickenden in the deposit department of the London Loan and Savings Company? A. Yes, I have Mr. Brickenden's personal account from the books, if you wish that.

40 Q. Yes, let us have that.

This deposit slip will be Exhibit Z.

—EXHIBIT Y. Loose leaf ledger sheet of the ledger of the London Loan and Savings Company in the account of William Biggs.

—EXHIBIT Z. Deposit slip, credit G. A. P. Brickenden, account number B84, dated December 12th, 1922, \$360, marked "Biggs B46 bonus".

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MR. SLAGHT: I understand there is a voucher signed by Mr. Kent with reference to the \$360 payment? A. I never heard of such a thing. There is one signed, I think by Mr. Biggs, a voucher for it somewhere.

Q. Let us see that then, I think you are right. The voucher is by Mr. Biggs? A. Yes, here it is. Here is what you are thinking of, Mr. Slaght. Mr. Kent signed that, a deposit slip, signed that, a bonus of \$360 to Mr. Brickenden, and a similar amount to the London Loan and Savings Company, making a total of \$720. These were put together. Mr. Hambly in giving his evidence had all these fastened together so that they would not get lost. 10

MR. SLAGHT: Q. I know, but this is particularly pertinent to the credit of Mr. Brickenden. Why cannot we put this in? A. The vouchers you have in your hand, are vouchers relating to the advances made to Biggs.

HIS LORDSHIP: And it would be unfortunate to unfasten them.

A. They are all referred to in the Reference.

MR. SLAGHT: They are not in the case so far as we are concerned, but I want to get this in.

HIS LORDSHIP: Then you had better put in—what do you say these are?

A. These are vouchers relating to the different items, relating to the Biggs loans. 20

MR. SLAGHT: I do not want to burden my case with these for the moment, and if your Lordship pleases, I will read this into the record.

MR. SLAGHT: At my request you have also shown to me in connection with the payment by the Company to Mr. Brickenden of the \$260 referred to in Exhibit G, a deposit slip signed by Mr. Kent, which reads as follows—there is printed across the top, "The London Loan and Savings Company, debit W. H. Biggs, Esq., number B46, on account of loan per receipt attached \$720, and credit M. J. Kent in Tr. (in trust) (that means in trust, suppose) M. J. Kent 293, \$360"; and on the line below, "G. A. P. Brickenden, F. G. B84, \$360" a line drawn and the two amounts added, and the amount appears \$720, 30 and then it reads "\$1,280 paid Mr. Biggs, December 1st, 1922." Then the date of the debit slip, "London, December 12th, 1922"—I think probably I had better put in a copy of that.

HIS LORDSHIP: Yes, I think you had better.

WITNESS: I will just see if by any chance I have a copy here.

MR. SLAGHT: Let us get this in too, Mr. Braden. It is attached to the document just read, is another, headed, "The London Loan and Savings Company, W. H. Biggs mortgage number B46, account of loan to W. H. Biggs per receipt on back hereof \$2,000, London, December 1st, 1922," and on the back of that is written, "London, December 1st, 1922, received from the London Loan and Savings Company the sum of \$2,000, being on account of loan B46." Then the signature, W. Herbert Biggs? A. Yes. 40

Q. So these two documents read together, show that Biggs got \$1,280, he receipted for \$2,000 and the disposition of the \$720 was that in Kent's account in trust went \$360, and in Mr. Brickenden's went \$360.

HIS LORDSHIP: Is there an agreement as to what these two sums were for? Is it a bonus to Brickenden?

MR. SLAGHT: A commission to Brickenden.

HIS LORDSHIP: And the other \$360?

MR. SLAGHT: Commission—

MR. SPRINGSTEEN: My information is that the whole \$720 is a bonus to the company. What the company does with it we have no knowledge.

HIS LORDSHIP: At all events, Biggs only got \$1,280.

MR. SLAGHT: Yes, out of that \$2,000, your Lordship will remember
10 that is part of an \$18,000 loan, and this \$2,000 it is \$2,000 out of the \$18,000—he would get the money, as we have seen, from time to time, for his advances.

WITNESSES: I might explain what that, M. J. Kent in trust, means.

MR. SLAGHT: I wish you would. A. The company evidently charged bonus in connection with each loan, a great many hazardous loans and they charge a bonus.

Q. From that sort of thing? A. I told his Lordship why they were stipulated for, and obtained, and as the bonus moneys came in, an account was opened up, to keep an account of the bonus moneys that was the name
20 “in trust.”

HIS LORDSHIP: Kent was holding them in trust for the company? A. The company got the money.

MR. WALSH: The company got that \$320, Mr. Brickenden got the other \$320—\$360, I mean.

MR. SLAGHT: The documents we have been reading from are contained in, and are a part of what was and still is an Exhibit on the reference before Mr. Blackburn, which Exhibit is number 28.

HIS LORDSHIP: Perhaps we had better put that in?

Do you want to put these in?

MR. WALSH: What is that, my Lord?
30

HIS LORDSHIP: These vouchers showing moneys paid to Brickenden.

MR. SLAGHT: A lot of moneys, they are all money paid on contracts, except the money paid—

MR. WALSH: They were in the Reference, so we will just refer to them here, anyway, 28R, vouchers showing moneys paid to Biggs.

—EXHIBIT 21R: Bundle vouchers London Loan and Savings Company signed by M. J. Kent, Manager, relating to W. H. Biggs mortgages.

MR. WALSH: Yes, my Lord, the \$360 was the most important.

MR. SLAGHT: Q. Then you have given us an account showing the dis-
40 position in the company's books, showing the disposition of the \$18,000. Now, let us have their ledger sheets showing the \$12,000.

(Ledger sheets produced).

MR. SLAGHT: Q. I will put in as Exhibit —

WITNESS: I will make sure that is the right account—yes—that is it, at the top there.

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MR. SLAGHT: Exhibit AA is the original account from the London Loan & Savings Ledger, showing the disposition of the \$12,000, and again, I say, Mr. Braden, that was paid out in dribs, from time to time to Biggs. A. Apparently, yes, I think that was a Building Loan. Now, what was the other one?

Q. The account showing the \$13,500 disbursement? A. Yes.

Q. Exhibit BB. Are there the sheets? A. Be good enough, for a minute, that I look at it again. Yes, transferred to new ledger.

Q. Both sheets are relative to the \$13,500? A. Yes, evidently the one sheet was in the old ledger, and AA was a sheet in the new ledger. Here 10 is another sheet, Mr. Slaght, that has to do with the same loan, and one with relation to the \$18,000 loan. I should have given it before.

HIS LORDSHIP: You had better attach that, then, to Exhibit Y.

MR. SLAGHT: Q. You now hand me a second sheet. A. And another account, in connection with the ledger account of the \$18,000.

Q. And which documents now make up Exhibit Y? A. Yes, and here is one in connection with the \$12,000, and here is the second sheet that should have gone in, and in the document, part of Exhibit AA, and these were put in, as the two sheets covering the \$13,500 loan, as Exhibit BB.

Q. Have you seen these properties in question? A. No, I have not. 20

Q. Then you would not recognize photographs of them.

HIS LORDSHIP: Well, is that all?

MR. SLAGHT: That is all, my Lord.

Pardon me, there is a matter I should have asked the witness about, my Lord.

Q. You will remember telling us on Examination for Discovery, Mr. Braden, that you found, or the company kept a bonus account, a bonus ledger account? A. Yes.

Q. And that that bonus ledger account for the purpose of reference by some parties was severed from its place, was taken out of its place in the book 30 and used before the Master on the Reference? A. It was produced, and I have never seen it since.

Q. You were asked to produce it on your examination for discovery and it was suggested it might be at your office and you would look for it, and you would produce it for us afterwards—what is the result of that? A. I have looked for it and the last recollection I have seen of that bonus ledger was when Miss Harrison was examining Mr. Clewes. She may have given it back to me; I have not seen it since and I was surprised the day I was examined, I have not seen it since, it is very important I should have it.

MR. SLAGHT: It is a document I desire very much. A. I am very 40 anxious to produce it.

Q. Have you searched your office since? A. I have looked all over the office and have made enquiry at Mr. Blackburn's office.

Q. You are not able to find it? A. There may be a copy of it somewhere.

Q. Let me have it, if there is. A. If there is a copy, but I enquired at the London Loan yesterday and they said they had not a copy.

Q. Then where is the copy that might exist? A. I do not know, I thought that I made a copy, but I have not even got a copy in my office.

Q. Have you a copy in your brief? A. No, I have not.

HIS LORDSHIP: You had better make another search for it and see if you can disclose it. A. It has been missing since the Reference.

HIS LORDSHIP: Anything further, Mr. Walsh?

MR. WALSH: Your Lordship, may I just look at this one minute?

10 HIS LORDSHIP: If there is any discovery, or anything that should go in, it will be taken, later, of course.

HIS LORDSHIP: Have you anything, Sir Alfred?

SIR ALFRED MORINE: Nothing.

Cross-examined by MR. SPRINGSTEEN:

Q. Mr. Braden, just one or two questions. You agreed there was a bonus of seven hundred and twenty dollars paid in connection with the first loan of \$12,000—is that correct—by Mr. Biggs to the London Loan? A. No, I did not agree to that. I say there was \$360 paid to Mr. Brickenden and \$360 to the London Loan, and further unquestioned, there was \$720.

20 Q. And so far as you know, Mr. Biggs gave no endorsement of the payment of \$360 to Mr. Brickenden, but an order on him? A. No, Mr. Biggs recognized the transaction because he signed the voucher which was put in a few minutes ago.

Q. Pardon me? A. He signed a receipt for \$2,000.

Q. Upon receiving the \$1,280? A. A statement of how the \$2,000 was disbursed is set out in that receipt, if my recollection is right. Will you let me see that?

HIS LORDSHIP: What is the date of it?

MR. SPRINGSTEEN: Dated December 12th, 1922.

30 There is no endorsement on that by Mr. Biggs? A. There is an endorsement, a receipt, "Received from London & Loan the sum of \$2,000 on account of loan B46."

Q. And all it says on the front, what Mr. Biggs signed——? A. Just a moment, you are not sure—I would like to clear that up. The \$1,280 and the \$720 makes the \$2,000 in the debit slip.

HIS LORDSHIP: "Account of loan to W. H. Biggs per receipt on back \$2,000", and then on the back, "Received from London Loan \$2,000 being on account of loan B46" signed by Biggs? A. If you look on the front, my Lord, you will see how the items are made up.

40 HIS LORDSHIP: On the front of the voucher are these two items, "Credit M. J. Kent in trust S. G. K. 293, \$360, and G. A. P. Brickenden, S. G. K.

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\$360", that totals up \$720, and on the left hand is, "\$1,280 paid Mr. Biggs December 1st, 1922," that makes the \$2,000.

WITNESS: I think there is no dispute between us as to how that is made up, Mr. Springsteen.

MR. SPRINGSTEEN: Q. While you were acting for the London Loan, if an application was made for a loan by a solicitor, it was your custom to pay the applicant one per cent. for bringing in this loan, if the loan was accepted by the company? A. I think that was customary.

Q. And that would account, would it not, in the ordinary course of business for the payment to Mr. Brickenden of the \$360 commission for bringing in the application for the loan? A. In regard to that \$360. 10

Q. Just answer me. A. You are asking me to assume something.

HIS LORDSHIP: He was not there.

MR. SPRINGSTEEN: Q. Then in connection with the \$12,000 loan, there was a bonus of how much paid by Mr. Biggs?—\$180? A. \$180, and then I believe Mr. Brickenden also got a commission on that, as his examination disclosed.

Q. And in connection with the \$13,500 mortgage, there was a bonus of \$1,000? A. And I think Mr. Brickenden got \$500 according to his evidence that was not disclosed to the company. 20

Q. I am not interested in that, between Mr. Brickenden and the company, and I just want to see that I am clear on this—there was no application by Mr. Biggs for a loan from the Consolidated Trust Company? A. Oh yes, there was.

HIS LORDSHIP: That has gone in as an Exhibit.

MR. SPRINGSTEEN: Could you tell me, were you familiar with that application? A. I became familiar afterwards, I was not familiar at the time.

Q. You cannot say whether these applications were sent to Mr. and Mrs. Biggs until after the loan had been made, could you? A. I had nothing to do with it. I was not there. You would have to ask someone else. 30

HIS LORDSHIP: Very well.

—Court adjourned for lunch.

—Court resumed at two o'clock p.m.

MR. SLAGHT: My Lord, if as a matter of grace I might ask that Mr. Braden again remove his gown and step into the box for a moment, until I see about the production of that original minute book which it was undertaken would be produced for our inspection.

MR. WALSH: He is only going to take his gown off.

MR. SLAGHT: We want to examine as to that minute book. 40

Re-cross-examined by MR. SLAGHT:

Q. Mr. Braden, you were already in the box this morning and undertook to have here for the inspection of the Court the original Minute Book of the Company—would you let me have it? A. Yes, I have the sheets here.

Q. These are loose sheets—where is the book itself? A. It is quite a large book, and I told Miss Fletcher to take the sheets out which referred to the Biggs matter, because it was a large book.

Q. I wanted to see it all. A. I thought it was only with regard to
10 the Biggs matter.

Q. It was understood by me that you were to have that Minute Book here after adjournment.

HIS LORDSHIP: Mr. Slaght, if the witness will state that the portions of the book he produces are all the portions relating to this matter and are all that you are entitled to—but of course it must be somebody who can speak to it.

WITNESS: You would have to get Miss Fletcher in the box. I asked her to give me every sheet that had anything to do with the Biggs matter.

HIS LORDSHIP: Leave those sheets with Mr. Slaght in the meantime,
20 and if he is not satisfied—

WITNESS: I do not know that they are quite in order. I am willing to have Miss Fletcher to come up.

Re-cross-examined by MR. SPRINGSTEEN:

Q. I wanted to ask Mr. Braden if he was familiar with the income from these particular buildings, and the carrying charges? A. I am having someone from the Huron & Erie come over and give evidence on that point.

Q. You are not personally familiar with that? A. No.

HIS LORDSHIP: Have you anything more to say to this witness?

WITNESS: There is just a correction I would like to make in what I
30 said. Mr. Slaght asked me if the Charter had been surrendered. The Charter had not been surrendered. I made enquiries since. The Charter of the London Loan was not—the London Loan did not operate under a Charter, it was not a Loan Society and under an old Act, 1877, and no application was made to surrender the Charter.

MR. SLAGHT: I am not prepared to accept that.

HIS LORDSHIP: You are not asked to accept it. I asked the question.

MR. SLAGHT: The position is this. I relied on what he said yesterday. I did not take any trouble to establish what he said yesterday was not accurate. Now today after this time has elapsed he is putting it differently.

HIS LORDSHIP: He did not put it positively. He said he thought it
40 had been surrendered, but that was not evidence. He did not profess to know

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as to the matter personally. The matter stood just as it was yesterday. There was no evidence that it had been surrendered.

Re-examined by MR. WALSH:

Q. Now, Mr. Braden, will you let me see, and put in as an Exhibit, the guarantee by the London Loan & Savings Company of these mortgages to the Consolidated Trusts? A. The Consolidated Trusts and the London Loan?

Q. Yes. A. Here it is, agreement—

HIS LORDSHIP: That is Exhibit CC.

This was when the Consolidated Trusts advanced the money for the two mortgages? 10

MR. WALSH: Yes, my Lord, it is a guarantee on both mortgages dated 31st December, 1927.

HIS LORDSHIP: To guarantee payments on these mortgages.

MR. SPRINGSTEEN: From the London Loan?

MR. WALSH: From the London Loan to the Consolidated Trusts.

Q. Now, Mr. Braden, in connection with the Insurance Policies we have put in on the Reference, I think they were, and we won't have to go back? A. I have them here, I think they were.

HIS LORDSHIP: Does it make any difference?

MR. WALSH: Q. Were they not on the Reference? A. I do not think 20 they were, they are not marked.

HIS LORDSHIP: As I understand, the Insurance policies were given, and Biggs gave his promissory for the first premium, and the promissory was not paid, and the policies were cancelled—I suppose there was nothing further about that—

MR. WALSH: He never continued the insurance? A. He never considered—

Q. There is a record, I want to add, that is a bill by Mr. Brickenden to Mr. Biggs.

MR. SPRINGSTEEN: Is he putting them in? 30

HIS LORDSHIP: They have not been put in.

MR. WALSH: W. H. Biggs, Esq., Account with G. A. P. Brickenden, re Mortgage to London Loan, "to drawing mortgage \$12,000, examining title, \$60, commission getting loan \$120; disbursements \$13.85, a total of \$193.85 in connection with the Ridout Street—"

HIS LORDSHIP: That is in connection with the \$13,500 mortgage?

MR. WALSH: No, the \$12,000 mortgage.

HIS LORDSHIP: What is this?

MR. WALSH: Brickenden's bill to Biggs re mortgage.

MR. SPRINGSTEEN: The commission was what? 40

MR. WALSH: \$120.

MR. SLAGHT: It was a bill against the London Loan or Biggs?

MR. WALSH: Against Biggs.

MR. SLAGHT: It comes from the custody of the London Loan? A. No, from the Biggs.

HIS LORDSHIP: It was put in on the Reference—what Exhibit?

MR. WALSH: It was called 9.

HIS LORDSHIP: It will be 9R.

—EXHIBIT 9R: Account by G. A. P. Brickenden against W. H. Biggs re \$12,000 mortgage Ridout Street \$193.85.

MR. WALSH: Q. Now, Mr. Braden, at the time you were telling His Lordship yesterday of a meeting of the London Loan and Savings Company when Mr. Kent was present? A. Yes.

Q. And you said Mr. McCormick was there? A. Mr. McCormick, Mr. Brickenden, Mr. H. A. Morine—

Q. Can you tell us what Mr. McCormick stated?

HIS LORDSHIP: When was this meeting?

WITNESS: February 27th, my Lord.

Mr. McCormick very vigorously defended the policy of the old Board, defended the investment including the Biggs' mortgages which were specifically referred to at that meeting.

MR. SLAGHT: Is this in reply? I did not cross-examine on that meeting.

MR. WALSH: I would be very glad you should cross-examine. Both you and Mr. Springsteen asked questions that were close, and I never objected.

MR. SLAGHT: My objection is, it is not reply.

HIS LORDSHIP: I won't be disposed to grant too much indulgence, Mr. Walsh.

MR. WALSH: That is the only one I will ask, my Lord.

Q. What was said, Mr. Braden? A. I said, Mr. McCormick very vigorously defended the loans that were attacked, and amongst the loans that were attacked were these Biggs loans. There were a number of others, I do not need to refer to them here. He said there would be no loss on any of these loans, and the investments of the company were in good order. Mr. Kent was present at that meeting. That was the meeting when he attempted to gain control of the company.

MR. WALSH: Q. Mr. Morine says he cannot hear you. A. That was the meeting at which Mr. Kent attempted to gain control of the company, February 27th.

Q. That was the meeting at which you told His Lordship that Mr. Kent objected to the investments? A. Yes.

Q. Including these Biggs mortgages? A. Yes, and there were a great number of investments. This was one of the large loans.

HIS LORDSHIP: All right. That is all then.

MR. SLAGHT: I understood I was to cross-examine, my Lord.

HIS LORDSHIP: Yes, certainly.

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Re-cross-examined by MR. SLAGHT:

Q. Mr. McCormick vigorously defended the Biggs' loans, saying in his opinion there was plenty of security? A. Yes, in his opinion it was well secured.

Q. And there would be no loss? A. Yes.

Q. And so far it has not lost anything? A. The company has not been able to exercise its right. This injunction order was taken out or we would have known our loss.

MR. WALSH: Is there any doubt there will be loss?

HIS LORDSHIP: You have got to prove that. 10

MR. SPRINGSTEEN: I was just going to ask about the Insurance policies.

HIS LORDSHIP: I thought they need not be put in.

MR. SPRINGSTEEN: If I have the dates.

HIS LORDSHIP: If you have them there, put in the Insurance Policies.

Q. Were they used on the Reference? A. I think they were produced on the Reference, but whether they went in or not—I do not think they went in, my Lord.

MR. WALSH: The dates of the policies.

HIS LORDSHIP: Never mind the dates. Put them in. A. There is one of the London Life. 20

HIS LORDSHIP: How many are there? A. Four or five, five altogether.

MR. WALSH: Q. Any more? A. Here is a mortgage which did not go in yesterday. I wondered why, it went in on the Reference.

HIS LORDSHIP: Those policies will go in, as Exhibit DD, five policies.

—EXHIBIT DD: Five policies on the life of W. H. Biggs, three policies in Great West Life Insurance Company, and two policies in London Life.

WITNESS: Here are two other mortgages. I thought they all went in yesterday, Mr. Walsh, these are some of the collateral mortgages which may have been handed back to me. One of these mortgages might have been 30 handed back to me yesterday and I put them with the papers.

MR. WALSH: Mr. Braden says there are a couple of mortgages, they may have been handed back to him yesterday. A. I thought they were in.

HIS LORDSHIP: Get them in now.

MR. WALSH: They are Exhibits—

HIS LORDSHIP: Just state what they are, you had better give them in their order of dates if you can, please.

MR. WALSH: I will, your Lordship: They look to me to be collateral mortgages. The first one is dated the 8th day of November, 1924. 40

HIS LORDSHIP: Are these all Biggs mortgages?

MR. WALSH: Yes, your Lordship:

The 8th November, 1924, Eva V. Biggs to the London Loan, Exhibit 4R.

HIS LORDSHIP: How much is it for? A. \$13,500.

MR. SPRINGSTEEN: That is a collateral mortgage.

MR. WALSH: The next one is dated 1st December, 1927, Eva V. Biggs to Consolidated Trusts, had been marked Exhibit 7.

HIS LORDSHIP: That will be 7R, the same amount?

MR. WALSH: \$20,000, 7R.

And the next one is dated the same date, December 1st, 1927, Walter Herbert Biggs to the Consolidated Trusts Corporation, \$20,000, that is Exhibit 6 on the Reference.

HIS LORDSHIP: That will be 6R.

10 —EXHIBIT 4R. Mortgage E. V. Biggs to London Loan, dated 8th November, 1924, registered number 19479 for \$13,500.

—EXHIBIT 6R: Mortgage W. H. Biggs to Consolidated Trusts Corporation dated 1st December, 1927, registered number 23113, \$20,000.

—EXHIBIT 7R: Mortgage dated 1st December, 1927, E. V. Biggs to Consolidated Trusts Corporation, registered number 23114, \$20,000.

MR. WALSH: Any others?

A. There is a cheque. I do not understand. Mr. Slaght asked me this morning for the \$33,000 cheque which was supposed to represent the moneys paid to the London Loan. Then I found another cheque, W. H. 20 Biggs and Eva Biggs for \$13,600.

HIS LORDSHIP: That is the second of the Consolidated Trust mortgages?

A. I thought everything was in. One cheque when Mr. Slaght asked me to give him a cheque for \$33,000 and I find another one here for an additional amount of \$13,600.

MR. SLAGHT: Was that endorsed and went through the bank? A. Yes, it was endorsed and went through the bank—let me see, no, it did not.

MR. SLAGHT: It never was used, the whole \$33,000. This is about—

HIS LORDSHIP: It might be only a voucher.

MR. SLAGHT: It should have been marked cancelled.

30 HIS LORDSHIP: If we do not get Mr. Braden out of the box we will never get through.

A. I am sorry to have monopolized so much time, your Lordship.

HIS LORDSHIP: It is not your fault. All right, Mr. Braden, I think, if you are wanted again you can return.

MR. WALSH: These are the rest of the Exhibits on the Reference. They should be all kept together.

HIS LORDSHIP: What next, Mr. Walsh?

MR. WALSH: I wish to read now, as your Lordship has the facts, the Examination for Discovery of G. A. P. Brickenden. This Examination was 40 taken on the 4th December, 1929. I think this is the logical place for this. They have to be read some time.

HIS LORDSHIP: Is Mr. Brickenden to be called as a witness?

MR. SLAGHT: I cannot possibly determine that, my Lord. If there is no better case against him than there is now he will certainly not be called.

HIS LORDSHIP: I had better not interfere with Mr. Walsh.

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Brickenden,
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Of course, putting it in in this way, it is only evidence against Brickenden.

MR. WALSH: I understand, your Lordship, we will hear him later in cross-examination, and we will have this first installment.

"Q. 1. Mr. Brickenden, you are the defendant, I take it, G. A. P. Brickenden, in this action? A. I am the defendant.

"4. Q. I see in paragraph 26 of your statement of Defence you say you are the sole partner of the firm of G. A. P. Brickenden & Co. A. The point I was talking about, these barristers were in my office.

"5. Q. Who is the partner? A. I am the partner. 10

"6. Q. The sole proprietor? A. Of G. A. P. Brickenden & Co.

"9. Q. Now, Mr. Brickenden, you are solicitor for the London Loan and Savings Co. and the Consolidated Trusts? A. I have been.

"10. Q. When did you start to be solicitor for them? A. I haven't the date.

"11. Q. Approximately? A. I haven't the date—somewhere in 1920.

"12. Q. Were you solicitor when the first mortgage was taken by the London Loan in this matter in 1922? A. I was general solicitor for the London Loan in 1922.

"19. Q. Now, George G. McCormick, what relation is he to you? A. 20
My father-in-law.

"20. Q. And what position did he occupy in the London Loan and Savings Co., when you were employed as general solicitor. A. As what?

"21. Q. General solicitor? A. President.

"23. Q. And your father-in-law was a holder of a very large block of shares? A. Yes, he was.

"28. Q. Did you know Mr. Biggs and Mrs. Biggs, the plaintiffs in this action? A. I know Mr. Biggs and have met Mrs. Biggs.

"33. Q. Did you do legal work for him? A. I may have.

"34. Q. Did you? A. I may have around that time. 30

"35. Q. Tell me what you did previous to the time of this mortgage? A. I presume you don't mind me refreshing my memory from the ledger sheets, this is eight years ago.

"36. Q. I hope your books will show everything; the ledger sheets show all your dealings with Mr. Biggs? A. I think so.

"37. Q. When does it start? A. 4th November, 1921.

"38. Q. What did you do for him then? A. I revised a lease for Mr. Biggs.

"39. Q. When next after that? A. On the 10th of June we handed a cheque over to Mr. Biggs from Mr. Samuel Baker, I don't recall the trans- 40
action.

"40. Q. You acted for Mr. Biggs as solicitor in both cases? A. I don't remember what that is; we charged him \$2.00 for revising the lease.

"41. Q. You were his lawyer whether you charged him two or two hundred dollars? A. Yes.

"53. Q. You are pretty well conversant with the Biggs property? A. Yes.

- "54. Q. Certainly you are? A. Yes.
- "55. Q. You put a mortgage on his property? A. Yes.
- "56. Q. You put a mortgage on to G. A. P. Brickenden, in Trust; that is yourself? A. Yes.
- "61. Q. What is the next business you did for Mr. Biggs? A. November 14th, London Loan; marked fees \$80.00 mortgage.
- "62. Q. That is the London Loan Mortgage? A. That is the \$18,000 mortgage.
- 10 "63. Q. Now what property is it on? A. That would be on 114 Elmwood; it is the corner, whatever that is.
- "66. Q. Now the mortgage that you say you got \$80.00 fees on, that was the \$18,000 mortgage? A. I think so.
- "67. Q. That was 114; was that to be a first mortgage? A. That was a first mortgage.
- "68. Q. Did you see the property at 114 Elmwood before the mortgage was put on? A. I don't remember whether I did or not.
- "69. Q. Was there any application made by Mr. Biggs for that mortgage? A. Mr. Biggs applied to our office for a mortgage.
- 20 "70. Q. How did he come to go to your office? A. Because we had done some work for him before.
- "71. Q. Do you know, did he make an application to you? A. I don't know whether it was ever put in writing but a verbal application was made to me.
- "72. Q. For how much? A. \$18,000; that was the amount settled on.
- "87. Q. The bonus you got on it? A. I got?
- "88. Q. Yes? A. I got a commission of \$360.00; how it was made up I don't recall.
- 30 "89. Q. You got a commission from them? A. Yes.
- "90. Q. How did you get a commission from them? A. I can't recall.
- "91. Q. Did you get a commission from every loan to the London Loan and Savings Co.? A. No.
- "92. Q. Why did you get it here? A. Because I asked for it.
- "93. Q. Why did you ask for it? A. Because I wanted it.
- "94. Q. Why did you want it? A. For the same reason you keep your office open.
- "95. Q. Why? A. Because the London Loan was getting a handsome bonus and I thought I should get a commission.
- 40 "101. Q. Up to the time that bonus was paid who was on the Board of the London Loan and Savings Co.? A. Mr. Robinson, Mr. Hunt, Mr. Kent, Mr. Baker and Mr. McCormick.
- "102. Q. Take them in order; did Mr. McCormick know you got \$360.00 bonus? A. I don't think so.
- "103. Q. Did you ever tell him? A. I don't think so; I would tell Mr. Kent and he would naturally instruct his Board.

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"104. Q. You know that Mr. Kent is dead? A. I heard so.

"105. Q. And you know one of the many rows in connection with the London Loan is that Mr. Kent objected to the bonuses you received. A. No.

"106. Q. It was the dissatisfaction of Mr. Kent that arose from what he considered improper bonuses and fees? A. I can't say that.

"107. Q. You heard that was his complaint? A. That is not evidence.

"108. Q. You heard that? A. I heard Mr. Braden said that.

"109. Q. Now, Mr. Brickenden, Mr. Baker would be the next member of the Board; did Mr. Baker know you got \$360.00? A. I can't tell 10 you.

"110. Q. Did you tell him? A. I don't think I told him; I wouldn't likely see him.

"111. Q. Did Mr. Robinson know? A. I have no idea; I presume Mr. Kent told them.

"112. Q. Did you tell them? A. Not that I know of.

"113. Q. Did you tell him or not? A. Not that I know of.

"114. Q. Now Mr. Hunt; did you tell Mr. Hunt? A. Not that I know of.

"115. Q. Then the only person that knew you got the bonus or com- 20 mission in this matter was Mr. Kent? A. I don't know.

"121. Q. Is 2% a legitimate rate? A. I am not saying I got 2%. I got, I said, \$360 commission.

"122. Q. Meeting of the Board of Directors, November 13th, W. H. Biggs: "lend \$18,000 at 7½% for 6 years with 2% bonus: no commission". Now you read that? A. Yes.

"123. Q. And it is quite clear from this, Minutes of the Board, November 13th, W. H. Biggs, Lend \$18,000 at 7½% for 6 years with 2% bonus. That shows that the Board didn't know that you were getting a commission? A. No, it doesn't. 30

"124. Q. What does it show? A. An entry made by Mr. Kent in the Minutes; it might have been changed subsequently.

"125. Q. Changed subsequently? A. Yes.

"126. Q. Can you show me any change subsequently? A. No.

"131. Q. Now you have divided the company's bonus, the London Loan and Savings Co. bonus, you divided 50-50? A. Apparently in that case I got \$360.00.

"140. Q. Now the money from this \$18,000 loan, it was to be used in the construction, alteration or improvement of the building on the land; that is what the money was to be used for? A. I think so; I would prefer 40 to have the document before me.

"144. Q. Do you know if the buildings were completed according to the arrangement? A. I can't say definitely; I don't know.

"145. Q. Did you go up and see them? A. I have seen them.

"146. Q. When did you see this building, 114 Elmwood Ave.? A. I can't tell you.

"147. Q. Have you seen it more than once? A. Yes.

"148. Q. How many times? A. I don't know.

"149. Q. Now when was the next mortgage you put on after the \$18,000 mortgage? A. November, 1923, I think, if you will let me see the abstract I can tell you.

"150. Q. Did you not put a mortgage on in 1922, in December, for \$3,000? A. We put one on after; I think there is one for \$3,000.

"151. Q. Have you any record of one being put on December 11th, 1922? A. No, I have no record here of that.

10 "152. Q. No. 17013; 11 Dec., 1922; and registered the 11th day of December, 1922; Walter H. Biggs to the London Loan and Savings for \$3,000 on part lot 11, Block "B"; Plan 343? A. Let me see the mortgage, please.

"153. Q. Do you want the Abstract? A. Anything to give me a record; I can't remember seven years back.

"154. Q. Do you remember that mortgage? A. It was drawn in our office I believe.

"155. Q. What was that mortgage? A. The mortgage will speak for itself; I think it is set out in the mortgage itself; (Ex. 4 on Reference).

20 "This mortgage is given as collateral security to a mortgage from Walter Herbert Biggs and wife to the London Loan and Savings Co. dated the 14th day of November, 1922, and registered in the Registry Office for the Registry Division of the City of London as Number 16914. It is hereby agreed that no interest is to be paid under this mortgage unless and until default is made under mortgage 16914 aforesaid, and the mortgagee will discharge this mortgage upon the request of the mortgagor? A. At any time, after the completion of the building now started to be built on the adjoining property covered by Mortgage Number 16914.

"156. Q. That is a collateral mortgage to the \$18,000 mortgage? A. I presume until the building was completed.

30 "157. Q. And this \$3,000 mortgage was on the premises 116 Elmwood Ave., on which Mr. Barrell had mortgages totalling \$7,000 against it? A. Yes.

"158. Q. And this was subsequent to this mortgage of Mr. Barrell's? A. I am not sure.

"159. Q. Isn't it clear from the abstract when you see the description of the Barrell property at the top?

A. It appears to be on the same property as Mr. Barrell's.

"160. Q. You had to report on that security before the \$18,000 mortgage would be confirmed? A. No, we didn't have to.

40 "161. Q. They wouldn't agree unless this security for \$3,000 was given? A. I can't remember; these documents would speak for themselves.

"162. Q. There is a meeting on Monday, December 11th, W. H. Biggs; "Solicitor reports extra security obtained"; Is that your recollection of that matter? A. I presume that is it.

"163. Q. Was there some difference by the Board about advancing it? A. I don't know; after it was passed by Mr. Kent I wouldn't know anything about it.

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"164. Q. What is your idea of putting the blame on Mr. Kent? A. Because he was the Manager of the Board I was doing business with; I am not trying to blame Mr. Kent in any way.

"165. Q. Now there was some difficulty in advancing the money, some members of the Board objected? A. I don't know.

"166. Did you ever hear of any? A. On the examination at the Reference I did.

"167. Q. You knew at the time? A. No, I didn't; I don't recall any.

"168. Q. Do you know when that money was advanced on this mortgage? A. I have no idea. 10

"169. Q. Do you know when the last was advanced? A. No, but the company would.

"170. Q. 13th July, 1923; W. H. Biggs and wife make a mortgage to G. A. P. Brickenden in Trust for \$5,000 on the southerly 94 feet 6 in. of Lot 11; Block "B"; plan 343, that would be what house number; mortgage No. 177837? A. I can't tell you; the abstract will tell.

"171. Q. You took a mortgage on the southerly 94 feet 6 inches of Lot 11; can't you tell me what the house number is; do you recollect, Mr. Brickenden? A. I think this was put on after the \$18,000 loan; after the house was completed, it must have been, it is the following year; I presume 20 it was taken on that property laterly secured by other property available.

"172. Q. What property was that; 116 Elmwood Avenue? A. I think there were other mortgages before that; I think there was a collateral before that on other property; the two mortgages were on the same date.

"173. Q. Look at the Abstract? A. Yes, there was another registered on the same date as collateral to that loan.

"174. Q. What is the number of that? A. No. 17783 was registered against several properties; on 116 and also other properties; this mortgage was registered against two properties.

"175. Q. It was registered against 114-116 Elmwood Avenue and 30 another property added on Cathcart St.? A. There are two parcels mentioned here.

"176. Q. As mortgagee you should be able to say quickly?"

Mr. Slaght objects; after seven years.

"177. Q. How many properties, the street numbers covered by this \$5,000 mortgage? A. I can't recall all of them.

"178. Q. 114-116 are on there? A. It is there in pencil; it wasn't registered on there.

"179. Q. Does that bring anything to your mind? A. I think it was on all the property he had. 40

"180. Q. On Elmwood Ave.? A. I think so.

"181. Q. Did you advance this \$5,000? A. I think I got a bonus on that; I imagine I advanced the \$5,000 and got back a bonus.

"182. Q. Of how much? A. \$1,000.

"183. Q. Look at your ledger sheet? A. Mr. Biggs is not disputing that mortgage.

"184. Q. Have you got the ledger sheet there? A. I have the record here.

"185. Q. Will you let me see your record? A. Yes.

"186. Q. That is the original record? A. Yes, I thought it had been destroyed.

"187. Q. "Biggs, Walter H., \$5,000 second mortgage on 114-112 Elmwood Avenue; 1000 bonus; coll. secured by Mrs. Biggs on Ridout Street property". Now this your original ledger sheet? A. I think so.

10 "188. Q. How did it happen to be torn out? A. There was a sheet in the front of each file on which a reference would be made; I explained that before.

"189. Q. Where is your ledger sheet? A. That was advanced by me.

"190. Q. Did you pay Mr. Biggs by cheques? A. I don't know.

"191. Q. Where would the entry show? A. I don't think I have anything but that.

"192. Q. You kept a set of books? A. Yes, but that was private, not the office.

20 "193. Q. Did the money come out of your personal account or the account of G. A. P. Brickenden & Co.? A. I don't know."

MR. SLAGHT: I interrupt to suggest that this is not one of the mortgages attacked.

MR. BRICKENDEN: Attacked by you but not by Mr. Biggs.

MR. WALSH: It is one of the mortgages in question.

MR. SLAGHT: I still object and state that it is not.

"194. Q. Now you gave him a cheque for how much out of that loan of \$5,000? A. I don't know whether I gave him the \$5,000 and got the bonus back or took it out first."

MR. WALSH: That is the bonus of \$1,000—

30 MR. SLAGHT: Just a moment—all this that is now being read I submit is irrelevant in the action and not admissible, with deference. When I say "all this", I mean my friend has examined Mr. Brickenden on some mortgage out of three—

HIS LORDSHIP: Mortgage made to whom?

MR. SLAGHT: Mortgage made to him by Biggs and money loaned to him, not a third of these mortgages complained of were loaned, and I cannot see the relevancy of it.

HIS LORDSHIP: I must hear the whole story.

40 MR. WALSH: The mortgage of \$13,500 paid off these—with the bonus. —(On instruction of trial judge the remainder of the discussion not taken).

MR. WALSH: Then I will continue at questions 199 to 213.

"199. Q. Then I see there is another mortgage; that mortgage was to G. A. P. Brickenden, in Trust; why is it in trust? A. To G. A. P. Brickenden.

"200. Q. Why put on the words "in trust"? A. That was my business.

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"201. Q. But why; what was the purpose? A. No reason at all.

"202. Q. Then there is the next mortgage dated the 24th August, 1923, and registered 31st day of August, 1924, to G. A. P. Brickenden in Trust, for \$2,000. No. 17944; perhaps I had better give you the mortgage? A. Yes.

"203. Q. Was there any advance under that mortgage? A. There was.

"204. Q. How much? A. Apparently \$2,000.

"205. Q. Did you advance the whole amount? A. I am not sure; I haven't any recollection of a bonus; I know I received \$800 eventually for 10 it.

"206. Q. Who from? A. From Mr. Biggs.

"207. Q. Let us see that sheet? That \$2,000 was a further mortgage on the same property? A. I think it had other property; there are three parcels.

"208. Q. What is the third parcel? A. Something on Huron St., I think they had.

"209. Q. Walter Herbert Biggs; \$2,000. Third mortgage 114-112 Elmwood and collateral secured by 140 x 130 on north-east corner of St. George and Huron St., money advanced 24th August, interest payable quarterly, April-July-October-January 8%, due October 13th, 1924. Statement marked as Exhibit "3". 20

"210. Q. Now the interest on this was payable according to the statement? A. Yes.

"211. Q. Did you get the whole amount of principal on this mortgage? A. Yes.

"212. Q. The whole principal? A. I think I got the whole of it.

"213. Q. And the balance was paid to you according to this statement on October 13th, 1924? A. \$800.

"216. Q. And the interest was 8%? A. Yes." 30

MR. SLAGHT: Just a moment. You are skipping 215 which I should like to have you read, or I will read, relative to these questions.

MR. WALSH: I do not think it is relevant to these, I asked him.

MR. SLAGHT: Question 215 was asked by my friend, my Lord, he has skipped it.

HIS LORDSHIP: Read it, Mr. Slaght. Question 215.

MR. SLAGHT: "215. Q. You had no difficulty in getting your principal and interest? A. I don't think I had; everything was going very well for Mr. Biggs at the time".

MR. WALSH: "216. Q. And the interest was 8%? A. Yes. 40

"217. Q. Now the next is the 13th January; and registered 13th day of February; \$1,200 No. 18495. Did you get any bonus on that? A. The mortgage was for \$1,200 and I got \$300 bonus.

"218. Q. What is your recollection as to the bonus of the \$2,000? A. I can't recall.

"219. Q. Do you think you did? A. I think I did.

"220. Q. Do you get it from your records? A. No, it isn't here.

"221. Q. Your recollection is that you think you did get it? A. I think I did; on this \$1,200. It appears to be a bonus of \$300 and on its being paid off I received \$600.

"222. Q. Walter Herbert Biggs, \$1,200, 3rd mortgage; bonus, \$300, on 114-112 Elmwood and collaterally secured by Ridout and Emery Street property; Money advanced \$750 on February 9th, 1923; \$450 on February 16th, 1924; interest 8% quarterly; \$100 off principal monthly; then you have October 13th paid in full \$600; that would be like a fourth mortgage on that property? A. It might be put on in that form; in reality it was an additional advance to him.

Statement marked as Exhibit "4".

"223. Q. The next mortgage on the Abstract is dated November 8th, 1924, and registered the 12th November, 1924; W. H. Biggs to the London Loan and Savings for \$13,500; No. 19476? A. This isn't a complete abstract.

"224. Q. That mortgage for \$13,500 is the next entry there? A. I don't think so; I think the \$12,000 was put on next; about a year after the \$18,000.

"225. Q. But no part of the \$12,000 went to pay off your mortgage?
20 A. Oh no.

"226. Q. And the \$12,000 wasn't on the Elmwood Avenue property. A. I don't know; I know the original security was to be Ridout Street, but there might be a collateral to the Elmwood property; I still say it is not complete.

"227. Q. Were there two mortgages of \$12,000 or just one mortgage? A. I can't tell you.

"228. Q. The mortgage for \$13,500 dated November 8th, 1924; W. H. Biggs to the London Loan and Savings Co. No. 19476; just look at that mortgage, Mr. Brickenden, that mortgage covers what property? A. Part
30 of this mortgage covers two properties apparently.

"229. Q. What does it cover? A. The property on Ridout St. Three properties on Ridout Street and two properties on Elmwood Avenue.

"230. Q. No. 114-116 Elmwood? A. I think so; I think there were other mortgages taken for the \$13,500 too.

"231. Q. This \$13,500 mortgage No. 19477 is from Mrs. Biggs; is that right? A. It is set out "interest is to be calculated on the principal owing on the preceding interest day. The mortgagor to have the privilege of paying the whole or any part of the principal sum on any interest day; this mortgage is collateral to a mortgage of even date given Walter Herbert
40 Biggs to the London Loan and Savings Company of Canada".

"232. Q. We have on the 8th day of November, 1924, a mortgage to the London Loan and Savings Co. on all the property owned by Mr. and Mrs. Biggs? A. I think it contained all the property.

"233. Q. And at that time there was a first mortgage on 114 Elmwood Avenue of \$7,000 to Edwin Barrell? A. I don't think so.

"234. Q. \$7,000 on 114 Elmwood Avenue to Mr. Barrell followed by

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three mortgages to you on which there was owing \$5,000; \$800 and \$600 respectively? A. Which were paid off to give this loan priority.

"235. Q. And then there was to the Huron & Erie another mortgage for \$10,000 on the 15th of April, 1924? A. I think so.

"236. Q. And another mortgage to the London Loan & Savings Co. for \$12,000? A. This \$13,500 mortgage was to follow behind the London Loan mortgages for \$18,000 and \$12,000.

"237. Q. The \$12,000 was on it then? A. Our certificate of title will show that.

"238. Q. Look at your certificate of title? A. The date of the certificate of title was November 12th, 1924. 10

"239. Q. And what does it show? A. All mortgages to be removed except the mortgage to Edwin Barrell and the Huron & Erie.

"240. Q. So, as I said, the mortgages were to Barrell of \$7,000; The London Loan for \$18,000; collateral mortgage for \$3,000; mortgage to Chilton \$2,000; mortgage to London Loan for \$12,000; and Huron & Erie, \$10,000. A. I think the Chilton mortgage was paid off.

"241. Q. You say in that the mortgage to Whitfield Lancaster was discharged; is that right? A. Whatever the certificate of title says: I didn't do the actual work on it and don't recall. 20

"242. Q. I see a mortgage to Whitfield Lancaster for \$900 and that was undischarged? A. I presume that it was discharged.

"243. Q. There is nothing there showing it is discharged? A. It must be discharged.

"244. Q. Biggs says that it is not discharged; Mr. Lancaster, according to this abstract, has a mortgage for \$900; is that true? A. I don't know.

"245. Q. How many mortgages did Mr. Lancaster have? A. I haven't the faintest idea.

"246. Q. Who attended to this for you? A. Some member of our office. 30

"247. Q. Did Miss Harrison attend to it? A. I presume so.

"248. Q. When you put on the \$13,500 mortgage was the application made to you? A. Yes, I think it was.

"249. Q. Mr. Biggs came in to see you? A. I think so.

"250. Q. Did you have an application in writing? A. If we did it would be with the London Loan.

"251. Q. Do you recall an application in writing? A. I recall the verbal part only.

"252. Q. What did you do when he applied for the \$13,500? A. I told him I couldn't give it to him at this time for my money was invested 40 and he would have to get it from somebody else; I told him I couldn't take it. My money was invested.

"253. Q. Did you tell him you would try to take it to the London Loan? A. I don't know.

"254. Q. Did you take an application to the London Loan? A. I suppose Mr. Kent did.

"255. Q. Did you speak to Mr. Kent? A. I spoke to Mr. Kent.

"256. Q. For the \$13,500? A. Yes.

"257. Q. And you acted as solicitor for putting through the transaction? A. Yes.

"258. Q. Did you receive any bonus or commission? A. I received fees and commission; I received \$500 to cover fees and commission.

"259. Q. Have you anything there to show? A. The only thing I have is fees and disbursements, \$500.

"260. Q. What date is that? A. November 11th, 1924.

10 "261. Q. And you say that is the fees and disbursements you got from Mr. Biggs on putting through the \$13,500 loan? A. Right.

"262. Q. You acted for the London Loan at that time? A. We were solicitors at that time.

"263. Q. And you were looking after their interests? A. We did the legal work on the \$13,500 loan.

"264. Q. You were looking after the interests of the London Loan at that time? A. We were their solicitors.

"265. Q. And solicitors for Mr. Biggs also? A. Yes.

20 "266. Q. Now what part of that \$500 is disbursements? A. About \$8.85.

"267. Q. So there would be fees and commission of \$491.15? A. There might be other disbursements but it is not here.

"268. Q. What other disbursements? A. I presume some of these discharges.

"269. Q. That would be the legal fees? A. I don't recall.

"270. Q. You charged \$80 on the \$18,000 mortgage and the legal fees would be less on the \$13,500? A. I charged \$500.

30 "271. Q. If the legal fees were \$80 for the \$18,000 it would be less wouldn't it; what were the legal fees for the \$13,500? A. That would be according to the work.

"272. Q. The title was searched, wasn't it? A. Subsequently searched.

"273. Q. Your legal fees wouldn't be more than \$50? A. It depends on the work we did.

"274. Q. What work did you do? A. I don't know.

"275. Q. The bonus fees would be \$400? A. Fees and commission.

"276. Q. It was a bonus, wasn't it? A. I won't say.

"277. Q. When you strip it it is a bonus? A. I received \$500 and my records say fees and disbursements.

40 "278. Q. And that was the very loan out of which you got repaid your \$5,000, \$800 and \$600 mortgages? A. I am not sure whether the other loans were paid out of that; I think Mr. Biggs paid that himself; I think the \$5,000 one was paid out of it."

HIS LORDSHIP: That is question 278.

MR. WALSH: Then questions 303 to 309.

"303. Q. Tell me what you did to justify your fee of \$500? A. I accepted my money and applied for a loan for him and got it.

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"304. Q. You got \$500 for accepting your money? A. I don't think so; I got \$500 for fees and disbursements.

"305. Q. It wasn't for paying the mortgage, he could pay your mortgage off? A. That is true."

MR. SLAGHT: Without bonus? A. Yes.

"306. Q. It wasn't for that, Mr. Brickenden? A. I just said I got fees and disbursements.

"307. Q. Wasn't it because he couldn't get the money elsewhere and had to pay this bonus? A. This \$13,500 really made an advance, an additional advance on their first mortgage. 10

"308. Q. And he was paying you \$500 for a purpose? A. Yes.

"309. Q. And the purpose was to get the loan? Wasn't it? A. I presume so."

"377. Q. Now I notice by a mortgage dated the 27th January, 1923, and registered the 6th day of February, 1923, as number 17155, Eva V. Biggs made a mortgage to the London Loan & Savings Co. for \$12,000; did you have anything to do with that? A. I applied to Mr. Kent for it.

"378. Q. Who came to see you about it? A. Mr. Biggs.

"379. Q. What did he say to you? A. He asked if I would care to secure a loan for him of \$12,000. 20

"380. Q. On what property? A. On Ridout St.

"381. Q. What place was that? A. The mortgage will speak for itself; lots 18-19 on the west side of Ridout St. Plan 399.

"382. Q. What was the house number? A. I don't recall, I can't tell you, "save and except the westerly 60 feet of lot 19."

"383. Q. Did he give you the street number at the time? A. I don't know.

"384. Q. Did he give you a written application? A. I don't recall; he would likely give Mr. Kent one at the time.

"385. Q. Did he give you any? A. I don't recall. 30

"386. Q. What was it to be used for, this loan of \$12,000? A. I have no idea.

"390. Q. What did you receive? A. I received fees and disbursements from Mr. Biggs including commission of \$120 amounting to \$193.85 which included a commission of 1% from Mr. Biggs; I have no record whatever of receiving anything from the London Loan; I guess Mr. Kent never gave it to me.

"392. Q. Did you apply for the loan? A. Yes, to the London Loan.

"393. Q. On behalf of Mrs. Biggs? A. Yes, by Mr. Biggs.

"394. Q. You sent your account to Mr. Biggs; to drawing mortgage \$12,000, examination of title; attendance, etc., \$60.00; a total of \$193.85? A. Yes. 40

"395. Q. Who acted as solicitor for the company? A. I was requested to act.

"401. Q. The Minutes of January 22nd, 1923; Board met; all present; Mrs. Eva V. Biggs, loan \$12,000 &c. No commission, what do you say

to that? A. It if says that it must be right; I can't say it is right; the way that was originally put up by Mr. Kent need not necessarily be the way it was completed".

MR. WALSH: Question 406.

MR. SLAGHT: Wait a moment now.

HIS LORDSHIP: Mr. Slaght may read questions 402 and 403.

MR. SLAGHT: "402. Q. Anyway you were not to get a commission?

A. I agreed with Mr. Kent that I should get a commission.

"403. Q. What were you to get? A. 1%."

10 MR. WALSH: Then question 406. "406. Q. You knew after this mortgage of \$12,000 in January, 1923, that Mr. Biggs was applying for more money? A. He applied for \$13,500.

"408. Q. The Minutes of the Board Meeting, Monday, March 19th, W. H. Biggs \$8,400; laid over; did you know he applied for that? A. I can't recall that.

"409. Q. Do you know that on May 21st, another application came up for Mr. Biggs? A. Mr. Biggs asked for the release of a vacant lot.

"410. Q. Do you remember that? A. I don't recall it now.

20 "411. Q. On June 12th, 1923; W. H. Biggs asks for increase; declined to increase loan? A. I don't recall it; Mr. Biggs dealt a great deal with Mr. Kent outside me.

"412. Q. On June 12th, 1923; you didn't know he asked for an increase and was declined? A. I don't remember.

"413. Q. Do you swear you didn't know? A. I can't remember.

"414. Q. On the 13th of June, he borrowed from you \$5,000 and \$1,000 bonus; did you know at that time he was at the London Loan and couldn't get it? A. I can't remember.

30 "415. Q. You should remember; it is in the Minute Book and came up at the meeting of June 12th, and he couldn't get it from the Board and you, on the next day, took a mortgage for \$5,000; do you say you didn't know he was turned down by the Board? A. I don't remember it; it is too long ago.

"416. Q. You won't say one way or another? A. I don't remember.

"417. Q. September 4th, 1923; W. H. Biggs; \$6,500; declined for that amount. Do you know about that? A. I don't know; that might be for an increase on the existing mortgages.

"418. Q. You made an application for that and were turned down? A. I can't recall.

40 "419. Q. Then we have November 11th, 1924, W. H. Biggs, \$13,500 wanted, laid over; do you know whether it came before the Board? A. I know I applied to Mr. Kent but I don't know whether it came before the Board.

"420. Q. Why was it laid over from November 11th, to November 18th? A. You will have to ask one of the Directors.

"421. Q. It says, lend; W. H. and Eva Biggs; lend \$13,500 at 8%;

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No. 16.
Extracts from
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—continued.

bonus \$1,000, what took place between the 7th and 11th? A. All I know is I applied to Mr. Kent.

"422. Q. Do you remember speaking to Mr. McCormick about it? A. I can't recall.

"423. Q. Did you speak to Mr. McCormick about it? A. I can't recall.

"424. Q. Did you speak to Mr. Baker about it? A. Only to the Manager that I recall.

"425. Q. The London Loan for some reason or other were not entertaining Biggs loans between certain dates? A. I don't know. 10

"427. Q. There was a reason why a commission should be paid? A. I don't know.

"327. Q.——"

MR. WALSH: There is evidently a mistake in the numbering of this, instead of 427 they call it 327—there is a mistake of one hundred in the numbering—from 327 to 331 of the wrong numbering.

"327. Q. Wasn't there a reason for paying a commission when they were turning him down? A. They weren't long discharging my mortgages.

"328. Q. Mr. Biggs paid you \$500 legal fees and commission? A. I 20 presume he did.

"329. Q. And after being turned down for several loans he was then able to get it? A. I don't know anything about the Minutes.

"330. Q. Do you want to see the Minutes? A. I don't care what you put in the Minutes.

"331. Q. Your father-in-law was President and you were solicitor; they are your own Minutes? A. Not at all; I was merely the solicitor".

MR. WALSH: Then question 526 to 543 inclusive.

"526. Q. Well, Mr. Biggs threatened to sue you for the return of the bonus or commission? A. That is right. 30

"527. Q. Have you that letter with you? A. July 2nd, I received a letter from Miss Harrison's office.

"528. Q. May I see it, Mr. Brickenden? A. I will furnish a copy if necessary.

"529. Q. I have a letter from Miss Harrison dated July 2nd, 1922, addressed to yourself; "Dear Mr. Brickenden", etc. You got that letter? A. Yes.

"530. Q. And it was unsigned? A. That is the way I got it. "Letter, July 2nd, marked as Exhibit 10".

"531. Q. Where is your reply? A. I think we phoned about the 40 settlement.

"532. Q. What did you arrange? A. \$1,000; Mr. McMillan arranged it and I saw Miss Harrison several times.

"533. Q. Why did you pay the \$1,000 back? A. Just what that letter and subsequent letters say.

"534. Q. Let me see the letters? A. I don't want to put them in.

"535. Q. Letter, July 11th; Miss Harrison to G. A. P. Brickenden; in this letter to Miss Harrison to you there is a complaint about the \$500 paid you in connection with the \$13,500 mortgage? A. That is what the letter says.

"536. Q. And in the letter of July 12th they ask for the Wilcox one; what is that? A. I don't know.

"537. Q. What did you make a settlement for? A. \$1,000.

"538. Q. Have you the agreement? A. It is right there.

"539. Q. Who drew this up? A. I presume between Mr. McMillan
10 and Miss Harrison.

"540. Q. Did you read it over? A. I did.

"541. Q. Was it correct? A. I presume so; that agreement was put in on the Reference.

"542. Q. This release mentions about 618 Talbot St.; what is that? A. That is the property he bought from Brickenden & McCrimmon and subsequently sold to a man named Sherry.

"543. Q. "That you had an unascertained amount", &c.; what was that? A. That would be legal fees."

MR. WALSH: Your Lordship, I want to put that release agreement in
20 now. It was identified on the Reference.

MR. SPRINGSTEEN: That was question 543?

MR. WALSH: At question 543.

Have you the original there, Mr. Slaght, I have a copy.

MR. SLAGHT: Put in the copy. This is all subject to my objection, it is not relevant, but His Lordship takes it subject to my objection. This agreement will be the same way.

MR. WALSH: Agreement between Biggs and Brickenden of the 16th July, 1929, and it settles the matter, I think it settles the matter.

HIS LORDSHIP: That will be Exhibit EE.

30 ——EXHIBIT EE. Agreement dated 16th July, 1929, between W. H. Biggs and Eva Viola Biggs and G. A. P. Brickenden.

MR. SLAGHT: Are the signatures copies on there?

MR. WALSH: Yes, my Lord. This agreement is as follows.

"Dated the 16th July, 1922, William Herbert Biggs and Eva Viola Biggs, his wife, of the first part, and George Arthur Porte Brickenden of the second part.

"Whereas the parties of the first part claimed as mortgagors to have overpaid the party of the second part in satisfaction of mortgages given by them to the party of the second part and registered in the Registry Office for
40 the Registry Division for the City of London as numbers 17782, 17783, 17944, 17945, 18494 and 18495 by way of bonuses and contrary to the provisions of the Interest Act R.S.O. 1927, chap. 102, and also claims to have overpaid the party of the second part in respect of certain commissions and bills of costs for concession obtained and services rendered for and to the said parties of the first part by the said party of the second part, and whereas the party

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of the second part claims a further unsatisfied bill of costs for services rendered to the parties of the first part and also to have a personal claim for an unascertained amount against the parties of the first part arising out of certain dealings in connection with the property known as 618 Talbot Street, London''—

HIS LORDSHIP: I suppose you can put it in. You have read enough to show what it is about.

MR. WALSH: That is all from Mr. Brickenden's examination.

HIS LORDSHIP: You have read down to and including question 543?

MR. WALSH: Yes, your Lordship.

MR. WALSH: I will call Mr. Hunt.

10

Plaintiffs'
Evidence.
No. 17.
Charles R.
Hunt,
Examination,
8th May, 1930.

CHARLES R. HUNT—Sworn. Examined by MR. WALSH.

MR. WALSH: I was just considering, your Lordship, there is a witness here from Grimsby, who is very anxious to get away, and I was wondering if perhaps a little out of turn I could call him and let him go—with your Lordship's approval, I will call the other witness first.

HIS LORDSHIP: You may call him. I do not care what order they are in.

Plaintiffs'
Evidence.
No. 18.
Orlando
Oldfield,
Examination,
8th May, 1930.

ORLANDO OLDFIELD—Sworn. Examined by MR. WALSH.

Q. Mr. Oldfield, where do you live? A. At Grimsby.

Q. At Grimsby, and do you know—what kind of a business do you 20
conduct? A. A Florist's establishment.

Q. A Florist's establishment? A. Yes.

Q. And did you ever apply for a loan to the London Loan & Savings
Company? A. I did, sir.

Q. And who did you see? A. I first went to the London Loan & Sav-
ings, their office, and they directed me to their solicitor, Mr. Brickenden.

Q. And did you see Mr. Brickenden? A. I did.

MR. SLAGHT: I do not know what this has to do with the matter un-
less it has to do with these properties in this way. I do not want to object
continually. If this is some other transaction, outside entirely, I am not 30
going to sit here quietly.

MR. WALSH: I submit it is admissible.

MR. SPRINGSTEEN: I also lodge my objection. I do not know what it
has to do with it.

HIS LORDSHIP: Go on with the next question.

MR. WALSH: Q. Tell us what procedure—

HIS LORDSHIP: But would procedure between Biggs and Brickenden
have anything to do with this?

MR. WALSH: Not directly with Biggs, but I submit in this sense, he
applied for a loan and my contention as to this evidence being admissible 40
goes to the question of commission.

HIS LORDSHIP: Well, what about it? Suppose he accepted a commission from this man, what difference does that make?

MR. WALSH: If I could show that was the policy on loans, it was a habit or custom of doing, on all the loans, of getting commissions and the amount of commissions.

HIS LORDSHIP: What difference does that make?

MR. SLAGHT: Every solicitor in the country——

MR. WALSH: Pardon me, not every solicitor.

HIS LORDSHIP: What difference does that make if it was the habit of
10 either the company or Brickenden to exact commissions?

MR. WALSH: It was not the habit of the company, but the habit of the solicitor.

MR. SLAGHT: It was the habit of the company and proven by you.

HIS LORDSHIP: What difference would it make if it was illegal and improper in the case of Biggs, how much would you have that strengthened by showing that he did it with somebody else?

MR. WALSH: I just want to show your Lordship that that was——

HIS LORDSHIP: It is not a matter of motive, you know, it makes no difference what the motive was—of course the motive was to get commissions.

MR. WALSH: And incidentally, your Lordship, it just limited the com-
20 pany to that, to this class of securities.

HIS LORDSHIP: I am not investigating the reasons for liquidating of this company. We are only investigating matters that are matters of record in this case.

MR. WALSH: I am producing that evidence, or tendering it in any event that on the size of the commissions on the loans, and that the loan could not be obtainable elsewhere.

MR. SLAGHT: Now my friend has taken——

MR. WALSH: I am not making any statement that I cannot prove to
30 the utmost.

HIS LORDSHIP: It does not make any difference about Mr. Walsh's statements. They are not evidence.

How can you hope to get in something, as a practise to do with this case?

MR. WALSH: In this sense, they could not get the loan elsewhere, and he says he applied to the solicitor of this company, and there was a commission paid.

HIS LORDSHIP: Suppose that was it—what difference does that make?

MR. WALSH: I say, your Lordship, that was one of the reasons why, or the main reason or the dominating reason of the loan being on.

HIS LORDSHIP: What loan?
40

MR. WALSH: Of the loan this man got.

HIS LORDSHIP: That does not make any difference. We are only investigating the Biggs cases.

MR. WALSH: Perhaps your Lordship sees, one thing does not make two things.

HIS LORDSHIP: If this commission on the Biggs' case was proper, very

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No. 18.
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well—if they are improper, they will not be made any less improper, or any more improper by the evidence of any other transaction.

MR. WALSH: All right, I cannot do anything on that.

MR. SLAGHT: Mr. Oldfield, is your orchard in bloom in Grimsby?

MR. WALSH: It is surprising, how they are all enquiring about the orchard, and not any commission. We would only like to know the commission, wouldn't we?

Plaintiffs'
Evidence.
No. 19.
Charles R.
Hunt,
(Recalled)
Examination
8th May, 1930.

CHARLES R. HUNT—Recalled. Examined by MR. WALSH.

Q. Mr. Hunt, what is your business? A. Flour miller.

Q. Where, Mr. Hunt? A. In London. 10

Q. Mr. Hunt, were you ever a valuator of the London Loan & Savings Company? A. I was.

Q. For how long, Mr. Hunt? A. I should say ten years.

HIS LORDSHIP: Up until when? A. Until the company was sold.

MR. WALSH: Q. And were you a Director of the company when these Biggs' Mortgages were put on? A. Yes, I think I was.

Q. You were a Director of the Company then? A. Yes.

Q. And will you tell His Lordship who were the Directors when these mortgages were put on, the \$18,000 mortgage, the \$12,000 mortgage, and the \$13,500 mortgage? A. The list of Directors, Mr. McCormick was President, Mr. Baker Vice President, Mr. Robinson and Mr. Kent and myself. 20

Q. Were Directors? A. Were Directors.

Q. And do you remember the putting on of the mortgage for \$13,500? A. I remember there was a mortgage for \$13,500 that was put on, oh yes.

And it was read, the mortgage was filed here as an Exhibit and it was read from the Minutes to the——

MR. SLAGHT: Do not lead, please.

MR. WALSH: I won't be leading, Mr. Slaght, do not be worrying.

Q. \$13,500 at 8%.

MR. SLAGHT: That is leading, most leading. 30

HIS LORDSHIP: Find out what the witness knows about it.

MR. WALSH: Q. This mortgage to them came up before the Board of Directors? A. Yes.

Q. And will you tell His Lordship what transpired with reference to that matter? A. It came up at one meeting, and I think was laid over and it came up at a separate meeting and was passed.

Q. Yes? A. And it was passed, in my recollection, as a first mortgage.

Q. Were you told, was anything said to you or to any other Member of the Board during your presence at this meeting, that this was a first mortgage on the property? 40

MR. SPRINGSTEEN: Said to anybody?

MR. WALSH: Said to anybody; was it said by Mr. Brickenden? A. I have no recollection of it being referred to as a second mortgage.

Q. And if you had known that was a second mortgage, of \$13,500, instead of a first mortgage—

SIR ALFRED MORINE: I object to that, my Lord.

MR. SLAGHT: I object to it, my Lord.

HIS LORDSHIP: The question is admitted, subject to objection.

MR. WALSH: Q. If you had known and been told at this meeting that it was a second mortgage for \$13,500 and not a first mortgage, would it have made any difference on the acceptance or rejection of that mortgage?

A. We were not loaning money on second mortgages. It would certainly
10 have made a difference.

Q. It certainly would have made a difference, and would you—and as a Member of the Board, would you have objected if you had known it was a second mortgage?

A. I would have.

Q. You would have objected? A. I would have.

Q. Now, you say that it was not the policy of the Board to loan on second mortgages? A. No.

HIS LORDSHIP: He says so.

MR. WALSH: Q. And did you know of them ever taking a second
20 mortgage? A. There were some second mortgages, not at that time, they were not loaning at that time on second mortgages.

I cannot recollect what the second mortgages would be, but there were a few second mortgages, but at the request of the Government we desisted from loaning on second mortgages.

HIS LORDSHIP: Q. Before this time you had desisted from loaning on second mortgages at the request of the Government? A. Yes, sir.

MR. WALSH: Q. Now, Mr. Hunt—

HIS LORDSHIP: So that it was not only not your policy to loan money on second mortgages, but it was not the policy of the Government, to your
30 knowledge, to allow the company to loan money on second mortgages? A. Yes, sir.

MR. WALSH: Q. Now, did you know that Mr. Brickenden was the solicitor, just at this time—who was the solicitor for the London Loan & Savings, Mr. Hunt, who was your general solicitor? A. Mr. Brickenden.

Q. And did you know at the time this \$13,500 mortgage was taken, did you know that Mr. Brickenden was the solicitor for the Biggs? A. I did not.

Q. You did not? And did you know that Mr. Brickenden had received or was receiving \$500 commission from Mr. Biggs for getting that loan of
40 \$13,500 from your company? A. I did not.

Q. And as a director of the London Loan and Savings Company—

HIS LORDSHIP: I do not think that is a proper question. He would never have had reason to suspect anything of the sort. Let it go at that.

MR. WALSH: May I ask what effect that would have made?

HIS LORDSHIP: I think I can exercise some common sense. I do not think it makes any difference whether he would or not.

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—continued.

If it was improper it was improper for him to have agreed to it. If it was not improper, then his view of it would not make any difference.

MR. WALSH: Q. Now, did you know that there were mortgages to Mr. Brickenden on this particular property that were paid off out of this \$13,500 mortgage? A. I was not aware they had.

Q. You were not aware that the proceeds of this \$13,500 were to go to pay off any of these mortgages?

A. I was not aware of it.

Q. You were not aware that the proceeds of this \$13,500 mortgage were to go to pay off any other Biggs' mortgages? A. I was not aware of it. 10

HIS LORDSHIP: That was on the Ridout street property, was it?

MR. WALSH: Yes, your Lordship will remember that there was \$5,000, \$2,000 and \$1,200.

Q. The President of the Board at this time was who? A. Mr. McCormick.

Q. And did you have confidence in Mr. McCormick and Mr. Brickenden?

HIS LORDSHIP: I do not care whether he had or not. I assume that he had of course.

HIS LORDSHIP: Just a moment, Mr. Hunt—I think the first mortgage was for \$18,000, the second mortgage was for \$12,000. 20

MR. WALSH: That was not first—your Lordship, there was the Barrell mortgage, the first, and the Huron & Erie.

HIS LORDSHIP: And a third mortgage for \$13,500, that was also to the London Loan?

MR. WALSH: Yes, your Lordship.

Q. So there were three mortgages to the London Loan.

MR. WALSH: Your Lordship has got it.

Cross-Examined—By MR. SLAGHT:

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Examined
by Mr.
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Q. How much a year did you draw as a Director? A. A thousand dollars a year. 30

Q. A thousand dollars a year, and were you a Director in 1922 and 1923? A. Yes.

Q. The records seem to indicate you were, in 1922 and 1923 and 1924? A. Yes.

Q. Did you pay some attention to the business of the company? A. Yes.

Q. And to the properties on which the company were loaning? A. On some of them, yes.

Q. And you were present when Mr. Biggs, at some little time before this, I see, secured a loan from your company for \$18,000? A. I think I 40 was present.

Q. Don't you know—why are you just remembering the one meeting? A. Well, I presume I was present, I remember the mortgages.

Q. You remember the mortgages and you were present on a little later

occasion when Mr. Biggs secured a loan from your company for \$12,000 more? A. Yes.

Q. The \$12,000 being a second mortgage, because you had already loaned him \$18,000 on the same property—

MR. WALSH: No.

MR. SLAGHT: In part? A. I do not think so.

Q. Well, then, you were aware of the existence of the \$18,000 and the \$12,000 mortgages? A. Yes, I knew there was the \$18,000 and the \$12,000 mortgage.

10 Q. On his property here? A. Yes.

Q. And then do you want us to believe that you knew so little about the \$13,500 that you did not know it was subject to both of these? A. I was, as well as the other Director—

Q. Will you answer that question, please. You say now under oath that you did not know of the existence of the previous mortgages, you had forgotten in that short time? A. No, I knew they were there.

Q. And do you want us to believe that you did not loan money on second mortgages? A. I say it was not the policy of the company to loan on second mortgages.

20 Q. Then why did you break the policy—you loaned this? A. The \$13,500.

Q. Yes? A. Because I thought it was a first mortgage.

Q. You have just told us you had in mind there were two previous mortgages, \$18,000 and \$12,000—

HIS LORDSHIP: Did you know the \$13,500 was on the same property as either of the other properties? A. I did not.

MR. SLAGHT: Q. Did you know what property the \$18,000 mortgage was on? A. I did at the time, I did not recall at the moment—

30 Q. Did you know what property the \$13,500 mortgage was on? A. I did at the time.

Q. Did you discuss the matter with Mr. Kent at all? A. No, I did not.

Q. Did you ask to see any valuations?

HIS LORDSHIP: You are speaking of the \$13,500. A. I think there were some valuations presented.

MR. SLAGHT: Q. By whom? A. I do not remember who the valuator was.

40 Q. You are purporting to remember something that occurred at the meeting—or did not occur there—what roughly were the valuations? A. I cannot remember.

Q. You cannot remember anything of that kind—and who were at the meeting—first tell me who was at the meeting when the \$18,000 mortgage was passed upon? A. I cannot tell you who was present, there might have been an absentee. I cannot remember that.

Q. Can you tell me anybody that was there? A. I think that—anybody there at the meeting of the \$18,000?

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Q. Yes? A. I cannot tell you who was there, but I know there must have been a quorum.

Q. That is all you remember, and do you remember whether Mr. Brickenden was there? A. I cannot say that, no.

Q. Do you remember who were at the \$13,500 meeting, if I might put it that way? A. I think everybody was there with the exception of Mr. Robinson.

Q. Do you remember whether Mr. Brickenden was there? He instructs me he was not there? Will you suggest or swear that he was there?

A. No.

10

Q. Then from whom did you get your information that this was your first mortgage, please? A. General impression that I had that it was a first mortgage.

Q. I want you, if you can, if you can go any further than that, to tell me who told you, or if anybody, or if you say you do not know I will take that?

A. I do not remember who told me, but I was under the impression that it was a first mortgage.

Q. Then you are leaving it this way, thinking back seven years, you are telling the Court, analyzing what you think was your mind that day at that meeting, you think you recall your impression was that it was a first mortgage—is that so? A. Because we were not loaning money on second mortgages.

20

Q. It is all based on that, I mean so far, it is practically based on that?

A. Practically based.
Q. Because it was a general policy only in exceptional cases to loan on second mortgages, you are thinking back, and you are thinking if you had known it was a second mortgage it would probably have struck your mind—is that the way you put it? A. If it had been my impression it was a second mortgage I would have objected.

Q. Mr. Kent was at that meeting? A. I cannot tell you, but there must have been a quorum.

30

Q. Did you ask anybody any single thing about that mortgage, and if so, what? A. I do not think I asked anybody about it. I relied upon the solicitor of the company to protect us on the mortgage.

Q. On the solicitor of the company to protect you and you relied on Mr. Kent? A. Mr. Kent was Manager of the company at that time. I would naturally place a certain reliance on him, of course.

Q. And did you make any enquiry about what properties were covered by the \$13,500 mortgage? A. I do not remember whether I did or not.

Q. Did you read the mortgage or the applications for the loan? A. The applications for the loan were read at the meeting by the Manager, or whoever was at the meeting.

40

Q. They would be either read out, or read by you, and do you suggest, as a Director having made a loan before on the same property for \$18,000, and a little while afterwards for \$12,000 and living here in the City of London, and presumed to know something about the properties for a thousand dollars

a year, is it a suggestion that ever struck your mind at all that the properties that were originally put as owned by Mr. Biggs who had borrowed \$30,000 from you, that the properties as read out in this application for a loan, were or were not the same? A. It did not strike me.

Q. Did you ask whether they were the same? A. I do not remember asking.

Q. Were you asleep at that meeting or awake? A. I think I was awake.

10 Q. I do not mean to be funny—I am not at all—these properties are within two blocks of where you live, Mr. Hunt? A. I have seen them.

Q. Am I right, they are within two blocks of where you live? A. They are a little more than that, but I have seen them.

Q. Let us get that factor—how much more than two blocks away from, Mr. Hunt? A. I would say about four or five blocks.

Q. And you pass them perhaps every day? A. Oh no.

Q. But you are familiar with them? A. I know the property but I do not pass them once a year.

20 Q. But know the properties and four or five blocks away from your own home, and you had loaned \$18,000 and \$12,000 on these very properties, and they come for \$13,500, how could you fail to know the name Biggs and the properties described all over again, they were not the same properties you had been loaning on before? A. Having a number of properties, you know, and I was not familiar with the numbers of the various properties, but I was under the impression that it was not a second mortgage.

Q. Do you suggest anybody deceived you, or you just did not know?
A. I suggest I placed implicit confidence in the solicitor of the company to protect the company.

Q. But he was not at the meeting? A. But he had to pass on the titles.

30 MR. WALSH: He recommended.

MR. SLAGHT: Would you mind observing the rules instead of suggesting to your own witness.

Q. At all events, your story is, it never struck you that Biggs and Mrs. Biggs—did you know them? A. I knew Mr. Biggs.

Q. You knew Mr. Biggs, you knew his property, four or five blocks away, heard the application read out, and at \$30,000 loaned to him, you never dreamed, I suppose, that it was on the same property? A. I did not.

40 Q. I suppose you would have your valuations made before the Board dealt with them—we have heard a certain Mr. Gorwell made some valuations? A. Mr. Gorwell? Mr. Gorwill made some valuations but I do not know that he made these.

Q. Did you depend upon him as a dependable— A. Sometimes, not always.

Q. How long have you kept him in the employ of the company? A. He was a long time before I was on.

Q. How long in your regime? A. Ten years.

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Q. Are you saying in that time that he was not a reliable valuator?
A. I did not rely entirely on his valuations.

Q. Then who else did you have as a valuator in this \$13,500 mortgage?
A. I do not remember.

Q. Do you suggest that you had any other valuation? A. I cannot say.

Q. Then if you are telling what is accurate, that knowing that, you had Mr. Gorwill, and as we have it proved today, you did have Mr. Gorwill's valuation, that you did not rely on his valuation, and yet took no steps yourself to look at the properties or go any further? 10

MR. WALSH: Mr. Gorwill's was after, Mr. Slaght.

WITNESS: Just give me the question again.

HIS LORDSHIP: He wants to know did you take any other steps to get at the valuation? A. I personally did not take any steps.

MR. SLAGHT: Q. So you were relying on Gorwill's valuation. A. If it was his valuation.

MR. WALSH: That was in 1925.

MR. SLAGHT: Q. Let me get it this way——

HIS LORDSHIP: Do not interfere.

MR. SLAGHT: Q. Do you say you passed on that loan without having 20 a valuation from anybody before you? A. I do not.

Q. There must have been somebody's valuation? A. Certainly.

Q. Certainly there must have been somebody's—and as far as you know the valuation you would have would be Gorwill, because he was the official valuator at that time? A. So far as I know.

Q. If there was anybody else whose valuation you relied on, tell me—I do not know of any other? A. No other London valuator, although Mr. Baker, our Vice President, occasionally used to go out and value.

Q. And Kent, I suppose, would look at the properties? A. Sometimes, I suppose he did. 30

Q. So that as far as values go, you would rely on the company's valuator, possibly on Mr. Baker if he had seen this property, and possibly on Mr. Kent, is that a fair way to put it? A. I would say so, yes.

MR. SLAGHT: Excuse me, my Lord, another question.

Q. You carried on, you were of the successful crowd that ousted Mr. McCormick and you are at present a Member of the Board of the London Loan, are you? A. I was of the London Loan and of the——

MR. WALSH: Of the London Loan Assets.

Q. Oh, I see, that is interesting, and are the London Loan Assets the owners of this mortgage now? A. The London Loan Assets, yes. 40

Q. They are, and when did they get it? A. When they took over the company.

MR. SLAGHT: Q. You are a Director in the London Loan Assets?
A. Yes.

Q. Was there a question in the application—has this company ever held a mortgage on the Company? A. I do not think so.

Q. But your application has that sort of a question? A. I cannot remember the application form.

MR. WALSH: There was no application for this \$13,500 mortgage.

HIS LORDSHIP: The next witness.

MR. WALSH: I will call Mr. Robinson.

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WILLIAM H. ROBINSON—Sworn. Examined by MR. WALSH.

Q. Mr. Robinson, what is your business? A. I am retired.

Q. Retired from what? A. I was in the Wholesale Drygoods business.

10 Q. The Wholesale Drygoods, and were you connected with the London Loan & Savings Company? A. Yes, I was a Director in the London Loan.

Q. For how long? A. Possibly twelve or fifteen years.

Q. And you have been on the Board with both sides, with the McCormick side, and with the Braden side—

SIR ALFRED MORINE: Do not suggest, Mr. Walsh.

HIS LORDSHIP: Fifteen years a Director, ending with the sale of the Assets to the London Loan? A. Not ending with the sale of the assets to the London Loan.

20 Q. Then you became a Director of the London Loan Assets? A. Yes.

Q. And you are that now? A. Yes.

Q. So the fifteen years brings you down to date, I suppose? A. Yes.

MR. WALSH: Q. Mr. Robinson, the Biggs—there is a Biggs' Mortgage for \$13,500, were you at the meeting of the Board of Directors when the Board accepted the application for \$13,500? A. No, I was not.

Q. You were not? A. No.

30 Q. And when did you, after that loan was accepted, or before it was accepted, did you have any conversation with Mr. McCormick or Mr. Brickenden about that mortgage? A. No, I do not think I had any special conversation with them.

Q. Did you have any conversation? A. I heard about the loan afterwards, and we had a Biggs loan before that, but I do not know that I had any special conversation with them on this loan at all.

MR. SLAGHT: He says he did not know he had any special conversation on this one.

MR. WALSH: Q. This \$13,500, was it a first mortgage or second one? A. I believe there was a mortgage ahead of it.

HIS LORDSHIP: When did you learn that? A. Pardon?

40 Q. When did you learn that there was a mortgage ahead of it? A. Just, it would be later on when the Biggs mortgages came in for discussion on account of the interest not being paid, they were in arrears.

MR. WALSH: When they got into arrears? A. That would be about

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the time, that is about the time I would know much about Biggs, because I was away on holidays at the time it was taken, and when I came back I would probably not hear of it for some time.

HIS LORDSHIP: Did you know about this \$13,500 mortgage—what was the date of that?

MR. WALSH: December, 1923.

MR. SLAGHT: That was 1924.

HIS LORDSHIP: Were you in touch with the earlier mortgages, the \$12,000 and the \$18,000? A. I was away when these, both these mortgages were taken, were in November, and I am away on my holidays. 10

HIS LORDSHIP: Which mortgages were taken in November? A. The \$18,000 was taken in November, 1922, and the other mortgage, \$13,500, was taken in November, 1924.

HIS LORDSHIP: The first, the \$18,000 mortgage was taken in 1922, and the next mortgage about three years later? A. I believe that is it, yes.

HIS LORDSHIP: Did you know in 1924 what was the standing usually of the \$18,000 mortgage, if it was satisfactory or not?

Before you heard of the \$13,500 mortgage having been taken, did you know whether the existing mortgage of \$12,000 which had been in your company for a number of years had been in good standing? A. No, I did not know it was not in good standing. 20

Q. Did you hear any complaint about it? A. I do not think so.

MR. WALSH: Did you know the mortgages had been in arrears, practically from the beginning?

HIS LORDSHIP: Now, I am speaking of about what he knew of the \$13,500 mortgage—he says he did not know any reason of complaint about the Biggs mortgage at that time.

MR. WALSH: Did you know that the Biggs \$13,500 was a second mortgage in the years 1924, 1925 and 1926, up until the fight for the Board in 1927? A. I cannot tell you that. I knew sometime that it was the second, that there was a mortgage ahead of it, but just when that was, I cannot tell you—it was during the discussion on the Biggs' mortgages, but just when I cannot say. 30

Q. Is it the policy of the Board to take second mortgages? A. Well no, I would not say it was not the policy or it was. They do not take very many second mortgages. We would not want a second mortgage, I would say, we would not be anxious to take a second mortgage.

Q. But was it your policy to loan on second mortgages? A. We had loaned on second mortgages.

Q. You had loaned on second Mortgages? A. We had loaned on 40 second mortgages.

Q. Had you been loaning on second mortgages before this \$13,500? A. Before that?

Q. Yes? A. Yes, we had loaned before that.

Q. And had you taken many? A. No, not very many. We had taken some.

HIS LORDSHIP: He was not at the Board meeting when this mortgage was passed, or this loan was passed.

MR. WALSH: Q. Now, who looked after these mortgage transactions when they came before the Board? A. When they came before the Board?

Q. Yes? A. They were brought up by the Manager.

Q. The Manager of the Company? A. Yes.

Q. Who passed upon them? A. The Board.

Q. The Board passed upon them? A. Yes.

10 HIS LORDSHIP: He either recommended that it be passed or that it be declined? A. Yes, he would have the application for the loan, and he would read the application and have the valuation of it, and recommend it or not.

MR. WALSH: Q. Who was the solicitor of the company? A. Mr. Brickenden.

Q. Did you know that on this \$13,500 mortgage that he was acting for the borrowers as well as for the company? A. No.

Q. Did you know that he was getting \$500 commission from the Biggs for getting this \$13,500 from the company? A. No.

Q. You did not know that? A. No.

20 Q. Did you know that he had himself on the properties mortgages that were to be paid out of this \$13,500? A. No, I did not know that.

Q. You did not know that? A. No.

HIS LORDSHIP: Q. Did you learn these facts afterwards before the second mortgage became the subject of contention? A. No, I did not know before it became a subject of contention.

Q. When did it become the subject of contention? A. I do not think that I knew that Mr. Brickenden had had these mortgages until after the sale to the London Loan.

HIS LORDSHIP: All right.

30 MR. WALSH: Q. Now, do you remember when Biggs became in default, later on, as the matter came before the Board? A. Yes, I remember that, when it came before the Board.

Q. And what attitude was taken at that time?

SIR ALFRED MORINE: Would you mind saying what Board, and at what time?

MR. WALSH: He knows what I mean.

WITNESS: As nearly as I remember there was an agreement with Mr. Biggs that he was to pay so much a month out of his salary, or some way—

HIS LORDSHIP: That agreement is in, I think.

40 MR. WALSH: I meant before that, before there was a change in the Directorate of the Board.

HIS LORDSHIP: Was there any contention in the Board? Did any contention arise among members of the Board about these Biggs' Mortgages? A. I would not say contention, but it was spoken of at the Board, these Biggs' Mortgages were running in arrears and something should be done to keep the payments up.

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Q. When was that? A. Oh, I would think that would probably—that might have been perhaps 1927 or 1928, I cannot say exactly.

HIS LORDSHIP: All right, anything else?

Cross-Examined—By MR. SLAGHT.

Q. Just a question or two—I see, Mr. Robinson, that the company did loan on second mortgages, they frequently, or sometimes, got a substantial bonus. In this case it was a thousand dollars? A. Yes.

Q. That would be so, would it not—if you did loan on second mortgages, you usually got a good bonus? A. They got a bonus on them.

MR. WALSH: On first? 10

MR. SLAGHT: Q. And on first mortgages too, at times. Then there was a Mr.—the valuator for the company during that time was Mr. who? A. Mr. Gorwill.

Q. And we have been told he was about ten years with the company? A. I would think so.

Q. Did you rely upon him at that time as a satisfactory valuator? A. Yes.

Q. And then Mr. McCormick—or my friend put it to you—did you know that part of the moneys from this loan were going to pay off some mortgages Mr. Brickenden had—if you had been dealing with the matter and had been otherwise satisfied with the security, would the fact that some of the moneys were going to pay off Mr. Brickenden have made any difference to you in the matter? A. It is kind of hard to say now, if everything else was—if we were satisfied with everything else, it probably would not make any difference—not any more than if we would take these mortgages from somebody else, if somebody else was holding it—I do not think it would make any difference, Mr. Brickenden was holding them. 20

Re-Examined—By MR. WALSH.

Q. My friend is asking you, as a Director, would it have made any difference if there was ahead of that \$13,500 mortgage, there was a mortgage ahead? 30

HIS LORDSHIP: He was not sure, he was not called upon to pass, to say it did not make any difference to him.

HIS LORDSHIP: All right, the next witness.

MR. WALSH: I will call Mr. Hambly.

—Mr. Hambly not present.

MR. WALSH: I will call Mr. Gardner.

GEORGE GARDNER—Sworn. Examined by Mr. Walsh.

Q. Mr. Gardner, what is your business? A. Auctioneer and valuator. 40

Q. Auctioneer and valuator? A. Yes.

Q. Is that a valuator of real estate? A. Yes, sir.

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Q. How long experience have you had? A. Practically eight years.

Q. Do you auction real estate? A. Quite often.

Q. And value it? A. Yes, sir.

Q. And are you qualified to give an opinion on real estate? A. I feel that I am.

Q. You feel that you are? A. Yes, sir.

Q. Will you tell His Lordship if you have ever seen the premises 309, 311 and 313 Ridout Street? A. I did, sir, yesterday.

Q. Yesterday, and will you tell His Lordship just what is that property?

SIR ALFRED MORINE: I would just like to interpose an objection to evidence of value given at this time in respect of these mortgages and properties. I make that general objection.

HIS LORDSHIP: It must be related to the time when the mortgage security was placed on the property.

SIR ALFRED MORINE: And other objection, I simply object to an expert evidence being taken now as to the value of the properties.

HIS LORDSHIP: I will take it for what it is worth.

MR. SLAGHT: I desire to make the same objection, assuming this is evidence of present or recent value and add to it this further objection, my Lord, that the plaintiffs have already proved that somebody still owns these mortgages, they are not proposing to tell us who, but I have my own idea who is the real owner, but in any event, there having been no loss established and the mortgages being secured for money, that under no circumstances could the Court award any judgment against my client on the grounds put forward in this case unless and until a loss has been incurred, and that may be a question of Law, but I want to go on record here and now as opposing the admissibility of evidence of value against me, because the Court in the end, if I apprehend the argument of my friend, will have to be asked to do this, although somebody when he picks out one of five that he thinks owns these mortgages, and that company may sustain a loss because some gentlemen come forward and say they do not think there is equity enough there to cover the securities, and that because they may sustain a loss—

MR. WALSH: Don't you think we have heard enough?

MR. SLAGHT: That they want the Court to read the future into a debt, that the properties will be realized upon and looking ahead in that way, in some manner guess or say that they may be going to take a loss.

HIS LORDSHIP: Well, tell me—

MR. SLAGHT: I think the action is absolutely ill-conceived in that way, and I think that, and at this stage object and give my grounds for that objection.

HIS LORDSHIP: The case is a good deal tangled up.

MR. SLAGHT: No question about that, but that is one issue in particular I want to put forward now.

HIS LORDSHIP: Might I ask one question—why have not these properties been sold?

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MR. WALSH: There has been an Injunction and my friend wants that continued just now.

HIS LORDSHIP: Why? When was the Injunction granted?

MR. WALSH: The Injunction was granted by Mr. Justice Jeffreys last year. We took proceedings.

Q. You took proceedings for sale?

MR. WALSH: Yes, your Lordship.

HIS LORDSHIP: Were you going to sell under the power?

MR. WALSH: Yes, your Lordship.

HIS LORDSHIP: Had you advertised? 10

MR. WALSH: No, we were proceeding to do that.

HIS LORDSHIP: And there was an Injunction restraining you doing that?

MR. WALSH: Yes, your Lordship.

HIS LORDSHIP: And directing that the rentals of the properties should be collected by somebody in the meantime?

MR. WALSH: Yes, and my learned friend says, after getting that, turns around and says he is just as sure of a loss.

HIS LORDSHIP: Who is the applicant for the Injunction?

MR. WALSH: Biggs and wife. 20

HIS LORDSHIP: That was a part of their proceedings for redemption, I suppose?

MR. WALSH: Yes, your Lordship.

HIS LORDSHIP: There was an Order of the Court under which there was a reference to ascertain the amount of the mortgage liability.

MR. WALSH: Yes.

HIS LORDSHIP: And it is suggested there may be an appeal from that report and Reference?

MR. SLAGHT: Notice of Appeal has been served, my Lord.

HIS LORDSHIP: I take it there is some liability? 30

MR. SLAGHT: Yes, my Lord.

HIS LORDSHIP: I suppose it only goes to the question whether under the Interest Act, any interest may be collected?

MR. SLAGHT: That is exactly it, my Lord.

HIS LORDSHIP: At all events the properties are liable for the principal.

MR. SLAGHT: Yes, my Lord.

HIS LORDSHIP: Do you not think we had better have——

MR. WALSH: When Mr. McCarthy was acting for Mr. Springsteen he said there was nothing owing on the mortgages.

MR. SPRINGSTEEN: The principal; less what has been paid. 40

HIS LORDSHIP: There has been something paid—there will be in respect of each of these mortgages, there will be a very substantial liability?

MR. SPRINGSTEEN: In respect of the \$13,500 mortgage we contend very little.

HIS LORDSHIP: But there will be something in respect of it?

MR. SPRINGSTEEN: We want to have that amount determined.

MR. SLAGHT: And your Lordship will see, so far as we are concerned, we only come in to the picture in November last when they sued us for an unascertained loss before they had been hurt.

MR. WALSH: Before they had been hurt?

HIS LORDSHIP: In the meantime, I will receive this evidence and see what it means. It seems to me, I cannot probably give final judgment in this case until these properties are sold.

SIR ALFRED MORINE: I want to implement my objection. It is irrelevant what the present values of these properties are.

10 HIS LORDSHIP: I would judge that was so, Mr. Morine, unless the present value is relegated to the time these values were put on.

SIR ALFRED MORINE: Again I would say, as these are actions for damages the evidence now must be relevant because when they come up, one of them may be more or less, there is no basis on which your Lordship can decide now.

HIS LORDSHIP: The basis would have to be a basis of evidence, it might transpire that property values, simply because of the dilapidation of the buildings, or because of the depreciation in the value of the property, it might transpire that the present value would have little relation to the value at the
20 time the money was put up, or it might be, the evidence would show the property was just as valuable as at the time the mortgage was put on.

SIR ALFRED MORINE: My objection is this, no judgment can be given while the property remains in the possession of the plaintiffs by counter-claim, because they might get more or less than the claim.

HIS LORDSHIP: It might be the Estate was in such a shape it would be of no assistance to the Court to be told of the present value, if there was not some evidence to relate the present value to the time the mortgages were negotiated.

SIR ALFRED MORINE: Then in regard to it, you are assuming that the
30 evidence would be that the value is not there—how does that go to the present action of fraud upon the part of the defendants by counter-claim?

HIS LORDSHIP: You may be absolutely right on that, it remains for argument. I cannot rule the evidence out now. Get on.

MR. WALSH: Q. Now you saw 309, 311 and 313 Ridout Street? A. Yes.

HIS LORDSHIP: Yesterday? A. Yesterday.

MR. WALSH: Q. You tell His Lordship—where is that property, and describe it? A. The property is a three family apartment.

HIS LORDSHIP: Mr. Walsh, your witness is answering a question.

40 WITNESS: It is a three family apartment, one apartment in the basement, one on the first floor and one on the second.

MR. WALSH: Q. Just given as a three-family apartment? A. Yes. The reason for the probably low valuation there is the great distance from the heart of the city.

Q. Just describe it first, before you come to any valuation—just describe it?

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HIS LORDSHIP: Is it an old building? A. No sir, it is not called an old building.

Q. How old? A. I should judge about five or six years old.

Q. Is it in good repair? A. Fair repair.

Q. Now, what is the property worth?

MR. SLAGHT: There are some other witnesses, whom, my friends, I am instructed that are in the courtroom still. If there are, they should step outside.

HIS LORDSHIP: All right now. Go on, what is the property worth?

A. Number 116 I put a value for forced sale apart from number 309, 311 10 and 313, for an auction sale, I put \$8,500, ordinary value \$11,000.

SIR ALFRED MORINE: I suppose my objection to the relevancy would be taken particularly to these questions?

HIS LORDSHIP: Surely.

SIR ALFRED MORINE: I do not want to repeat them as to the condition of the buildings at the present moment.

HIS LORDSHIP: Can you tell now from your knowledge of real estate, this mortgage was put on in 1924.

MR. WALSH: Q. In 1924?

HIS LORDSHIP: November, 1924. 20

MR. WALSH: Pardon me, I will give your Lordship—that is the third mortgage, November of 1924.

HIS LORDSHIP: Put on in November of 1924, that is five years ago last November. Can you say whether these properties—is it one property or three properties? A. One building.

Q. Would that property be worth more or less than it is today?

A. It would certainly be worth more then.

Q. How much more then, why? A. Because property values were higher then than they are now.

HIS LORDSHIP: In 1924, what would be the value of the property, what 30 you call the ordinary value? A. The ordinary value, I should say would be about \$14,000.

HIS LORDSHIP: And the forced sale value? A. It would be around \$10,000.

Q. Around \$10,000? A. Perhaps.

Q. You did not know the property then, I suppose? A. Just from driving past it.

Q. Not from inspection? A. No, sir.

Q. Do you think—has there been any depreciation in property between that time and this? A. Yes, a certain amount of depreciation. 40

Q. Has that been taken care of in these figures you have given? A. Yes, I have taken care of it, yes.

MR. WALSH: Q. What is the next one, 315-317 Ridout? A. 315, 317 is a duplex—I put the forced sale value \$5,500, ordinary value \$7,100.

HIS LORDSHIP: Forced sale how much? A. \$5,500.

Q. And what you call ordinary value, that is a sale through an agent, I suppose? A. Yes, \$7,100.

HIS LORDSHIP: What about these figures—say when the mortgage was put on these, the same mortgage?

MR. WALSH: Yes, your Lordship, the same mortgage.

HIS LORDSHIP: \$13,500—what would you say would be the values at that time?

MR. WALSH: That covered all of them.

HIS LORDSHIP: 1924, yes? A. The values—

10 Q. Five years ago, say? A. Yes, I should say possibly \$6,500 and \$8,000, that is, if the buildings were in the same condition then as they are now.

Q. Is this one building too? A. Yes, one building.

Q. Is it in fair repair now? A. Yes, just fair condition.

MR. WALSH: Q. You say the forced sale \$6,000 back in 1924?

HIS LORDSHIP: \$6,500.

MR. WALSH: \$6,500.

MR. SLAGHT: And what is the other value? A. \$8,000, the ordinary sale at that time, \$8,000 approximately.

20 MR. WALSH: Q. Now, did you say 319 and 319½ Ridout?

HIS LORDSHIP: Is that also covered by the \$13,500?

MR. WALSH: Yes, my Lord, everything is covered.

HIS LORDSHIP: This is what?

MR. WALSH: This is 319 Ridout Street.

A. The value I placed on that property is \$5,800.

Q. Tell his Lordship what it is? A. A two-family apartment, one on the first floor and one above.

HIS LORDSHIP: Forced sale now? A. \$5,800 and \$7,800 ordinary.

30 Q. 1924? A. Well, now, I presume these garages were all there at that time. There are several garages at that place.

MR. WALSH: Then you included the garages in each? A. Yes, everything in it.

Q. Yes? A. With the garages I would say that that property, five years ago would have been worth about \$7,200 and \$8,700 for an ordinary value at that time.

MR. SLAGHT: I did not get that figure? A. \$8,700.

MR. WALSH: Q. Well, you add \$1,400 more on each, do you think?

A. Yes, I think it would be worth more money at that time than now.

Q. \$1,400 more? A. I did not say \$1,400 more.

40 HIS LORDSHIP: \$1,400 as between \$5,800? A. Pardon me, the figures I was quoting, I would make that \$8,700.

HIS LORDSHIP: You said the forced value of 319 would be \$5,800, and you said the forced value in 1924 would be \$7,200? A. No, that would be too much.

Q. What would you add to that \$5,800? A. I would add about \$800—that would be \$6,600.

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MR. SLAGHT: He did say that, my Lord.

HIS LORDSHIP: Is there very much use of our prolonging this branch of the inquiry? Is it not obvious that the thing to do is to go ahead and get these properties cleaned up?

MR. SPRINGSTEEN: I want to find out how much we owe and redeem them. We do not want them sold.

HIS LORDSHIP: You have been told by the Master what amount.

MR. SPRINGSTEEN: We are not satisfied with that. We may go a considerable distance before we find the amount now.

MR. SLAGHT: Then I might say, I won't accept at all the valuation 10 this man gives, because the valuation by the company's own valuator, who saw them at the time, says \$8,100.

HIS LORDSHIP: This would not be the way. The only way to get at the actual damages would be to have the properties sold and then get expert evidence as to the difference between property values at this time, at the time of the sale, and the time when these securities were taken.

MR. SLAGHT: Even then, my Lord.

HIS LORDSHIP: Even then you have difficulty, still you have a result with it.

MR. SLAGHT: I think my friend, the plaintiff, has difficulty. 20

MR. WALSH: You are very anxious about me.

MR. SLAGHT: I am solicitous for you only.

MR. WALSH: Certainly, you have been solicitous.

HIS LORDSHIP: We will let this go on, and exhaust the evidence of this witness, but I am not quite sure it is worth while.

Have you any more expert evidence on property values?

MR. WALSH: Yes, your Lordship, I have three.

HIS LORDSHIP: Are you proposing to go on now and get the values of the others?

MR. WALSH: Yes, my Lord, I have the values here of 114 and 116. 30

MR. SLAGHT: You are separating these?

MR. WALSH: Yes, Mr. Slaght.

MR. SLAGHT: We have had a series of three.

MR. WALSH: In the Elmwood Avenue property——

HIS LORDSHIP: Just a moment, there is nothing, of course, no way of getting this matter of liability under these mortgages determined until the appeals have been exhausted?

MR. SLAGHT: No, my Lord, none at all.

MR. SPRINGSTEEN: I think not, my Lord.

MR. SLAGHT: I want your Lordship to see the property. 40

HIS LORDSHIP: Not if I can help it.

MR. SPRINGSTEEN: There have been five sets of experts there yesterday. I think the tenants have had about enough now.

MR. WALSH: I do not think I would need any more expert evidence if your Lordship once saw them.

HIS LORDSHIP: If you cannot get a real estate man to speak as to values,

it is of no use for the Court to see them, but there is no doubt at all, I think, that you cannot get this case finally determined until you have the properties sold. There will be uncertainties, I think, then it might turn out there is no loss.

MR. WALSH: If there is no loss on these properties we will be tickled to death.

MR. SLAGHT: You see the position we are in, they sell them for the full value to the London Loan.

MR. WALSH: My learned friend has such an abiding faith, it would
10 be such an easy matter for them to take the properties over if they have such abiding faith, the man who got the commissions could take them over if he has such an abiding faith.

HIS LORDSHIP: This is all going down on the notes.

SIR ALFRED MORINE: I did not even speak. My learned friend has just said, if the property is eventually to be sold, he admits they have no claim whatever if it is sold and realizes the amount.

HIS LORDSHIP: Yes.

SIR ALFRED MORINE: Does not that illustrate the utterly worthlessness of the evidence given now of the present value.

HIS LORDSHIP: No, I do not say the present value cannot be obtained
20 in this way, but it would be a very unsatisfactory way of obtaining it.

SIR ALFRED MORINE: I submit that cannot be sustained as damages at all, ascertained in this way. I merely want to point out if they could be ascertained they should be sold and if on a change of market there would be no loss and there was a profit, to whom would the profit belong?

HIS LORDSHIP: Suppose Mr. Walsh brought witnesses here to say the property is worth so much and suppose you put witnesses in the box, and on cross-examination they admit the same thing, would there be any question then?

MR. SLAGHT: Even then, they could not guess at the time of the sale.
30 London might have a boom and property go up twenty-five per cent.

HIS LORDSHIP: It might be that if a brick falls on a man's head and injures him, and he gets a verdict and applies to a jury for his case, it might be argued it may be fatal—if this man may suffer an injury, it may turn out that this has frightened him mentally. This is very unprofitable, there is no use going on with it.

I am just debating, Mr. Walsh, whether it is worth while going on at all with this sort of evidence.

MR. WALSH: I might say, just to wind this up, my learned friends have
40 studied the case in this Courtroom of *Orris v. Collings*. Your Lordship proceeded on the very same, where there was evidence just as your Lordship indicated long before they were sold or anything, your Lordship gave judgment for damages which was upheld on appeal, and I want the very same policy—

MR. SLAGHT: We do not know the facts in that case.

MR. WALSH: You never read it. Will you say it was not?

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HIS LORDSHIP: Have you exhausted your evidence except on the question of values?

MR. WALSH: Oh no, my Lord.

HIS LORDSHIP: Might I suggest you let this witness stand down and go on with the rest of your case and see what we will do about the rest of it.

MR. WALSH: Might I just take these two Elmwood properties?

HIS LORDSHIP: How long will the rest of your evidence take—the rest of the afternoon?

MR. WALSH: I expect so, my Lord.

HIS LORDSHIP: You will be excused for today, witness. 10

How many more witnesses have you apart from the question of valuation, Mr. Walsh?

MR. WALSH: Just in a moment, your Lordship.

HIS LORDSHIP: I suppose you have experts too, Mr. Slaght?

MR. SLAGHT: I have not decided as yet whom I might call, subject to my objection.

HIS LORDSHIP: Do you see any objection to our going on with the other branches of the case, which are independent, and let us hear—

MR. SLAGHT: Stand over, during this trial until the conclusion of the other evidence in this trial, and then proceeding at this hearing? 20

HIS LORDSHIP: If we decide to proceed with this kind of evidence. As I feel now, I am disposed to stop this kind of evidence, and direct a sale of the property.

MR. SLAGHT: I do not want to do anything that falls in with that, because as I look at it, until they have suffered some kind of loss, they have no right to sue Mr. Brickenden and Mr. McCormick.

HIS LORDSHIP: The other difficulty, Mr. Springsteen points out; he says his clients may want to redeem, and they cannot redeem until they know what the liability is.

MR. SLAGHT: That is the trouble there. 30

HIS LORDSHIP: In that case we might go on with the trial in all the other branches, and leave this question of the quantum of damages quite open.

MR. SLAGHT: Now I am here to meet everything he has got, because I think I have legal defences aside from all this, that makes his difficulty such as he cannot possibly succeed.

Now that is another matter, but I may want to test that on appeal, and I should like to do that rapidly—I think I can convince your Lordship the case must be dismissed against my client.

HIS LORDSHIP: That may be, but the value of these properties, the present value, is a matter entirely independent. 40

MR. SLAGHT: But the other Court may say that he had been shut off in this case in giving something he had a right to give—I want all doors open.

HIS LORDSHIP: I think I will hear this case now, as it strikes me now, to a finish; in other words, letting Mr. Springsteen go ahead with his appeal, and after the appeal has been decided, have the properties sold, and then I will be in a position to dispose of the case.

MR. SPRINGSTEEN: It speaks very favorably on my appeal.

HIS LORDSHIP: If you win that is the end of it, that is the end of the case.

MR. SPRINGSTEEN: Might I say this, in connection with the Injunction proceedings, I think the evidence of the values of the property will be of some assistance and particularly the evidence of the income from the property and its carrying charge.

I contend that these defendants so administered the properties when they were collecting the rents, that they got down until they would not satisfy
10 the tenants, and that sort of thing——

HIS LORDSHIP: You are foreclosing on that by the Master's report?

MR. WALSH: I cannot allow a remark like that to go unchallenged.

HIS LORDSHIP: Mr. Springsteen is now within the four corners of the Master's Report.

MR. SPRINGSTEEN: I am moving for a continuation of the Injunction, my Lord.

MR. WALSH: I will oppose that bitterly.

HIS LORDSHIP: If your liability is ascertained and you redeem——

MR. SPRINGSTEEN: Quite, but until it is finally determined, I would
20 be quite content to allow the present receivers collect the rents and look after the properties, we do not want to get them back into our hands particularly, but we do not want the defendants controlling them. I propose to show that while these Receivers have been administering the properties they have got them into pretty fair shape.

HIS LORDSHIP: Get along then with your other evidence, Mr. Walsh. How many more witnesses have you, Mr. Walsh?

MR. WALSH: About two or three, my Lord.

HIS LORDSHIP: You might let your witnesses as to values go today and finish your other questions.

30 MR. SLAGHT: We might let our witnesses as to value go, my Lord.

HIS LORDSHIP: Yes.

JOHN H. HAMBLY—Sworn. Examined by Mr. WALSH.

Q. Now, Mr. Hambly, what is your occupation? A. I was Manager for the London Loan and Savings Company.

Q. Yes? A. Up to the time of its amalgamation with the Huron & Erie.

HIS LORDSHIP: Manager? A. Manager.

Q. In succession to Mr. Kent? A. Yes, sir.

MR. WALSH: Q. And where are you now, Mr. Hambly? A. With
40 the Huron & Erie Mortgage Corporation.

Q. And how long were you Manager of the London Loan? A. From 1927.

Q. 1927, and can you tell me what part of 1927? —do you remember?

A. I went to the London Loan in October, 1925, the following February,

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I think, I was made Assistant Manager, and the year after that I was made Manager of the Company.

Q. I see, and you continued, you say, right down to the time? A. Right down to the time of the winding up of the company.

Q. Now, Mr. Hambly, you have been a Director of the company? A. I was appointed a Director, I think in 1927.

Q. That was at the meeting where you replaced Mr. Kent, did you? A. Yes, succeeded Mr. Kent on the Board as Managing Director.

Q. Now, Mr. Hambly, did you ever hear of these Biggs' Mortgages?

A. The Biggs' Mortgages were on the books of the company at the time I 10
went in to the office and had been for some time.

Q. Yes? A. They were mortgages that were in arrears at that time.

HIS LORDSHIP: And you went in when? A. In 1925, your Lordship.

HIS LORDSHIP: Yes? A. They were in arrear at the time I went in
to the office and I think were in arrear almost continuously down to the time
of my leaving the office.

MR. WALSH: Q. Now, did you know from looking at the records of
the company whether they were ever paid up from their inception? A. I
do not think they were.

Q. They were always in arrear? A. They were always in arrear. 20

Q. Now, will you tell His Lordship about the security for these mort-
gages? A. In regard to the—

MR. SLAGHT: Pardon me, I did not catch the last question.

HIS LORDSHIP: What do you mean by that?

MR. SLAGHT: The one before that.

HIS LORDSHIP: He asked the witness to tell about the securities for
these mortgages—I do not know just what the question means, myself.

MR. WALSH: Q. What kind of security were they?

HIS LORDSHIP: The Abstracts tell that.

MR. WALSH: I do not mean the legal security, the security in fact. 30

SIR ALFRED MORINE: Do you mean values?

MR. WALSH: Was it a good security or bad security?

MR. SLAGHT: Now?

MR. WALSH: Do not all jump on me.

HIS LORDSHIP: Mr. Hambly may have had his opinion, of course, they
were bad securities if they were in arrear? A. The only evidence I got
on that—

MR. SLAGHT: Wait until you are asked.

HIS LORDSHIP: I will hear what he says. A. I think it was in 1927
Mr. Biggs came to see me and said he had an offer for the Elmwood Prop- 40
erty—

SIR ALFRED MORINE: I object.

WITNESS: For the Elmwood property which was number 116—

HIS LORDSHIP: When was this? A. I think that was in 1927, along
about June or July, 1927. Mr. Biggs had a purchaser in view for the Elmwood
property.

Q. Biggs came to you—you were not the Managing Director then, were you? A. Yes, I was at that time.

Q. What did he say? A. He had a purchaser in view for the Elmwood Avenue property, that would be number 116 Elmwood, the apartment house on the corner for which he had received an offer of some \$24,000 and he was asking \$25,500, and asked my opinion as to what I would think of him selling in view of his financial condition at that time, and also in view of the fact that it was to be a cash transaction. I strongly advised him to sell.

MR WALSH: Q. At the \$24,000? A. At the \$24,000.

10 Q. Yes? A. But he was under the impression that he could get the purchaser up to the \$25,500 and in the interim the purchaser dropped out of sight and the deal fell through.

Q. Do you know anything at all about who is the solicitor for Mr. Biggs? A. I understood Mr. Brickenden, Brickenden & Company, were solicitor for Mr. Biggs.

Q. And did you know whether—how did you know—what transpired with you that would indicate that? A. In various transactions that came up Mr. Brickenden apparently acted for Mr. Biggs.

20 Q. Yes? A. In other words, there was some life insurance that was secured as collateral and it was secured through Mr. Brickenden's office.

Q. In connection with these mortgages? A. Yes, and certain policies were received in connection with the mortgages coming from Mr. Brickenden's office, through Miss Harrison.

Q. Did Mr. Brickenden to your knowledge ever "O.K." any of the receipts for the rents? A. I think Mr. Brickenden had a supervision of the rents that came in from Mr. Biggs and also supervision of the disbursements. You see by these receipts, I think there were some cheques produced at the examination that bore that out.

30 Q. Now, were you at any of the meetings? A. Yes, I attended practically all the Board meetings from the time I went there.

Q. Do you know if there was any objection made by Mr. Kent to the Biggs' mortgages? A. Of course, those mortgages were all on prior to my going into the company's employment.

Q. After your going there, was there any objection?

SIR ALFRED MORINE: I object.

HIS LORDSHIP: Objection by whom?

MR. WALSH: By Mr. Kent.

HIS LORDSHIP: What difference would that make, after they were put on?

40 MR. WALSH: He is not here, and they are saying he consented to all this. His attitude might not be the same—

HIS LORDSHIP: He cannot tell what Mr. Kent told him—

—On instruction of His Lordship question and answer following were stricken out.

MR. WALSH: Q. At the Board Meetings—you attended these Board meetings? A. I did.

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Q. Who were the members on the Board that transacted the business?
A. Of course the members all, almost invariably there was a full attendance of the Board.

Q. Yes? A. And the agenda, and various matters to come before the Board were prepared by myself and handled by the President, Mr. McCormick.

Q. Who was the person who had the say in regard to the applications—

SIR ALFRED MORINE: I object to this.

HIS LORDSHIP: Of course the Board had the say.

SIR ALFRED MORINE: More than that. These applications—these were 10
in there then.

HIS LORDSHIP: This was subsequent matters.

SIR ALFRED MORINE: Subsequent matters altogether.

HIS LORDSHIP: I suppose one could imagine what happened, the Managing Director makes the agenda, and I suppose if a loan is up for consideration, when it is raised he is asked for his opinion, and the Board would be likely to be influenced by his opinion. Some of the Board may be active and interested and the others may be just wooden men. They may be nearly all wooden members.

MR. WALSH: That is just it, my Lord. 20

Q. What did this Board—

HIS LORDSHIP: It is no use asking Mr. Hambly about it. He was not there when these matters were put on.

MR. WALSH: During his time.

HIS LORDSHIP: No, you cannot ask him what happened during his time.

MR. WALSH: Q. Were there any commissions paid to Mr. Brickenden after you came—

MR. SLAGHT: Surely that is not evidence, my Lord.

HIS LORDSHIP: No, I do not think so. 30

Commissions payable to Brickenden may have been right or wrong, does not depend whether it was his practice, the payment of commissions, the company knew about it, whether they were right or wrong.

MR. WALSH: Q. When you came, were the Biggs' mortgages ever mentioned at different times? Were they ever mentioned?

HIS LORDSHIP: He cannot say anything about that unless Mr. McCormick or Mr. Brickenden was present.

MR. WALSH: Q. Did you ever have any conversations with them about these mortgages? A. The practice of the company was—

MR. SLAGHT: Oh no. 40

WITNESS: Lists of these arrears were prepared and submitted to the Board from time to time for consideration.

HIS LORDSHIP: Yes? A. And the Biggs cases were almost invariably on these lists.

HIS LORDSHIP: They were chronic? A. As being in arrear, and it was up to the Board to decide what action should be taken with them.

HIS LORDSHIP: Certainly.

MR. WALSH: Q. Now, did you ever have any conversation with Mr. McCormick or Mr. Brickenden with regard to these mortgages being in arrear? A. They were placed in Mr. Brickenden's hands on a couple of occasions, more than a couple of occasions, to make an attempt to collect the arrears.

MR. WALSH: Q. Yes? A. And the Board, in view of certain conditions that existed, Mr. Biggs was apparently in a very tight financial position, leniency was extended to him at various times but the solicitor usually,
10 I think, was rather lenient with Mr. Biggs in connection with the collection of these arrears.

HIS LORDSHIP: That must have been with the consent of the Board, I suppose. At any time the Board could have said, "We will have no more nonsense with Biggs, he must pay up", and if Mr. Brickenden did not do it, some other solicitor could be employed.

MR. WALSH: Q. What did Mr. McCormick do? A. He was President of the Company and was there at the time these instructions would be given.

Q. And did you have any conversation with them about the security?
20 A. No, I did not.

HIS LORDSHIP: All right. Any cross-examination?

MR. SLAGHT: None from me, my Lord.

Cross-Examined—By MR. SPRINGSTEEN.

Q. Just one question, Mr. Hambly, in connection with the offer that was mentioned by Mr. Biggs to you of \$24,000—do you recall that he also mentioned to you that an additional consideration was an equity in a farm, having a value of approximately \$10,000 he was to get? A. No, I have no recollection of that whatever. I understood that it was that Mr. Biggs had received an offer of \$24,000, which was to be a cash transaction.

30 Q. Yes? A. And that he was willing to take \$25,500.

MR. SPRINGSTEEN: Q. And in addition to that cash he was to get this interest in the farm, having a value of approximately \$10,000? A. No, I do not recollect that.

Q. You do not deny he mentioned it to you? A. No, I would not deny that.

Cross-Examined by MR. SLAGHT.

Q. Just a question, I wondered if you called this, referring to the payment out of moneys on the Biggs' loans—would it be the case that after the cheques were paid, they were then taken out to Mr. Brickenden to have him
40 put his initial on so that he could keep tab on what they were, and keep track of them? A. The cheques to which I was referring were cheques covering funds on loans, the rental returns from the premises would be the foundation, and against that amount these cheques for various payments would be drawn.

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MR. SLAGHT: Q. For upkeep? A. Upkeep, coal and light and various other expenses, and I think Mr. Brickenden, for a considerable length of time had a careful scrutiny of the rent coming in, and also of the payments out on that account.

Q. And as I understand it, what he was doing was in the interest of the company as well, I mean, to see the money was used to the best advantage? A. To the best advantage in connection with the property, there were taxes and many other things that had to be paid and out of the rentals received these payments were made.

Q. And so far as you were concerned there was nothing objected to that Mr. Brickenden was doing, he was doing it in the best interest of Mr. Biggs and the Company? A. Yes. 10

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Cross-Examined by MR. SPRINGSTEEN.

This witness may be familiar with the income of the properties.

Q. Are you familiar with the income of the properties? A. No, I am not, because there was quite a bit of the property, especially during the last year, that was idle.

Q. When your company started to collect the rentals, were any of these properties occupied? A. I think there were three apartments vacant when I started to collect the rent, two or three apartments. 20

HIS LORDSHIP: Are they all occupied now? A. That I do not know, my Lord.

Q. Are you collecting rents now? A. The Canada Trust Company are collecting rents.

MR. SPRINGSTEEN: Q. Do you know that these vacancies occurred while your company was looking after the premises?

HIS LORDSHIP: What difference would that make?

MR. SPRINGSTEEN: I suggest, my Lord, it makes this much. While these people were in control of the administration of the properties they kept them vacant and ran down the property. 30

MR. WALSH: For how long?

HIS LORDSHIP: Do not bother, Mr. Walsh. I am going to take care of this.

WITNESS: I think the vacancies were before the company took hold.

HIS LORDSHIP: You do not expect a mortgagee in possession to make as much revenue as the mortgagee might make. He will do his best.

MR. SPRINGSTEEN: My only suggestion is this, my Lord, that the present Receiver is doing very well with the property, and when it was in the hands of the Mortgagee, it was doing very badly and just in connection when you mention that the Receiver should be continued until we know the amount we have to pay or redeem. 40

WITNESS: I think it was only three months we were collecting the rents, April, May and June last year.

Q. Are you familiar since the Receiver has been administering the property, that all the interest on the mortgage has been paid? A. No, I have no knowledge of it.

Q. Do you know whether any arrears of taxes have been paid? A. That I do not know.

Q. Are you in with the present Receivers? A. The Canada Trust Company is a subsidiary company to the Huron & Erie and handle it under appointment.

MR. SLAGHT: He is with the Consolidated Trusts Company.

MR. WALSH: The two other witnesses I had here left. I guess they went with the Real Estate Agents. They thought there would be nothing more tonight and they departed.

10 HIS LORDSHIP: What are they about?

MR. WALSH: One was Miss Fletcher of the London Loan & Savings Company. She came shortly after the Biggs' loan, your Lordship.

HIS LORDSHIP: Very well, Mr. Walsh, you wish to put in something more?

MR. WALSH: Yes, your Lordship, I wish to read from the examination of Mr. George G. McCormick, one of the defendants by counter-claim, taken before Mr. Blackburn on the 5th December, 1929.

MR. WALSH: "1. Q. You are Mr. George G. McCormick, one of the defendants in this action by counter-claim? A. I am.

20 "2. Q. And, Mr. McCormick, you were President of the London Loan & Savings Company? A. Yes.

"3. Q. Can you tell me when you took over the Presidency of the Company? A. I can't from memory; it is a good many years ago; over forty years since I was a Director.

"4. Q. When this Biggs mortgage was taken in 1922 you were then and for some time before that President of the Company? A. Yes.

"5. Q. And then, the same, this applies to the Consolidated Trusts Company? A. Yes.

30 "6. Q. And during the time the Biggs transactions took place you were one of the largest shareholders of the company? A. I was always one of the largest.

"8. Q. What relation was Mr. Brickenden to you? A. Son-in-law".

SIR ALFRED MORINE: Question 7, my Lord, "Up to the time it was changed you were the largest shareholder? A. I don't know; I think Mr. Kent was; we were pretty nearly equal; I was one of the large shareholders".

MR. WALSH: Question 8. "What relation was Mr. Brickenden to you? A. Son-in-law."

MR. WALSH: Questions 26 to 32 inclusive.

40 "26. Q. Now as President of the Company it wouldn't affect you if it came before the Board that the solicitor was getting a commission, that wouldn't interest you at all? A. Not a particle.

"27. Q. It would be immaterial to you? A. Immaterial to me.

"28. Q. May I say that was the policy you followed, that if commissions were paid to the solicitor it was immaterial to you? A. It was immaterial to me.

"29. Q. They didn't care? A. I didn't say that; I don't know.

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—continued.

"30. Q. If an application came to the London Loan & Savings Company and your solicitor was being paid a bonus, or commission or large legal fees from either side for getting the loan, would that be material to you? A. To me personally but as a director of the company it would be immaterial to me.

"31. Q. And as President of the Company? A. I was Chairman of the Board.

"32. Q. And that fact would be immaterial to you? A. It would be immaterial to me."

MR. WALSH: Questions 46 to 49. 10

"46. Q. Then a Minute of January 22nd, 1923; Mrs. Eva V. Biggs lent \$12,000 at 7½%; bonus 1½%; no commission; M. J. Kent, Manager; George McCormick, President; Do you remember that loan to Mrs. Biggs? A. I don't remember it particularly.

"47. Q. Do you know what property it was on? A. No, I don't.

"48. Q. Do you remember any details about the property? A. No, I don't.

"49. Q. You notice it says "no commission" there? A. That is what it reads.

"55. Q. You of course would be interested to know the solicitor was getting \$120.00 commission from the other side besides legal fees? A. I don't think so. 20

"56. Q. That wouldn't interest you in any shape or form? A. No.

"75. Q. Do you remember this Monday, November 17th, 1924; E. & W. G. Biggs; lend \$13,500 at 8%; bonus \$1,000? A. I don't remember any further than the Minutes on the book.

"76. Q. You have turned him down on three occasions that year and on November 17th, 1924, you lend him this \$13,500; any reason for that? A. Any reason for that, I can't recall; I presume there was some reason."

MR. WALSH: Questions 86— 30

MR. MORINE: Just one moment, Question 85.

MR. WALSH: You cannot put that evidence in. I am not reading that part.

SIR ALFRED MORINE: You have to make that answer clear.

HIS LORDSHIP: Not allowed.

MR. WALSH: Questions 86 to 93 inclusive.

"86. Q. But the fact that \$500 was paid is immaterial to you as President of the company? A. I don't know how I can answer that question now, it is so long ago.

"87. Q. Mr. McCormick, as President of the company, you were there to look after the interests of the shareholders? A. We were all there for that purpose. 40

"88. Q. And the fact that a bonus or commission was paid to the solicitor was a material fact for you to know? A. I don't know.

"89. Q. I suppose you were very greatly surprised when you heard of it? A. I don't know; I was surprised to hear it.

"90. Q. You were more than surprised, you were shocked? A. I didn't say I was shocked.

"91. Q. With a bonus of \$1,000, to your company, and \$500 to the solicitor of the company out of a mortgage of \$12,000; wouldn't you be surprised at that state of affairs? A. I don't think I was.

"92. Q. Nothing unusual for the London Loan? A. I don't know that.

"93. Q. It was pretty nearly the order of the day; bonuses to the company and commission to the solicitor? A. I don't know.

10 "110. Q. Did you know this was a second mortgage, this \$13,500? A. I couldn't have known; I don't know now.

"123. Q. You had two first and a second mortgage one for \$18,000, one for \$12,000 and one for \$13,500, separate mortgages? A. We only lend on property.

"124. Q. One of these was a second mortgage in the Biggs case? A. I don't recall that.

"125. Q. Would it be material whether it was a first or second mortgage? A. Not if the second was good enough; if we had the first.

20 "126. Q. The Huron & Erie had a first mortgage of \$10,000 and Barrell had one for \$7,000. And then you had a third mortgage? A. I can't answer that.

"127. Q. It would be material whether they were first or second? A. I would pay some attention to it.

"128. Q. And whether you had first or second mortgages on the Biggs property? A. I can't recall that.

30 "188. Q. There is a first mortgage held by the Huron & Erie on 309-11 Ridout St.? A. A first mortgage by Barrell on 114 Elmwood Ave., a first mortgage on 116 Elmwood by the Consolidated Trusts, a first mortgage on 317-19 Ridout St. and a second mortgage held by the London Loan & Savings Co., all the above property; do you remember that? A. No, I don't; what was the second mortgage taken for?

"189. Q. You were President? A. I am asking for information.

"190. Q. That is what I am here today for; I want to know why the London Loan ever took that second mortgage for \$13,500; can you tell me? A. I cannot."

MR. WALSH: That is all of the examination, my Lord.

HIS LORDSHIP: Is that all tonight, Mr. Walsh?

40 MR. WALSH: I just have a few nice questions from Mr. Biggs, but perhaps I can leave that till the morning. That will be perhaps the shorter. If my friend would like to go on, Mr. Springsteen, I have no objections.

HIS LORDSHIP: I think we will conclude, if you want to get away, Mr. Slaght. Is there anything, Mr. Springsteen, any real controversy on this appeal? It is only a question of law, of the interests?

MR. SPRINGSTEEN: I do say the learned Master let in a lot of evidence that ought not to have been let in, at the Reference, on the conspiracy—it does not affect the Motion.

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HIS LORDSHIP: So that the real question is the question of Law, whether the Interest Act applies? Whether the Meagher Case applies?

MR. SPRINGSTEEN: Might I point out to your Lordship, I think I can shorten it up, the bonus in the first and second mortgages, the first and second are covered by the Meagher Case, the only difference I have been able to discover in these two mortgages, the bonuses were retained by the company, and not the full amount of the principal advanced, and the cheque given by the mortgagor to the mortgagee.

HIS LORDSHIP: So your appeal is confined to the \$13,500 mortgage.

MR. SPRINGSTEEN: Largely, and I will tell your Lordship what my point is, the mortgage on its face itself, brings it within the Interest Act, and once it comes within the Interest Act, then I say all the old Ontario cases with respect to Interest apply. 10

HIS LORDSHIP: Mr. Registrar, let me have that \$13,500 mortgage.

MR. SPRINGSTEEN: I am not waiving my claim in the \$18,000 mortgage, but I think your Lordship is bound by the decision.

HIS LORDSHIP: Now, Mr. Slaght, it might of course be as you suggest that when Mr. Walsh has closed his case, you may want to offer no evidence at all. I do not know what you will do. You take the responsibility of that, but either at the close of his case or at the close of the defence, subject to an appeal from the Report, and subject to valuation, it may be that the plaintiff will fail, if that is so, that is the end of the case, as between your clients, as between the plaintiffs and your clients, leaving only the question of the appeal from the Report for determination; so that it seems to me convenient, that we should dispose, if we could, of the case in that way. Then if the action fails you are out of it, you and Sir Alfred Morine are out of it. If I am not able to decide in your favour, after the close of the case, then it seems to me the thing to do would be to defer decision until the appeal has been settled, and until after the properties have been sold. Either course you get rid of the action. 20 30

If the Biggs redeem, that closes the action, does it not, Mr. Slaght?

MR. SLAGHT: Oh, yes, my Lord. If Biggs redeem. Their friend's case against us is now gone. He is not damaged no matter what his legal rights may or may not be.

HIS LORDSHIP: Or if, on the other hand, the properties were disposed of, yielding sufficient to pay the mortgages in full—

MR. SLAGHT: Then again he has nothing—If your Lordship desires expressions from me for the moment. Of course, I do not want to appear stubborn about this, but I still feel that I do not want to, by any assent of mine, to tie my clients up to await a sale of the property as a solution of the matter, because I am going to ask the Court to say that they do not need to wait for it. 40

HIS LORDSHIP: If you succeed in establishing, either from the plaintiff's, if the Plaintiff does not succeed in making out his case, or if you succeed in meeting his case on other grounds, that, of course, disposes of the action.

MR. SPRINGSTEEN: Then, it is understood, my Lord, we should argue the appeal from the Master's Report on the opening of the Court in the morning?

HIS LORDSHIP: I do not know. I will see. It may be that I will want you to work on Saturday.

MR. SPRINGSTEEN: I think, having stated the point, it is a matter your Lordship will determine in your own mind very shortly, either for or against me.

—Case adjourned until to-morrow morning at ten o'clock, Friday, May 10 9th, 1930.

Court resumed ten o'clock, A.M.

HIS LORDSHIP: Well, Mr. Walsh.

MR. WALSH: Your Lordship, I wish to read from the Examination of Mr. Walter Herbert Biggs and Mrs. Eva Viola Biggs. Mr. W. H. Biggs, taken on the 17th day of October, 1929.

"1. Q. You are one of the plaintiffs in this action, Mr. Biggs?

A. One of the plaintiffs.

"12. Q. You obtained a loan from the defendant Loan Company?

A. Yes, for \$18,000.

20 "13. Q. And you gave a mortgage back, No. 16914?

A. That is correct.

Mortgage No. 16914 marked as Exhibit "1".

"14. And is this the mortgage?

A. That is the mortgage.

"23. Q. And Mr. Brickenden arranged the matter entirely for you?

A. Yes.

"24. Q. And he also acted for the loan company?

A. Yes.

30 loan? "29. Q. Did Mr. Brickenden also charge you a fee for getting you the

A. Yes.

"75. Q. Now, Mr. Biggs, I notice that on the 8th of November, 1924, that you gave a mortgage No. 19476 to the defendant Loan Company for \$13,500 on the same property as set out in Exhibit "1"?

A. On the same property and the other property; that covers all my property.

Mortgage for \$13,500 marked as Exhibit "5".

"76. Q. That covers all your property?

A. Yes.

40 "77. That was a second mortgage?

A. Yes.

"78. Q. Can you tell me what the purpose of that mortgage was? Look at this mortgage?

A. That is the mortgage.

"79. Q. And what was the purpose of that mortgage?

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A. The purpose of that mortgage was to clean up everything, to retire anything that was outstanding.

"89. Q. Did you pay Mr. Brickenden a percentage for getting this loan for you? A. No, a flat figure, I think it was \$50.00.

"90. Q. The reason you obtained this last loan was because you had some pressing liabilities outstanding? A. Yes.

"91. Q. And if it wasn't for these pressing liabilities you wouldn't have this mortgage? A. No, I changed my position at that time; I went into a new position and realized how heavy it was going to be and I didn't want to have to bother with it. 10

"92. Q. You had some outstanding liabilities with Mr. Brickenden at the time? A. Yes."

MR. SPRINGSTEEN: You read the next question.

HIS LORDSHIP: We heard the same yesterday. You may call your client and explain.

MR. WALSH: "Q. 100. How much did you pay Mr. Brickenden? A. Here is a cheque on the 8th November to G. A. P. Brickenden & Co. for \$1,923.33."

Cheque marked as Exhibit "6".

"101. Q. This cheque you say which you now produce, was used to liquidate the balance on Mr. Brickenden's mortgages? A. Balance owing on his mortgage. 20

"104. Q. And then you gave Mr. Brickenden Exhibit "6" in settlement of his mortgages? A. Yes.

"105. Q. The three mortgages? A. There are only two.

"106. Q. So then the London Loan mortgage was a third mortgage? A. Until April.

"107. Q. Mr. Brickenden still had a \$5,000 loan ahead of the \$13,500 loan to the London Loan? A. Yes.

"108. Q. Why wasn't it all paid out of the \$13,500; why wasn't Mr. Brickenden's \$5,000.00 loan paid out of the \$13,500? A. I don't know; the money wasn't given to me. 30

"109. Q. You mean the whole \$13,500 wasn't advanced? A. No.

"149. Q. The Huron & Erie still have that mortgage of \$10,000? A. Yes.

"150. Q. Is it still \$10,000? A. A little less than that.

"151. Q. I notice a mortgage to Whit. Lancaster? A. Yes.

"152. Q. Is that paid off? A. It is down to \$500 now.

"209. Q. You eventually paid to the London Loan all you owed except the \$13,500? A. I didn't pay them all.

"210. Q. You arranged that they be paid off? A. I did not. 40

"211. Q. Didn't you arrange with the Consolidated Trust to pay them off? A. No, I didn't; Mr. McCormick arranged that.

"212. Q. Why did Mr. McCormick arrange that? A. That I can't say; that was a question between the Consolidated Trust and the London Loan; they asked me if I would let them transfer the loan and I didn't know anything about it.

"213. Q. Didn't you get some money back? A. I did not, not a dollar.

"214. Q. At any event the effect was to pay off the London Loan? A. That was their end of it; I don't know; I am under oath and I don't know what the deal was about.

"215. Q. What did Mr. McCormick say about it? A. He said they were going to transfer the loans to the Consolidated Trust and got me to sign a new mortgage.

"216. Q. Did you check the amount before you signed? A. Yes.

10 "217. Q. Did you sign an application to the Consolidated Trust? A. I didn't.

"218. Q. Did Mrs. Biggs? A. Excuse me, after the arrangement was made I think they said there would be an application signed; Leonard Starling is a nephew of mine and he worked in there and he brought this application over and asked me to sign it.

"219. Q. Mr. Brickenden and Mr. McCormick engineered this? A. Yes.

"220. Q. And then you had to see Mr. Brickenden? A. I didn't see him.

20 "221. Q. Did you raise any objection about it? A. No, they wanted to change it for their own purposes.

"222. Q. Look at this document and see if that is your signature and Mrs. Biggs? A. Yes, just as I told you.

Application marked as Exhibit 8.

"223. Q. This is an application for a loan for \$20,000 and the purpose of the loan is to pay off existing first mortgages? A. Yes.

"224. Q. Did you understand that was the reason of this Exhibit 8? A. Yes, I understood that; Mr. McCormick told me they wanted to transfer the funds from one company to the other.

30 "225. Q. To pay off the London Loan and have the Consolidated Trust carry the mortgage? A. Yes.

"226. Q. Your mortgage had climbed up from the amount you had in the first place? A. Yes.

"227. Q. Had you paid any interest? A. I paid a lot of interest.

"228. Q. Anyway it went up from eighteen thousand to twenty thousand—so you were at least \$2,000 behind in your interest? A. Yes.

"229. Q. Then I notice another application amongst the papers for a loan for \$13,500; look at that document and see if it is your signature and Mrs. Biggs? A. Yes.

40 Application marked as Exhibit 9.

"230. Q. Why did you sign Exhibit 9? A. For the same reason.

"231. Q. The same reason you signed Exhibit 8? A. Yes.

"232. Q. Just to please Mr. McCormick? A. I don't know whether it was to please him or not.

"233. Q. Did he ask you to do that? A. Yes.

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"234. Q. And Mr. McCormick had been a very good friend up to that time? A. Quite.

"235. Q. And was a pretty good friend to advise the loans? A. I knew him before I had the loans.

"236. Q. When you wanted loans did you see Mr. McCormick or Mr. Brickenden? A. Mr. Brickenden.

"252. Q. You say there was no pressure brought to bear on you to pay up the interest? A. No.

"253. Q. The pressure came after 1929? A. It did.

"254. Q. After there was a change? A. Yes." 10

MR. SPRINGSTEEN: There is apparently a mistake in the numbering, that is the second 252. There are two different questions, my Lord, number 252—one at page 20 and one at page 22. It is the one at page 22 my friend is reading.

MR. WALSH: Questions 317 to 319.

"317. Q. Now throughout all these transactions Mr. Brickenden was your solicitor? A. Yes.

"318. Q. Until you went to Miss Harrison? A. Yes.

"319. Q. And he was also the company's solicitor? A. Yes.

"367. Q. Have you any way of showing how much was paid to Mr. Brickenden on the three mortgages which he held? A. The mortgages were all retired. 20

"368. Q. They were all retired by the loan to the London Loan Co.? A. That was the balance.

"369. Q. Before that you were paying Mr. Brickenden? A. Yes.

"370. Q. Whatever money you could spare you paid to Mr. Brickenden? A. Yes.

"371. Q. And as a consequence the London Loan mortgage went behind? A. Yes".

MR. WALSH: There is a second examination of Mr. Biggs taken on the 22nd October, 1929. 30

HIS LORDSHIP: I suppose that is after an adjournment—are they numbered continuously?

MR. WALSH: No, my Lord, now I am reading from the second examination, questions 28, 31.

"Q. 28. As I understand it, any business you did you did through Mr. Brickenden? A. I did.

"Q. 31. What you would do when you wanted a loan was to speak to Mr. Brickenden about the amount you required and he would place the facts before the Board in your behalf? A. Yes." 40

MR. WALSH: Now, my Lord, from Mrs. Biggs' examination—her examination was taken on the 21st day of October, 1929, and I am reading questions 1 to 13 inclusive.

"1. Q. Mrs. Biggs, you are one of the Plaintiffs in this action? A. Yes.

"2. Q. Do you own any of the property covered by any of the mort-

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gages held by either the defendant companies, I will speak of the mortgages: Mortgage No. 17155, dated January 27th, 1923; \$12,000; all of Lot 19 except the westerly sixty feet; did you own that property at one time? A. No.

"3. Q. Did you buy any property from Fred E. Stevens? A. There is very little I can tell you; the only thing I did was to sign when Mr. Biggs brought the papers.

"4. Q. You signed whatever papers he brought? A. Yes.

"5. Q. You had no money of your own? A. No.

"6. Q. Whatever money went into the property was Mr. Biggs' money?

10 A. Yes.

"7. Q. And your name was signed from time to time in connection with certain loans and in buying property; is that right? A. I suppose so.

"8. Q. But you had nothing to do with the business end of any of these mortgages? A. No.

"9. Q. Never make any payments regarding the alterations or improvements? A. Nothing at all.

"10. Q. Everything was left to your husband? A. Yes.

"11. Q. Did you ever see Mr. Brickenden in connection with any of the business in connection with the mortgages? A. No.

20 "12. Q. Your husband made all the arrangements on behalf of you and himself? A. Yes.

"13. Q. And your husband also handled all the money? A. Yes".

MR. WALSH: Now, your Lordship, the question as to the value—before I close my case, comes up definitely for decision, and just before I call that witness, following out your Lordship's suggestion, I thought perhaps I should mention this to your Lordship. I think the position I shall take on the argument, on my learned friend's appeal, will be such as to fall in line with your Lordship's suggestion yesterday.

HIS LORDSHIP: What suggestion do you refer to?

30 MR. WALSH: In connection with the amount of that mortgage.

HIS LORDSHIP: To direct a sale?

MR. WALSH: Yes, your Lordship, and may I say this, I think it is only fair for me to mention it, that my learned friends say that there is a value in this property. They say that they can redeem the property, and there is a sworn testimony of Mr. Biggs that he will do whatever you say—I do not think your Lordship will have any difficulty in fixing the amount after you hear the appeal, what I have to say on that appeal, your Lordship, I think my learned friend will—

40 HIS LORDSHIP: In the meantime we will postpone the question of amount of damages. I think the other issue ought to be determined first, and then there is the further difficulty. Mr. Slaght suggests there is a great deal of difficulty in arriving at any proper estimate of damages on that footing, assuming the plaintiff is entitled to any.

MR. WALSH: I cannot possibly close my case without putting in evidence as to the value, not only on the question of damages, but I have to have that evidence in—

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HIS LORDSHIP: What do you mean by that?

MR. WALSH: I have to have the evidence of the three witnesses I propose to call on the question of value. I have to follow that up, before I can possibly close my case.

HIS LORDSHIP: If I reserve that question, you are not hurt.

MR. WALSH: Except I cannot close my case.

HIS LORDSHIP: I know you cannot close your case unless there is an understanding that damages, assuming there was a basis of damages, ascertained or to be ascertained under some understanding of the Court—

MR. WALSH: May I just add to that, it is not only on a question of damages, but also on the merits I want to call this evidence, quite apart from any question of damages I want to call the evidence of value quite apart from any evidence of damages. It is linked right up with my other evidence. 10

HIS LORDSHIP: In what way?

MR. WALSH: I want to show to this Court, if I can from the evidence I have got, I submit, that this property never had that value, that Mr. Brickenden put forward that second mortgage application, having knowledge of it, he knew it. I can satisfy your Lordship. I am very reluctant—

HIS LORDSHIP: That goes to your allegation of fraud?

MR. WALSH: Right to the very bottom, my Lord. 20

HIS LORDSHIP: And are you accusing Mr. Brickenden of negligence?

MR. WALSH: I am sorry, and I am accusing Mr. McCormick of the same thing, right down to the bottom of it.

HIS LORDSHIP: All right. I had better not interfere with your case. You had better go ahead and do it in your own way.

MR. WALSH: I might, before saying this, if the defendants were sincere in what they say about the value of this property and sincere in having the money to redeem—the position I am going to take on the argument on that appeal may dispense with any other evidence of any kind on this case.

HIS LORDSHIP: All right, call the evidence. 30

MR. WALSH: I would call Mr. Jones, except I have a witness from the City Hall—might I call him first?

EDWARD HOUGHTON. Sworn. Examined by MR. WALSH

Q. Mr. Houghton, where are you employed? A. I am the City Tax Collector of the City of London, at the City Hall.

HIS LORDSHIP: What? A. City Tax Collector for London.

MR. WALSH: Q. Mr. Houghton, will you tell His Lordship if you have a statement—do you know anything about the taxes or have access to the taxes of the City of London for numbers 309 to 319 Ridout Street and 114 and 116 Elmwood Avenue? A. I have, and I have a statement here showing the arrears of taxes on 309, 311, 313, 315, 317, 319 and 319½ Ridout Street. 40

Q. Will you just give the first to His Lordship—you have—

MR. SPRINGSTEEN: I do not know whether this witness made his

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extracts from the rolls, and there is some information from these rolls that I think is very important. I would like to know where this extract is taken from and what information it contains before it goes in.

WITNESS: They were taken from the Tax Collector's rolls, and the arrears of taxes roll.

MR. SPRINGSTEEN: By whom? A. At my office.

Q. You did not take them yourself? A. No.

MR. SPRINGSTEEN: I submit then that this witness cannot give the evidence, my Lord.

10 MR. WALSH: I submit my Lord—

HIS LORDSHIP: Then if he took them himself, nobody would perhaps take objection. It might be objectionable, but the real evidence—

MR. WALSH: Can you verify this now? A. Yes.

MR. SPRINGSTEEN: There is more information I desire as to these taxes.

HIS LORDSHIP: Do you want him to bring the rolls here?

MR. SPRINGSTEEN: I do not want to inconvenience him, but if he will bring the information of the taxes paid on the last six months, that will satisfy me.

WITNESS: The last six months?

MR. SPRINGSTEEN: Right up to the present time.

20 HIS LORDSHIP: Verify those figures and come back with a statement of payments up to the present time.

—Witness steps down from box.

MR. WALSH: I will call Mr. Collier.

JOHN P. COLLYER—Sworn. Examined by MR. WALSH.

Q. Mr. Collier, by whom are you employed? A. The Canada Trust Company.

Q. And I believe—

HIS LORDSHIP: A clerk? A. I am the Assistant Manager, my Lord.

30 MR. WALSH: Q. And I believe that the Canada Trust Company was appointed Receiver of this property? A. Yes.

Q. Under an Order by Mr. Justice Jeffreys? A. I believe it was Mr. Justice Jeffrey.

Q. By Mr. Justice Jeffrey? A. Last summer.

HIS LORDSHIP: Receiver of the rents?

MR. WALSH: Yes, my Lord, as Receiver of the rents.

HIS LORDSHIP: Of all the Biggs' properties?

MR. WALSH: Of all the Biggs' properties on Ridout Street and Elmwood Avenue.

40 Q. Now, could you tell His Lordship what was the condition of this property at the time you took it over, as to the mortgages on it, do you know? A. It was subject to several mortgages, I believe.

Q. I am not talking about the London Loan mortgages or the Consolidated Trusts—the others.

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HIS LORDSHIP: What is the use of going over all that? You have everything in that statement which Mr. Slaght said he would check up, and I suppose these statements are correct., Mr. Slaght.

MR. SPRINGSTEEN: There were minor amendments, not substantial, and Mr. Braden asked me for the amendments. I thought I had given them to him.

MR. BRADEN: I will have this typed for your Lordship, there are a few errors, so I am told.

MR. WALSH: I just want to find if there are any arrears. We have nothing to mention—but we want the arrears. 10

HIS LORDSHIP: What arrears—at the present time?

MR. WALSH: At both times.

MR. SPRINGSTEEN: How can this witness give the evidence?

HIS LORDSHIP: I suppose he can speak of the standing of these mortgages according to his books.

MR. SPRINGSTEEN: The arrears would be according to the books of some other company.

HIS LORDSHIP: I will take the evidence of what the books that came to him show.

WITNESS: We have no real evidence of the arrears at that time. Claims 20 were made to us from time to time, and we paid them.

MR. WALSH: Q. What was the claim that was made at that time—can you tell me? What was owing on the Huron & Erie Mortgage on 309, 311 and 313 Ridout Street, will you see?

HIS LORDSHIP: Which mortgage is this?

MR. SPRINGSTEEN: Wait a moment.

MR. WALSH: The Huron & Erie, it is a first mortgage on 309, 311 and 313.

MR. SPRINGSTEEN: If my friend wants to prove what that is, he has a very easy way to prove it. Just call an officer of the Huron & Erie Company. 30 They know what payments were made to that time. This witness cannot possibly know, my Lord.

HIS LORDSHIP: I would not think so.

MR. WALSH: Can you tell me?

HIS LORDSHIP: Tell you what?

MR. WALSH: Q. Tell me what was owing to the Huron & Erie at that time?

HIS LORDSHIP: He could not tell that.

MR. WALSH: Q. Were you advised?

MR. SPRINGSTEEN: Please, Mr. Walsh— 40

HIS LORDSHIP: You cannot ask that.

If one follows strictly the rules of evidence he cannot get any evidence at all. There must be some limits, however.

MR. WALSH: Q. You have no knowledge of the arrears personally?
A. No accurate knowledge, no.

Q. Did you have charge of this matter? A. I had in a general way.

I attended to a number of legal details at the time the matter came in. Since then Mr. Blackwell, in the office, who was called, had attention.

MR. WALSH: He was subpoenaed for to-day? A. He was in late. He was not aware it was coming up to-day, or he would certainly have stayed in town, but I know in a general way, it has come before me several times and I know the account fairly well.

HIS LORDSHIP: What account? A. The rent account, my Lord.

HIS LORDSHIP: What are you seeking to prove from this witness, Mr. Walsh?

10 MR. WALSH: I want to know how that property stands, the arrears that are on it.

HIS LORDSHIP: To the Huron & Erie?

MR. WALSH: On all the properties.

HIS LORDSHIP: On all the properties covered by the Biggs' mortgages?

MR. WALSH: Yes, all the properties.

HIS LORDSHIP: Have you a ledger statement? A. I have a ledger statement of all receipts and disbursements—receipts of rents and disbursements on account of mortgages and carrying charges.

HIS LORDSHIP: I will allow you to say what that is

20 MR. SPRINGSTEN: I have no objection to that at all.

HIS LORDSHIP: Let us know all that.

A. There is a balance in the account of eleven cents.

HIS LORDSHIP: On what date? A. At the present time.

HIS LORDSHIP: In other words, the mortgages are all in good order now? A. On this one, the Huron & Erie mortgage.

Q. And that mortgage is on what property? A. It is a first mortgage of the Ridout Street property.

HIS LORDSHIP: That is? A. The Barrell mortgage on the Elmwood property is in order.

30 MR. WALSH: That is a new one?

HIS LORDSHIP: In the first place there are prior mortgages on all these properties? A. Yes, my Lord.

Q. All of them? A. I believe—no—

HIS LORDSHIP: One of them is a smaller mortgage? A. The smaller Ridout, the Duplex.

Q. At any rate, so far as you know, are all the prior mortgages in good order except the Huron & Erie? A. Yes, my Lord.

40 Q. And the Biggs' Mortgages, are they all in order, does the income from the property carry the Biggs' mortgages? A. Do you mean the Biggs' Mortgages to the London Loan? They are all mortgages from Mr. Biggs.

HIS LORDSHIP: Yes, I understand, but the mortgages from Biggs to the London Loan? A. \$13,500 and to the Consolidated Trust something like \$33,600.

Q. Are these mortgages paid up? A. No.

Q. You have paid nothing on them? A. No, we have paid nothing on them. The Order directed us not to pay anything on these mortgages.

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Q. Then you spoke of the account being in good order and there being a balance of eleven cents to its credit, that only means you are taking care of the prior— A. That is the taxes and the prior mortgages.

HIS LORDSHIP: That is really only the taxes and the Barrell mortgage—it shows there is nothing paid on these—

HIS LORDSHIP: Let us get this now so it may be verified.

Q. What is your opinion of it as to the Huron & Erie? A. It is overdue on principal and there are arrears of interest, something more than one thousand dollars, so I understand, of course I cannot say.

MR. SPRINGSTEEN: That is not evidence. 10

HIS LORDSHIP: It is not evidence, but he will have to get it.

MR. WALSH: Have you any objection to leaving these sheets here? A. For the time being, no.

HIS LORDSHIP: The sheets merely show your receipts and disbursements? A. Yes, my Lord.

Q. Receipts from rentals and disbursements on account of carrying charges? A. Carrying charges, and they give pretty full details.

HIS LORDSHIP: Do you want them left here for any purpose, Mr. Walsh?

MR. WALSH: In argument, I might want to go over them. Your Lordship has the substance. 20

WITNESS: There have been some extraordinary expenditures.

MR. WALSH: Q. How do you mean? A. Paid some considerable arrears of taxes.

Q. How do you mean, extraordinary—is it there? A. There were arrears of taxes from 1923.

Q. What year? A. 1923, on the Elmwood property.

Q. Yes? A. From 1923.

HIS LORDSHIP: You may leave your sheets here. Counsel may want to look at them, and they will be handed back.

—EXHIBIT FF. Loose sheets from record of Canada Trust Company. 30

MR. WALSH: Just one further question, under the order of Mr. Justice Jeffrey, I see Mr. Biggs has the right to stay on the property, provided he pays his proportionate part, that is of the carrying charges—can you tell me what he has paid? A. His own electric light and water bills.

Q. That is all? A. No.

Q. What else? A. He has also paid a proportion of the general, that is the hallways lighting.

Q. Yes? A. He has also paid, there are certain bills for coal and he has paid his proportion of those.

Q. Has he paid his proportion of the interest and his taxes? A. Of 40 his interest—the property which he occupied is not subject to the first mortgage.

Q. What one is he in? A. He is in 316. I am not sure, it is one of duplexes.

Q. Has he paid the taxes? A. He has not paid them to us.

Q. Has he paid the taxes to you? A. Not to me, no.

Q. And you say the taxes were in arrears.

HIS LORDSHIP: What was the order so far as taxes were concerned?

MR. WALSH: I have it right here, my Lord.

Here is the order, my Lord.

MR. WALSH: "This Court doth Order that the defendants be and they are hereby restrained until the trial or other disposition of this action or until further order, from taking proceedings under the powers of sale existing by reason of the mortgages held by them mentioned in the writ of summons herein.

10 "2. This Court DOTH FURTHER ORDER that until the trial or other final disposition of this action or until further order, all the rents or other income payable in respect of the mortgaged premises other than that part thereof occupied by the plaintiffs, as a residence, while so occupied by them, be collected by the Canada Trust Company, and that the said mortgaged premises be managed by them, and that the said Trust Company do apply said rents and income from the said mortgaged premises in payment of the necessary carrying and operating charges thereof, including taxes thereon and interest on encumbrances other than those held by the defendants, the said The Canada Trust Company being and it is thereby appointed
20 Receiver and Manager of the said property; the said necessary carrying and operating charges shall not include the part of the said premises occupied by the plaintiffs as aforesaid, the necessary carrying and operating charges thereon to be paid by the plaintiffs as a condition of their occupancy thereof."

HIS LORDSHIP: That would be difficult? A. It has been very difficult.

HIS LORDSHIP: I would have thought the Counsel might have agreed on some rent to be paid by him.

MR. WALSH: Q. On the basis of that account, you have got eleven cents after paying these arrears of taxes, and you have not anything to pay the interest on the first mortgage to the Huron & Erie and not anything to
30 pay the interest on the Consolidated Trust, or the London Loan Mortgages?

That is quite correct.

HIS LORDSHIP: Mr. Registrar, when this trial is over, you will hand back these ledger sheets, and they will be available afterwards.

WITNESS: Thank you, my Lord.

Cross-Examined by MR. SPRINGSTEEN.

I wish to cross-examine this witness, my Lord.

Q. How long has your company been acting as Receiver of these accounts? A. I believe since the beginning of August, 1929.

Q. And what are the annual taxes on the property? A. That is some-
40 thing I cannot say. We have never had enough money to pay the taxes from time to time.

Q. You have paid a considerable amount, however, on arrears of taxes, I believe? A. Yes, sir.

Q. How much? A. Something more than \$800, I believe.

Q. And that would exhaust considerably the year's taxes on the property,

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would it not? A. It is difficult to say, I do not think it would against all the properties.

Q. And then you have paid how much money to the Huron & Erie Corporation on their mortgage? A. I might better take it from the ledger sheets.

Q. Beg pardon? A. We have not made very large payments to the Huron & Erie.

Q. Will you just run over that and tell me how much you have reduced? A. The first item on September 6th, 1929, \$397.12, and then on May 7th, 1930, \$160. 10

HIS LORDSHIP: That is day before yesterday? A. That is the day before yesterday, sir.

MR. SPRINGSTEEN: I understand you missed a payment—will you check that over?

HIS LORDSHIP: It does not make much difference, if it is there, it is there.

MR. SPRINGSTEEN: Never mind, I will have it checked over.

MR. WALSH: I have a statement here from the Huron & Erie Loan.

MR. SPRINGSTEEN: Never mind, witness.

Q. Then the coal bill for the last year was in arrears when you became 20 Receivers? A. I believe it was.

Q. And you have paid that? A. I think not. We decided under the Order we had no power to pay any past due accounts.

HIS LORDSHIP: They were not encumbrances on the property.

MR. SPRINGSTEEN: Q. Let us get at the income of this property—you are familiar with the rents? A. Yes.

Q. Can you tell me what the rental is in respect of each of these properties then? A. The total rent of each?

Q. Take each apartment itself and tell me what the rent per month is, that will enable us to get at it? A. I can only take it from the ledger sheets. 30 That is the only papers I have here, it shows receipts.

HIS LORDSHIP: Do the ledger sheets show the origin of the receipts? A. It shows the person from whom it was received, and the property.

HIS LORDSHIP: The person and the property? A. Yes.

HIS LORDSHIP: Surely you do not need to spend half a day with this witness, bringing that all out when it is all here already.

MR. SPRINGSTEEN: The income per month is not here.

HIS LORDSHIP: The entries are all there. It shows the month, shows the property, shows the name of the tenants.

MR. SPRINGSTEEN: It seems to me I could cover it in about five minutes, 40 covering each apartment.

HIS LORDSHIP: It will take you half an hour.

MR. SPRINGSTEEN: There are only seventeen.

MR. WALSH: I have a statement of the properties, I will put in. I have a statement there.

MR. SPRINGSTEEN: Of what each is per month?

MR. WALSH: Yes.

MR. SPRINGSTEEN: Wait until I check it over.

HIS LORDSHIP: You can check it over later.

MR. SPRINGSTEEN: That is all, my Lord.

Re-Examined by MR. WALSH.

Q. Just one question, may I say this—

You applied all the rents you received from the properties on which the Huron & Erie had no mortgage, and on which Barrell had no mortgage, all to the Huron & Erie, and Barrell's mortgage—you say, however, we have
10 been getting enough—

HIS LORDSHIP: Whatever was an encumbrance on the property prior to Biggs' mortgage, he recognized, whether in the way of mortgages or taxes.

WITNESS: Yes, my Lord, the taxes against the property.

HIS LORDSHIP: The taxes had precedence, and the result is there was about a thousand dollars arrears on the Huron & Erie Mortgage, and eleven cents in the Treasury.

Q. And some taxes not paid for 1929? A. 1929 and 1930. 1930 taxes are not due yet.

MR. WALSH: Is there something not due from 1928—here is a statement,
20 I think, from the Huron & Erie.

HIS LORDSHIP: There are some arrears of taxes? A. Yes, your Lordship.

HIS LORDSHIP: All right. Go on, the next witness.

MR. WALSH: Might I put in this statement from the Huron & Erie of June, 1929?

HIS LORDSHIP: Not unless the other side consents.

MR. SPRINGSTEEN: If I could see it.

HIS LORDSHIP: Let the other side see it.

Cross-Examined by MR. SLAGHT.

Q. I suggest, Mr. Collier, that your rentals, as they are coming in
30 today covering all the properties, that you are collecting an amount of \$10,680 per year, or at an annual rate of \$10,680? A. I cannot say definitely.

MR. SLAGHT: Approximately.

HIS LORDSHIP: The ledger statement can be made to show exactly what the receipts are.

MR. SLAGHT: That is really the way. I want to crystalize it.

Q. And they are all occupied? A. I believe all save two apartments of the Elmwood Apartments.

HIS LORDSHIP: The receipts would vary from month to month, depending on how many are vacant.

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GEORGE GARDNER—Recalled. Examined by MR. WALSH.

HIS LORDSHIP: You dealt with the Ridout Street properties? A. Yes, sir.

MR. WALSH: Q. Then I come to Elmwood Avenue. Now 116 Elmwood Avenue. Will you tell His Lordship what the 116 Elmwood Avenue is? A. Number 116 Elmwood is a six family apartment building of fairly good construction. It needs money spent on it at the present time. It is rather run down.

HIS LORDSHIP: Well? A. There are two of the apartments, two in the first floor and two in the second floor.

MR. WALSH: Q. What did you say the value of that property was? 10
A. The forced sale value I put at \$13,500, the ordinary value at \$17,700.

HIS LORDSHIP: \$17,500? A. \$17,700 my Lord.

MR. WALSH: Q. What would you say was the value of that building in 1924, in November, 1924, on that property, which would be about six years—five and one half years ago?

HIS LORDSHIP: This mortgage was put on in November, 1924?

MR. SPRINGSTEEN: No, my Lord, the \$13,500 mortgage was put on in November, 1924.

HIS LORDSHIP: Was not this one of the properties on which a mortgage was put on in 1922? 20

MR. WALSH: The London Loan has two in it.

HIS LORDSHIP: Are you attacking these values, on the 1922 value?

MR. WALSH: The whole thing, I just took it 1924 because there was not much difference in those dates.

HIS LORDSHIP: Very well.

WITNESS: I cannot say, approximately \$15,500 for a forced sale.

Q. How much are you putting it for forced sale? A. \$15,500.

Q. Yes? A. And for ordinary value I would say approximately about \$20,000.

Q. Now 114 Elmwood Avenue, would you tell His Lordship what that 30
is? A. Number 114 is a stucco duplex, one family on the ground floor and a family upstairs.

Q. Yes? A. It apparently is an old house that has been fixed over, converted into a duplex.

HIS LORDSHIP: What do you say as to 114? A. It is an old house that has been altered into a duplex.

Q. What are the figures? A. \$6,600 and \$7,750.

MR. SPRINGSTEEN: Q. What did you say—\$6,600? A. \$6,600 and \$7,750.

MR. WALSH: Q. Now, what would you say the values were in 1924? 40
A. I would say \$7,200 and \$8,250.

Q. Now I see—

HIS LORDSHIP: Are these differences in valuation based on depreciation of the property or on depreciation of real estate values? A. Just depreciation of real estate values. I know nothing of the houses at that time, of course.

HIS LORDSHIP: Go on.

MR. WALSH: Q. From what you saw there? A. Yes.

Q. And would you now take six years ago, you would say the amounts added would be right? A. Apparently, yes, partly from the market conditions.

Q. I see you put two valuations, one a forced value, and one the ordinary value—what do you mean, in your experience? A. A forced sale would be what I consider the value of these properties at forced sale by auction, in order to make a sale—the other price I figure is the ordinary price
10 when an individual is making a value himself, say through a broker, to sell the property.

Q. Are the ones that you give as the ordinary value? A. Yes.

Q. Would you say that was a fair and reasonable value of the property?

A. That I feel is a fair and reasonable value.

HIS LORDSHIP: That is the price at which it could be placed in the agent's hands? A. Yes, sir.

Q. And if he could not get that, he would have to reduce it until he reached the forced value? A. He would have to.

MR. WALSH: Q. I think you told His Lordship yesterday that you
20 had had considerable experience in auctioneering real estate? A. I have.

Q. What is this property like? A. Of course on Ridout Street, that property is quite a distance from the centre of the city, it is quite a long ways out as London goes, it is practically on the City Limits.

Q. Elmwood Avenue property? A. The Elmwood property is closer in, apparently, although there is not an awful difference in the actual distance.

Q. And what would you tell His Lordship as to the saleability of the property in your opinion? A. Of course, from an investment point of view—

MR. SPRINGSTEEN: Just a moment. This man has not been called as
30 to his ability, but as an auctioneer.

HIS LORDSHIP: He has been called as a valuator.

WITNESS: I think it would—

MR. WALSH: What do you say as an investment? A. From an investment standpoint, the Elmwood property would be a fair investment; the Ridout Street property I would not recommend to a client on account of its distance from the downtown section.

Q. Is there anything else you want to tell His Lordship?

HIS LORDSHIP: He need not volunteer anything.

40 Any cross-examination?

Cross-Examined by MR. SPRINGSTEEN:

Q. What experience have you had in valuing Real Estate, Mr. Gardner?
A. In regard to valuing real estate?

Q. Yes? A. The experience I have had in my general business.

Q. What is your general business? A. Auctioneering and real estate.

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—continued.

Q. Who did you value lands for? A. I valued lands for probably, at different times, for probably fifteen large law firms in the City.

Q. Do you value for any Insurance Companies or Loan Companies, or anything of that kind? A. Just occasionally, because they have their own valuers.

Q. You are not retained in that capacity? A. Only for, to make sales, that is all.

Q. And you are not a real estate agent engaged in buying and selling, or acting as a broker in making sales, except as an auctioneer? A. Oh yes, I have a real estate department in my office. 10

Q. You have a real estate department? A. Yes.

Q. What percentage of change in values has been in properties in London between 1924 and 1930? A. I should figure there is a general depreciation in values in South London, and also in certain parts of the City, and also an increase in certain parts of the City.

Q. Then this is in what you call South London? A. Yes.

Q. And has there been about the same depreciation all over that district? A. I should say, pretty generally.

Q. And what percentage of depreciation do you say has taken place in that period of time, in that district? A. I have already given you the figures, 20 which I think are justified.

Q. You have given me the figures, but I want you now to say what percentage of depreciation has taken place in that area? A. I cannot say that in general. I have given you the figures in individual cases that I have looked over, that is all.

Q. So you take a theoretical house that was worth \$10,000 in 1924, what would you say it would be worth now in that district, a new house in 1924? A. You cannot do that because there might be much depreciation in one property and another property in that district, and another property might not— 30

Q. In that district—just a moment, you told me a few moments ago the depreciation in that district had been about general? A. There was about general.

Q. A general depreciation all over the district—now then, taking into consideration nothing only that general depreciation, what percentage has that depreciation amounted to between 1924 and 1930? A. Well, I would not, from the position I am in here, I would not like to state.

Q. No, now tell me how, if you do not know that, how you can place a value on these properties as of the present time, and as of 1924, if you do not know what the extent of that depreciation has been? A. That is just 40 from my personal experience. I am not going to commit myself to anything I am not definitely certain on.

Q. You must have had some basis to arrive at the value in 1924? A. Just, there has been a natural decrease.

Q. I want to get at how much. A. Well, I would not like to say any general figure.

Q. You would not like to say any figure? A. Pardon me, sir, if you would give me a house and conditions prevailing, I will answer your question.

HIS LORDSHIP: Now you have your answer.

MR. SPRINGSTEEN: I do not think it is.

HIS LORDSHIP: An enormous multiplication of words in this case, both in the pleadings and the evidence.

I am not speaking of you, in particular, Mr. Springsteen.

MR. SPRINGSTEEN: Thank you, my Lord.

Q. You have seen these properties, I understand, and are familiar with
10 them—is that a photograph of 319 and 319½ Ridout Street? A. This is 309, 311 and 313.

Q. Just a moment, let us see—you point to the building at the right hand side? A. Yes.

That will be Exhibit GG.

MR. WALSH: Pardon me, my Lord, I object to them. I want them proved.

MR. SPRINGSTEEN: Could you identify these as the houses—if the witness could identify this photograph of the houses, that will be sufficient.

HIS LORDSHIP: I do not see how any of this is of any use at all, Mr.
20 Walsh. I do not see why so much time should be spent on cross-examination.

HIS LORDSHIP: Do you recognize the house? A. Certainly.

HIS LORDSHIP: All right.

MR. SPRINGSTEEN: The building at the right hand side of what will be Exhibit GG is 309, 311 and 313 Ridout Street? A. Yes.

Q. The building in the photograph is? A. Is 315 and 317.

—EXHIBIT GG. Photograph showing 315 and 317 Ridout Street at left and 309, 311 and 313 Ridout Street at right hand side of photo.

Q. Then that is a photograph of what? A. 319 and 319½.

30 MR. SPRINGSTEEN: That will be exhibit HH.

Q. What is that photo of? A. That is 309, 311 and 313 Ridout Street.

MR. SPRINGSTEEN: That will be Exhibit II.

—EXHIBIT HH. Photograph of 319 and 319½ Ridout Street.

—EXHIBIT II. Photograph showing front and side of 309, 311 and 313 Ridout Street South.

Q. And what is this? A. That is number 116 Elmwood Avenue.

MR. SPRINGSTEEN: That will be Exhibit KK.

—EXHIBIT KK. Photograph of Number 116 Elmwood Avenue, subject to \$18,000 mortgage, first to London Loan.

40 Q. And this? A. This is number 114 Elmwood Avenue.

MR. SPRINGSTEEN: That will be Exhibit LL.

—EXHIBIT LL. Photograph showing 114 Elmwood Avenue, front view.

MR. WALSH: Taking them subject to my objection. There is also writing on the back of these that I do not think should be there.

MR. SPRINGSTEEN: I will delete that marking. I am not offering that as evidence at all.

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HIS LORDSHIP: I will assume, Mr. Walsh, if you like, you can bring on more witnesses to prove about these same matters, probably Mr. Slaght or Mr. Springsteen will bring other witnesses who will add thirty or forty per cent. to these valuations.

MR. SLAGHT: Eighty odd thousand dollars, my Lord. This man runs \$62,950, when he works back to his valuation.

HIS LORDSHIP: Working back to 1924?

MR. SLAGHT: He lands at \$62,950—that is right? A. Approximately.

MR. SLAGHT: And our witness would cover approximately eighty thousand dollars or ninety thousand dollars. 10

MR. WALSH: What is that?

HIS LORDSHIP: You only state what I would expect them to be.

Then your next witness.

MR. WALSH: I will call Mr. Jones.

MR. SLAGHT: In view of Gorwill's valuation—his valuation was \$81,000, made at the time with two directors saying he was a careful man in their employ.

HIS LORDSHIP: Whether he was or not, I do not see what you can say.

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Sidney Jones,
Examination
9th May, 1930.

SIDNEY JONES—Sworn. Examined by MR. WALSH.

MR. WALSH: I do not want to be— 20

HIS LORDSHIP: I do not want to close you out. You say this evidence has a bearing on the question of fraud, and you have raised the question of fraud.

MR. WALSH: If your Lordship reserves to me the right to call it later under those conditions?

HIS LORDSHIP: I suppose you would be as far ahead if you called one. Would you want to call one?

MR. SLAGHT: I suppose I would.

HIS LORDSHIP: Suppose you confine yourself to one—would that be as useful as three? 30

MR. SLAGHT: I do not see the necessity of it at all.

MR. WALSH: I will just take this witness and be through with it.

MR. SLAGHT: I do not think the Court is going to pass any judgment on this case based on a valuation taken in 1930 when we have Mr. Gorwill giving us a certificate of character by my friend's own witnesses, by Directors at that time. Supposing Gorwill was over optimistic or something—that would not show any bad faith on the part of Brickenden in any way, and it was not Brickenden's task to have anything to do with values or Mr. McCormick.

MR. WALSH: Mr. Slaght, do not be so innocent, the valuation by Mr. 40
Gorwill was had in 1925, not the time of the loans at all.

HIS LORDSHIP: I merely suggested you might as well take the evidence of one witness as another.

Have you some to call, Mr. Springsteen?

MR. SPRINGSTEEN: Yes, my Lord.

HIS LORDSHIP: Will you let it go at one?

MR. SPRINGSTEEN: Yes, my Lord, I am willing to limit my number of experts to the same number as my friend's.

HIS LORDSHIP: That is what I said.

MR. WALSH: One reason I call this witness, he is a builder and he would tell you the type of construction of these buildings, that is one of the things I want.

10 HIS LORDSHIP: Go on, your own way.

MR. WALSH: I was wondering, your Lordship, could I just confine this to—

HIS LORDSHIP: Get on.

MR. WALSH: Q. Mr. Jones, what is your occupation?

HIS LORDSHIP: Perhaps if you confine this witness to construction, Mr. Springsteen will confine his witness—

Q. Have you a witness to speak as to construction?

MR. SPRINGSTEEN: I do not know whether we have or not. I believe not, my Lord.

20 HIS LORDSHIP: This witness is a builder, did he build either of these houses?

MR. WALSH: He did not build them.

HIS LORDSHIP: Was it the construction which is of value?

MR. WALSH: He is a builder and made a personal examination of each of these houses, and he knows what it would cost to build them, he says.

HIS LORDSHIP: Use your own judgment.

MR. WALSH: Well, we will hurry this up. It won't take long.

Q. What is your occupation? A. Builder.

30 Q. How long have you been a builder? A. I followed my trade since a boy, and have been in business about eleven years.

Q. Have you built many houses? A. Yes.

Q. Now, will you tell His Lordship, did you see the premises on Elmwood and Ridout that have been in litigation today? A. Yes.

Q. Will you tell His Lordship what the corner property on Ridout, that is 309 to 313—will you tell His Lordship about it—309, 311 and 313 Ridout Street South? A. Yes, the building is approximately twenty-six by thirty-seven, in three apartments, red brick, and hollow tile construction, hot water heating, with roofed verandah.

40 HIS LORDSHIP: What are we gaining by this? Are you wanting to show by this witness that this construction is faulty?

MR. WALSH: No, my Lord, but by reason of what is in the building, what the value would be of it.

MR. SLAGHT: Of course, the cost of the material was very different six years ago and now.

HIS LORDSHIP: He is giving it now?

MR. WALSH: He is giving it now.

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*Plaintiffs'
Evidence.
No. 29.*

*Sidney Jones,
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—continued.

HIS LORDSHIP: This building is built of wood and bricks and stone and plaster like other buildings? A. Just like other buildings. The value I placed on the building was \$9,942, and on the land \$1,058, making a total of \$11,000.

MR. WALSH: \$11,000? A. Yes.

Q. Under what conditions do you value that? A. Under the conditions of construction, what it would cost to build it. In other words, I would be willing to build it for that.

Now what would you say would be the value of that property—

MR. SLAGHT: This year? 10

MR. WALSH: I am asking him, Mr. Slaght.

Q. What would you say would be the value of that property today?
A. \$11,000 today.

Q. To build today? A. Yes.

Q. What would it have cost to build in 1924? A. It would have cost eight per cent. more, your Lordship.

HIS LORDSHIP: There would be about nine hundred dollars more? A. Yes.

MR. WALSH: Q. What did you say the value of that property would be today, quite apart from the construction of it—what do you say would be the value of it? A. Well, I would say that the value would be about the same as I gave you, because it would cost as much to construct it, and the land, that would be the value of it from a builder's standpoint. 20

Q. Now, did you see 315 and 317? A. Yes.

Q. Now, will you tell His Lordship what kind of building that is? A. It is a stucco on brick, two apartments, which has been an old building remodelled, or made into apartments. It has hot water heating, small basement, and has verandahs.

Q. What do you say about it? A. Well, the value of that, there are some garages at the back which I took into consideration, the total value including garages, \$7,846. 30

Q. That includes the land? A. The land and the garages and the building.

Q. Everything complete? A. Yes.

Q. And what do you say the value would be when it was built? When it was—when it was changed or converted, at least, would there be any difference? A. Well, of course, a man could spend a lot more money in converting it than it would be worth, you can realize that, that would be my valuation, the cost of it and placed in the state it is now.

Q. At the time it was done? A. Yes. 40

Q. What would you say about its value today? A. Well, I would say the value would be pretty close, almost identical, yes.

Q. Now 319 and 319½—will you tell His Lordship what kind of a place that is? A. That is a brick building, about 24.6 x 46.6, it has two apartments, it is built right direct, an old building been altered, has a wooden

shingle roof, a verandah, hot water heating, partly stucco and part of it frame at the rear.

Q. What do you say as to that? A. In my opinion the value of that is \$8,028, and the garages at the rear, the land and building.

Q. What would you say with reference to six or eight years ago, would there be any change? A. That would be in 1922.

Q. Yes, or 1924? A. Yes.

Q. For either of those dates, would there be any change? A. It would cost slightly higher to do that work then than now.

10 Q. What would you say? A. About the same, about eight per cent. on labor and material in the cost.

Q. Now, did you see 116 Elmwood Avenue? A. Yes.

Q. Will you tell His Lordship what that is? A. It is a six apartment, built of red brick.

HIS LORDSHIP: Number 116 Elmwood? A. Yes, your Lordship, built I would say about 1923, according to the name plate on it. The building is 43 x 58, approximately, has a flat roof, six apartments, red rug brick, is hot water heat, equipped with Frigidaire.

20 Q. Yes? A. I value the building at \$22,832, and the land at \$1,575, making a total of \$24,407.

Q. Now, do the Frigidaires make any difference? A. Yes.

Q. How many Frigidaires are there?

HIS LORDSHIP: They did not go in at the time? A. I would imagine not.

Frigidaires would be worth about \$400 each to instal, take them as a unit, that would be six units at \$2,400.

Q. Now, that was a total of \$24,407 on the Elmwood Avenue? A. Yes.

MR. WALSH: Q. Now, take 114 Elmwood Avenue?

30 MR. SLAGHT: That figure is today, is it?

MR. WALSH: Mr. Slaght wants to know if that is the value today? A. Yes, that is the figure I have taken today.

Q. With the Frigidaires? A. Yes.

Q. Is there any difference in six years ago? A. The cost would be about the same in 1922 as the other—that is about eight per cent. more to construct it in 1922 than at the present time.

MR. SLAGHT: Eight per cent. on that amount is \$1,952.00.

MR. WALSH: It is manifest there were no Frigidaires put in.

40 Q. Would you just tell us now, 114 Elmwood? A. 114 Elmwood is a stucco on frame, has a shingle roof, stucco on frame

HIS LORDSHIP: How large? A. Two apartments, your Lordship.

Q. What is the valuation? A. The valuation, total, the land, building and garage, the land complete, and garage, I would say \$7,374.00.

MR. WALSH: Q. That is with the garage and everything? A. Yes, with the garage at the rear and all.

Q. Have they Frigidaire? A. No.

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—continued.

HIS LORDSHIP: Is that the last one? A. That is the last one.

Q. Have you made a total of those figures? A. Yes, your Lordship.

Q. What is the total? A. \$58,655.

HIS LORDSHIP: That is the replacement value as of today? A. Yes, your Lordship.

Q. But the value of these buildings six or eight years ago you think would be about? A. About eight per cent. more, on the buildings.

Q. Six or eight years ago? A. Yes, sir.

MR. WALSH: Q. Were there any, will you tell His Lordship the class of materials, whether it was new or second-hand? A. There was a lot of 10 second hand material used.

HIS LORDSHIP: A couple of these were reconditioned, rebuilt? A. Yes.

MR. WALSH: It was second-hand? A. Yes.

MR. WALSH: That is all, thank you, witness. Unless the other Counsel want to ask you something.

Cross-Examined by MR. SPRINGSTEEN.

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by Mr.
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9th May, 1930.

Q. Just one question, you are familiar with the districts in which most of these houses are located? A. Yes.

Q. A very good district, is it not? A. Yes.

Q. And growing quite rapidly? A. Yes.

Q. And is it not a very good district in which to place for rent—they are easily rented at fairly substantial rentals? A. Yes.

20

Cross-Examined by MR. SLAGHT.

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Q. Do you know the rentals of any of the premises? A. No.

Q. Not one? A. No.

Q. And you did not therefore take into account the productiveness or the annual intake in making your valuations at all? A. No, mine was purely from reconstruction standpoint.

Q. Would you have it in an estimate, having informed the Court that on a construction standpoint you bring out a value of \$58,000 odd? A. With 30 the eight per cent. brings \$63,000 as of six years ago.

Q. And that \$63,000 valuation, would you hazard any estimate—

HIS LORDSHIP: About \$62,000.

MR. SLAGHT: \$62,000 odd then, I had \$63,000 something, but \$62,000 odd, we will say.

HIS LORDSHIP: Perhaps you are right.

MR. SLAGHT: Adding the eight per cent. on, I made it \$63,347.00.

MR. WALSH: Have you taken the land out? \$62,000 with the land out.

MR. SLAGHT: Your other valuator said the whole thing was worth more than.

40

HIS LORDSHIP: Get on.

MR. SLAGHT: Q. Would you hazard any estimate now, as a valuator or builder as to what the revenue is from these properties? A. No, I have an idea they would rent about fifty dollars a month on a average.

HIS LORDSHIP: How would that estimate compare with Gorwill's estimate?

MR. SLAGHT: Just about the same, my Lord. A thousand higher, giving construction.

Q. Then you do not know anything about, I suppose you will agree with me, as a real estate man, the revenue from properties is one of the factors you have regard to, one of the factors in arriving at a sale value for a property? A. Well, of course, my figures here are only construction.

HIS LORDSHIP: He is confining himself to construction, and he has given the district a good character, and apart from that he is just giving the value of the buildings, and they might be anywhere? A. Yes, sir.

10 HIS LORDSHIP: That is the case, Mr. Walsh?

MR. WALSH: I have a man here from the Tax Office, and they have the Huron & Erie statement here now, your Lordship.

That is my case then, your Lordship.

ARTHUR ARMITAGE—Sworn. Examined by MR. WALSH.

Q. Mr. Armitage, what position do you occupy? A. I am the Manager of the Mortgage Department of the Huron & Erie Loan.

Q. Of the Huron & Erie Loan? A. Yes, sir.

Q. And you have a mortgage, I think, on 309 Ridout Street? A. Yes, sir.

20 Q. Will you just tell His Lordship what was the principal on that mortgage and how it stands? A. The original mortgage, my Lord, was \$10,000 and the present principal balance is \$9,588.48. Now, that is in arrear.

HIS LORDSHIP: How much? A. The principal balance now is \$9,588.48.

MR. WALSH: Plus what? A. Plus arrears of interest, \$1,064.02.

HIS LORDSHIP: All right.

MR. WALSH: Anything else now? A. There is a small item of interest on arrears. This statement is figured as of today's date.

30 HIS LORDSHIP: All right.

Cross-Examined by MR. SPRINGSTEEN.

Q. May I see the sheet you are reading from? A. Yes.

Q. In the first column, what do these figures represent at the heading, at the top, please? A. What column do you mean?

Q. What does that item of \$20,000 represent there? A. Well, that is the valuation that we placed on the property.

Q. When you made the loan? A. Yes, sir.

Q. And what payments have been made on that loan, just read them, please? A. On the 7th of May we received a payment of \$160.

40 HIS LORDSHIP: What is this property? A. This is the Ridout Street property, 309.

HIS LORDSHIP: 309, 311 and 313? A. Yes. The payment we re-

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—continued.

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No. 30.
Arthur
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Examination
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No. 30.
Arthur
Armitage,
Cross-
examination
by Mr.
Springsteen.
9th May, 1930.

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No. 30.

Arthur
Armitage,
Cross-
examination
by Mr.
Springsteen,
9th May, 1930.

—continued.

ceived before that was on the 9th of January. This is an adjustment of an item credit here, and taken out again. It was to the wrong account. The payment we received before that was on the 9th of January, \$70 on the 9th of January.

HIS LORDSHIP: What is the benefit of this?

MR. WALSH: Another valuation here of \$16,000? A. We have one here of \$16,000.

HIS LORDSHIP: Just a moment, what is the use of this?

MR. SPRINGSTEEN: Just to show the property is getting in better shape in the hands of the Receiver, that is all, my Lord. 10

Cross-Examined by MR. SLAGHT.

Plaintiffs'
Evidence.
No. 30.
Arthur
Armitage,
Cross-
examination
by Mr.
Slaght,
9th May, 1930.

Q. Mr. Armitage, you have been with the Huron & Erie for some time?
A. Seventeen years.

Q. And you are perhaps in charge of the Department that authorized the \$10,000 loan in 1924? A. No, sir, I was not in that department.

Q. You were not at that time? A. No, sir.

Q. Who was the valuator for the Huron & Erie at that time. A. Well, we have two valuations here, two original valuations, one was made by Mr. Fetterly, Mr. E. B.—he is not with the Corporation.

Q. Was he a competent valuator? A. I think so, usually. 20

Q. How many years was he a valuator? A. I could not say that. He was there before I was.

HIS LORDSHIP: What was the original valuation? A. \$20,000.

Q. And some other valuator? A. Since then, the value in 1928, it was cut to \$16,000, also by Mr. Fetterly.

MR. SLAGHT: Down to \$20,000 in 1924.

HIS LORDSHIP: When was that it was cut down to \$16,000? A. In 1928.

Plaintiffs'
Evidence.
No. 30.
Arthur
Armitage,
Re-examination
by Mr. Walsh,
9th May, 1930.

Re-Examined by MR. WALSH:

Q. Is Mr. Fetterly with you? A. No, he has left the employment of 30 the company. He was pensioned. He has retired at pensionable age.

HIS LORDSHIP: That is your case?

MR. WALSH: I have to call the man from the City Tax Office, and I am through, my Lord.

HIS LORDSHIP: All right.

Plaintiffs'
Evidence.
No. 31.
Edward
Houghton,
(Recalled)
Examination
Continued.
9th May, 1930.

EDWARD HOUGHTON—Recalled.

Examination continued by MR. WALSH.

Q. Have you the information about the taxes? A. Yes, I have personally verified the figures I had here before.

Q. Are they correct? A. They are correct. 40

Q. Brought up to date? A. The 1930 taxes have not yet been demanded.

- Q. The 1929? A. The 1929, yes.
- Q. That is correct? A. This is correct.
- Q. Tell His Lordship the statement? A. The taxes in arrear on 309, 311 and 313 Ridout Street to the end of 1929 are \$423.52.
- HIS LORDSHIP: We will put this statement in as an Exhibit.
- WITNESS: 315 and 317 Ridout is another parcel, \$586.19.
- MR. WALSH: Q. Yes? A. And 319 Ridout, \$633.33.
- Q. Yes? A. 116 Elmwood Avenue, \$616.88
- Q. Yes? A. And 114 Elmwood Avenue, \$447.57.
- 10 HIS LORDSHIP: Down to the end of last year? A. Yes, sir, making a total of \$2,707.59.
- MR. WALSH: Q. Still in arrear? A. Yes.
- MR. SPRINGSTEEN: \$2,707.59? A. Yes.
- HIS LORDSHIP: Mr. Springsteen wanted something about payments that had been made in the last six months? A. On January 25th, 1930, the arrears on 116 Elmwood to the end of 1928 was paid with a cheque from the Canada Trust Company for \$735.68.
- MR. WALSH: Q. And the amount that you have given His Lordship?
- A. Is exclusive of that, yes.
- 20 MR. WALSH: And there is owing today? A. Yes.
- Q. \$616.88? A. Yes.
- HIS LORDSHIP: Any cross-examination of this witness?
- MR. SPRINGSTEEN: I am instructed, my Lord, there is approximately \$2,000 paid off in taxes.
- HIS LORDSHIP: You will be able to show that then by the Exhibits.
- MR. SPRINGSTEEN: I do not know that I can, my Lord, they are in the hands of the Receiver.
- HIS LORDSHIP: What do you say to that? A. I have just come from the books, and that is the only payment I saw.
- 30 HIS LORDSHIP: That is your case?
- MR. WALSH: That is my case, your Lordship.
- HIS LORDSHIP: The defence.
- MR. SLAGHT: On behalf of my client, my Lord, I move the Court for non-suit. I submit there is no—
- HIS LORDSHIP: The responsibility is yours, Mr. Slaght, if you are content, I am.
- I do not entertain motions for non-suit in non-jury cases.
- MR. SLAGHT: I will get whatever benefit there may be of moving.
- HIS LORDSHIP: Surely.
- 40 MR. SLAGHT: I have very substantial reasons why I think there is nothing to call on my clients for in defence.
- HIS LORDSHIP: I take it that all the defendants will make the same motion.
- MR. SPRINGSTEEN: That is my motion.
- HIS LORDSHIP: Are you all content to let the case stand the way it is?

*In the
Supreme
Court of
Ontario.*
—
Plaintiffs'
Evidence.
No. 31.
Edward
Houghton,
Examination,
9th May, 1930.
—continued.

No. 32.
Motion for
Non-Suit by
Mr. Slaght on
behalf of
Defendant
Brickenden,
9th May, 1930.

*In the
Supreme
Court of
Ontario.*
—
No. 33.
Motion for
Non-Suit by
Sir Alfred
Morine on
behalf of
Defendant
McCormick,
9th May, 1930.

SIR ALFRED MORINE: My motion, my Lord, would be too technical. I think that judgment should be entered for McCormick against all the defendants, and costs, upon the ground there has been no evidence whatever to substantiate the claim which has been made against him.

Now, I do not want to go, at this stage, into a discussion of the matter. If your Lordship will give me the advantage if the case ever comes to appeal, of all the objections I might make, not shut me out on any point whatever.

HIS LORDSHIP: All right.

SIR ALFRED MORINE: If your Lordship would like me to point out a few salient matters in this I would like to do so. 10

HIS LORDSHIP: I shall not interfere now, I shall leave it with Counsel to take their own course, also in the way of offering evidence.

SIR ALFRED MORINE: I do not intend to offer any evidence.

HIS LORDSHIP: Have you any evidence, Mr. Slaght?

MR. SLAGHT: My Lord, the only question on which I would care to offer any evidence would be, for whatever effect it might have on my motion to continue the Injunction. I think that that will depend chiefly upon the result of the Appeal from the Master's report. I apprehend—

HIS LORDSHIP: The Injunction now is what?

MR. SPRINGSTEEN: The Injunction now is to prevent the defendants 20 from exercising their powers of sale under the mortgage until after trial—I say the Master's report is wrong, and I might say, my Lord, I intend to argue that while I think your Lordship is bound by the Meagher case in respect of the first two mortgages my instructions are that it is the plaintiff's intention to appeal to the point where the merits of that decision can be tested out, but I do think that the Meagher case still lives, the Interest Act applies to the \$13,500.

HIS LORDSHIP: You concede that the Meagher Case, and perhaps others, perhaps the facts make it hopeless for you to appeal as the only course so far is the other mortgages. 30

MR. SPRINGSTEEN: No, I do not. I apprehend that your Lordship is bound by the Meagher Case. I will ask your Lordship to find that the Brown case will apply to the making of the new mortgage to the Consolidated Trust Company which was held not to be in settlement at all, that the bonus and interest paid on the whole thing—

HIS LORDSHIP: I thought you said last night the only question you were raising was the \$13,500?

MR. SPRINGSTEEN: I think your Lordship is bound; I suppose I will not argue that first too seriously, but I want to make it plain that I am not abandoning, but in respect to offering evidence, I do not care to offer any 40 evidence on this branch of the case, only to satisfy your Lordship that if the Master's Report is not correct that the Injunction should be continued.

HIS LORDSHIP: I suppose when we come to consider these two motions—you have two motions?

MR. SPRINGSTEEN: Yes, my Lord.

HIS LORDSHIP: You can offer evidence if you choose to do so.

No. 34
Motion to
Continue
Injunction
by Mr.
Springsteen
on behalf of
Walter H.
Biggs and Eva
V. Biggs,
9th May, 1930.

MR. SPRINGSTEEN: Very good, my Lord. I will offer no evidence.

HIS LORDSHIP: Then, what is your attitude, Mr. Slaght?

MR. SLAGHT: I have no evidence to offer, my Lord.

HIS LORDSHIP: Then, I will hear your argument, Mr. Walsh.

I suppose, so far as the facts are concerned, you rely on the Master's report?

MR. WALSH: Yes, my Lord. I might say, I would just as soon argue that report, and clean that up. That is the Motion, and then again, I would like to take them in their practical sequence. First, to start out—

10 HIS LORDSHIP: The onus is on Mr. Springsteen, so far as the Master's report is concerned. He is appealing. We will let him deal with that, so far as you are concerned it will be only necessary for you to say, so far as the facts, you rely on the report.

MR. WALSH: Yes, my Lord.

HIS LORDSHIP: So you will be able to go ahead with your sale proceedings.

MR. WALSH: Yes, your Lordship.

HIS LORDSHIP: Then we will be able to argue the matter.

Certified to be a correct transcript.

20

J. E. HENDERSON, C.S.R.

Official Reporter, S .C. O.

Reasons for Judgment of Raney J.

No. 35.

The plaintiffs sue as mortgagors for the redemption of certain mortgaged properties situated in London. The Loan company and the Trust company counterclaim for judgment for the mortgage moneys and also bring in Mr. McCormick, a former president, and Mr. Brickenden, a former solicitor of the Loan company, against whom the Loan company claims damages arising out of the transactions.

30 There were subsequent liquidations and adjustments between the defendant companies and certain other London financial corporations, and at the trial these other corporations were, with their consent, added as co-plaintiffs in the counterclaim.

The trial was opened in London before Mr. Justice Wright on the 1st of November, 1929. As a preliminary step he made an order directing the Master at London to take the mortgage accounts and postponed the trial until after the report of the Master. Under this order, the Master heard evidence and made his report on the 29th of April, 1930. The plaintiffs appealed from the Master's report, and their appeal, and the continuation of the trial, came on before me at London.

*In the
Supreme
Court of
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—
No. 34.
Motion to
Continue
Injunction
by Mr.
Springsteen
on behalf of
Walter H.
Biggs and Eva
V. Biggs.
9th May, 1930.

—continued.

*In the
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Court of
Ontario.*

—
No. 35.
Reasons for
Judgment of
Raney, J.
11th October,
1930.

*In the
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No. 35.
Reasons for
Judgment of
Raney, J.
11th October,
1930.

—continued.

The facts in the case are not simple. In the Autumn of 1922, the plaintiff, Walter Biggs, applied to the Loan Company for a building loan on an apartment building, 116 Elmwood avenue, London, and pursuant to the application, a mortgage for \$18,000 was made on the 14th of November, 1922, in favour of the Loan Company,—the plaintiff, Eva Biggs, joining to bar her dower. The Loan company, not being well satisfied with the security, Biggs, shortly afterwards, gave a collateral mortgage for \$3,000 on an adjoining property, 114 Elmwood avenue, which was already subject to two mortgages, one for \$6000 and the other for \$1,000. Biggs agreed to pay a bonus of 2% to the Loan company on the \$18,000 loan, and \$360 was accordingly deducted from the face amount of the mortgage and retained by the Loan company. The company's solicitor, Brickenden, also charged Biggs a commission of 2% on the loan, and \$360 of the mortgage moneys was paid to him. 10

In January 1923, the Loan company made an advance to the plaintiff, Mrs. Biggs, of \$12,000 secured by a mortgage on her property numbers 315, 317 and 319 Ridout Street, London. From this loan the company deducted a bonus of 1½%, in addition to fees and commissions charged by the company's solicitor, Brickenden.

In November, 1924, Mr. and Mrs. Biggs gave the Loan company mortgages to secure \$13,600 on the Elmwood avenue properties and the Ridout Street properties, already covered by the prior mortgages of \$18,000 and \$3,000 and \$12,000 as above stated, and on two other Ridout Street properties, 311 and 313, which were already subject to a mortgage in favour of the Huron & Erie Loan Company for \$10,000. Though this mortgage was registered on the 12th of November, the loan was not authorized by the directors of the Loan company until the 17th of November. The Loan company charged the mortgagors a bonus of \$1,000 on this loan which, in addition, carried interest at 8%. 20

There was a history behind this last mentioned mortgage which has an important bearing on the case which the Loan company now makes against the defendants by counterclaim, McCormick and Brickenden. In the later months of 1923, Biggs was apparently in need of more money, and entries in the minute book of the Loan company indicate that applications were made during those months for further advances, which were not entertained; but in July of 1923, the defendant Brickenden advanced moneys to him on a mortgage in his favour for \$5000 with a collateral mortgage by Mrs. Biggs for a like amount; and in August he made further advances on mortgages in his favour, covering the same properties, for \$2000, and in January, 1924, further advances on like mortgages for \$1200. All three of these mortgages were expressed to be to Brickenden "in trust", and in each case Brickenden retained out of the mortgage moneys a substantial bonus; that in the case of the first of the three having been \$1000. The mortgages to Brickenden covered the properties that had been previously mortgaged by Biggs and his wife to the Loan company. In respect of some of the lands, these mortgages to Brickenden were respectively second, third and fourth mortgages, and in 40

respect of other lands they were third, fourth and fifth mortgages.

Between July, 1923 and January 1924, the period during which the Brickenden mortgages were given, Biggs and his wife were heavily in default under their two earlier mortgages to the Loan company, and in the written application which Brickenden made on their behalf to the Loan company for the \$13,500 loan, it is recited that the money was "to be applied to pay arrears of interest on company's present mortgages of \$18,000 and \$12,000 respectively, and sundry accounts amounting to \$7500 and a second mortgage of \$5000 held by G. A. Brickenden which will mature about March, 1925."

10 Nothing was, however, said in the written application for the loan about the other two mortgages to Brickenden for \$2000 and \$1200 respectively.

Besides the bonus of \$1000 which was subtracted by the Loan company when it advanced the moneys on the \$13,500 mortgage, Biggs also paid a commission to Brickenden in a charge of \$500 which Brickenden, in his examination for discovery in the action, said covered commission, fees and disbursements,—his disbursements were \$8.85. The \$12,000 net which was left to the mortgagors after payment of the bonus to the Loan Company and the solicitor's charges were used by them, as far as was necessary, to pay off the three mortgages to Brickenden.

20 All three mortgages to the Loan company being greatly in arrear in December, 1928, the directors of the company, under pressure from the Provincial Registrar of Loan Companies, required payment of the two earlier mortgages. This was effected after a fashion and as a matter of bookkeeping by these mortgages being made over to the Consolidated Trusts Corporation of which the defendant McCormick was president, and the defendant Brickenden the solicitor. Biggs made application to the Trust Company for a loan of \$20,000 to pay off the \$18,000 mortgage and arrears of interest, and for a loan of \$13,600 to pay off the \$12,000 mortgage with arrears of interest. These applications were accepted by the Trust company, conditioned, however, upon the Loan Company guaranteeing the loans and giving additional security. The new mortgages were executed by Biggs and his wife in favour of the Trust company, and the Loan company also assigned its mortgages for \$18,000 and \$12,000 to the Trust company. There were no bonuses in these transactions with the Trust company.

30 Later on, the plaintiffs in this action put forward a claim against the defendant Brickenden for moneys which they alleged they had overpaid to him "by way of bonuses, and contrary to the provisions of The Interest Act," in respect of the mortgages they had made to him, and "in respect of certain commissions and bills of costs for concessions obtained and services rendered"

40 and these claims were adjusted by an agreement between the plaintiffs and Brickenden dated the 16th of July, 1929, by the terms of which Brickenden abandoned certain claims which he was putting forward against Biggs and his wife and paid them \$1000. The words I have quoted as above are from the memorandum of agreement of settlement as prepared in Brickenden's office and executed by the parties.

The condition of default on the two earlier mortgages to the Loan Com-

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pany continued until the commencement of this action, and the mortgagors also became heavily in default in respect of the last mortgage of \$13,500. Any payments of importance that was made in respect of the two earlier mortgages were made from the proceeds of the last mortgage.

Dealing now first with the plaintiffs' appeal from the Master. In effect, —though it is not very aptly expressed,—the plaintiffs' claim in their pleading to be entitled to redeem their several properties on payment of the amount of principal moneys actually advanced by the Loan company in each case without liability for interest, claiming that the transactions were within the condemnation of section 6 of The Interest Act (R. S. C. c. 102), and before the Master the plaintiffs contended that the account should be taken on the basis of credit being allowed them on account of principal of all payments that have been made by them on account of interest, agreeably to the provisions of section 9 of The Interest Act, *Meagher vs London Loan & Savings Co.* (1929) O.L.R. 221 and 600) was then under consideration in the Supreme Court of Canada and the Master deferred his report until the judgment in that case should be handed down. That judgment came down in April of this year (1930, C.L.R. 378) and after a consideration of it the Master was of the opinion that the plaintiffs "must pay the full amount set forth in each of the mortgages with interest, less the amounts which have been paid and credited." The two earlier mortgages in this case appear to be on all fours with the mortgage in the *Meagher* case, and on the argument before me, counsel for the plaintiffs conceded that the view taken by the Master was the correct conclusion of law under the judgment of the Supreme Court of Canada so far as those mortgages were concerned. The Master was also of opinion that in any event the plaintiffs failed as to those mortgages because they had waived their rights to make any claim under The Interest Act by making the new mortgages to the Trust company in December, 1923. In this view I concur.

That leaves the only remaining question on the plaintiffs' appeal to be whether the \$13,500 mortgages by Biggs and his wife are within the provisions of section 6 of The Interest Act, as interpreted in the *Meagher* case. The repayment clause of these mortgages, after providing for interest at 8% per annum, reads:—"Two hundred and fifty dollars, \$250, is to be paid on account of principal and interest on the 8th of each month; such payment being blended principal and interest, not in advance; interest is to be reckoned on the principal owing the last payment day and is to be deducted from each monthly payment and the balance applied on principal, and interest at the rate aforesaid payable monthly . . ."

Section 6 of The Interest Act, so far as it applies to this clause, is in the following language: 40

"6. Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable . . . on any plan under which the payments of principal money and interest are blended . . . no interest whatever shall be chargeable, payable or recoverable on any part of the principal money advanced, unless the mortgage contains a statement showing the

amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance."

The mortgage under discussion is clearly within the first part of this section. The only question therefore is whether the mortgage complies with the last part of the section, beginning with the word "unless."

Dealing with a similar question in the Meagher case, Mr. Justice Smith, speaking for the Court, said:

10 "The Act, however, as it stands does not aim at controlling or limiting the rate of interest or recompense that lenders may exact for loans, and has no such effect if the last part of section 6 is complied with, except that no greater rate can be exacted than the rate mentioned in the statement thereby called for. The aim is to prevent the collection of interest provided for in the mortgage by plans described in section 6, which do not disclose to the ordinary borrower the real rate of interest being exacted by such plans. So far, however, as this Act is concerned, any rate of interest may be provided for by such plans, and enforced, if that rate is disclosed by a statement in the mortgage of the principal money and of the rate of interest, as provided in the latter part of section 6.

20 "There is, therefore, in the mortgage in question, no offence against the spirit of the Act, because it does not fail to disclose to an ordinary borrower what he is to pay for the loan, though he might not realize what rate per cent. the \$3,000.00 cash in advance, added to the 7½ per cent., would amount to. The \$3,000.00 cash payment might, however, give him a clearer idea of what the loan was costing him than if provided for in terms of an added rate of interest."

30 Adapting this language to the case in hand, there is no offence against the spirit of the Act in this case, because the mortgage here in question did not disclose to Biggs the rate per cent. the one thousand dollar bonus added to the 8% interest would amount to. The one thousand dollar bonus might give him a clearer idea of what the loan was costing him than if it were stated in terms of a higher rate of interest.

That part of the judgment in the Meagher case which I have quoted, and which deals with the latter part of section 6 may be a dictum, but if so it is a dictum of the Supreme Court of Canada, which a trial Judge is bound, I think, to respect.

The result is that though the \$13,500 mortgages are within the first part of the section, they are also within the last part,—the "unless" clause. All the mortgages are therefore enforceable according to their terms, as found by the late Master, and the appeal from the Master fails.

40 The remaining questions are on the counterclaim of the defendant companies against McCormick and Brickenden.

First, as to McCormick. If these different transactions with the plaintiffs were fair samples of the manner in which this Loan company under its former management did business, it is not surprising that it went into liquidation. A successful manufacturer is not necessarily a successful executive officer of a Loan company, and a greed for bonuses may destroy whatever good judg-

ment he might otherwise bring to bear on the kind of loans his company ought to make. The responsibility for these Biggs loans and for allowing them to get so heavily in default was not doubt partly that of the president, partly that of the managing director and partly that of the other directors. Mr. Kent, who was the managing director is now deceased. If he were living, and in a position to defend himself, it is not unlikely that the Court, in an appropriate proceeding, would be able to fix the company's board of directors, or some of them, with personal responsibility for whatever loss may be incurred ultimately in these transactions, owing to their neglect to perform the fiduciary duties which they undertook when they accepted their appointments. 10
In the absence of Mr. Kent that is probably impossible, and the difficulty in this case was not reduced to Mr. McCormick's failure to take the witness stand at the trial, or to offer any evidence in his own behalf.

Then as to Brickenden. Whatever may be said about the bonuses and commissions which he collected from the plaintiffs, those matters are not now in issue. They were settled as between him and the present plaintiffs. Moreover, there is no legal claim against him that I can see in respect of the two earlier mortgages. But the \$13,500 mortgages are on a different footing.

Mr. William E. Robinson, one of the directors of the company, but who was not present at the meeting of the Board when the directors voted to accept the application for the \$13,500 loan, was a witness at the trial. He swore that he did not know that Brickenden was acting in this loan for the Biggs, or that he was getting a commission, or that he, Brickenden, held mortgages on the properties covered by the application for the loan. 20

Mr. Charles R. Hunt, another director of the company, who was present at the meeting when the \$13,500 loan was authorized, said that the loan was passed as a first mortgage. He said that the company was not at that time loaning money on second mortgages, and that if he had known it was a second mortgage he would have objected. The company had, he said, at that time desisted from second mortgage loans on notice from the Government. He 30
said he did not know that Brickenden was solicitor for Biggs; did not know that Brickenden was receiving a commission from him, and did not know that Brickenden held mortgages on the properties that were being paid out of the proceeds of the loan.

Brickenden signed a certificate of title in connection with this mortgage in these words: "We hereby certify that we have investigated the title to the lands comprised in the said mortgages and that the same is good and sufficient for the purposes of the said mortgages." In this statement he disclosed seven prior mortgages on the properties, totalling \$54,000., including the Loan company's two earlier mortgages of \$18,000 and \$12,000., and including his own mortgage for \$5000., which was to be paid out of the loan, but not including the two other mortgages held by him for \$2,000 and \$1,200 respectively which were also paid to him out of the loan. 40

I am satisfied on the evidence that at the date of these \$13,500 mortgages there was no equity in the properties which they covered, above the prior mortgages, not including Brickenden's \$5,000 mortgage, and that on a

forced sale at that time not enough could have been realized to pay the prior encumbrances.

It is putting it mildly to say that the three mortgages on the Biggs' properties, held by Brickenden at that time, and totalling \$8,200, were doubtful securities. His interest was to get those mortgages paid. He did not make a disclosure of these mortgages in his certificate of title, and it does not appear that the certificate of title came before the Board before the loan was authorized. It may never have been seen by anybody but the managing director, and there is no evidence that it was seen even by him. Brickenden's interest in the transaction was in clear conflict with his duty as solicitor for the company, and under these circumstances he is responsible for whatever loss the company may suffer.

Asked on his examination for discovery why he had added the words "in trust" after his name as mortgagee in the Biggs' \$5,000 mortgage he answered that there was "no reason at all" for doing it. At the trial he failed to take the witness stand or to offer any evidence on his own behalf.

I do not find myself embarrassed by the subsequent liquidations and adjustments. The same solicitors represent the two original defendants and plaintiffs by counterclaim and the added plaintiffs by counterclaim, the Huron & Erie Mortgage Corporation, the Canada Trust Company, and London Loan Assets Limited. The right of action is in one or more of these plaintiffs by counterclaim. It is not necessary that I should differentiate. They may work out their rights among themselves.

There will be judgment for the Loan company and the Trust company on their respective mortgages, with a reference to the Local Master to bring the mortgage accounts down to the date of his final report.

There will be judgment in favour of the Plaintiffs by counterclaim against Brickenden for whatever balance the Master may find owing on the \$13,500 mortgages according to the terms of those mortgages allowing credit for payments that have been made by the mortgagors, and upon payment by Brickenden these mortgages will be assigned to him.

At the discretion of the plaintiffs by counterclaim, there may be a sale under direction of the Master of the properties covered by these mortgages subject to the prior mortgages, and in the event of this course being adopted there will be judgment against Brickenden for the deficiency.

Brickenden will pay the costs of the plaintiffs by counterclaim and McCormick will pay his own costs.

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IN THE SUPREME COURT OF ONTARIO

*In the
Supreme
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The Honourable }
Mr. Justice Raney }

Saturday the 11th day of October, A.D. 1930.

No. 36.
Formal
Judgment of
Trial Court
11th October,
1930.

BETWEEN

WALTER HERBERT BIGGS and EVA VIOLA BIGGS.

Plaintiff.

(Seal)

—AND—

**THE LONDON LOAN AND SAVINGS COMPANY OF CANADA and
THE CONSOLIDATED TRUSTS CORPORATION.**

Defendants. 10

AND BETWEEN

**THE LONDON LOAN AND SAVINGS COMPANY OF CANADA.
CONSOLIDATED TRUSTS CORPORATION, THE HURON AND
ERIE MORTGAGE CORPORATION, THE CANADA TRUST
COMPANY, and LONDON LOAN ASSETS LIMITED.**

Plaintiffs by Counterclaim.

—AND—

**WALTER HERBERT BIGGS, EVA VIOLA BIGGS, G. A. P.
BRICKENDEN, G. A. P. BRICKENDEN & COMPANY and
GEORGE C. McCORMICK**

20

Defendants by Counterclaim.

No. 36.

THIS action coming on for trial on the 7th, 8th and 9th days of May, 1930, at the Sittings of this Court holden at the City of London in the County of Middlesex, for trial of actions without a Jury in the presence of Counsel for the plaintiffs and for the defendants and for the plaintiffs by counterclaim and the defendants by counterclaim; upon reading the pleadings and hearing the evidence adduced and upon hearing what was alleged by Counsel aforesaid and judgment having been reserved until this day and the Court having directed that the plaintiffs by counterclaim may, if they so elect, have the properties covered by the mortgages in the pleadings mentioned sold, subject to the prior mortgages, under the direction of the Master of this Court at London, and the plaintiffs by counterclaim electing not to have the said lands sold by the said Master; 30

1. THIS COURT DOTH ORDER AND ADJUDGE that the plaintiffs action be and the same is dismissed.
2. AND THIS COURT DOTH DECLARE that the plaintiffs by counterclaim, The London Loan and Savings Company, The Huron and Erie Mortgage Corporation, and London Loan Assets Limited are entitled to recover from the defendants by counterclaim Walter Herbert Biggs, Eva Viola Biggs and G. A. P. Brickenden the amount due and owing upon the mortgage made by Walter Herbert Biggs and Eva Viola Biggs dated the 8th day of November, 1924, to the London Loan and Savings Company for \$13,500.00, and that the Consolidated Trust Corporation and the Canada Trust Company are entitled to recover from the defendants by counterclaim Walter Herbert Biggs and Eva Viola Biggs the amount due and owing upon the two mortgages bearing date the 1st day of December, 1927, made by the said Walter Herbert Biggs and Eva Viola Biggs to the Consolidated Trust Corporation, one for \$20,000.00 and one for \$13,600.00 and which said mortgages were registered in the Registry Office for the County of Middlesex as number 23113 and 23114 respectively, AND DOTH ORDER AND ADJUDGE THE SAME ACCORDINGLY.
3. AND THIS COURT DOTH ORDER that the appeal from the Report of the Local Master of this Court at London, dated the 29th day of April, 1930, and made herein pursuant to the Order of Mr. Justice Wright dated the first day of November, 1929, be and the same is hereby dismissed and that the said Report be and it is hereby confirmed.
4. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that it be referred to the said Local Master of this Court at London to take a further account of the amount due and owing to the London Loan and Savings Company, The Huron & Erie Mortgage Corporation and the London Loan Assets Limited and to Consolidated Trust Corporation and the Canada Trust Company upon the said mortgages since the date of the said Local Master's report and that such further amounts which the said Local Master shall find be added to the amounts set out in the said report and that he do find the total amounts which are due and owing to the plaintiffs by counterclaim upon their respective claims at the date of his report.
5. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiffs by counterclaim The London Loan and Savings Company, The Huron and Erie Mortgage Corporation and the London Loan Assets Limited do recover from the defendants by counterclaim, Walter Herbert Biggs, Eva Viola Biggs, and G. A. P. Brickenden, the amount which the said Master shall find to be due to them forthwith after the confirmation of the said Master's Report, and upon payment of the amount due to them together with the costs of this action and the costs of the reference and of the appeal from the said Master's Report, that subject to the lands not having been sold in the meantime under the powers of sale by the prior mortgagees or foreclosed by prior mortgagees, and subject to the provisions of

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section 2 of The Mortgages Act, the said plaintiffs by counterclaim do assign and convey the mortgaged premises and deliver up all documents relating thereto;

6. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiffs by counterclaim Consolidated Trust Corporation and Canada Trust Company do recover from the defendants by counterclaim Walter Herbert Biggs and Eva Viola Biggs the amount which the said Local Master shall find to be due and owing to them forthwith after the confirmation of the Master's Report, and upon payment of the amount found due to them, together with their costs of this action, and the costs of the reference and of the appeal from the said Master's Report, that subject to the lands not having been sold in the meantime under the powers of sale by the prior mortgagees or foreclosed by prior mortgagees, and subject to the provisions of section 2 of The Mortgages Act the said plaintiffs by counterclaim do assign and convey the mortgaged premises and deliver up all documents relating thereto. 10

7. AND THIS COURT DOTH DECLARE that the defendant by counterclaim, G. A. P. Brickenden upon payment by him of the amount of the claim of the plaintiffs by counterclaim as provided in paragraph 5 hereof, shall be entitled to subrogation to the rights of the said plaintiffs by counterclaim mentioned in said paragraph 5 as against the defendants by counterclaim Walter Herbert Biggs and Eva Viola Biggs to the extent of such payments and DOTH ORDER AND ADJUDGE THE SAME ACCORDINGLY. 20

8. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Huron and Erie Mortgage Corporation, appointed Receiver under Order of this Court dated the 25th July, 1929, do forthwith pass its accounts before the Local Master of this Court at London, Ontario, and that the said Local Master in taking the further account aforesaid shall take into consideration and credit against the said mortgages of the plaintiffs by counterclaim Consolidated Trusts Corporation, and Huron and Erie Mortgage Corporation, the rents received by the said Huron and Erie Mortgage Corporation, less the disbursements, charges, taxes, fees and expenses in administering the said property. 30

9. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the counterclaim as against the defendant by counterclaim George C. McCormick be and it is hereby dismissed without costs.

10. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendants do recover from the plaintiff their costs of this action, including the costs of the day before the Honourable Mr. Justice Kelly, and of the reference and of the appeal from the said Master's Report forthwith after taxation thereof. 40

11. AND THIS COURT DOTH FURTHER ORDER that as regards

the plaintiff and defendant by counterclaim Eva Viola Biggs such sums as are by the judgment directed to be recovered from her are to be levied out of the separate property of the said Eva Viola Biggs which she is now or may hereafter be possessed of or entitled to and any property which she may hereafter while discoverd be possessed of or entitled to and not otherwise, but this judgment shall not render available to satisfy the same any separate property which the said defendant was or may be restrained from anticipating unless by reason of section 11 of The Married Woman's Property Act, such property shall be available to satisfy the judgment notwithstanding such
10 restriction.

12. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiffs by counterclaim do recover from the defendant by counterclaim G. A. P. Brickenden their costs of the counterclaim including the costs of the day before the Honourable Mr. Justice Kelly, and of the reference herein directed, forthwith after taxation thereof.

E. HARLEY,

Senior Registrar,
SCO

Entered, J. B. No. 85

20 This 30th Aug. 1932.
EDMUND WELD
Registrar S.C.O.
(Middlesex).

NO. 37

NOTICE OF APPEAL

30 TAKE NOTICE that the above-named defendant by counterclaim, G. A. P. Brickenden, intends to appeal, and hereby appeals, to a Divisional Court Sitting at Osgoode Hall in the City of Toronto, at the next sittings thereof, from that portion of the judgment herein pronounced by the Honourable Mr. Justice Raney after Trial without a Jury at London, and dated the 11th day of October, 1930, whereby under said judgment the plaintiffs by counterclaim, or any of them, are granted judgment for any relief whatever against the above-named defendant by counterclaim, and whereby the said plaintiffs by counterclaim were awarded judgment against the above defendant for whatever balance the Master might find owing on the \$13,500.00 mortgages, and in the alternative against the above defendant, for any deficiency after sale under such mortgages, and whereby costs were awarded against the above defendant upon the following amongst other grounds:

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No. 36.
Formal
Judgment of
Trial Court,
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—continued.

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Court of
Ontario.*

No. 37.
Notice of
Appeal,
17th October,
1930.

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Supreme
Court of
Ontario.*

No. 37.
Notice of
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17th October,
1930.

—continued.

1. That the said judgment is against law and evidence and the weight of evidence.

2. That upon the evidence before the learned Trial Judge the claim of the plaintiffs by way of counterclaim against the above-named defendant should have been dismissed with costs.

3. That the learned Trial Judge improperly purported to permit the addition of—after two adjournments of the trial and after the trial had proceeded for a considerable period of time by the taking of evidence on the issues between the parties then before the Court—three new plaintiffs by counterclaim, namely, The Huron and Erie Mortgage Corporation, The Canada Trust Company and London Loan Assets, Limited, contrary to and against the protest of the defendant by counterclaim and proceeded forthwith with the taking of evidence of the trial of the action without permitting Production, Discovery or even Pleadings to be delivered by the new plaintiffs so added and without affording the defendant by counterclaim any proper opportunity of preparing for trial of any new issues so raised, or of submitting a proper Defence thereon. 10

4. The above-named defendant by Counterclaim further submits that the learned Trial Judge erred in granting judgment against the above-named defendant in favour of all five of the plaintiffs by Counterclaim collectively, being the two original plaintiffs by Counterclaim and the three plaintiffs by Counterclaim added during the course of the trial. 20

5. And it is further submitted that the evidence does not disclose nor was the learned Trial Judge able to find any joint cause of action whatsoever upon the evidence against the above defendant, and further, that the evidence does not disclose, and that the learned Judge was unable to find any separate cause of action whatsoever in any of the five plaintiffs by counterclaim against the above-named defendant, as would appear from the finding of the learned Trial Judge contained in the Reasons of Judgment rendered as follows:

“The right of action is in one or more of these plaintiffs by Counterclaim. It is not necessary that I would differentiate. They may work out their rights among themselves.” 30

6. The learned Judge erred in his recollection of the evidence as disclosed by the documents, (which documents were accepted as correct), in overlooking the fact that the two mortgages for \$2,000.00 and \$1,200.00 respectively, which the learned Judge suggests were not disclosed in the Certificate of Title, had been actually discharged on the record at the Registry Office prior to the Certificate of Title being furnished to the Company and that in the letter from the defendant, Brickenden, to the Company which accompanied the Certificate of Title, the actual mortgages for \$2,000.00 and \$1,200.00, which had been discharged, were physically enclosed and delivered to the Company with said letter, and that said letter explained to the Company that said mortgages had been discharged. It is, therefore, respectfully submitted that the learned Trial Judge’s misconception of the knowledge of the Company received at the same time as the Certificate of Title erroneously prejudiced and affected the learned Trial Judge against the defendant, Brick- 40

enden, because of the belief that there had been non-disclosure of these mortgages and the full detail concerning same, whereas the very documents themselves were forwarded to and placed upon the file of the Company, along with the Certificates of Title. The letter above referred to and the Certificate of Title and the mortgages all were produced from the custody of the Company at the trial.

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—continued.

7. It is submitted that the plaintiff by counterclaim, The London Loan and Savings Company, to whom the \$13,500.00 mortgage was originally given, sold and assigned the same and parted with their ownership thereof to The
10 Huron and Erie Mortgage Corporation.

The defendant, Brickenden, was never in the relationship of solicitor to The Huron and Erie Mortgage Corporation at any time. The London Loan and Savings Company of Canada, the original clients of the defendant, Brickenden, was dissolved by operation of law by the consent of the Lieutenant-Governor-in-Council.

8. It is submitted that the only basis of suggested liability on the part of the defendant, Brickenden, is by reason of his relationship as solicitor and by reason of his non-disclosure of certain facts. It was not suggested in the evidence nor the argument that such claim as this against the solicitor was
20 ever assigned by the Company to any of the other four co-plaintiffs of the original Company by counterclaim.

9. It is submitted that the learned Judge erroneously overlooked the fact that if any loss ever did accrue to any of the five Corporations by reason of the security in question, that such Corporation never had any contact whatever with the defendant, Brickenden.

10. It is further submitted that having regard to the addition of three new counterclaiming defendants during the course of the trial—against which the above-named defendant protested—that leave was granted to amend the Pleadings and deliver amended Pleadings, and such leave was not taken advantage of by the plaintiffs by counterclaim from the date of the trial, which
30 concluded on the 8th of May, 1930, until the 7th day of October, 1930, on which date an imperfect copy of what purported to be an Amended Counterclaim was forwarded by Counsel for the solicitors for the plaintiffs by counterclaim to Counsel for the above-named defendant by letter, and that within four days thereafter and before the expiration of the usual or a reasonable time for the filing by the above-named defendant of a Defence to the fresh causes of action put forward in such Amended Counterclaim, namely, on the 11th day of October, 1930, four days after the forwarding by letter of the Amended Counterclaim, judgment was delivered in this action so that the
40 learned Trial Judge did not have the benefit of any Statement of Defence to the Amended Counterclaim, nor the benefit of such written and pleaded Defence as this defendant by counterclaim was entitled to place upon the file of the Court.

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11. Such further and other grounds as Counsel may advise and as may be disclosed by the notes of evidence and exhibits at the trial, which are not presently before Counsel on revision of this Notice of Appeal.

AND TAKE NOTICE that in support of said Appeal will be read the formal judgment appealed from, the Reasons of the learned Trial Judge delivered herein, the evidence and exhibits at the trial and such further material as Counsel may advise.

DATED at Toronto this 17th day of October A.D. 1930.

SLAGHT & COWAN,

372 Bay Street,

Toronto, Ontario,

Solicitors for the above-named Defendant,

G. A. P. BRICKENDEN.

10

Reasons for Judgment of First Divisional Court.

No. 38

*In the
Supreme
Court of
Ontario.*
—
No. 38.
Reasons for
Judgment of
First Divisional
Court.
1st March,
1932.

App. Div.
BIGGS
v.
LONDON LOAN COMPANY
et al.
10 (By original action)
LONDON LOAN COMPANY
et al
v.
BIGGS, BRICKENDEN, et al
(By counterclaim)

Copy of Reasons for Judgment of Court of Appeal (Mulock, C.J.O., Riddell, and Grant, JJ. A.), delivered 1st March, 1932.

I. F. HELLMUTH, K.C., and A. G. SLAGHT, K.C., for Brickenden and Brickenden & Co., defendants by counterclaim, (appellants) and for McCormick respondent in cross-appeal

W. N. TILLEY, K.C., and GEORGE WALSH, K.C., for the several companies, plaintiffs by counterclaim, (respondents) and also for the said plaintiffs by counterclaim by cross-appeal against one McCormick, defendant by counterclaim.

20 GRANT, J. A.:—This is an appeal by Brickenden and Brickenden & Co., defendants by counterclaim, against the judgment of Raney, J., pronounced the 11th day of October, 1930, whereby he directed that judgment should be entered against these appellants and in favour of the London Loan and Savings Company of Canada, Huron and Erie Mortgage Corporation, and London Loan Assets Limited plaintiffs by counterclaim, for the amount owing in respect of a certain mortgage given for the principal sum of \$13,500 with interest thereon and costs; and a cross-appeal by the said companies against the dismissal of their counterclaim against George G. McCormick, one of the defendants by counterclaim in respect of the said mortgage, which dismissal was without costs.

30 The trial judgment covered several other matters which formed part of the subject matter of the litigation, but the appeal and cross-appeal as above mentioned were the only matters with respect to which this Court was required to deal.

Counsel for Brickenden and his firm (who will be referred to hereafter merely as Brickenden for the reason that the individual controlled the firm) in effect contend that neither the plaintiffs by counterclaim nor any one of them succeeded in establishing any cause of action as against the appellant; on the other hand counsel for the companies contend that the judgment should have gone against McCormick as well as against Brickenden.

40 The facts underlying the litigation are exceedingly complicated, but an understanding and appreciation of the legal questions involved, necessitate a somewhat extensive narrative of them.

In the action as originally constituted, Walter H. Biggs and his wife, Eva Viola Biggs, sued the London Loan and Savings Company and the Con-

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Supreme
Court of
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solidated Trust Company, seeking redemption of certain properties in the City of London, Ontario, on payment of the amounts of principal monies actually advanced by the two companies in respect thereof, and repudiating any liability for interest, basing their claim upon the contention that the mortgage transactions came within the sanction of the provision of the Interest Act of Canada. It is sufficient to state here that this claim was dismissed, and as no appeal was taken therefrom, such dismissal must stand.

The London Loan and Savings Company and the Consolidated Trusts Corporation, defendants in such original action, delivered counterclaims seeking to recover from Biggs and his wife the amounts which might be found due and owing by them on their several mortgages, with the usual remedies for collection of the same; and the Loan Company also claimed against Brickenden and his firm and McCormick, the three of whom they added as defendants by counterclaim, damages sustained by them by reason of what were alleged to be either fraud and conspiracy in respect of the placing of the loans and the advances of the monies by the London Loan Company, or caused by the breach of their respective obligations to the company resulting from the fiduciary relationship existing between them. This fiduciary relationship on the part of Brickenden and his firm, was alleged to be due to the fact that they were the standing solicitors for the London Loan Company, and on the part of McCormick it was said to be due to his being president of that company. Mrs. Brickenden is his daughter, and it was suggested that he was assisting his son-in-law at the expense of the Loan Company and in breach of his duty to the latter.

As has already been stated, no appeal or cross-appeal has been taken with respect to other matters which were determined by the learned Trial Judge, Brickenden appealing against the judgment whereby he was held liable for the amount of the one mortgage with interest and costs, and the companies seeking to recover against McCormick also, he having been exculpated by the Trial Judge.

In 1922 Biggs secured a loan of \$18,000 from the London Loan Co. on an apartment building, 116 Elmwood Ave., London, the mortgage therefor being dated November 14th, 1922, Mrs. Biggs barring her dower in the usual manner. Later, at the request of the Loan Co. Biggs gave as collateral security a mortgage for \$3,000 on an adjoining property, street No. 114, upon which there were already two mortgages for \$6,000 and \$1,000 respectively. Biggs was paying a bonus of 2% to the Loan Company, the amount of which was retained by them, and Brickenden, who was the company's solicitor in the matter, obtained a like commission, his claim to which was based upon the fact that he entrusted the matter to the company. This commission was paid by the company to Brickenden out of the proceeds of the loan.

Early in the following year Mrs. Biggs obtained a loan of \$12,000 from

the London Loan Co. on the security of her property on Ridout Street, London. The Company obtained a bonus of $1\frac{1}{2}\%$ out of this loan also.

In July, 1923, Brickenden advanced \$5,000 to Biggs, taking a mortgage from him for the amount and a collateral mortgage from Mrs. Biggs. In August he advanced Biggs another \$2,000 and in January, 1924, a further sum of \$1,200, with respect to both of which he had mortgages both from Biggs and from his wife. In some of these, indeed if not in all of them, Brickenden also obtained bonuses for advancing the money.

10 It appears that some application had been made to the Loan Company seeking further advances which were not made, and the advances above mentioned were made by Brickenden instead.

In or about the month of November, 1924, a further loan was procured by Biggs and his wife from the London Loan Co., in respect of which a mortgage was made for \$13,500, covering both the Elmwood Avenue and the Ridout Street properties, upon which, as above stated, the Company already had three mortgages in all, viz. one for \$18,000 on Biggs' property with the collateral mortgage for \$3,000 and one for \$12,000 on Mrs. Biggs' property. This mortgage also covered two other properties on Ridout Street on which there was a prior mortgage of \$10,000 in favor of the Huron and Erie
20 Corporation.

This appeal has to do with this mortgage for \$13,500.

The application for the mortgage (vide p. 83 of Appeal Book) is a typewritten paper, unsigned but which purports to have endorsed upon it "Geo. G. McC., President." These initials were stated to have been put on by McCormick.

30 It will be noted upon a perusal of the application that it is stated on its face that Biggs and his wife desire "a further loan of \$13,500 on their properties on Ridout Street and Elmwood Avenue," showing at once that they already had loans from the company. It also appears that a bonus of \$1,000 was to be allowed to the company for the accommodation, and that the money was to be used in part to pay the arrears of interest on the company's present mortgages of \$18,000 and \$12,000 and certain accounts amounting to \$7,500, and a second mortgage of \$5,000 held by Brickenden, and it goes on to state "Company will receive a new mortgage for \$13,500 on the property already mortgaged to the company, viz., apartment house in London South valued at \$33,000 by applicant; Nos. 315-319 on Ridout Street valued by applicant at \$20,000 including six garages; also No. 114 Elmwood Avenue valued by applicant at \$11,500. (This property is subject to a mortgage held by Ed. Barrell of \$7,000), margin being \$4,500 and house No. 313 Ridout Street
40 valued by applicant at \$20,000. (This property is subject to mortgage held by the Huron and Erie, for \$10,000. Below the above is typewritten the following:

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“Mr. Gorwill valued properties as follows:—

1st Property mentioned	\$31800.
2nd “ “	14500.
Garages	2000.
	<hr/>
	48300.

—continued.

exclusive of the margins in other properties.”

It will be noted that this application shows clearly upon its face that the properties, upon which a mortgage was to be given to secure the amount to be advanced, were held subject to other mortgages some of them to the Loan Company itself, one to the Huron and Erie Company, one to another party named Barrell, and one of \$5,000 to Brickenden. 10

This appears to be of some importance when one comes to consider the grounds upon which the liability of Brickenden is based.

The Managing Director of the London Loan Company at the time that these transactions were carried through, was a Mr. Kent, who died prior to the trial of this action. Had he been living, it seems probable that he would have been able to throw a good deal of light upon the manner in which the transactions were put through, and it may be that the Loan Company was seriously handicapped by reason of the fact that his testimony was not available. However that may be, it is quite manifest from even a casual perusal of the evidence of some of the witnesses, that the London Loan Company's Board of Directors had very lax ideas as to the obligations and duties which their official positions entailed. It was sought to place upon McCormick as President, responsibility for the making of the company of unsatisfactory loans, but the initials of the President on the back of the very informal application, as already mentioned, coupled with his relationship to Brickenden, are not sufficient to serve as a foundation for a claim against him for damages on the part of the company of which he was President. The evidence falls very far short of furnishing even a prima facie case against McCormick, and I think the dismissal of the counterclaim as against him was right, and that the appeal therefrom should be dismissed. 20 30

In approaching a conclusion that Brickenden should be held liable, the learned Trial Judge refers to the evidence of two witnesses who were directors of the Loan Company, in the following paragraphs:—

“Mr. William E. Robinson, one of the Directors of the Company, but who was not present at the meeting of the Board when the directors voted to accept the application for the \$13,500 loan, was a witness at the trial. He swore that he did not know that Brickenden was acting in this loan for the Biggs, or that he was getting a commission, or that he, Brickenden, held mortgages on the properties covered by the application for the loan. 40

“Mr. Charles R. Hunt, another director of the company, who was present at the meeting when the \$13,500 loan was authorized, said that the loan was

passed as a first mortgage. He said that the Company was not at that time loaning money on second mortgages, and that if he had known it was a second mortgage he would have objected. The Company had, he said, at that time desisted from second mortgage loans on notice from the Government. He said he did not know that Brickenden was solicitor for Biggs, did not know that Brickenden was receiving a commission from him, and did not know that Brickenden held mortgages on the properties that were being paid out of the proceeds of the loan."

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10 He then refers to the certificate of title given by Brickenden from which he quotes a passage. This certificate of title is to be found on page 84 of the Appeal Book. After mentioning briefly the properties and the mortgages given by Biggs and his wife for the \$13,500, with their registered particulars, Brickenden's firm certify that they have investigated the title to the lands, comprised in the said mortgages and state:

"that the same is good and sufficient for the purposes of the said Mortgages, and that the said Mortgages have been duly executed and registered and form charges upon the mortgaged lands to the full amount thereby secured."

"Subject to the following mortgages:"

20 A list is given of nine mortgages, the first two being for \$6,000 and \$1,000 respectively to Barrell and it is stated in ink that these are on 114 Elmwood Avenue, and the words are also written "to stand."

The third is a mortgage to the London Loan for \$18,000. After it is written "to stand."

The fourth is a mortgage to the London Loan for \$3,000.

The fifth is a mortgage from George to Chilton for \$2,000. which is stated in the margin as being ready to be released on demand.

The sixth is a mortgage to the London Loan Co. for \$12,000 which is also marked "to stand."

30 The seventh is a mortgage to Whitfield Lancaster for \$1100. but a foot note states that this mortgage was discharged and the discharge registered.

The eighth, a mortgage to the Huron and Erie for \$10,000.

The ninth, a mortgage to Brickenden for \$5,000 "which last mortgage the London Loan is assuming." In the margin opposite this is written "to be paid off in Mch. 1925 retaining money."

40 This certificate of title is dated 12th November, 1924, is signed "G. A. P. Brickenden & Co." and is addressed to the London Loan and Savings Company of Canada. Underneath is written "All mortgages to be removed except mortgages to Edwin Barrell and Huron and Erie & London Loan on 2 Elmwood and 3 Ridout Street properties. G. A. P. Brickenden."

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There is also written beneath, the reference to the Whitfield Lancaster mortgage.

It is to be noted that while the application and the certificate of title both refer to a mortgage of \$5,000 held by Brickenden, neither of them refers to two other mortgages for \$2,000 and \$1,200 respectively which had been given to him by Biggs and his wife.

There was a spirited dispute between counsel as to whether or not any part of the proceeds of this loan of \$13,500 was used to pay these other two mortgages held by Brickenden, and it was not until further productions were required before this Court that the matter was cleared up. The \$13,500 10 mortgage was dated the 8th day of November, 1924. The certificate of title was given on the 12th. The balances (\$800 of principal on one and \$600 on the other) owing to Brickenden by Biggs in respect of the two mortgages for \$2,000 and \$1,200 respectively, were paid by cheque (Ex. 60) dated November 8th, 1924, for the sum of \$1,993.33 given by Biggs to Brickenden. That cheque, however, was not paid until the 13th day of November following.

It appears from a copy of Biggs' bank account (exhibit 64, ledger sheet of account No. 446) that prior to the deposit on November 13th, 1924, of the Loan Company's cheque for \$5,355.80, there had been at the credit of the 20 account only \$4.77. Immediately after the item in the letter account crediting the deposit of the Loan Company's cheque just mentioned, the cheque to Brickenden by Biggs for \$1,993.33 was charged up, and it is quite evident that the funds out of which this cheque to Brickenden covering inter alia the balances of principal owing on his two mortgages from Biggs above mentioned was paid, were furnished by the Loan Company's cheque. It is not clearly shown what made up the difference between the \$1,400 of principal and the total amount of the cheque received by Brickenden; it is suggested on behalf of the Loan Company that this consisted of a bonus which Brickenden 30 was receiving from Biggs for getting him the loan. However that may be, it is quite easy to believe that it is so, as the whole record in this case, if it does not establish anything else, clearly establishes this fact, namely, that the Loan Company's Board of Directors, including their deceased Managing Director, and their solicitor, made a practice of getting bonuses on every favourable opportunity. When one reads in the minutes of the meetings of the Loan Company's Board of Directors the bald statement that the Company was receiving a bonus of \$1,000 for making a loan to this man Biggs of \$13,500, and similar bonuses in respect of every loan made to the same parties; and that the Company not only was cognizant of the fact that the Company's 40 solicitor was receiving commissions from applicants for loans, but that the Company itself was issuing its cheques to the solicitors in payment of such commission, the denunciation of the solicitor for his conduct in that regard, by the representatives of the Company and the members of their Board of Directors, reminds one of the homely expression regarding "The pot calling the kettle black."

Reverting to the statements made by the two members of the Board of Directors, Hunt and Robinson, a perusal of their evidence would not lead me to express as strongly as was done by the learned Trial Judge, the effect of their testimony. The evidence of Hunt more particularly, was very much shaken on his cross-examination. Be that as it may, I find it impossible to give credence to some of their statements in the light of the facts as disclosed by the documents. Having in mind that the application for this loan now in question was first before the Board of Directors on November 11th, and was laid over and that it came on again before the Board of Directors on

10 November 17th, when the loan was approved by the Board; bearing in mind also the express reference therein to the prior mortgages held by this Loan Company, as well as by Barrell and the Huron and Erie, the statements that part of the money then to be advanced was to be used to pay arrears of interest due the Company on its prior mortgages, and that the security consisted of lands (giving street numbers) already mortgaged to the Company; observing further that the certificate of title given by Brickenden's firm as the Company's solicitors was given to the Company on the 12th of November, and the meeting of the Board of Directors was not held until the 17th, and the certificate of title set forth in the plainest possible language the list of mort-

20 gages then standing against the various properties (excepting as already mentioned the two mortgages for \$2,000 and \$1,000 respectively to Brickenden, which were cleared off by discharges registered on that same date November 12th) and stated which of them were to remain and which were to be paid off and discharged; having in mind all these facts which were disclosed by the documents then before this Board of Directors, or which the members of this Board ought to have insisted upon seeing and having before them if they were not read by them, I do not think that any Court would pay any attention to the statements of a member of the Board of Directors of the Company who says that the loan was passed as a first mortgage; that if he

30 had known it was a second mortgage he would have objected to it; that he did not know that Brickenden was acting for Biggs; that he did not know that Brickenden was receiving a commission from Biggs; and that he did not know that Brickenden held any mortgage on the properties or any of them which was being paid out of the proceeds of the loan. The position of these directors has only to be stated in plain language in order to reveal its true absurdity if a stronger word should not be used. Here were members of a Board of Directors of a Loan Company of which the principal business was to lend money on mortgages on real estate; the principal duty of the members of the Board, as it appears to me, was to see that the moneys of

40 the Company's shareholders were being lent only on good security, at proper rates of interest, and under proper conditions, and that only after they had carefully examined the application, valuation, solicitor's certificate of title, and any and all other material in the hands of the Company, or which ought to have been furnished to the Company, so that they would know, when passing a loan, that the rights of the Company and its shareholders were properly safeguarded. In the present case the application for the loan and the

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solicitor's certificate of title either were before them actually, or they should have insisted upon their being placed before them so that they might see for themselves exactly what the facts were as disclosed thereby. Hunt admits that the application was read over at the Board Meeting and that he lived within a few blocks of the properties in question. I do not think the Court is justified in accepting or acting upon their statements, seeking either to excuse themselves or to cast responsibility upon others, that they did not know the facts which these documents stated in the plainest possible language. When they say that they did not know, they are merely publishing the fact of their own negligence and failure to discharge the duties for the discharge of which they had been made directors of this Company. To know the facts regarding applications for loans before lending the company's money was the very purpose for which they were made directors. 10

As will have been noted, the application refers to valuations which had been made by Gorwill. This man was the Company's regular valuator and had made valuations of the various properties, in connection with the loans previously made by the Company. His valuations appear on the record on pages 228 and 230 of the Appeal Book, and show a substantial margin or equity. Whether it was safe to rely on such valuations or not, may be another question, but the fact remains that the Company did have valuations of the properties made by its own valuator. It is alleged on behalf of the plaintiffs by counterclaim that the properties in questions did not afford any reasonable security for this further loan of \$13,500; that Brickenden knew this to be the fact; that he was eager to unload his three mortgages on the Loan Company's shoulders and that he did so by means of this new loan; that as the company's solicitor and agent in the matter presenting the application for the loan on behalf of the would-be borrower, there was a duty resting upon him, owing to his fiduciary relation to the Loan Company, to make sure that the whole position was fully understood and appreciated by the Company, and that for his failure to discharge that duty, he is answerable in damages. 20 30

On a perusal of the material upon the record, it seems to me to be quite beyond the realm of discussion, that the late Managing Director, Kent, knew all that was going on, and, as it appears that he was rather opposed to some of the things that were being done, and made his opposition known, it does not require any very great stretch of one's imagination to reach the conclusion that the members of the Board of Directors of the Company also knew a great deal more about all these transactions than their testimony at the trial would lead us to suppose. The natural inclination to unload the burden of responsibility for carelessness and negligence, if it should not be described in stronger language, upon some other person as scapegoat, was probably too strong to be withstood. 40

Reverting to the certificate of title given by Brickenden, it is to be ob-

served that it is only a certificate of title, and, save that it mentions the other mortgages upon the properties, it has nothing to do with the question of the sufficiency of the security. There is no suggestion on the part of anybody that the certificate of title was inaccurate, except that the plaintiffs by counterclaim complain that the certificate does not say anything about the two subsequent mortgages held by Brickenden. The answer made to that on his behalf is that when the certificate of title was given the discharges to these two mortgages had been registered and the mortgages were no longer in existence upon the properties. Whether that is a sufficient answer to justify the omission of any mention of these two mortgages in the application for the loan, and the failure to mention the fact that these mortgages were to be paid out of the proceeds of the loan, may be a nice question, in view of the relationship of solicitor and client existing between Brickenden and the Loan Company, with the obligations on his part thereby resulting, as very fully discussed by Haldane, L.C. in *Nocton v. Lord Ashburton*, 1914 A.C. 932, upon which decision counsel for the plaintiffs by counterclaim chiefly rely.

Before considering the legal position of the parties in the case at bar, it is convenient at this point to note certain other aspects of the matter which should be considered. As has already been mentioned the learned Trial Judge, instead of going into the question of damages sustained by the plaintiffs by counterclaim, gave them judgment for the amount owing upon the mortgage in question, as against Brickenden and his firm. The counterclaim asked for damages. It would appear from a perusal of the reasons for judgment (vide page 67 of the appeal book) that the learned Trial Judge had formed the opinion that there was no equity in the properties to serve as security for the mortgage then in question and that, if there were a forced sale, that mortgage would prove a total loss. He does go on to state that "Brickenden's interest in the transaction was in clear conflict with his duty as solicitor for the Company, and under these circumstances he is responsible for whatever loss the Company may suffer." It is apparent the learned Judge was here referring to the London Loan Company. He does not find in so many words that the mortgage is a total loss, but he proceeds to pronounce judgment for the plaintiffs by counterclaim against Brickenden for whatever the Master might find owing on the \$13,500 mortgage, and he provides for the assignment of the mortgages to Brickenden upon payment thereof by him. He further provides for a sale of the property at the option of the plaintiffs by counterclaim, in which event the judgment against Brickenden was to be for the deficiency only. Upon examining carefully into the matter I find that, out of the \$13,500 for which the mortgage was given to the Company by Biggs, the Company retained more than \$1600 in payment to it of arrears of interest owing in respect of its prior mortgages on the same property. The Company suffered no loss on this. I find also that the Company retained out of the principal sum \$1000 in the nature of a bonus taken by the Company for making the loan. That sum was never advanced and was not lost. I do not know of any basis, either legal or equitable, upon which the Court can justify giving judgment to the Loan Company for these

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amounts, aggregating over \$2,600, never advanced and therefore never lost. The Company made some bookkeeping entries and that was all. The money was not paid to anybody.

Extracts from Brickenden's examination for discovery were put in by counsel for the plaintiffs by counterclaim. From these it is established that Brickenden told Kent, the Managing Director of the Loan Company, in regard to the application, and also that he, Brickenden, was to receive a commission in respect of the loan, and that Kent agreed thereto. That evidence was put in as part of the plaintiffs' case. In the absence of any sufficient evidence of fraud and collusion entered into by Brickenden and Kent to exploit the Loan Company, behind the backs and without the knowledge of the other members of the Board of Directors, I am at a loss to understand upon what basis it can be contended that the Loan Company did not know that Brickenden was to receive a commission in respect of the loan, as to which the Company's Managing Director had full knowledge. 10

As appears by the formal judgment, as well as by the reasons of the learned trial Judge, the plaintiffs by counterclaim were given the option of having the lands, covered by the mortgage, sold or realized upon, and declined to have this done. We therefore have this position, that no attempt has been made to realize upon the mortgage security, nor has the property covered thereby been sold. It is stated that a loss is inevitable, but no actual loss has been sustained. This point was made before us and was not controverted by counsel for plaintiffs by counterclaim. That being so, apart from other features of the matter to which I will presently refer, I am not able to understand how the Loan Company could be given judgment for any sum by way of damages. Even if we assume as facts, those things which have not been, in my opinion, satisfactorily established, namely that there must inevitably be a loss in respect to the mortgages, and that such loss will be due to or will result from a breach of duty on the part of Brickenden, the present claim is premature, certainly in so far as it assumes to recover damages for loss sustained. 20 30

There is another aspect of the matter which, in my view, affords an insurmountable obstacle to this claim.

By agreement dated July 3rd, 1929 (Exhibit G appeal book) the London Loan and Savings Company of Canada, to which I referred as the Loan Company, sold its entire assets to the Huron and Erie Mortgage Corporation, which in turn, by the same agreement agreed to sell a portion of such assets to The London Loan Assets Limited, a company which was incorporated for the purpose of carrying out the transaction. The Loan Company received as consideration for the transfer \$720,000 and 20,000 shares of the capital stock of the Assets Company (see evidence of Braden, page 74). The transfer was couched in language of very wide significance, particularly in respect of "rights of action arising out of or incidental or appurtenant to ownership of any assets hereby assigned or conveyed or affecting the value 40

thereof in so far as these rights of action are capable of being transferred." The same language is used in the agreement for transfer by The Huron and Erie to the Assets Company. The mortgage in question was transferred under and by virtue of the said agreement which was duly approved by the Lieutenant-Governor-in-Council, and thereupon became effective. The document did not contain any specific assignment of the claim against Brickenden, if any claim in law existed. As a result of the assignment the London Loan Company, at the time when the counterclaim was delivered, had no right, title or interest to or in respect of the mortgage in question. (See evidence of Braden, page 74) which mortgage was at that time owned by the Assets Company (vide evidence of Hunt at top of page 196).

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Counsel for the appellant Brickenden asserted that there was no evidence of any kind, either direct or indirect, to indicate or to justify any inference that the London Loan Company did not receive the full face value of the mortgage, upon the sale and transfer of its assets, nor has our attention been directed to, nor have I found any such evidence. In so far as the London Loan Company is concerned, at the time when the counterclaim was delivered the original action was only begun on July 9th, 1929, and therefore six days after the agreement was entered into, and the counterclaim was not delivered until November of the same year, and the amended counterclaim in November of 1930) it had no right, title or interest in the mortgage in question, had not attempted to realize upon it by sale of the security, and, in so far as is disclosed upon the record, had received full face value for it upon the sale and transfer of its assets. Under these circumstances for both reasons I am at a loss to understand upon what basis the London Loan Company could be given judgment for damages against Brickenden in respect of the mortgage. The lack of any rights on the part of the Loan Company, would appear to have been made doubly sure, if the contention of its counsel be correct, that the Company had validly and effectually assigned any cause of action which it possessed.

It is made quite clear by the opinion of Haldane, L.C. in the Nocton case that the claim of the London Loan Company, if it had any, was one for damages, and the damages would be commensurate with the loss sustained by reason of the breach on the part of Brickenden of his duty to the Loan Company arising out of the fiduciary relation of solicitor and client. Even if we assume for the sake of argument, that there was a breach of duty on the part of Brickenden, having suffered no loss, the Loan Company could not recover any damages against him.

The Huron and Erie Mortgage Corporation and the London Loan Assets Limited are in no better case, but rather in a worse case if that be possible. There was no fiduciary relationship existing between Brickenden and those two companies with respect to this mortgage, nor could the Loan Company assign to them the benefit of the fiduciary relation between its solicitor and itself. He was not acting as solicitor for those companies in respect of the

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mortgage, nor indeed was he acting as solicitor for any of these companies at the time when the agreement of July 3rd, 1929, was entered into. Whether they or either of them has or has not a claim, or may in the future have a claim against the London Loan Company, Limited, in respect of this mortgage, when attempt is made to realize upon it, is not a matter with which we are at present concerned. Even if the London Loan Company had a valid claim in law against Brickenden, it is doubtful, in my mind, if they could validly assign that claim so as to give either or both of the other companies a right to bring action in respect of it. In *Laidlaw v. O'Connor*, 23 O.R. 696, the late Chief Justice Armour held that a claim on the part of a client for negligence as against his solicitors, could not be assigned by him to another person so as to enable the assignee to maintain an action thereon in his own name. 10

In *McCormack v. Toronto Railway Co.*, 13 O.L.R. 656, Anglin, J. (now C.J.C.) at pages 659 and 660 held that a cause of action arising *ex delicto* could not be assigned, and the Divisional Court affirmed his judgment. Anglin, J. there refers to the different rule which obtained in respect of proceedings under the Bankruptcy Acts which he states was based upon the language of those statutes.

In *Burke v. Shaver*, 29 O.L.R. 365, the Appellate Division (Meredith, C. J. O. delivering the judgment) recognized the difference between the claim for damages against a solicitor arising from a "direct breach of a positive contract to do a specific act," which was held to be assignable, and the claim arising out of a breach of the general duty of the solicitor to his client based upon the fiduciary relationship existing between them. 20

The decision of this question as to assignability of such a claim is not necessary in the case at bar, and I do not found my judgment upon it. For the other reasons which have been given I am fully convinced that the judgment in favour of the plaintiffs by counterclaim against Brickenden cannot stand and that the appeal of the latter should be allowed and the counterclaim against him dismissed, but, upon the facts, without costs. In any view, the giving of a judgment in favour of the three companies against Brickenden, under the circumstances of this case, could not be justified. If the London Loan Company was entitled to judgment against him, it was only because they had not parted with their rights in respect of the mortgage, and in that case neither of the other companies would have any right in it. On the other hand if either or both of the other companies had any valid claim on the mortgage then the London Loan Company could not have any claim because the rights of the others could only arise in consequence of the transfer of its rights to them by the London Loan Company. As the rights of the three companies among themselves arose out of a transaction with which Brickenden had nothing whatever to do, I do not know any valid reason for permitting them to speculate at his expense on the question as to which of them had a right to recover against him. 30 40

The cross appeal against McCormick should also be dismissed and with costs. As McCormick was president of the Loan Company and apparently had an active part in the questionable practices followed by the Board of Directors, I do not feel disposed to interfere with the disposition made by the Trial Judge of the costs of the trial in respect of the counterclaim as against McCormick.

MULOCK, C.J.O.:— }
 RIDDELL, J. A.:— } I agree.

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1st March,
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IN THE SUPREME COURT OF ONTARIO

The Honourable Chief Justice of Ontario The Honourable Mr. Justice Riddell The Honourable Mr. Justice Grant	}	Tuesday, the First day of March, 1932.
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BETWEEN:

WALTER HERBERT BIGGS and EVA VIOLA BIGGS	10 Plaintiffs:
---	-------------------

—AND—

(Seal of The Supreme Court of Ontario).	THE LONDON LOAN AND SAVINGS COMPANY OF CANADA and THE CONSOLIDATED TRUSTS CORPORATION	Defendants:
--	---	-------------

AND BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA, CONSOLIDATED TRUSTS CORPORATION, THE HURON AND ERIE MORTGAGE CORPORATION, THE CANADA TRUST COMPANY and LONDON LOAN ASSETS LIMITED	20 Plaintiffs by Counterclaim:
---	-----------------------------------

—AND—

WALTER HERBERT BIGGS, EVA VIOLA BIGGS, G. A. P. BRICKENDEN, G. A. P. BRICKENDEN & COMPANY and GEORGE C. McCORMICK	30 Defendants by Counterclaim:
--	-----------------------------------

No. 39.

UPON MOTION made unto this Court by counsel on behalf of the Defendants by Counterclaim, G. A. P. Brickenden and G. A. P. Brickenden & Company, on the 15th, 16th and 19th days of October, 1930, by way of appeal from the Judgment pronounced herein by The Honourable Mr. Justice

Raney dated the 11th day of October, 1930, and upon motion made unto this Court on the said days by counsel on behalf of the Plaintiffs by Counterclaim by way of cross-appeal from the said judgment by way of notice to vary pursuant to Rule 497 insofar as it dismissed the counterclaim against the Defendant by Counterclaim, George C. McCormick, in the presence of counsel for the Plaintiffs by Counterclaim; upon hearing read the pleadings and upon hearing read the evidence adduced at the trial and what was alleged by counsel aforesaid.

*In the
Supreme
Court of
Ontario.*
—
No. 39.
Formal Order
of Appellate
Division.
1st March,
1932.

—continued.

10 (1) THIS COURT DOTH ORDER that the cross-appeal of the Plaintiffs by Counterclaim against the Defendant by Counterclaim, George G. McCormick, be and the same is hereby dismissed.

(2) THIS COURT DOTH FURTHER ORDER that the Plaintiffs by Counterclaim do pay to the Defendant by Counterclaim, George G. McCormick, his costs of the said cross-appeal forthwith after taxation thereof.

(3) THIS COURT DOTH FURTHER ORDER that the appeal of the Defendants by Counterclaim, G. A. P. Brickenden and G. A. P. Brickenden and Company, be and the same is hereby allowed, and that the said Judgment be varied and as varied be as follows:—

20 1—THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiffs' action be and the same is hereby dismissed.

30 2—THIS COURT DOTH DECLARE that the Plaintiffs by Counterclaim, The London Loan and Savings Company of Canada, The Huron and Erie Mortgage Corporation and the London Loan Assets Limited are entitled to recover from the Defendants by Counterclaim, Walter Herbert Biggs and Eva Viola Biggs, the amount due and owing upon the mortgage made by Walter Herbert Biggs and Eva Viola Biggs dated the 8th day of November, 1924, to The London Loan and Savings Company of Canada, for \$13,500.00, and that Consolidated Trusts Corporation and The Canada Trust Company are entitled to recover from the Defendants by Counterclaim, Walter Herbert Biggs and Eva Viola Biggs, the amount due and owing upon the two mortgages bearing date the 1st day of December, 1927, made by the said Walter Herbert Biggs and Eva Viola Biggs to the Consolidated Trusts Corporation, one for \$20,000.000 and one for \$13,600.00, and which said mortgages were registered in the Registry Office for the County of Middlesex as Numbers 23113 and 23114 respectively, and DOTH ORDER AND ADJUDGE the same accordingly.

40 3—AND THIS COURT DOTH ORDER that the appeal from the Report of the Local Master of this Court at London, dated the 29th day of April, 1930, and made herein pursuant to the Order of Mr. Justice Wright dated the 1st day of November, 1929, be and the same is hereby dismissed and that the said Report be and it is hereby confirmed.

*In the
Supreme
Court of
Ontario.*

No. 39.
Formal Order
of Appellate
Division.
1st March,
1932.

—continued.

- 4—AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that it be referred to the said Local Master of this Court at London to take a further account of the amount due and owing to the London Loan and Savings Company, The Huron and Erie Mortgage Corporation and The London Loan Assets Limited and to Consolidated Trusts Corporation and The Canada Trust Company upon the said mortgages since the date of the said Local Master's Report and that such further amounts which the said Local Master shall find be added to the amounts set out in the said Report and that he do find the total amounts which are due and owing to the Plaintiffs by Counterclaim upon their respective claims at the date of this Report. 10
- 5—AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiffs by counterclaim The London Loan and Savings Company, The Huron and Erie Mortgage Corporation and the London Loan Assets Limited do recover from the defendants by counterclaim, Walter Herbert Biggs, Eva Viola Biggs, the amount which the said Master shall find to be due to them forthwith after the confirmation of the said Master's report, and upon payment of the amount due to them, together with the costs of this action and the costs of the reference and of the appeal from the said Master's Report, that subject to the lands not having been sold in the meantime under the powers of sale by the prior mortgagees or foreclosed by prior mortgagees, and subject to the provisions of section 2 of The Mortgages Act, the said plaintiffs by counterclaim do assign and convey the mortgaged premises and deliver up all documents relating thereto; 20
- 6—AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiffs by counterclaim, Consolidated Trust Corporation and Canda Trust Company do recover from the defendants by counterclaim, Walter Herbert Biggs and Eva Viola Biggs the amount which the said Local Master shall find to be due and owing to them forthwith after the confirmation of the Master's Report, and upon payment of the amount found due to them, together with their costs of this action, and the costs of the reference and of the appeal from the said Master's Report, that subject to the lands not having been sold in the meantime under the powers of sale by the prior mortgages or foreclosed by prior mortgagees, and subject to the provisions of section 2 of The Mortgages Act the said plaintiffs by counterclaim do assign and convey the mortgaged premises and deliver up all documents relating thereto. 30
- 7—AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Huron and Erie Mortgage Corporation, appointed Receiver under Order of this Court dated the 25th July, 1929, do forthwith pass its accounts before the Local Master of this Court at London, Ontario, and that the said Local Master in taking the further account aforesaid shall take into consideration and credit against the said mortgages 40

of the plaintiffs by counterclaim, Consolidated Trusts Corporation and Huron and Erie Mortgage Corporation, the rents received by the said Huron and Erie Mortgage Corporation, less the disbursements, charges, taxes, fees and expenses in administering the said property.

*In the
Supreme
Court of
Ontario.*
No. 39.
Formal Order
of Appellate
Division.
1st March,
1932.

8—AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the counterclaim as against the defendant by counterclaim, George G. McCormick, be and it is hereby dismissed without costs.

—continued.

10 9—AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendants do recover from the plaintiff their costs of this action, including the costs of the day before The Honourable Mr. Justice Kelly, and of the Reference and of the appeal from the said Master's Report forthwith after taxation thereof.

20 10—AND THIS COURT DOTH FURTHER ORDER that as regards the plaintiff and defendant by counterclaim, Eva Viola Biggs, such sums as are by the Judgment directed to be recovered from her are to be levied out of the separate property of the said Eva Viola Biggs which she is now or may hereafter be possessed of or entitled to and any property which she may hereafter while discoverd be possessed of or entitled to and not otherwise, but this judgment shall not render available to satisfy the same any separate property which the said Defendant was or may be restrained from anticipating unless by reason of Section 11 of The Married Woman's Property Act, such property shall be available to satisfy the Judgment notwithstanding such restriction.

11—AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the counterclaim against the defendants, G. A. P. Brickenden, G. A. P. Brickenden and Company and George G. McCormick, be and the same is hereby dismissed without costs.

30 (4) AND THIS COURT DOTH FURTHER ORDER that there be no costs of this appeal to the Defendants by Counterclaim, G. A. P. Brickenden and G. A. P. Brickenden and Company.

E. HARLEY,
Senior Registrar,
S. C.O.

(Seal of
The Supreme Court
of Ontario)
E.S.

30.8.32.

40 Entered O.B. 127 pages 468-9-10-11,
August 30th, 1932.
V.C.

IN THE SUPREME COURT OF ONTARIO

In the
Supreme
Court of
Ontario.
—
No. 40.
Order Allow-
ing Payment
into Court as
Security for
Costs.
22nd April,
1932.

APPELLATE DIVISION

The Honourable the Chief
Justice in Appeal
In Chambers

} Friday the 22nd day of April, A.D. 1932.

BETWEEN:

THE LONDON LOAN & SAVINGS COMPANY OF CANADA,
CONSOLIDATED TRUSTS CORPORATION, THE HURON AND
ERIE MORTGAGE CORPORATION, THE CANADA TRUST
COMPANY and LONDON LOAN ASSETS LIMITED.

10

(Plaintiffs by Counterclaim)
Appellants

—AND—

WALTER HERBERT BIGGS, EVA VIOLA BIGGS, G. A. P.
BRICKENDEN, G. A. P. BRICKENDEN & COMPANY and
GEORGE G. McCORMICK,

(Seal)

(Defendants by Counterclaim)
Respondents

No. 40.

E. S. 27.4.32

20

UPON the application of the above named appellants and upon hearing read the Notice of Motion filed and the Certificate of the Accountant of the Supreme Court of Ontario filed, in the presence of Counsel for the Appellants and Counsel for the Respondents, and upon hearing what was alleged by Counsel aforesaid:

1. IT IS ORDERED that the sum of five hundred dollars (\$500.00) paid into Court to the credit of this action as appears by the Certificate of the Accountant of this Court filed as security that the Appellants the London Loan and Savings Company of Canada, Consolidated Trusts Corporation, The Huron and Erie Mortgage Corporation, The Canada Trust Company and London Loan Assets Limited, will effectually prosecute their appeal to the Supreme Court of Canada from the Judgment pronounced by the Court of Appeal of this Court on the 1st day of March, 1932, and will pay such costs and damages as may be awarded against them by the Supreme Court of Canada, be and the same is hereby allowed as good and sufficient security.

30

2. AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

E. HARLEY,
Senior Registrar.

Entered O.B. 125, page 403, April 28, 1932.
V. C.

S. C. O.

40

IN THE SUPREME COURT OF CANADA

*In the
Supreme
Court of
Canada
No. 41.
Statement of
Case.*

BETWEEN:

WALTER HERBERT BIGGS and EVA VIOLA BIGGS,
Plaintiffs,

—AND—

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION,
Defendants.

AND BETWEEN:

10 THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
CONSOLIDATED TRUSTS CORPORATION, THE HURON AND
ERIE MORTGAGE CORPORATION, THE CANADA TRUST
COMPANY and LONDON LOAN ASSETS LIMITED.
(Plaintiffs by Counterclaim)
Appellants.

—AND—

G. A. P. BRICKENDEN and G. A. P. BRICKENDEN & COMPANY
(Defendants by Counterclaim)
Respondents.

20

No. 41.

STATEMENT OF CASE

THIS is an appeal by the Appellants from the judgment of the Appellate Division of the Supreme Court of Ontario, (Mulock, C. J. O., Grant, J. A., and Riddell, J. A.,) delivered on the 1st day of March, 1932, setting aside as against the Respondents the judgment of Raney, J. delivered on the 11th day of October, 1930, after the trial of the action before him on the 7th, 8th and 9th days of May, 1930, whereby judgment was given in favour of the Appellants, with costs, as against the Respondents for the amount found due by the Local Master of the Supreme Court of Ontario at London,
30 Ontario, upon a certain mortgage bearing date the 8th day of November, 1924, made by Walter Herbert Biggs and Eva Viola Biggs in favour of The London Loan and Savings Company of Canada (one of the Appellants) for the sum of \$13,500.00, upon the ground that the interest of the Respondents in the placing of the said mortgages was in clear conflict with their duties as solicitors for the said Appellant Company, and under the circumstances they were responsible for whatever loss the Company might suffer, and in the result judgment was given against the Respondents for the full amount of the mortgage and accumulated interest.

IN THE SUPREME COURT OF CANADA

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

BETWEEN:

WALTER HERBERT BIGGS and EVA VIOLA BIGGS,
Plaintiffs

—AND—

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION
Defendants 10

AND BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
CONSOLIDATED TRUSTS CORPORATION, THE HURON AND
ERIE MORTGAGE CORPORATION, THE CANADA TRUST
COMPANY AND LONDON LOAN ASSETS LIMITED,
(Plaintiffs by Counterclaim) Appellants

—AND—

G. A. P. BRICKENDEN and G. A. P. BRICKENDEN
& COMPANY,
(Defendants by Counterclaim) Respondents. 20

No. 42.

APPELLANTS' FACTUM

NOTE:

In this Factum any references to pages in the Record refer to pages in the printed Record used before the Supreme Court of Canada and not to this new Record.

A

STATEMENT OF FACTS

This is an appeal by The London Loan and Savings Company of Canada, The Huron and Erie Mortgage Corporation and London Loan Assets Limited, three of the Plaintiffs by Counterclaim, from the judgment of The Supreme Court of Ontario delivered on the First day of March, 1932, setting aside the judgment of the Trial Judge, the Honourable Mr. Justice Raney, bearing date the 11th day of October, 1930, against the Respondents, (the Defendants by Counterclaim).

This action was commenced on the 9th day of July, 1929, by Walter H.

Biggs and Eva Viola Biggs as Plaintiffs against The London Loan and Savings Company of Canada and The Consolidated Trusts Corporation as Defendants, for an accounting in connection with three mortgages made by these Plaintiffs in favour of The London Loan and Savings Company of Canada for \$18,000.00, \$12,000.00 and \$13,500 respectively, (referred to in the Case as Exhibit 1-R, at page 208, and Exhibit 2-R at page 218 and Exhibit 5-R at page 253) and in connection with two mortgages made by the said Plaintiffs in favour of The Consolidated Trusts Corporation for \$20,000.00 and \$13,600.00 respectively, (referred to in the Case as Exhibit 6-R, at page 277, and Exhibit 7-R at page 278): or in the alternative for the return of certain bonus moneys and interest paid in connection with these loans and claimed to have been received by the Loan Company in violation of the Interest Act of Canada.

The action came on for trial before The Honourable Mr. Justice Wright at London on the 1st day of November, 1929, and an Order was made referring the matter of the accounts to the Local Master at London, and permitting the amendment of the pleadings and the adding of parties: (see Order at page 11 of Case). On the 14th day of November, 1929, a counterclaim was issued in the Biggs action by The London Loan and Savings Company of Canada and Consolidated Trusts Corporation as Plaintiffs against Walter Herbert Biggs, Eva Viola Biggs, G. A. P. Brickenden, G. A. P. Brickenden and Company, and George G. McCormick as Defendants, claiming the full amount owing on the different mortgages held by these Companies and made by the Plaintiffs Walter Herbert Biggs and Eva Viola Biggs in their favour, and for damages against the Defendants Brickenden and McCormick for fraud and breach of duty in connection with the procuring of the mortgages and lack of security in connection therewith. The reference to take the mortgage accounts was proceeded with, and the Local Master at London made his report, bearing date the 29th day of April, 1930, (see Report at page 41 of Case) in which he found the amounts due and owing under the different mortgages, and found against the Plaintiffs Walter Herbert Biggs and Eva Viola Biggs in reference to the moneys claimed to be owing to them under the provisions of the Interest Act of Canada. The order of the Honourable Mr. Justice Wright directed that any appeal from the Master's report was to be heard when the action was tried. The Plaintiffs Walter Herbert Biggs and Eva Viola Biggs appealed from the Master's report and the said appeal was heard when the said action and counterclaim came on for trial before the Honourable Mr. Justice Raney on the 7th, 8th and 9th days of May, 1930, and at the trial leave was given to the Plaintiffs by Counterclaim to add London Loan Assets Limited, The Canada Trust Company and The Huron and Erie Mortgage Corporation as Plaintiffs by Counterclaim upon the consent of each of these parties being filed: (see consents at pages 38, 39 and 40 of Case). Judgment was given by the Honourable Mr. Justice Raney on the 11th day of October, 1930, dismissing the appeal of the Plaintiffs Walter Herbert Biggs and Eva Viola Biggs from the Master's report, and confirming same, and granting judgment in favour of the Plaintiffs by Counterclaim against Walter Herbert Biggs and Eva Viola Biggs for the full amount

of the mortgages and interest as found by the Master, and in addition, directing the judgment against the Respondents for the amount of a second and third mortgage bearing date the 8th day of November, 1924, and registered as No. 19476 for the sum of \$13,500.00, (referred to as Exhibit 5-R), upon the ground that there was no security for the mortgage, and that the Respondents, as solicitors for The London Loan and Savings Company of Canada, had committed a breach of trust in failing to disclose that the proceeds of the mortgage were being used principally for paying off three prior mortgages held by the Respondents. The action as against the Defendant by Counterclaim McCormick was dismissed without costs. 10

The Respondents appealed from this decision, and the appeal was allowed by the Appellate Division of the Supreme Court of Ontario. The Plaintiffs Walter Herbert Biggs and Eva Viola Biggs also gave notice of appeal but abandoned the appeal. This appeal, therefore, is in connection with the claim against the Respondents under the mortgage for \$13,500.00 (referred to in the Case as Exhibit 5-R), which mortgage covered premises known as Nos. 309, 311, 313 Ridout Street and 114, 116 Elmwood Avenue in the City of London, owned by the plaintiff Walter Herbert Biggs, which mortgage was collaterally secured by a mortgage of even date for the same amount, and with the same terms, covering properties known as Nos. 315, 317, 319 20
Ridout Street, London, owned by the Plaintiff Eva Viola Biggs (referred to in the Case as Exhibit 4-R at page 258). At the time this mortgage (Exhibit 5-R) was registered it was a fifth mortgage against premises 309, 311, 313 Ridout Street South, a seventh mortgage against 114 Elmwood Avenue, and a fifth mortgage against 116 Elmwood Avenue. The collateral mortgage on the Eva Viola Biggs properties known as 315, 317, 319 Ridout Street South was a sixth mortgage. The first mortgage on premises 309, 311, 313 Ridout Street South for \$10,000.00 was held by The Huron and Erie Mortgage Corporation; the first and second mortgages on 114 Elmwood Avenue were held by one Edwin Barrell; the first mortgage on 116 Elmwood Avenue was held by The London Loan and Savings Company of Canada; and the first mortgage on Eva Viola Biggs' properties, 315, 317, 319 Ridout Street South, was held by The London Loan and Savings Company of Canada also. There were three blanket separate mortgages held by the Respondent Brickenden on the Walter Herbert Biggs' properties, (being 309, 311, 313 Ridout Street South and 114, 116 Elmwood Avenue), collaterally secured by three separate blanket mortgages of the same date for the same amounts covering the Eva Viola Biggs' properties known as 315, 317, 319 Ridout Street South, which were paid out of the proceeds of the \$13,500.00 loan, (being Mortgage referred to as Exhibit 5-R). When the Respondent's mortgages were discharged, the 30
situation in regard to the Walter Herbert Biggs' mortgages was as follows: 40

309, 311, 313 Ridout Street—1st mortgage to the Huron and Erie Mortgage Corporation for \$10,000.00; 2nd. blanket mortgage to The London Loan and Savings Co. of Canada for \$13,500.00.

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Court of
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No. 42.
Appellants'
Factum
A
Statement of
Facts.
—continued.*

114 Elmwood Avenue— 1st mortgage to Edwin Barrell for \$6,000.00.
2nd. mortgage to Edwin Barrell for \$1,000.00.
3rd mortgage to The London Loan and Savings
Company of Canada, as collateral security, for
\$3,000.00.
4th mortgage to The London Loan and Savings
Company of Canada for \$13,500.00.

10 **116 Elmwood Avenue—** 1st mortgage to The London Loan and Savings
Company of Canada for \$18,000.00;
2nd mortgage to The London Loan and Savings
Company of Canada for \$13,500.00.

The situation in regard to the Eva Viola Biggs' mortgages was as follows:

20 **315, 317, 319 Ridout Street—**1st mortgage to The London Loan and Savings
Company of Canada for \$12,000.00;
2nd mortgage to Whitfield Lancaster for \$1,-
100.00;
3rd mortgage to The London Loan and Savings
Company of Canada for \$13,500.00, (Ex-
hibit 5-R).

The values of the Walter Herbert Biggs' properties at the time the said mortgage for \$13,500.00 (Exhibit 5-R) was registered, according to the uncontradicted evidence of one Gardner were as follows:

309, 311, 313 Ridout Street—	Forced sale value.....	\$ 10,000.00
	Ordinary value.....	14,000.00
114 Elmwood Avenue—	Forced sale value.....	7,200.00
	Ordinary value.....	8,250.00
116 Elmwood Avenue—	Forced sale value.....	15,500.00
	Ordinary value.....	20,000.00

30 The values of the Eva Viola Biggs' properties at this time were as follows:

315, 317 Ridout Street—	Forced sale value.....	\$ 6,500.00
	Ordinary value.....	8,000.00
319 Ridout Street—	Forced sale value.....	6,600.00
	Ordinary value.....	8,700.00

(See evidence of Gardner, pages 163, 164 and 191; also evidence of Jones, page 197, as to construction costs of 309, 311, 313 Ridout Street and 315, 317 Ridout Street, and page 198 as to 114 and 116 Elmwood Avenue and 319 Ridout Street).

40 There was clearly no equity in any of these properties over the first

*In the
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Court of
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No. 42.
Appellants'
Factum
A
Statement of
Facts.

—continued.

mortgages, and not sufficient value in the properties to take care of the first mortgages under forced sale conditions.

The Plaintiffs Walter Herbert Biggs and Eva Viola Biggs, after obtaining the first mortgages hereinbefore referred to on 116 Elmwood Avenue and 315, 317, 319 Ridout Street, South, from The London Loan and Savings Company of Canada, applied for further loans as follows: on March 19th, 1923 (see Exhibit "D" at page 225), and on June 12th, 1923, (Exhibit "D" at page 230), both of these applications being refused. On the 13th day of July, 1923, the Plaintiff Biggs obtained his first loan from the Respondents for \$5,000.00, his second loan of \$2,000.00 on the 24th of August, 1923, and his third loan of \$1,200.00 on the 13th of January, 1924. These mortgages all bear interest at eight per cent. payable monthly, and a bonus was paid in connection with each loan: (see extracts from examination for discovery of the respondent Brickenden, page 137, questions 181 and 182; page 139, question 217). 10

What is said to be an application for the loan of \$13,500.00 (Exhibit 5-R) is a document unsigned and undated. The application for the loan came before the Board of The London Loan and Savings Company of Canada on the 11th of November, 1924, (see Exhibit D page 264), and the application was laid over. The application was accepted on the 17th of November, 1924, (see Exhibit D page 269). It is admitted that the Respondent acted for the plaintiff Biggs as well as for the Loan Company, (see extract from examination of respondent Brickenden at page 142, questions 257, 264 and 265), and received from Biggs for obtaining the loan a fee of \$500.00, (see extracts from examination of respondent Brickenden at page 142, question 258). 20

Before the application for the loan came before the Board of The London Loan and Savings Company of Canada, the mortgage for \$13,500.00 (Exhibit 5-R) had already been drawn as it bears date the 8th of November, 1924, cheques were prepared on the W. H. Biggs account on the 8th of November, 1924, and discharges of two of the Respondent's mortgages were prepared on the 11th of November, 1924; (see mortgage Exhibit 5-R at page 253: see cheques issued on November 8th, 1924, Exhibits 22-R at page 260, 24-R at page 261, 31-R at page 262 and 31R at page 263: see also Abstracts of Title, Exhibits "A" at page 320 and "E" at page 326). The moneys mostly were advanced and paid out on the 12th of November, 1924, (see Biggs account, Exhibit 28-R at page 205), and the transaction in so far as the mortgage itself was concerned was fully carried out and completed at least five days before the Board of the Loan Company accepted the loan, which was not until the 17th of November, 1924. The different transactions in connection with this loan were under the supervision of the respondent Brickenden as written instructions were placed on the ledger sheets of the W. H. Biggs' account that no cheques were to be paid unless marked O.K. by the respondent Brickenden: (see Exhibit 28-R at page 206: see cheques marked 30 40

“O. K.” by respondent Brickenden, Exhibits 24-R at page 261, 25-R at page 268, Exhibit 31-R at pages, 262, 263, 266, 267 and 270):

*In the
Supreme
Court of
Canada.*

Three of the Directors of the Loan Company whose evidence was before the Trial Judge, and who were on the Board of the Loan Company at the time the loan was accepted, stated they did not know that the Respondents were acting for the Plaintiff Biggs as well as for the Loan Company, or that the Respondents were receiving a fee from Biggs of \$500.00 for putting through the loan, or that the Respondents had mortgages on the property which were being discharged from the proceeds of the loan: (see extracts from examination of McCormick at page 175; extracts from examination of Hunt at page 150 and 151: and extracts from examination of Robinson at page 158.

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Appellants'
Factum
A
Statement of
Facts.

—continued.

No evidence of any kind was offered by the Respondents at the trial. The Trial Judge found the following facts against the Respondents:

1. That at the date of the \$13,500.00 mortgage (Exhibit 5-R) there was no equity in the property it covered and not sufficient equity to provide for the first mortgages under forced sale conditions:

2. The Respondents, as solicitors for The London Loan and Savings Company of Canada, did not make a disclosure of the mortgages held by them:

3. The Respondents' interest in the transaction was clearly in conflict with their duty as solicitors for The London Loan and Savings Company of Canada, and the Respondents are responsible for the loss suffered by the Company.

B.

**SHOWING THE GROUNDS UPON WHICH THE JUDGMENT IS
ALLEGED TO BE ERRONEOUS**

No. 42.
Appellants'
Factum
B
Grounds upon
which Judgment
alleged
erroneous.

It is submitted with respect that the judgment of the Appellate Division of the Supreme Court of Ontario is erroneous in the following respects:—

1. In setting aside the findings of fact of the trial Judge who heard the evidence and had the opportunity of seeing the witnesses in the witness box:

2. In misconstruing the findings of damage of the trial Judge who found there was no equity in the property covered by the mortgage in question above the first mortgages:

3. In holding that no loss had been proved because the security had not been realized upon, and that no attempt had been made to realize upon the security:

*In the
Supreme
Court of
Canada.*
—
No. 42.
Appellants'
Factum
B
Grounds upon
which Judgment Alleged
Erroneous.
—continued.

4. In holding the claim for damages was premature:

5. In holding that, because of the Agreement of the 3rd. day of July, 1929, (Exhibit "G" at page 297), The London Loan and Savings Company of Canada had no right, title or interest in respect to the mortgage in question, or the right to claim damages for the breach of duty of its solicitors.

6. In failing to take cognizance that no evidence was produced to show that The London Loan and Savings Company of Canada had received the full face value of the mortgage from The Huron and Erie Mortgage Corporation.

7. In holding that the trial Judge erred in giving judgment in favour 10 of all three Plaintiffs by Counterclaim:

8. In holding that, in the circumstances disclosed in evidence, there was no liability on the part of the Respondents either on the mortgages or in damages:

9. In holding that the onus of proof in justifying the said transaction was not upon the Respondents:

10. In holding that the Plaintiffs by Counterclaim, The Huron and Erie Mortgage Corporation and London Loan Assets Limited, were not entitled to recover even if the said claim was not assignable where the original assignor, The London Loan and Savings Company of Canada, was a party 20 to the said action.

No. 42.
Appellants'
Factum
C
Argument and
Consideration
of Law.

C.

ARGUMENT AND CONSIDERATION OF LAW.

The facts preceding the acceptance of the \$13,500.00 mortgage (Exhibit 5-R, page 253) are not in dispute. It is quite clear that at the time this mortgage was accepted by The London Loan and Savings Company of Canada the Board had already refused on three occasions to increase its loans to Biggs, (see Exhibit D at page 225, Minutes of Meetings of the Board of The London Loan and Savings Company of Canada of March 19, 1923, "W. H. Biggs—\$8400. Laid over", and Exhibit D at page 230, Minutes of Meetings of the Board of The London Loan and Savings Company of Canada of 30 June 12, 1923, "W. H. Biggs—Asks increase. Decline to increase present loan": see also evidence of Braden, Case page 75, lines 10 to 14 inclusive, as follows:

"Witness: "September 4th, 1923, W. H. Biggs, \$6,500 declined for this amount"—it does not say what property that application was made for.

"His Lordship: Just the Minute? A. Just the Minute declining the application.")

and had even taken collateral security for the first mortgage of \$18,000.00 on 116 Elmwood Avenue (see Exhibit D, page 213, Minutes of Meeting of the Board of The London Loan and Savings Company of Canada of December 11, 1922, "re Biggs, W. H.—Solicitor reported extra security for \$3000 obtained. Loan confirmed").

It was following the refusal of The London Loan and Savings Company of Canada to increase its loan to Biggs that the respondent Brickenden accepted the three mortgages for \$5,000.00, \$2,000.00 and \$1,200.00, (referred to in the case as Exhibits 10-R at page 232, 11-R at page 235, and 15-R at page 10 238). Before the respondent would make these advances to the plaintiffs he insisted upon and received large bonuses, and stipulated for interest at eight per cent. payable monthly, as well as large legal fees. (See extracts from examination for discovery of the respondent Brickenden at page 137:

"181. Q. Did you advance this \$5,000? A. I think I got a bonus on that; I imagine I advanced the \$5,000 and got back a bonus.

"182. Q. Of how much? A. \$1,000.

Page 139:

"218. Q. What is your recollection as to the bonus of the \$2,000? A. I can't recall.

20 "219. Q. Do you think you did? A. I think I did.

Page 140:

"222. Q. Walter Herbert Biggs, \$1,200, 3rd mortgage; bonus \$300, on 114-112 Elmwood and collaterally secured by Ridout and Emery St. property; Money advanced \$750 on February 9th, 1923; \$450 on February 16th, 1924; interest 8% quarterly; \$100 off principal monthly; then you have October 13th paid in full \$600; that would be like a fourth mortgage on that property? A. It might be put on in that form; in reality it was an additional advance to him." See also Exhibit 30-R, case page 242).

30 On the 11th of November, 1924, when the application for the \$13,500.00 loan first came before the Board of The London Loan Company of Canada and was laid over, none of the respondent Brickenden's mortgages were nearly due except the second of the three mortgages, (Exhibit 11-R at page 235 of case) which was falling due on the 13th of November, 1924. Why then did the Board of the Company change its mind if it knew the facts? What circumstances had arisen in the meantime to induce the Board to take a more favourable view of the Biggs' application than than in March, June and September, 1923, when the arrears against the first mortgages were much less and the amount asked for then was only \$8,400.00, or \$6,500.00 in September 1923? (See minutes of meeting of the Board of The London Loan and Savings Company of Canada of March 19, 1923, Exhibit D at page 225; also 40 see minutes of meeting of September 4, 1923, referred to in the evidence of Braden at page 75 of Case). The only answer to these questions is that the facts in connection with the applications were not before the Board of the Company or they thought that the new mortgage was a first mortgage, as is set out in the evidence of Charles R. Hunt, at page 150 of the Case. There is positive evidence by Robinson and Hunt that the Board of the Loan Com-

pany did not know that the respondent Brickenden's mortgages existed, or that the proceeds were to be used to discharge the respondent's loans, or that the respondent Brickenden was acting for the borrower and was being paid an exorbitant fee for his services. See evidence of Hunt at page 149 of case, lines 32 to 38 inclusive,—

Q. This mortgage to them came up before the Board of Directors?

A. Yes.

Q. And will you tell his Lordship what transpired with reference to that matter? A. It came up at one meeting, and I think was laid over and it came up at a separate meeting and was passed. 10

Q. Yes? A. And it was passed, in my recollection, as a first mortgage.

Page 150, lines 6 to 10 inclusive:

Q. If you had known and been told at this meeting that it was a second mortgage for \$13,500 and not a first mortgage, would it have made any difference on the acceptance or rejection of that mortgage? A. We were not loaning money on second mortgages. It would certainly have made a difference. Page 150, lines 32 to 40 inclusive:

Q. Now, did you know that Mr. Brickenden was the solicitor, just at this time—who was the solicitor for the London Loan and Savings, Mr. Hunt, who was your general solicitor? A. Mr. Brickenden. 20

Q. And did you know at the time this \$13,500 mortgage was taken, did you know that Mr. Brickenden was the solicitor for the Biggs? A. I did not.

Q. You did not? And did you know that Mr. Brickenden had received or was receiving \$500 commission from Mr. Biggs for getting that loan of \$13,500 from your company? A. I did not.

Page 151, lines 6 to 10 inclusive:

Q. You were not aware that the proceeds of this \$13,500 were to go to pay off any of these mortgages? A. I was not aware of it. 30

Q. You were not aware that the proceeds of this \$13,500 mortgage were to go to pay off any other Biggs' mortgages? A. I was not aware of it.

Cross-examination of C. R. Hunt:

Page 152, lines 25 and 26:

His Lordship: Did you know the \$13,500 was on the same property as either of the other properties? A. I did not.

Examination of William H. Robinson:

Page 157, lines 34 to 37:

Q. Is it the policy of the Board to take second mortgages? A. Well no, I would not say it was not the policy or it was. They do not take very many second mortgages. We would not want a second mortgage, I would say, we would not be anxious to take a second mortgage. 40

Page 158, lines 13 to 28:

Q. Who was the solicitor of the company? A. Mr. Brickenden.

Q. Did you know that on this \$13,500 mortgage that he was acting for the borrowers as well as for the company? A. No.

Q. Did you know that he was getting \$500 commission from the Biggs for getting this \$13,500 from the company? A. No.

Q. You did not know that? A. No.

Q. Did you know that he had himself on the properties mortgages that were to be paid out of this \$13,500? A. No, I did not know that.

10 Q. You did not know that? A. No.

HIS LORDSHIP: Q. Did you learn these facts afterwards before the second mortgage became the subject of contention? A. No, I did not know before it became a subject of contention.

Q. When did it become the subject of contention? A. I do not think that I knew that Mr. Brickenden had had these mortgages until after the sale to the London Loan.

The evidence of Hunt and Robinson is corroborated by the admissions made on the examination for discovery of the respondent Brickenden, who states that he did not tell anyone about his interest in the matter beyond
20 Mr. Kent, the manager of the company who, at the date of the trial, was deceased. See questions from examination for discovery of the respondent Brickenden at page 144,—

"420. Q. Why was it laid over from November 11th to November 18th? A. You will have to ask one of the Directors.

"421. Q. It says, lend; W. H. and Eva Biggs; lend \$13,500 at 8%; bonus \$1,000, what took place between the 7th and 11th? A. All I know is I applied to Mr. Kent.

"422. Q. Do you remember speaking to Mr. McCormick about it? A. I can't recall.

30 "423. Q. Did you speak to Mr. McCormick about it? A. I can't recall.

"424. Q. Did you speak to Mr. Baker about it? A. Only to the Manager that I recall.

See also at page 142:

"255. Q. Did you speak to Mr. Kent? A. I spoke to Mr. Kent.

"256. Q. For the \$13,500? A. Yes.

"257. Q. And you acted as solicitor for putting through the transaction? A. Yes.

40 "258. Q. Did you receive any bonus or commission? A. I received fees and commission; I received \$500 to cover fees and commission.

"259. Q. Have you anything there to show? A. The only thing I have is fees and disbursements, \$500.

"260. Q. What date is that? A. November 11th, 1924.

"261. Q. And you say that is the fees and disbursements you got from Mr. Biggs on putting through the \$13,500 loan? A. Right.

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"262. Q. You acted for the London Loan at that time? A. We were solicitors at that time.

"263. Q. And you were looking after their interests? A. We did the legal work on the \$13,500 loan.

"264. Q. You were looking after the interests of the London Loan at that time? A. We were their solicitors.

"265. Q. And solicitors for Mr. Biggs also? A. Yes.

"266. Q. Now what part of that \$500 is disbursements? A. About \$8.85.

"274. Q. What work did you do? A. I don't know. 10

"275. Q. The bonus fees would be \$400? A. Fees and commission.

"276. Q. It was a bonus, wasn't it? A. I won't say.

"277. Q. When you strip it it is a bonus? A. I received \$500 and my records say fees and disbursements.

"303. Q. Tell me what you did to justify your fee of \$500? A. I accepted my money and applied for a loan for him and got it.

Page 143:

"308. Q. And he was paying you \$500 for a purpose? A. Yes.

"309. Q. And the purpose was to get the loan? Wasn't it? A. I presume so." 20

which show beyond any question what Brickenden's interest was in obtaining the mortgage of \$13,500.00. The only evidence that there was any disclosure of any of the respondent's loans is in the certificate of title (Exhibit 5-R at page 264) which the trial Judge deals with as follows:

"It is putting it mildly to say that the three mortgages on the Biggs' properties, held by Brickenden at that time, and totalling \$8,200, were doubtful securities. His interest was to get those mortgages paid. He did not make a disclosure of these mortgages in his certificate of title, and it does not appear that the certificate of title came before the Board before the loan was authorized. It may never have been seen by anybody, but the man- 30
aging director, and there is no evidence that it was seen even by him. Brickenden's interest in the transaction was in clear conflict with his duty as solicitor for the company, and under these circumstances he is responsible for whatever loss the company may suffer." (See Reasons for Judgment of the Honourable Mr. Justice Raney at page 346, lines 6 to 15, of Case).

Then there is the outstanding fact, which is beyond dispute, that the mortgage was prepared on the 8th of November, 1924, and registered on the 12th of November, 1924, and the moneys advanced on the 12th of November, 1924, and the two mortgages of the Respondent for \$2,000.00 and \$1,200.00 were discharged on the 12th of November, 1924, five days before the loan 40
was authorized by the Board of the Company. In addition to this, Biggs, the borrower, could not issue cheques on the account unless they were O.K'd. by the respondent Brickenden, and express instructions to this effect were noted on the ledger sheet of Biggs' account; (see ledger sheet showing Biggs' account, Exhibit 28-R at page 206: also cheques O.K'd. by respondent Brickenden, Exhibits 24-R at page 261, 25-R at page 268, 31-R at pages 262,

263, 266, 267 and 270). It will be noted that some of these cheques (exhibits 24-R at page 261 and 31-R at pages 262 and 263) also bear date the 8th of November, 1924, although they were not cashed until the 13th of November. It is, therefore, quite clear that at all times the respondent Brickenden had full charge of all expenditures in connection with the proceeds of this loan and must have been in control of the granting of the loan, or knew he could exercise sufficient influence upon the Board of the Company to induce the Board to grant it otherwise he would not have prepared the mortgage and allowed the issue of the cheques on the Biggs' account before the Biggs' application came before the Board of Directors. The acceptance of the application by the Board of Directors of The London Loan and Savings company of Canada was, therefore, nothing more than a mere formality.

The evidence of the Plaintiff Biggs shows the purpose of obtaining the loan, and that the respondent Brickenden received payment of all his mortgages from the loan, and that the respondent Brickenden acted for the plaintiff Biggs throughout and personally arranged all his loans for him with the Company. See extracts from examination for discovery of the plaintiff Biggs at pages 178 and 179 of Case,—

“79. Q. And what was the purpose of that mortgage? A. The purpose of that mortgage was to clean up everything, to retire anything that was outstanding.

“89. Q. Did you pay Mr. Brickenden a percentage for getting this loan for you? A. No, a flat figure, I think it was \$50.00.

“90. Q. The reason you obtained this last loan was because you had some pressing liabilities outstanding? A. Yes.

“91. Q. And if it wasn't for these pressing liabilities you wouldn't have this mortgage? A. No, I changed my position at that time; I went into a new position and realized how heavy it was going to be and I didn't want to have to bother with it.

“92. Q. You had some outstanding liabilities with Mr. Brickenden at that time? A. Yes.”

“Mr. Springsteen: You read the next question.

“His Lordship: We heard the same yesterday. You may call your client and explain.

“Mr. Walsh: Q. 100. How much did you pay Mr. Brickenden? A. Here is a cheque on the 8th November to G. A. P. Brickenden & Co. for \$1,923.33.”

Cheque marked as Exhibit “6”.

“101. Q. This cheque you say which you now produce, was used to liquidate the balance on Mr. Brickenden's mortgages? A. Balance owing on his mortgage.

“104. Q. And then you gave Mr. Brickenden Exhibit “6” in settlement of his mortgages? A. Yes.

“105. Q. The three mortgages? A. There are only two.

“106. Q. So then the London Loan mortgage was a third mortgage? A. Until April.

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"107. Q. Mr. Brickenden still had a \$5,000 loan ahead of the \$13,500 loan to the London Loan? A. Yes.

"108. Q. Why wasn't it all paid out of the \$13,500; why wasn't Mr. Brickenden's \$5,000.00 loan paid out of the \$13,500? A. I don't know, the money wasn't given to me."

Also at page 181 of Case,—

"236. Q. When you wanted loans did you see Mr. McCormick or Mr. Brickenden? A. Mr. Brickenden.

"252. Q. You say there was no pressure brought to bear on you to pay up the interest? A. No. 10

"253. Q. The pressure came after 1929? A. It did.

"254. Q. After there was a change? A. Yes.

"317. Q. Now throughout all these transactions Mr. Brickenden was your solicitor? A. Yes.

"318. Q. Until you went to Miss Harrison? A. Yes.

"319. Q. And he was also the company's solicitor? A. Yes.

"367. Q. Have you any way of showing how much was paid to Mr. Brickenden on the three mortgages which he held? A. The mortgages were all retired.

"368. Q. They were all retired by the loan to the London Loan Co.? 20
A. That was the balance.

"369. Q. Before that you were paying Mr. Brickenden? A. Yes.

"370. Q. Whatever money you could spare you paid to Mr. Brickenden? A. Yes.

"371. Q. And as a consequence the London Loan mortgage went behind? A. Yes."

"Q. 28. As I understand it, any business you did you did through Mr. Brickenden? A. I did.

"Q. 31. What you would do when you wanted a loan was to speak to Mr. Brickenden about the amount you required and he would place the facts 30
before the Board in your behalf? A. Yes."

There was no evidence to show that the Board of the Company knew anything of what had been done prior to the date of the acceptance of the loan, especially the advancing of the moneys and the payment of two of the mortgages held by the respondent Brickenden, and the only person who could have explained this unusual transaction was the respondent Brickenden who refused to give evidence at the trial or to justify what had been done. It must also be borne in mind that the only person connected with the Company who stood to gain by this transaction was the respondent Brickenden, who, by having this loan accepted by the Board of the Company, obtained 40
payment of his own loans together with the bonuses charged in connection therewith, and also made a secret fee or commission of \$500.00; the result being that the Company was left with a worthless security transferred to it by its solicitor, and its solicitor at the expense of the Company received payment in full of a loan which would never have been paid by the borrower, and which was worthless at the time it was obtained.

The trial Judge states in reference to the value of the security (at page 346, lines 1 to 5 of the Case).

"I am satisfied on the evidence that at the date of these \$13,500 mortgages there was no equity in the properties which they covered, above the prior mortgages, not including Brickenden's \$5,000 mortgage, and that on a forced sale at that time not enough could have been realized to pay the prior encumbrances."

10 The history of the mortgage is shown in the Master's report (at page 47 of the Case) that from the year 1924 until November 1st, 1929, the mortgage had grown from \$13,500.00 to \$20,275.64 after crediting \$1,117.40 for moneys paid by the plaintiff Biggs.

20 The trial Judge has found on uncontradicted evidence that the respondent Brickenden's interest in the placing of the \$13,500 loan was in clear conflict with his duty as solicitor for the company, and he is liable to the company for all damages sustained by it. It is a well established principle of law that a solicitor is in a fiduciary position when dealing with a client in a business matter, and that all transactions between solicitor and client which result in the solicitor's obtaining a benefit for himself are subjected by Courts of law to strict scrutiny, when called in question by the client, and are treated as imposing obligations on the solicitor of greater or less stringency. In some cases the obligation goes so far as almost to bind the solicitor to abstain altogether from a transaction of the kind: (see in *Re Haslam and Hier-Evans* (1902) 1 Chancery Division at pages 769 and 770 Judgment of Stirling, L. J.: also the case of *Edwards vs Meyrick* referred to in the judgment of Mr. Justice Stirling cited in (1842) 2 Hare reported at pages 60, 69, 70: see also page 68 where the Vice-Chancellor states that the rule the Court imposes is that inasmuch as the parties in a relation which gives or may give the solicitor an advantage over the client, the **onus lies on the solicitor** to prove that the transaction was fair. See also *Howell v Ransom*, 11 Paige Reports, page 538, judgment of Walworth Chancellor, which held that where an attorney at law obtained from his client the assignment of a judgment for a consideration so grossly inadequate that the client would not have probably made the assignment if he had been fully informed of the facts which his attorney ought to have ascertained and communicated, the assignment would be set aside as constructively fraudulent. That it was not necessary for the client in such cases to prove actual fraud on the part of the attorney. That the burden of establishing the fairness of the sale and that it was made upon a full and adequate consideration was cast upon the attorney. That the attorney could not sustain his purchase without showing

40 that he communicated to his client everything necessary to enable him to form a correct judgment as to the real value of the subject of the purchase and as to the propriety of selling for the price offered. See also *Powell vs. Powell*, (1900) 1 Chancery Division, page 243, the judgment of Farwell, J. at pages 246 and 247, where the position of a solicitor acting for clients is clearly defined. Mr. Justice Farwell stated:

"A solicitor who accepts such a post puts himself in a false position;

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if he acts for both, he owes a duty to both, to do the best that he can for both. . . . The solicitor, therefore, must be independent of the donee in fact, and not merely in name, and this he cannot be if he is solicitor for both. Again, his duty is to protect the donor against himself, and not merely against the personal influence of the donee, in the particular transaction."

This was a case where the same solicitor acted for both the donor and the donee where a voluntary settlement by a young person just of age was made in favour of her mother.

See also *Gibson v Jeyes*, 6 Ves. 266, at page 278, where it was held that 10
a solicitor in a transaction with a client must prove he has given all advice
against himself he would give against a third person.

See also *Davies v London & Provincial Marine Insurance Co.*, 38 Law
Times Reports, page 478 at page 480, and at 8 Chancery Division, page
469, where it is stated if there be a pre-existing relationship between the parties
such as that of solicitor and client, if the parties can contract at all they can
only contract after the most ample disclosure of everything by the solicitor
to the client. See also *Moody v Cox*, (1917) Law Times Reports, N.S. Vol.
116 at page 740, which adopts the judgment in *Gibson v Jeyes* and *Davies v*
London & Provincial Marine Insurance Co. See page 747, judgment of 20
Lord Cozens Hardy, Master of the Rolls, in which he says an attorney selling
to a client or buying from a client is bound to disclose everything that is
material or may be material to the judgment of his client before the transac-
tion is completed. See judgment of Scrutton L. J., at page 751, which held
that if a man who is in the position of solicitor to a client so that the client
has presumably confidence in him and the solicitor has presumably influence
over the client, desires to contract with his client he must make a full dis-
closure of every material fact that he knows and must take upon himself the
burden of satisfying the court that the contract is one of full advantage to
the client.

Warrington, L. J., states at page 748—In fact there exists, owing to the 30
position of the solicitor to his client, a fiduciary relationship which imposes
upon him the obligation not only of observing the utmost good faith in deal-
ing with his client but of giving to his client such advice and such informa-
tion as he would have given if he had not been personally in his other capacity
interested in the matters arising between them.

Also *Ward v. Sharpe*, (1884) 53 Law Journal Chancery, page 313, judg-
ment of North J. P., at page 319, where the following principle is laid down,—
In a transaction between a solicitor and client in which the latter takes a 40
benefit, cannot be supported unless the solicitor has taken care that his client
is fully acquainted with the facts and properly advised upon them and the
onus of proving this is upon the solicitor. See also page 320 where *Gibson v*
Jeyes is referred to, and judgment of Lord Eldon quoted. Also *Imeson v*
Lister (1920) Law Times Journal, Vol. 149 page 446,—A solicitor is acting
either as agent or solicitor for the client and as such is in a fiduciary position
and bound to disclose all material facts affecting the purchase.

See also Nocton and Lord Ashburton, cited in 1914 Appeal Cases, page 932, where the facts are very similar to the facts in this case. Nocton acted as solicitor for Lord Ashburton and advised him to release from a mortgage, for an inadequate consideration, the most valuable part of the security. Lord Ashburton was warned by Nocton's partners that Nocton had an interest in the transaction, and not to rely on the advice that he received. Notwithstanding this, Lord Ashburton signed a release, and brought the action to recover from Nocton the loss or damage he sustained. It was finally held by the House of Lords that where a solicitor has had financial transactions
 10 with his client and has handled his money to the extent of using it to pay off a mortgage made to himself, or of getting the client to release from his mortgage a property over which the solicitor by such release has obtained further security for a mortgage of his own, a Court of Equity has always assumed jurisdiction to scrutinize his action: (see judgment of Viscount Haldane at page 956), and accordingly damages were awarded against the solicitor.

This case was followed and the same principle applied in O'Connor v. Rentier, (1925) 1 D. L. R. at page 398, being the judgment of the Alberta Supreme Court.

20 The Nocton case is a much weaker case than the case against the respondents because one of Nocton's partners wrote to Lord Ashburton calling his attention to the risky nature of the transaction, and to the fact that Nocton had a large financial interest in the property which would benefit by the release being given, and he was also warned in the same letter that he should obtain the advice of an independent solicitor, but he failed to regard the warnings, and notwithstanding his failure to do so it was held by the Court that the transaction should be set aside and the solicitor was liable for all damages sustained by Lord Ashburton.

30 It is also a well established principle of law that findings of fact by the trial Judge who had the opportunity of seeing the witnesses in the witness box and judging their demeanour should not be interfered with, and in the case of Nocton and Lord Ashburton, cited in 1914 Appeal Cases at page 932, it was stated by Viscount Haldane at page 945, "My Lords, I think that to reverse the finding of the judge who tried the case and saw the appellant in the witness-box was, in the circumstances of this case, a rash proceeding on the part of the Court of Appeal". See also Ruddy vs. The Toronto Eastern Railway (1917), 33 D. L. R. pages 193 and 194, quoted with approval by the Court in the case of Morrow Cereal Company vs. Ogilvie Flour Milling Co. 57 S.C.R. 403-411—"From such a judgment an appeal is always open, both
 40 upon fact and law. But upon questions of fact an Appeal Court will not interfere with the decision of the Judge who has seen the witnesses, and has been able, with the impression thus formed fresh in his mind, to decide between their contending evidence, unless there is some good and special reason to throw doubt upon the soundness of his conclusions". See also Jasper-son vs. Plumb, 63 O. L. R. page 43, where this principle is clearly set forth as follows:—"Where an appeal on a question of fact lies, it is within the juris-

diction of an appellate court to reverse a finding of fact; but such a course is only to be adopted upon very clear proof of error where the case depends upon the credibility of witnesses whom the trial Judge has seen and believed".

It is submitted with respect that the Appellate Division of the Supreme Court of Ontario in arriving at the conclusions which it arrived at could not do so without reversing the findings of fact of the trial Judge. At page 357 of the Case in the reasons for judgment of the Honourable Mr. Justice Grant he proceeds to review the evidence of the witnesses Hunt and Robinson, and to reverse the conclusions arrived at by the trial Judge from the evidence of these two witnesses. He also, at page 359 proceeds to misconstrue the clear findings of fact of the trial Judge on the question of the value of the security, and throughout his judgment takes the view that the onus of proof is upon the plaintiffs by counterclaim instead of the respondents. There is no question about the fact that in a transaction such as this the duty of explaining the transaction rested entirely upon the respondents. The trial Judge took this view in dealing with the certificate of title which the Honourable Mr. Justice Grant laid so much stress upon as showing that the Company knew what it was doing by reason of the information appearing upon the certificate of title. As the trial Judge has found, there is no evidence to show that the certificate of title was ever seen by any member of the Board of the Company: on the contrary there is the evidence of Hunt and Robinson that they did not know what was contained in the solicitor's certificate of title. Surely the Directors of any company are entitled to rely upon their solicitor and to take for granted that the solicitor will act for the company honestly and fairly, and will make full disclosure where he himself is concerned in any of the Company's business matters. 10

The question of the damages suffered by the Plaintiffs by counterclaim was one matter which was gone into very thoroughly at the trial. The evidence of Gardner shows that there was no equity in the property covered by the mortgages for \$13,500.00 in 1924 when these mortgages were placed: (see evidence of Gardner at page 163, 164, 191: also reasons for judgment of Trial Judge at page 346). The Appellate Division of the Supreme Court of Ontario took the view that the trial Judge did not so find, but it is respectfully submitted that upon perusal of the evidence of Gardner and Jones and the reasons for judgment of the trial Judge, the Honourable Mr. Justice Grant, who delivered the judgment of the Appellate Division, misconstrued the findings of the trial Judge on this point. If the trial Judge has properly found what the damages are then no object would be gained in attempting to realize upon the security if, as has been found by the trial Judge, there was not sufficient value in the properties to pay the first mortgages. If the conclusions of the trial Judge are correct (and his findings in this respect are based upon the uncontradicted evidence of Jones and Gardner) it is quite obvious that the damage sustained by the plaintiffs by counterclaim would be the full value of the mortgage plus all accrued interest. In any event no proceedings could be taken to offer the property for sale or to realize upon the security on account of the injunction order made by the Honourable 30 40

Mr. Justice Jeffery, bearing date the 25th day of July, 1929, (see page 188 of Case), as The London Loan and Savings Company of Canada by this order was restrained from taking any proceedings under the mortgages. The claim for damages is, therefore, not premature as is declared by the judgment of the Honourable Mr. Justice Grant in his reasons for judgment, as the damage actually took place in 1924 when the mortgage moneys were advanced, and the damages have increased up to the present time by reason of the nonpayment of interest. The principle as to damages is very clearly set forth in the following authorities,—Mayne on Damages, Tenth Edition, 1927, 10 at page 538:

“Whenever an agent violates his duties or obligations to his principal, whether it be by exceeding his authority or by positive misconduct, or by mere negligence, or omission in the proper functions of his agency, or in any other manner, and any loss or damage thereby falls on his principal, he is responsible for it, and bound to make a full indemnity. In such cases it is wholly immaterial whether the loss or damage be direct to the property of the principal, or whether it arise from the compensation which he has been obliged to make to third parties in discharge of his liability to them, for the acts or omissions of his agent. 20 The loss or damage need not be directly or immediately caused by the act which is done, or which is omitted to be done. It will be sufficient if it be fairly attributable to it, as a natural result, or a just consequence. Where the breach of duty is clear, it will, in the absence of all evidence of other damages, be presumed that the party has sustained a nominal damage.”

Page 540:

“In all these cases the actual loss is the measure of damages, and this measure may vary according to the time at which the action is brought.”

30 Page 545 and page 546, it is stated:

“Where a principal instructs an agent to buy or sell goods for him, it is a fraud if the agent sells his own goods to the principal, or purchases them for himself, because the principal assumes that he is getting the advantage of his agent's skill and intelligence in making for him the best possible bargain, and this he obviously does not get if the agent is making a bargain for himself. Such a transaction may therefore be set aside at the option of the principal. Where, however, matters have gone so far that the transaction cannot be undone, the principal is driven to an action for damages, in which he will recover such a sum as will 40 recompense him for the loss actually caused by the agent's fraud.”

See also page 116 where it is stated:

“In suits against solicitors for breach of duty, the negligence is the cause of action, and not the consequential injury; no fresh suit can be brought upon the accrual of fresh loss; hence it follows that in such cases the jury may give damages, not only for what has been, but for what may naturally be, the result of the wrong, for otherwise there would

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be no redress. In all actions upon contracts for a principal sum and interest, both should be included in the judgment."

In *Bevan on Negligence*, Volume 2, Fourth Edition, 1928, at page 1398, it is stated,—

"A solicitor's liability in this relation is that of any other agent similarly employed; although the circumstances of his employment may affect him with all the liability of a trustee, since, if he engaged in any matter wherein his own personal interests are so involved that the right inference from the facts of the transaction is that he is acting, not as solicitor or agent alone, but as one who, being a solicitor, is taking advantage of his position to acquire a benefit for himself, though his doing so may hazard the trust, then the character of trustee will be imputed to him." See case of *Fyler v. Fyler* (1841) 3 Beav. 550. 10

The reasons for judgment of the Appellate Division of the Supreme Court of Ontario, delivered by the Honourable Mr. Justice Grant, refer to the agreement of the 3rd day of July, 1929, (Exhibit G) as an unsurmountable obstacle in the way of the plaintiffs by counterclaim succeeding in their claim against the respondents, and it is respectfully submitted that the Appellate Division misconceived and misconstrued the meaning and effect of the said agreement. It will be noted upon a careful perusal of the agreement of the 3rd day of July, 1929, that there never was in fact a sale of the assets of The London Loan and Savings Company of Canada to The Huron and Erie Mortgage Corporation, but merely a transfer to The Huron and Erie Mortgage Corporation of the assignable securities of The London Loan and Savings Company of Canada for what they were worth, and a re-transfer to London Loan Assets Limited of such securities as were not required for payment of the liabilities of The London Loan and Savings Company of Canada, against which was a loan of \$720,000.00 advanced by The Huron and Erie Mortgage Corporation bearing interest at six per cent., which was to be repayable at the rate of \$100,000.00 a year. The London Loan and Savings Company of Canada received the 20,000 shares of London Loan Assets Limited stock for distribution amongst its shareholders upon the transfer by the shareholders to the three trustees appointed under the terms of the agreement of the shares held by these shareholders in The London Loan and Savings Company of Canada. In other words, the shareholders of The London Loan and Savings Company of Canada received \$35.00 in cash and share for share in London Loan Assets Limited for the shares held by them in The London Loan and Savings Company of Canada, the \$35.00 a share being a loan on the assets transferred to London Loan Assets Limited which is to be repaid from the realization of the assets of The London Loan and Savings Company of Canada: so that any loss in connection with the assets of The London Loan and Savings Company of Canada will mean a loss to the shareholders of the Loan Company; therefore in any event the loss in connection with this security will be a loss to The London Loan and Savings Company of Canada and its shareholders because London Loan Assets Limited was only incorporated to wind up the affairs of The London Loan 20 30 40

and Savings Company of Canada and to make a distribution of the money realized from time to time.

It will be noted upon looking at the charter of London Loan Assets Limited that the very purposes for which this Company was incorporated were as follows:

(a) To purchase, acquire and take over from The Huron and Erie Mortgage Corporation a portion of the assets purchased by that corporation from The London Loan and Savings Company of Canada and subject to the provisions of The Companies Act, to pay for the same, wholly or partly,
10 in shares of the Company fully paid up and non-assessable;

(b) Subject to the provisions of The Companies Act, to pay out of the funds of the Company the costs, charges and expenses incurred or payable by any person or corporation in respect of: (1) The investigation of the affairs of The London Loan and Savings Company for the purpose of ascertaining and getting in the assets required from The Huron and Erie Mortgage Corporation:

(2) The prosecution of any claims against directors, officers, servants or agents of The London Loan and Savings Company or other persons whom the directors may consider under liability to the Company or The London
20 Loan and Savings Company or The Huron and Erie Mortgage Corporation in respect of the affairs of The London Loan and Savings Company; and

(3) The prosecution of all other claims and demands arising out of the affairs of The London Loan and Savings Company which are not specifically retained from the assets of The London Loan and Savings Company by The Huron and Erie Mortgage Corporation;

No specific assignment of the claim against Brickenden is included in the agreement, but there is a general assignment reading as follows:—

“The Loan Company agrees to sell and sells to the Mortgage Corporation, and the Mortgage Corporation agrees to purchase and purchases
30 from the Loan Company the entire assets and undertaking of the Loan Company including:—

Sixth:—All rights of action arising out of or incidental or appurtenant to ownership of any assets hereby assigned or conveyed or affecting the value thereof insofar as these rights of action are capable of being transferred.

Eighth:—All other assets and property to which the Loan Company is or may become entitled in connection with the said business.”

If the claim against Brickenden was assignable it passed under the terms of the agreement as being a right of action pertaining to the ownership of
40 the security. If it was not assignable it would remain as an asset of The London Loan and Savings Company of Canada. It is further submitted that there is no evidence of the loan company having been paid the full face value of the security, as found by the judgment of the Honourable Mr. Justice Grant. On the contrary it is abundantly clear that the full amount of the security is still outstanding. The London Loan and Savings Company of Canada has received nothing for the transfer of its assets under the terms

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of the agreement beyond moneys which were loaned and the right to participate in the realization of the balance of these assets in the hands of London Loan Assets Limited. The value of the stock of London Loan Assets Limited, as will be seen by looking at the agreement (Exhibit G) depends upon the success of London Loan Assets Limited in realizing upon the securities which have been transferred to it after the loan of \$720,000.00 from The Huron and Erie Mortgage Corporation has been paid in full.

It is further submitted that the adding of The Huron and Erie Mortgage Corporation and London Loan Assets Limited as party plaintiffs brought before the Court every person who could possibly have a claim on this mortgage, and under the circumstances the Court, having all the interested parties before it, would be able to effectually deal with the matter. See *Powley v. Mickleborough*, reported in 21 O.L.R. page 556. The facts of this case are the defendants were held liable in damages for injury to the plaintiffs' premises by water overflowing from a tap negligently left running in the defendants' premises upon the floor above the plaintiffs, in the same building, both plaintiffs and defendants being tenants of the owner of the building. It appears that at the time of the damage complained of George Powley & Co. were the tenants and occupiers of a part of a flat in a building on Front Street, in the City of Toronto; the defendants were tenants and occupiers of a flat above that occupied by George Powley & Co. It is alleged that the defendants on the 25th March, 1909, negligently turned on, and left turned on during the night, a water tap in the premises occupied by them, and large quantities of water escaped from such tap and flowed down on the premises of the flat below, occupied by George Powley & Co., causing damage. In June 1909 George Powley & Co. were incorporated as the George Powley Paper Company Limited, who acquired and took over the assets of George Powley & Co. It was held by the trial Judge that the plaintiffs were not entitled to recover, upon the ground that, a tort not being assignable, the new company could not sue, and that George Powley & Co., who were added as party plaintiffs, could not sue, because Powley, on his examination, had admitted that all the assets of the firm had been transferred to the new company. Clute, J., in delivering the judgment of the Court states at page 558, "I think that this position is entirely untenable. Both parties are before the Court, and a right of action is vested in either one or the other; it is immaterial which." See also judgment of Middleton, J., at page 560, in which he states,—"Upon the argument it was plain that the judgment of the Court below could not stand upon the ground upon which the learned Judge had placed it. The assignor and assignee were both before the Court as plaintiffs, and the effect of the assignment is, therefore quite immaterial. The right of action against the wrongdoer must be vested in either one or the other, and their respective rights are quite immaterial."

It is submitted that in any event the right of action against Brickenden is appurtenant to the value of the security as affecting the value of it and, therefore, passed with the security, but if this is not so The London Loan and Savings Company of Canada could have carried on the action without the

addition of The Huron and Erie Mortgage Corporation and London Loan Assets Limited. The decision in *Laidlaw v. O'Connor*, 23 Ontario Reports, 696, referred to in the reasons for judgment of Mr. Justice Grant at page 362 of the Case, is not an authority for the proposition that a claim against a solicitor for negligence is not assignable as this decision was overruled on appeal and it was held by the Honourable Mr. Justice McMahon, who delivered the judgment of the Divisional Court, that the claim was assignable and that an action could be maintained in the name of the assignee.

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10 The claim against the respondent Brickenden is a claim for fraud and neglect of duty on the part of the respondent Brickenden toward The London Loan and Savings Company of Canada, and the Court could go so far as to set aside the transaction in lieu of granting damages, which has been done in other cases where a solicitor obtained a direct advantage over a client. There should be no difficulty in this respect in this case because while Biggs was the mortgagor Brickenden, however, was the real party to the transaction.

20 The point as to assignability of the claim against the respondent Brickenden might be more seriously considered were it a case where either The Huron and Erie Mortgage Corporation or London Loan Assets Limited attempted to bring the action without adding The London Loan and Savings Company of Canada. The cases referred to in the judgment of Chief Justice Armour are authorities for the proposition that a personal claim which is not assignable could not be litigated without the assignor being a party to the action. It is respectfully submitted that no difficulty of this kind has arisen because the original assignor is a party to the action and there has been no attempt on the part of the assignee to litigate the claim without the original assignor being a party plaintiff. Mr. Justice Grant also refers to the cases of *McCormack v Toronto Railway Company*, 13 Ontario Law Reports, 656, and *Burke v Shaver*, 29 O. L. R. 375, as being authorities in support of his contention that a right of action *ex delicto* is not assignable although he distinguishes in the *Burke* case between the cause of action against a solicitor for his failure to do a positive act and a claim for breach of a general duty arising out of the retainer to bring sufficient care and skill to the performance of the contract. It is submitted with great respect that the claim against the respondent Brickenden is for his failure to do a positive act, and the presence of all parties before the Courts as plaintiffs makes it unnecessary and it is of no consequence whether the claim was an assignable one or not under the circumstances. It must also be borne in mind that all claims which were not capable of being assigned under the terms of the agreement 30 of the 3rd day of July, 1929, were by the express terms of the agreement reserved: (see Exhibit G. paragraph 4 at page 299 of Case), and there was in this case merely the transfer of the assets of The London Loan and Savings Company of Canada from one company to the other for the purposes of the agreement. The error made by the Appellate Division of the Supreme Court was in assuming that there had been an actual sale of the mortgage, 40 resulting in the sale of the security and the payment to The London Loan

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and Savings Company of Canada of the full value of the security, which assumption is entirely erroneous.

The Court of Appeal, it is respectfully submitted, also made the grave error of dealing with the question of onus. They overlooked entirely the fact that the onus of explaining and justifying the transaction rested upon the shoulders of the respondent, holding that the certificate of title and the fact that it was stated that the managing director knew something about the matter was sufficient to justify the actions of the respondent. It is difficult to understand how in any possible view of the case the appellants are not entitled to the additional moneys advanced on November 12th, 1924, 10 and particularly the moneys received by the respondents out of the advances.

It is, therefore, submitted that this appeal should be allowed and the judgment of the trial Judge restored, or such other relief granted to the appellants as may be proper, and that the respondents should pay the costs in this Court and in the Courts below.

W. N. TILLEY

GEORGE T. WALSH

Of Counsel for the Appellants.

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RESPONDENTS' FACTUM

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NOTE:

In this Factum any references to pages in the Record refer to pages in the printed Record used before the Supreme Court of Canada and not to this new Record.

A.

STATEMENT OF FACTS

1. This is an appeal by the plaintiffs by Counterclaim from a Judgment of the Court of Appeal of Ontario (Mulock, C.J.O. Riddell and Grant, JJA.), dated the 1st day of March, 1932, reversing a Judgment of Mr. Justice Raney, the trial Judge, dated the 11th day of October, 1930, and dismissing the counterclaim of the plaintiffs. 30

2. The action as originally constituted was brought by Walter H. Biggs and his wife, Eva Viola Biggs, against the London Loan and Savings Company and the Consolidated Trusts Corporation seeking redemption of certain properties in the City of London, Ontario, on payment of the principal moneys actually advanced without interest, on the contention that the mortgage transactions came within the provisions of the Interest Act of

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Canada. This claim of the original plaintiffs was dismissed by the trial Judge and no appeal was taken therefrom.

3. The London Loan and Savings Company and the Consolidated Trusts Corporation, the only defendants in such original action, delivered a counterclaim asking recovery from the Biggs of the amounts which might be found owing on their several mortgages and the London Loan and Savings Company also claimed against Brickenden and his firm and McCormick, the three of whom were added as defendants by counterclaim, damages sustained by them by reason of either fraud or conspiracy in the placing of the loans and that the advances of the moneys by the London Loan was induced by the respondents in breach of their obligations to the Company in view of the fiduciary relationship occupied by them.

4. On the part of Brickenden and his firm the fiduciary relationship alleged was that they were solicitors for the London Loan and Savings Company, and as to McCormick, that he was the President of that Company.

5. During the trial of the action before Mr. Justice Raney, which began on the 7th day of May, 1930, Counsel for the plaintiffs by counterclaim asked for and obtained leave, notwithstanding strenuous objection on the part of Counsel for the defendants by counterclaim, to amend the style of cause by adding three new plaintiffs by counterclaim namely: The Huron and Erie Mortgage Corporation, The Canada Trust Company and The London Loan Assets Limited. (Case, p. 100, l. 6, to p. 104, l. 38) and the pleadings were directed to be amended accordingly. The amended counterclaim of these plaintiffs appears in the Case at page 15 et seq., but is dated the 14th day of November, 1929, the actual date of the original counterclaim.

6. The original Statement of Defence of the Respondent (Case, p. 27) is dated the 28th day of November, 1929, and the amended Statement of Defence (Case, p. 35) of the respondent was dated the 14th day of May, 1931.

7. A number of acts of commission and omission were alleged against the respondents but with the exception of a mortgage transaction of the Biggs amounting to \$13,500, these were all disposed of by the trial Judge against the appellants and it is in connection with this advance to the Biggs by the appellant the London Loan and Savings Company and the circumstances surrounding it that this appeal is concerned. (Case, p. 345, ll. 15-19).

8. The relationship between Biggs and the London Loan and Savings Company appears to have begun in the Autumn of 1922 when Biggs obtained a loan of \$18,000 from the London Loan and Savings Company on an apartment building, 116 Elmwood Avenue, London, Mrs. Biggs barring her dower, and shortly thereafter, upon request of the Loan Company, a collateral mortgage of \$3,000 was given by Biggs on an adjoining property, 114 Elmwood Avenue, upon which there were already two mortgages of \$6,000 and \$1,000 respectively in favour of one Edwin Barrell. In the following year Mrs. Biggs obtained a loan of \$12,000 from the Loan Company on the security of her property, 315, 317 and 319 Ridout Street, London. In both of these cases the Loan Company obtained bonuses on their advances and Brickenden who was

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acting as solicitor for both parties, also received bonuses to the knowledge of the London Loan Company.

9. In the Spring of 1923, Biggs made application for a further advance but the Loan Company did not grant same and in July of that year the respondent Brickenden personally advanced \$5,000 to Biggs taking a mortgage from him for that amount and a collateral mortgage from Mrs. Biggs on the properties already mortgaged to the London Loan for \$18,000 and \$12,000 respectively, and another collateral mortgage from the Biggs on premises 309, 311 and 313 Ridout Street. In August the respondent Brickenden took a further mortgage from Biggs for an advance of \$2,000 and in January, 1924, a further mortgage for \$1,200 on the same properties, both of these mortgages being secured in the same manner as the mortgage for \$5,000 above referred to. (Case, p. 331, Ex. 32 R.). Biggs paid bonuses to Brickenden for these advances. 10

10. In or about November, 1924, Biggs applied to Brickenden for a further advance when Brickenden informed him that he could not grant same as whatever money he had was out on investment. (Case, p. 141, ll. 32-42).

11. Application was then made by Biggs and his wife to the London Loan for an advance of \$13,500 on the security of the properties already mortgaged to it and Brickenden. (Case, p. 268, l. 25, to p. 269, l. 20). It is in regard to this \$13,500 mortgage that the trial Judge found the respondent Brickenden liable. 20

12. The application for this \$13,500 loan came before the Board of Directors on the 11th day of November, 1924, and according to the Minutes of the Board, was laid over at that meeting. (Case, p. 264, l. 1).

13. The application sets out the purposes for which the loan is desired, and that it was a further loan from the Loan Company in addition to the existing mortgages of \$18,000 and \$12,000. It also sets out the \$5,000 mortgage to Brickenden which was at a later date to be satisfied out of the moneys advanced. It does not, however, set out the \$2,000 and \$1,200 mortgages to Brickenden which had previously been reduced to \$800 and \$600 respectively. The respondent Brickenden, as solicitor, gave a certificate of title to the London Loan Company (Case, p. 264, l. 25, to p. 265, l. 21). This is dated the 12th day of November, 1924. This certificate sets out clearly the existing encumbrances against the property, including the \$5,000 mortgage to the respondent Brickenden but does not include the two mortgages of \$2,000 or \$1,200 respectively to the respondent Brickenden because at that date these two mortgages had been discharged, the discharges being dated the 11th day of November, 1924, and registered on the 12th, although at the date of the discharges and their registration the cheque which Biggs had given to Brickenden for the discharges of the balance due on these mortgages had not then been actually paid. The certificate also sets out that certain other mortgages are to be removed and there is at the foot of the certificate a note by Mr. M. J. Kent, the Managing Director of the Loan Company, showing that he had seen the certificate and appreciated its contents. 30 40

14. The application again came before the Board of Directors on the 17th day of November, 1924, when the loan was granted subject to a bonus of \$1,000 to be paid by the Biggs (Case, p. 269, l. 30) and the notation at the foot of the application over the initials of the President carries out the directions of the Board. (Case, p. 269, l. 19).

10 15. The moneys so advanced were applied as follows: \$1,600 to the Loan Company to cover arrears of interest owing on prior mortgages on the same property—\$1,000 retained by the Loan Company as a bonus—\$5,000 retained by the Loan Company to pay off the Brickenden mortgage for that amount and the balance disbursed to settle a number of accounts including one of \$1,993.83 to Brickenden which covered the balance due on the two mortgages of \$2,000 and \$1,200 respectively and a sum for costs and commission.

20 16. As to the properties covered by the \$13,500 mortgage it appears from the books of the Loan Company that the Company's own valuator, one S. B. Gorwill, in November, 1922, valued 116 Elmwood Avenue at \$31,800. (Case p. 210, l. 31) and in January, 1923, he valued lots 18 and 19 on the west side of Ridout Street, numbers 315-319 Ridout Street, at \$14,500 (Case, p. 221, l. 10), and on November 8th, 1924, Gorwill's valuations on these two properties covered by the former \$18,000 and \$12,000 mortgages respectively at a total of \$48,300 are repeated in the books of the Loan Company. (Case, p. 252, l. 20). About a year later, namely on the 6th of October, 1925, Gorwill values all the properties covered by the \$13,500 mortgage at a total of \$81,500, with existing encumbrancers of \$60,210 (including the \$13,500 mortgage) showing a surplus or equity in the properties of \$21,290 (Case, p. 271, l. 15, to p. 273, l. 36). It further appears that another year later, namely on July 2nd, 1926, Gorwill repeated his valuations of \$48,300 on the properties covered by the \$18,000 and \$12,000 mortgages respectively. (Case, p. 275, l. 15).

B.

**GROUNDS UPON WHICH JUDGMENT OF APPELLATE DIVISION
 SHOULD BE SUSTAINED.**

30 1. The respondents submit that the Judgment of the trial Judge was erroneous and the Judgment of the Court of Appeal is correct and should not be disturbed for the reasons given therefor by Mr. Justice Grant, concurred in by the other members of the Court and for the reasons set out in Part 3 hereof.

2. The respondents submit that they committed no breach of duty in regard to any of the appellants and that no loss or damage has been proved to have been sustained by any of the appellants.

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C.

ARGUMENT

The respondents submit:

1. The claim of the appellants by counterclaim against the respondents must be for damages or loss sustained owing to breach of duty owed to them or one of them by the respondents acting in a fiduciary capacity. It is therefore incumbent upon the appellants to show first as to which of the appellants if any, the respondents stood in a fiduciary relationship and secondly, what was the breach of duty, and thirdly, the loss or damages sustained by such breach of duty.

2. In regard to the first of these, the only appellant in regard to whom it can be urged that Brickenden occupied a fiduciary relationship is the London Loan and Savings Company of Canada. It is admitted that he was acting as their general solicitor at the time when the \$13,500 mortgage was applied for and granted, but it is denied that he was guilty of any breach of duty owed to the London Loan and Savings Company. It cannot be contended that in regard to this \$13,500 transaction he was in any way in confidential or fiduciary relationship with any of the other appellants and it is to be observed that the trial Judge does not attempt to discuss or indeed even consider which of the appellants is entitled to recover from the respondents any loss which may have been sustained. He merely finds that Brickenden was guilty of a breach of duty to the Loan Company, that is the London Loan and Savings Company, and leaves the appellants to work out amongst themselves who should get the damages. (Case p. 346, ll. 6-26). 10 20

3. Admitting that Brickenden occupied a fiduciary relationship to the London Loan and Savings Company as their general solicitor, of what breach of duty was he guilty?

The learned trial Judge says (Case, p. 346, ll. 6-26):

"It is putting it mildly to say that the three mortgages on the Biggs' properties, held by Brickenden at that time, and totalling \$8,200, were doubtful securities. His interest was to get those mortgages paid. He did not make a disclosure of these mortgages in his certificate of title, and it does not appear that the certificate of title came before the Board before the loan was authorized. It may never have been seen by anybody but the managing director and there is no evidence that it was seen even by him. Brickenden's interest in the transaction was in clear conflict with his duty as solicitor for the company, and under these circumstances he is responsible for whatever loss the company may suffer. 30

"Asked on his examination for discovery why he had added the words "in trust" after his name as mortgagee in the Biggs' \$5,000 mortgage he answered that there was "no reason at all" for doing it. At the trial he failed to take the witness stand or to offer any evidence on his own behalf. 40

"I do not find myself embarrassed by the subsequent liquidations and adjustments. The same solicitors represent the two original defendants and plaintiffs by counterclaim and the added plaintiffs by counterclaim, The Huron and Erie Mortgage Corporation, The Canada Trust Company, and London Loan Assets Limited. The right of action is in one or more of these plaintiffs by counterclaim. It is not necessary that I should differentiate. They may work out their rights among themselves."

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4. It may be pointed out that the trial Judge was in error as to at least
10 two of the statements contained in the above extract from his reasons for
Judgment. First, at the time of the \$13,500 mortgage, there is no evidence
to show that the three mortgages held by Brickenden at that time were
doubtful security nor as a matter of fact did these three mortgages total more
than \$6,400, that is \$5,000 on the first of these mortgages and a balance of
\$1,400 on the other two. Further, when he says that there was no evidence
that the certificate of title was seen even by the managing director, there
appears in the evidence a notation made by the manager himself on the very
certificate of title which shows conclusively that he had perused and appreci-
20 ated the certificate. (Ex. 5-R, Case 265, l. 22, et seq). Further, the learned
trial Judge says he did not make a disclosure of these mortgages in his cer-
tificate of title. It is quite plain from the certificate of title already referred to
he disclosed the \$5,000 mortgage and the fact that it was to be repaid out of
the proceeds of the loan, so that the only additional amount that would be
coming to him, Brickenden, not referred to in the certificate specifically, was
the balance of \$1,400 on the other two mortgages, and as to these two mort-
gages he had discharged same trusting Biggs to make good the cheque he had
given him in payment therefor, as he had taken Biggs' undertaking to pay.
Whether or not Biggs did subsequently make payment, he, Brickenden, could
30 have no claim against the Loan Company for any priority in respect of the
balance due on these two mortgages.

5. The learned trial Judge seems to have proceeded on the assumption
that Brickenden was in some way guaranteeing the sufficiency of the security.
There is no evidence to show that he had anything to do with the sufficiency
or insufficiency of the security offered for the \$13,500 mortgage. That was
entirely a matter for the manager and directors who would act on their own
judgment, coupled with the report received from their own valuator. The
witness Hunt, a director, says in answer to the question:

Q. So that as far as values go, you would rely on the company's
40 valuator, possibly on Mr. Baker if he had seen this property, and possibly
on Mr. Kent, is that a fair way to put it? A. I would say so, yes.
(Case, p. 155, l. 31.)

And Robinson (another director) says in reference to Mr. Gorwill in
answer to the question:

Q. And we have been told he was about 10 years with the Company?
A. I would think so.

Q. Did you rely upon him at that time as a satisfactory valuator?
A. Yes. (Case, p. 159, l. 14).

And again Mr. Robinson says at page 158, line 3, to appellants' counsel:

Q. Now, who looked after these mortgage transactions when they came before the Board? A. When they came before the Board?

Q. Yes? A. They were brought up by the Manager.

Q. The Manager of the Company? A. Yes.

Q. Who passed upon them? A. The Board.

Q. The Board passed upon them? A. Yes.

HIS LORDSHIP: He either recommended that it be passed or that it be declined? A. Yes, he would have the application for the loan, and he would read the application and have the valuation of it and recommend it or not." 10

6. It is difficult to understand what obligation or duty rested upon Brickenden as solicitor to advise the company that among the claims that might be paid out of the proceeds of the loan he would receive some \$1,400, the balance due on two mortgages which he had already discharged, nor is there the slightest warrant for any suggestion that he had any reason to think that the security was not at the time ample for the loan, indeed if he had had the valuations of the company's valutors before him he cannot have concluded in any way differently from what the Board of Directors concluded namely that they had sufficient security. 20

7. It is submitted the evidence fails to disclose any breach of duty on the part of Brickenden and it is immaterial whether the balance of \$1,400 was or was not paid to Brickenden out of the proceeds of the loan.

8. The respondent submits that the statement of the Director Hunt called by the appellants. (Case, p. 153, l. 40) is incredible. He says:

Q. Did you read the mortgage or application for the loan? A. The applications for the loan were read at the meeting by the manager or whoever was at the meeting." 30

9. When the application on its face discloses not only the prior mortgages to the London Loan Company and also the mortgage of \$5,000 to Brickenden it is impossible to credit his statement (Case, p. 149, ll. 39-44, p. 152, l. 20) that he was not aware that this \$13,500 mortgage was not a first mortgage, and in this connection the respondent relies on the analysis of the evidence of the two directors, Hunt and Robinson, as set out in the reasons for Judgment of Mr. Justice Grant.

10. The respondent submits that the case of Nocton vs. Lord Ashburton, 1914 A.C. 932, relied upon by the appellants is totally dissimilar in its facts to the case at bar and affords no ground on the facts disclosed in evidence here to warrant the conclusion that the respondent was guilty of breach of duty or negligence. 40

11. In regard to the third proposition namely what loss or damages were sustained by the London Loan and Savings Company. Assuming for this purpose that there was a breach of duty on the part of Brickenden, it is submitted the onus of establishing such loss and damages rested and rests upon this appellant and that it has failed to show any loss whatever.

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12. In the first place this appellant has made no attempt to realize upon the mortgage security, indeed could not have done so because before the original counterclaim was filed it had parted with all its interest in this mortgage and as far as it could with all its rights in respect thereto. Nor indeed
10 have any of the other appellants, The Huron and Erie or the London Loan Assets Limited, made any attempt to realize upon the security. The action, therefore, is premature as up to the time of the trial no actual loss has been sustained or proved.

—Continued

13. Further, if it were proper, which it is submitted it is not, to assume that some day there may be some loss incurred in respect of this \$13,500 mortgage by somebody, and also assuming that Brickenden was in any way guilty of a breach of duty, nevertheless, the only possible breach of duty would be in not disclosing that out of the moneys coming to Biggs there was a balance due him of some \$1,400. How can it be said that had this been disclosed, the
20 Board of Directors would have declined the loan? They were satisfied to lend \$13,500 upon this second mortgage. They knew that the purpose for which the money was to be applied was, amongst other things, to pay sundry accounts amounting to \$7,500. Brickenden's \$1,400 was one of these accounts. What difference can it have made to the Board of Directors whether this \$1,400 went to Brickenden or to anybody else? How can it be said that it would have operated to prevent the loan? Indeed, the only evidence in this respect is the evidence of the director Robinson, who, in cross-examination says as follows at page 159, line 18:

30 "Q. And then Mr. McCormick—or as my friend put it to you—did you know that part of the moneys of this loan were going to pay off some mortgages Mr. Brickenden had—if you had been dealing with the matter and been otherwise satisfied with the security, would the fact that some of the moneys were going to pay off Mr. Brickenden make any difference to you?
A. It is kind of hard to say now—if we were satisfied with everything else it probably would not make any difference—not any more than if we would take these mortgages from somebody else—if somebody else was holding it—I do not think it would make any difference, Mr. Brickenden was holding them."

40 and there was no evidence to the contrary. In this regard then, how can it be said that the Company suffered any loss by reason of their not knowing, if they did not know, that \$1,400 of the proceeds of the \$13,500 loan would be applied by Biggs in payment for a debt, for it had ceased to be a mortgage, due to Brickenden? Again, how can the loss at the most, under any circumstances, be more than \$1,400?

14. Assuming further that there will be a loss at some time on the \$13,500 mortgage, nevertheless, the London Loan and Savings Company will not be the parties who would suffer that loss. In July, 1929, prior to the bringing of the counterclaim, the London Loan and Savings Company sold all its assets to the Huron and Erie Mortgage Corporation, including the \$13,500 mortgage in question, and the London Loan and Savings Company received as consideration for such transfer, \$720,000 in money and 20,000 shares of the London Loan Assets Limited, and the \$13,500 mortgage became vested in the Huron and Erie Mortgage Corporation, and all rights thereunder passed to the latter corporation, and there is no evidence whatever to indicate that the Loan Company did not receive the full face value of this mortgage upon the sale and transfer of its assets. (Case Ex. G. p. 297, p. 91, l. 34 et seq; p. 92, ll. 6-27). Under these circumstances, it is submitted, the only appellant who had any fiduciary relationship with the respondent has failed to establish any loss. 10

15. As to the appellant the London Loan Assets Limited, there is no evidence that this \$13,500 mortgage was included in the schedule of assets transferred by the Huron and Erie Mortgage Corporation to the London Loan Assets Limited by the agreement of July, 1929, before referred to.

16. As to the other appellants, the Consolidated Trusts Corporation or the Canada Trust Company, there is no evidence to show that either of these were at any time interested in the \$13,500 mortgage transaction and therefore, it is submitted, they can have no claim in respect thereto. 20

17. Dealing with the Huron and Erie Mortgage Corporation, in whom the \$13,500 mortgage is vested, it is submitted, its only rights can be under the agreement of July, 1929 (Case, p. 297, Ex. G.) and not because of any fiduciary relationship between it and the respondent. Brickenden was never solicitor for the Huron and Erie, nor had he acted for any of the appellants in the preparation or consummation of the agreement of July, 1929.

18. Under the agreement of July, 1929, previously referred to, amongst the assets sold by the London Loan Company to the Huron and Erie Mortgage Corporation were: 30

All rights of action arising out of or incidental or appurtenant to the ownership of any assets hereby assigned or conveyed or affecting the value thereof in so far as these rights of action are capable of being transferred. (Case, p. 298, l. 18 et seq.).

19. The rights of action, if any, which the London Loan had against Brickenden was one which would sound in damages for a tort and its essence is negligence or breach of duty.

Nocton vs. Lord Ashburton, 1914, A.C. 932.

Hill vs. Finney, 4 F. & F., 616, at page 635.

And if the cause of action arises ex delicto, it cannot be assigned.

McCormick vs. Toronto Railway Company, 13 O.L.R. 656 at pp. 659-660.

Burke vs. Shaver, 29 O.L.R. 365.

20. It is submitted that both on the facts and on the law the appellants have failed to establish any claim against the respondents and that the Judgment of the Court of Appeal should be confirmed and this appeal dismissed with costs.

I. F. HELLMUTH,

Of Counsel for the Respondents.

No. 44.

REASONS FOR JUDGMENT OF CROCKET, J.

*In the
Supreme
Court of
Canada.*

No. 44.
Reasons for
Judgment.
A
Crocket, J.
29th March,
1933.

Crocket, J.—

This is an appeal from a judgment of the Appeal Division of the Supreme Court of Ontario setting aside a judgment of Raney, J., which held the respondents liable for all moneys due upon two mortgages made by one, Walter H. Biggs and his wife, of London, on November 8th, 1924, in favour of the appellant, The London Loan and Savings Company, to secure a loan to Biggs amounting to \$13,500.

There is really but one respondent, G. A. P. Brickenden, "G. A. P. 10
Brickenden & Co." being merely a firm name under which he practised law. Notwithstanding the joinder of so many parties in the counterclaim and the numerous charges of fraud and collusion stated therein against him in conjunction with Mr. and Mrs. Biggs and George G. McCormick, his father-in-law and president of the Loan Company, in respect of two previous mortgage loans of \$18,000 and \$12,000 made by the Company to Biggs, as well as in respect to the later one of \$13,500, this appeal concerns only his conduct as an interested solicitor in connection with the last mentioned loan, the learned trial judge having based his judgment against him on the ground that he had a personal interest in the transaction which was in clear conflict 20
with his duty as solicitor for the Company and did not make a full disclosure of all material facts in connection therewith. He held that there was no legal claim against Brickenden in respect of the two earlier mortgages, and dismissed the counterclaim as against McCormick.

That Brickenden was the general solicitor of The London Loan and Savings Company and acted as solicitor for the Company as well as solicitor for Biggs in connection with the putting through of the two previous mortgage loans as well as the \$13,500 loan directly in question, is not disputed. Neither is it disputed that when he sought this loan from the Company for Biggs he held four registered mortgages in his own name, as security for three loans 30
which he had personally made to Biggs for \$5,000, \$2,000 and \$1,200 respectively after the Loan Company itself had declined an application for a further loan of \$8,400 in addition to its \$18,000 and \$12,000 loans, which mortgages covered the properties Mr. and Mrs. Biggs had previously mortgaged to the Loan Company. The \$5,000 loan was secured by two mortgages dated July 13th, 1923, and the \$2,000 and \$1,200 loans by mortgages dated respectively

August 24th, 1923, and January 13th, 1924. The \$5,000 loan was payable under the terms of the two mortgages by which it was secured in two years from date and the interest quarterly with the privilege to the mortgagors of paying the whole or any part of the principal on any interest day. The \$2,000 and \$1,200 mortgages provided for the re-payment of the principal moneys in monthly instalments with interest payable quarterly. All three loans bore interest at eight per cent. Brickenden admitted in his discovery examination having exacted a bonus or commission of \$1,000 from Biggs on the \$5,000 loan, \$120 commission on the \$2,000 loan in addition to \$73.85
 10 for fees and disbursements, and \$300 on the \$1,200 loan, and that he settled a claim which Mr. and Mrs. Biggs subsequently brought against him for these bonuses and commissions and other overcharges by paying them back \$1,000.

The record also conclusively shews that when Biggs sought the \$13,500 loan from the Company through Brickenden in November, 1924, he had fallen behind in his interest payments on the Company's \$18,000 and \$12,000 mortgages to the amount of \$1,636.14, but had kept down the interest on the three Brickenden mortgages and had made all his monthly payments as they fell due on the principal of the \$2,000 and \$1,200 mortgages, so that these
 20 had been reduced to \$800 and \$600 respectively; and that when the loan was put through Brickenden received from its proceeds \$1,993.33, in payment of the balance due on the two last mentioned mortgages and a charge he made of \$500 for fees, commissions and disbursements (the disbursements amounting to but \$8.85) for putting through this latest loan, while the Loan Company retained \$5,000, for which it assumed his \$5,000 mortgage, besides a bonus payment of \$1,000, which it exacted from Biggs on the loan, and \$1,636.14 in payment of the overdue interest on its \$18,000 and \$12,000 mortgages.

Brickenden's position as the solicitor of both the borrower and the
 30 lender in the negotiation and completion of a mortgage loan in which he was so directly and largely interested was one, which could only be justified by the observance on his part of the utmost frankness and good faith towards both parties. That it was his imperative duty in such circumstances to fully disclose to his clients all material facts within his knowledge in relation to the transaction and treat with them upon a perfectly equal footing cannot be doubted. Moreover, it must now be taken as an established rule of law that when a solicitor acts for a client in a matter in which he is himself financially interested the onus rests upon him, if the propriety of the transaction is called in question, to shew that the negotiations were honestly
 40 conducted and that the transaction was fair and just and in no way disadvantageous to his client. This is the clear effect of the judgments in *Gibson v. Jewes*, 6 Vez. 278; *Edwards v. Meybrick*, 2 Hare, 69; *McPherson v. Watt*, 3 A.C., p. 266; *Ward v. Sharpe*, 53 L.J. Ch. (1884) 319; and in *Re Haslam and Hier-Evans*, (1902) 1 Ch. D., 769. The law for the purposes of this case is perhaps most concisely summed up in the following extract from the judgment of North, J., in *Ward v. Sharpe*:—

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“A transaction between solicitor and client, in which the latter takes a benefit, cannot be supported unless the solicitor has taken care that his client is fully acquainted with the facts and properly advised upon them, and the onus of proving this is upon the solicitor.”

Another passage which may usefully be quoted in the present case is the following from the judgment of Lord O’Hagan in *McPherson v. Watt*:—

“An attorney is not affected by the absolute disability to purchase which attaches to a trustee. But, for manifest reasons if he becomes the buyer of his client’s property he does so at his peril. He must be prepared to shew that he has acted with the completest faithfulness and fairness; that his advice has been free from all taint of self-interest; that he has not misrepresented anything or concealed anything; that he has given an adequate price and that his client has had the advantage of the best professional assistance which, if he had been engaged in a transaction with a third party, he could possibly have afforded. And, although all these conditions had been fulfilled, though there has been the fullest information, the most disinterested counsel and the fairest price, if the purchase be made covertly in the name of another without communication of the fact to the vendor, the law condemns and invalidates it utterly. There must be *unberrima fides* between the attorney and the client, and no conflict of duty and interest can be allowed to exist.” 10 20

Notwithstanding the grave charges made against him in the counter-claim, Brickenden refrained on the trial from even so much as attempting to vindicate his conduct in the negotiation and completion of the loan transaction, and left the case for decision upon the testimony offered in behalf of the appellants, which included portions of the evidence he had given on his examination on discovery. He left quite unsolved the mysterious fact that while the two mortgages to the Loan Company, by which the \$13,500 loan was secured, were executed and acknowledged by Mr. and Mrs. Biggs on November 8th, on which date he obtained from Briggs an order on the Loan Company to pay him his \$1,993.33 covering the balance due on his \$2,000 and \$1,200 mortgages and his \$491.15 bonus or commission and other charges, the application for the loan was laid over by the Board of Directors for consideration on November 11th, and was not actually authorized by the Board until November 17th, as shewn by the Company’s minute books, during which interim, on November 12th, he registered the two new mortgages to the Loan Company, and the certificates discharging his \$2,000 and \$1,200 mortgages and signed his certificate of title to the Loan Company before presenting for payment on November 13th, his \$1,993.33 order from Biggs. 30 40

The application for the loan is unsigned, but the record shews that there is no doubt it was made through Brickenden. It bears no date on its face, but has the following memorandum endorsed upon it:—

“Nov. 17, 1924, E. & W. Biggs \$13,500. Wanted. Lend at 8% with bonus of \$1,000. Geo. C. McC., President”.

Presumably the application was prepared before the new mortgages

were executed. It stated that the money was to be applied to pay the arrears of interest on the Company's present mortgages of \$18,000 and \$12,000 and sundry accounts amounting to \$7,500 and a second mortgage of \$5,000 held by Brickenden which will mature about March, 1925, and that as security the Company would receive a new mortgage for \$13,500 on the property already mortgaged to the Company.

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Although the properties proposed as security were stated in the application to be subject to two other mortgages than those which the Loan Company already held, one by Ed. Barrell for \$7,000 and the other by Huron and
10 Erie for \$10,000, no mention was made therein of either the Brickenden \$2,000 or \$1,200 mortgages, which were not discharged on the records until November 12th, or of the fact that any portion of the proceeds of the loan was to be applied towards paying off the amounts due Brickenden upon them, though it is stated that \$5,000 of the loan money is to be applied to the payment of the \$5,000 mortgage. No mention is made either of the fact that Biggs was to be required to pay Brickenden \$500 for fees, commissions and disbursements in addition to the \$1,000 bonus he promised to pay the Company.

—continued.

The result of the transaction, so far as Brickenden is concerned, was
20 that he got his \$5,000 mortgage loan, and the balances due on two subsequent mortgages paid off by the London Loan and Savings Company, besides receiving a bonus or commission of \$491.15 and legal fees from the proceeds of the loan—a total of \$6,993.33. The Loan Company received a bonus of \$1,000 and \$1,636.14 overdue interest on its \$18,000 and \$12,000 mortgages, leaving \$3,870.53 for Biggs with which to pay the "sundry accounts amounting to \$7,500" mentioned in the application. Apparently the "sundry accounts" covered not only the balance of Biggs' mortgage indebtedness to Brickenden but his bonus and commission as well

Brickenden's certificate of title was dated, as already stated, on November
30 12th, the day on which his \$2,000 and \$1,200 mortgages were discharged before his order of November 8th for \$1,993.33 had been accepted by the Company, and made no mention of these two mortgages, though it set out nine different mortgages, which were on that date outstanding against different parcels of the lands comprised in the new mortgages to the Loan Company, amounting in all to \$61,300, including his own \$5,000 mortgage, numbered the ninth, and which last mortgage he stated in the certificate the London Loan was assuming. To his certificate of title he added a note to the Loan Company, stating that all the mortgages listed were to be removed except the
40 Barrell and Huron and Erie mortgages for \$7,000 and \$10,000 respectively and the Loan Company's \$18,000 and \$12,000 mortgages. If all other mortgages than those indicated were removed, there would still remain on the mortgaged premises five mortgages for a total of \$47,000, to which the Company was to add two more to secure the new loan of \$13,500, making a grand total of \$60,500.

It is perfectly obvious that the intention from the beginning was that Brickenden was not only to unload his \$5,000 mortgages upon the Loan

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Company, but that he was to be paid the balances of principal and interest due on his two subsequent mortgages out of the proceeds of the proposed loan, as well as his exorbitant commission money. Brickenden has not testified that he advised the manager of the Loan Company or any of its directors or officers of this fact, which was surely a very material fact, having regard to the much encumbered state of the title of the properties of Mr. and Mrs. Biggs. On the contrary, the application itself would seem to have concealed both these material facts by the statement that \$7,500 of the proceeds of the loan was to be applied to the payment of "sundry accounts." This statement the record shows was untrue. Why did the application not mention the \$2,000 and \$1,200 Brickenden mortgages as well as the \$5,000 mortgage? Why was it that the application was laid over at the Directors' meeting on November 11th, and the certificate of title held back till November 12th—four days after the execution of the new mortgage, and until Brickenden discharged his third and fourth mortgages, before presenting his order from Biggs for \$1,993.33 to the Company's manager for payment? Brickenden has chosen not to explain any of these things and must be held to have been guilty of a breach of duty to his client, the London Loan and Savings Company. 10

It is quite apparent that Brickenden must have obtained the consent of the managing director (Kent) to put the loan through, cash his \$1,993.33 order from Biggs and arrange for the Company's assumption of his \$5,000 mortgages, without waiting for the authorization of the Board of Directors. How he did so is left entirely to conjecture. Unfortunately Kent passed away before the trial of the action and Brickenden vouchsafes no information. The consent of the managing director does not help him unless it is shewn that it was obtained upon full disclosure of all material facts and this is not shewn. Kent himself may or may not have been influenced to violate his own duty to the Company, and it may be that but for a breach of duty on his part and on the part of other directors and officers of the Company, the loan would not have been made. The learned trial Judge has found that at the time of the loan there was no equity in the mortgaged properties above the prior mortgages, not including Brickenden's \$5,000 mortgages. I take this to mean he held the new mortgages to be worthless, which would surely point to a marked laxity and dereliction of duty on the part of the managing director and other officers of the Company, for the record shows that the managing director was advised by Brickenden's certificate of title before the completion of the loan of the prior mortgages, including the Brickenden \$5,000 mortgages, though not of his \$2,000 and \$1,200 mortgages. While it may for this reason well be said that Brickenden was not wholly responsible for the unfortunate transaction, he cannot invoke the connivance or dereliction of others as an excuse for his own breach of duty. It only renders his own breach of duty the more indefensible. He assuredly ought not to be allowed in such circumstances to excuse himself on the ground that the managing director or any other director or officer of the Company with whom he negotiated ought not in any event to have accepted his proposal. 20 30 40

That the transaction was highly improvident and one which was fraught

with disaster to both Biggs and the Loan Company, and advantageous only to himself, is perfectly obvious from the documentary evidence concerning the transaction itself and the subsequent history of the mortgages and the Loan Company. The Loan Company was obliged by the Provincial Government Inspector to clear off its first two mortgages for \$18,000 and \$12,000 and it did so by arranging in December, 1927, with the Consolidated Trusts Corporation, of which McCormick and Brickenden were also president and solicitor respectively, to make a new loan to Biggs to the amount of \$33,000 on two fresh mortgages at six and one half per cent. on the same properties, 10 for \$20,000 and \$13,600, of which \$33,542.26 was paid to the London Loan for the amounts then due it for principal and interest, and by itself guaranteeing the new loans and giving additional security. The \$13,500 mortgages the London Loan retained until it assigned all its remaining assets to the Huron and Erie Mortgage Corporation on July 3rd, 1929. On November 1st of the latter year the total indebtedness of Mr. and Mrs. Biggs on these three mortgage loans was found by the local master, to whom the mortgage accounts were referred for investigation, to amount to \$56,887.23.

On November 6th, 1929, the Consolidated Trusts Corporation transferred all its assets to the Canada Trusts Corporation, this transfer covering 20 the \$20,000 and the \$13,600 Biggs mortgages above referred to, as replacing the original \$18,000 and \$12,000 Biggs mortgages, guaranteed by the Loan Company as aforesaid. Both these corporations were joined with the London Loan and Savings Company as co-plaintiffs in the counter-claim, together with the Huron and Erie Mortgage Corporation and the London Loan Assets Limited. The last mentioned Company was incorporated under the provisions of the Ontario Loan and Trusts Corporation Act for the particular purpose of carrying out the terms of an agreement which was entered into on July 3rd, 1929, between the London Loan and Savings Company, the Huron and Erie Mortgage Corporation and the newly created company, for the liquidation of 30 the affairs of the London Loan and Savings Company, and which provided for the transfer of all its assets, first, to the mortgage corporation and then to the new company, including all rights of action which were capable of assignment.

There can be no doubt of Brickenden's breach of duty to the London Loan and Savings Company or that the Company suffered a serious loss in consequence thereof.

The difficulty is to determine the amount of that loss which is fairly attributable to him, having regard to the subsequent transfer of these two \$13,500 mortgages, together with all the Company's other assignable assets 40 to the Huron and Erie Mortgage Corporation and the London Loan Assets Limited for the liquidation of its indebtedness, under the agreement of July 3rd, 1929, and to the large increase of the mortgage indebtedness which the accumulation of the mortgagors' interest, taxes and other arrearages have since produced while these mortgages have remained in the hands of the assignees unrealized and presumably unrealizable, I cannot satisfy myself that Brickenden can justly be charged with all of these arrearages as the

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learned trial Judge has decreed.

I am satisfied that he should not be charged with the \$1,000 which the Loan Company withheld out of the proceeds of the loan in payment of its bonus charge, nor, in the circumstances, with the \$1,636.14, which it also withheld to pay itself the arrears of interest on its two prior Biggs mortgages. The latter amount cannot, in my opinion, fairly be said to have been lost to the Company as a result of the loan.

That Brickenden, on the other hand, ought not in the circumstances to be allowed to retain any of the benefits which he personally derived from the transaction and should indemnify the Loan Company to this extent at least 10
is clear to my mind. As already stated, he received \$6,993.33 of the proceeds of the loan, including the \$5,000 for the first two of his four Biggs mortgages. It is true that he cannot now be restored precisely to his former position in respect of these mortgages, but these were in effect all merged in the larger \$13,500 mortgages, which, it must be taken, the Loan Company was induced by his breach of duty to accept, and which, it is clear from the Master's report and the evidence throughout, was practically worthless as a security for the moneys advanced.

While in strictness of law the right of action for damages resulting from Brickenden's breach of duty lay in the London Loan and Savings Company 20
and did not pass to its assignees under the agreement of July 3rd, 1929, the worthless mortgages did pass, with all other assignable assets of that Company, but only for the purpose of liquidation in the Company's interest. The Huron and Erie Mortgage Corporation and the London Loan Assets Limited are both parties to the counterclaim and before the Court on this appeal, and I can see no objection to treating the moneys which improperly came into Brickenden's hands out of the proceeds of the loan for his own use and benefit as moneys of the London Loan and Savings Company or to its assignees under the agreement referred to, or in subrogating him, to the rights of that company or its assignees under these mortgages to the extent of the moneys 30
he may be required to pay back. One or other of the corporations named is entitled to the fruits of the action, and having regard to the terms of the assignment, it makes no difference in the result which of them actually receives the money. In the end it goes to the London Loan and Savings Company or to the London Loan Assets Limited for its benefit.

In my opinion, the ends of justice would, in the circumstances, best be served by a decree requiring Brickenden to restore to the London Loan and Savings Company or to the Huron and Erie Mortgage Corporation or the London Loan Assets Limited the \$6,993.33 which he improperly received 40
out of the proceeds of the loan, together with interest at the statutory rate from November 12th, 1924, the date of the completion of the loan, until judgment, and declaring that upon payment of the said sum and interest, he shall be subrogated to that extent to the rights of the London Loan and Savings Company or its assignees under the said mortgage.

The appeal should be allowed and the judgment of the trial Judge varied as here indicated, costs throughout to be paid by the respondent.

No. 45.

REASONS FOR JUDGMENT OF SMITH, J.

Smith, J.—

I am in agreement with what my brother Crocket has written in this case, except as to the remedy.

I am of opinion that the Appellant Loan Company should be placed as nearly as possible in the position in which the Appellants would have been had there been no breach of duty on the part of Brickenden; that is, that the Appellant Loan Company is entitled to the full amount of damages
10 sustained. *Nocton v. Lord Ashburton* (1914) A.C., 932.

Under this case, I do not think the amount to which the Appellant is entitled can be limited to the amount that the Respondent received out of the transaction, but is to be measured by the amount of loss sustained by the Appellant.

I am of opinion, however, that the \$1,000.00 bonus retained by the Appellant Loan Company out of the loan, and the full 8% interest mentioned in the mortgage are not losses sustained by the Appellant Loan Company. If the transaction had not gone through, they would have received no such bonus, nor would they have been able to invest the \$12,500.00 on proper
20 security at 8%. Properly speaking, there should, perhaps, be a reference to ascertain the actual rate of interest that could have been earned on proper security; but, to avoid the delay and expense of such a reference, I am of opinion that justice would be done by allowing the legal rate of 5%.

There should therefore be a reference back for recalculation of the amount payable by Respondent on the mortgage, by deducting the \$1,000.00 from the principal and calculating the interest at 5%, instead of 8%.

With this variation, the appeal should be allowed and the judgment of the trial judge restored with costs to the Appellant of both appeals.

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No. 46.

**FORMAL JUDGMENT ALLOWING APPEAL
IN THE SUPREME COURT OF CANADA**

WEDNESDAY the 29th day of March, A.D. 1933.

PRESENT:

THE HONOURABLE MR. JUSTICE RINFRET,
THE HONOURABLE MR. JUSTICE LAMONT,
THE HONOURABLE MR. JUSTICE SMITH,
THE HONOURABLE MR. JUSTICE CANNON,
THE HONOURABLE MR. JUSTICE CROCKET.

10

BETWEEN:

WALTER HERBERT BIGGS and EVA VIOLA BIGGS,

Plaintiffs:

—AND—

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
and THE CONSOLIDATED TRUSTS CORPORATION

Defendants:

AND BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
CONSOLIDATED TRUSTS CORPORATION, THE HURON AND
ERIE MORTGAGE CORPORATION, THE CANADA TRUST
COMPANY and LONDON LOAN ASSETS LIMITED,

20

(Plaintiffs by Counterclaim)

Appellants:

—AND—

G. A. P. BRICKENDEN and G. A. P. BRICKENDEN & COMPANY
(Defendants by Counterclaim) Respondents:

The appeal of the above named Appellants from the Judgment of the Appellate Division of the Supreme Court of Ontario pronounced in the above cause on the First day of March in the year of Our Lord 1932 reversing the Judgment of The Honourable Mr. Justice Raney of the Supreme Court of Ontario rendered in the said cause on the Eleventh day of October in the year of Our Lord 1930 having come on to be heard before this Court on the Twenty-ninth and Thirtieth days of November and the first day of December in the year of Our Lord 1932 in the presence of counsel as well for the Appellants as the Respondents whereupon and upon hearing what was alleged by counsel aforesaid this Court was pleased to direct that the said Appeal

30

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 Appellate Division of the Supreme Court of Ontario should be and the same was reversed and set aside and that the said Judgment of The Honourable Mr. Justice Raney of the Supreme Court of Ontario should be and the same was restored with the variation hereinafter mentioned.

10 AND THIS COURT DID FURTHER ORDER AND ADJUDGE that
 it be referred to the Local Master of the Supreme Court of Ontario at Lon-
 don on the taking of the further account directed in paragraph 4 of the said
 Judgment of the Honourable Mr. Justice Raney to make a re-calculation of
 the amount due and owing to The London Loan and Savings Company of
 Canada, The Huron and Erie Mortgage Corporation and London Loan Assets
 Limited upon the Mortgage made by Walter Herbert Biggs and Eva Viola
 Biggs, dated the Eighth day of November, A.D. 1924, for \$13,500.00 by
 deducting the sum of \$1,000.00 from the principal sum due under the terms
 of the said Mortgage and by computing the interest to be paid under the
 said Mortgage at the rate of five per cent. instead of at the rate of eight per
 cent., but otherwise upon and in accordance with all other terms contained
 20 in the said Mortgage.

AND THIS COURT DID FURTHER ORDER AND ADJUDGE that
 the Respondents should and do pay to the Appellants the costs incurred by
 the said Appellants as well in the said Appellate Division of the Supreme
 Court of Ontario as in this Court.

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 —
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No. 47.
Order of His
Majesty's
Privy Council
Granting
Special Leave
to Appeal.
10th November
1933

L.S.

AT THE COURT AT BUCKINGHAM PALACE

The 10th day of November, 1933.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT EARL OF ATHLONE
SECRETARY SIR PHILIP CUNLIFFE-LISTER
SECRETARY SIR JOHN SIMON, SIR BOYD MERRIMAN

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 20th day of October 1933 in the 10 words following viz.:—

“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 G. A. P. Brickenden in the matter of an Appeal from the Supreme Court of Canada between the Petitioner Appellant and the London Loan and Savings Company of Canada the Huron and Erie Mortgage Corporation the Canada Trust Company and London Loan Assets Limited Respondents setting forth (amongst other things) that the principal business of the Respondents the London Loan and Savings Company (thereinafter referred to as the Respondent Loan Company) was to advance money on the security of mortgages upon real estate: that the Respondent Loan Company's Directors were all experienced in the business and the Respondent Loan Company employed its own valuer one Gorwill and a manager one Kent whose work it was to advise the Directors upon such applications for loans as might be made to the Respondent Loan Company: that the Petitioner was Solicitor to the Respondent Loan Company; that in the autumn of 1922 one Walter Herbert Biggs obtained from the Respondent Loan Company a loan of 18,000 dollars secured by a mortgage on certain property situate at 116 Elmwood Avenue in the City of London in the Province of Ontario one Eva Vera Biggs (his wife) joining to bar her dower: that shortly thereafter Biggs gave as a collateral security to the Respondent Loan Company a mortgage for 3,000 dollars on certain property situate at 114 Elmwood Avenue aforesaid which property was already subject to two mortgages for 6,000 dollars and 1,000 dollars respectively in favour of one Edwin Barrell: that in the following year Eva Vera Biggs obtained a loan of 12,000 dollars from the Respondent Loan Company secured by a mortgage on her property situate at 315 317 and 319 Ridout Street in the City of London: that in the case of each

of the loans the Respondent Loan Company obtained from the mortgagor a bonus in respect of the advance and the Petitioner acted as Solicitor for both parties and also received a commission and fees from the mortgagor to the knowledge of the Respondent Loan Company: that in the spring of 1923 Walter Herbert Biggs applied for a further loan to the Respondent Loan Company which was not granted: that in July 1923 the Petitioner personally advanced 5,000 dollars to Biggs on the security of a mortgage from Biggs and a collateral mortgage from Eva Vera Biggs each for 5,000 dollars on the properties (already mortgaged to the Respondent Loan Company) and upon the further security of another collateral mortgage from Biggs on certain property situate at 309, 311 and 313 Ridout Street aforesaid: that in August 1923 the Petitioner advanced 2,000 dollars to Biggs and in January 1924 1,200 dollars to Biggs: that each of the loans were secured by mortgages on the properties just referred to: that Biggs paid a bonus to the Petitioner Brickenden in respect of each of the three loans just mentioned: that in November 1924 Biggs applied to the Petitioner for a further advance of 13,500 dollars: that at that date the Petitioner informed Biggs that he had no money available for the proposed loan: that thereafter Biggs and Eva Vera Biggs made a written application to the Respondent Loan Company for an advance of 13,500 dollars on the security of the properties already mortgaged (1) to the Respondent Loan Company and (2) to the Petitioner as aforesaid: that this application showed clearly upon its face that the properties were held by Biggs subject to other mortgages some of them to the Respondent Loan Company itself one to the Respondents the Huron and Erie Mortgage Corporation and one of 5,000 dollars to the Petitioner: that the application further set out the purposes for which Biggs required the loan namely (1) to pay the arrears of interest on the mortgages referred to (which were mortgages to the Respondent Loan Company) (2) to pay sundry accounts owing by Biggs amounting to 7,500 dollars and (3) to pay off the mortgage for 5,000 dollars held by the Petitioner: that the application was considered at two meetings of the Respondent Loan Company's Board of Directors held respectively on the 11th November 1924 and the 17th November 1924: that the application was laid over at the first meeting and allowed at the second meeting as thereafter set out: that after considering the valuations placed by the Respondent Loan Company's valuer upon the properties it was resolved to grant the application and to charge interest at the rate of 8 per cent. per annum upon the loan of 13,500 dollars and a bonus of 1,000 dollars in respect of the loan: that the Petitioner was not present at either of the meetings: that the Petitioner acted as Solicitor for Biggs in connection with the mortgage for 13,500 dollars and also in his capacity of general Solicitor to the Respondent Loan Company did the legal work in connection with the mortgage on behalf of the Respondent Loan Company: that the Petitioner gave a certificate of title to the

No. 47.
Order of His
Majesty's
Privy Council
Granting
Special Leave
to Appeal.
10th November
1933

—continued.

No. 47.
Order of His
Majesty's
Privy Council
Granting
Special Leave
to Appeal.
10th November,
1933.

—continued.

Respondent Loan Company dated the 12th November 1924 in respect of the mortgage: that this certificate set out clearly the existing encumbrances against the property to be mortgaged including the Petitioner's mortgage for 5,000 dollars: that the two mortgages for 2,000 dollars and 1,200 dollars to the Petitioner already referred to had by November 1924 been reduced to 800 dollars and 600 dollars respectively: that Biggs gave the Petitioner a cheque dated the 8th November 1924 for an amount which included the balance due under the mortgages; that the discharges in respect of the mortgages were dated the 11th November 1924 and registered on the 12th November 1924 although the cheque 10 had not been paid by that date: that neither the application nor the certificate of title disclosed the mortgages for 2,000 dollars and 1,200 dollars: that the mortgages were duly discharged on the date of the certificate and five days before the application was granted as aforesaid and accordingly were not at the date of the certificate or at the date when the application was granted existing encumbrances upon the property to be mortgaged as security for the loan of 13,500 dollars: that moneys were advanced to Biggs by the Respondent Loan Company pursuant to the resolution mentioned and such moneys were applied as follows:—the Respondent Loan Company retained (1) 1,600 dollars to 20 cover arrears of interest due on the mortgages mentioned; (2) 1,000 dollars as a bonus and (3) 5,000 dollars to pay off the Petitioner's mortgage for 5,000 dollars; that the balance of 5,900 dollars was used to settle sundry accounts due by Biggs: that one of these accounts was for 1,993.33 dollars on a cheque given to the Petitioner in satisfaction of (1) the balance due under the two mortgages for 2,000 dollars and 1,200 dollars respectively and (2) the sum of 500 dollars due to the Petitioner by Biggs for fees and commission: that as admitted at the trial by one of the Respondent Loan Company's Directors and not contradicted by any other evidence if the fact had been made known to 30 the Respondent Loan Company that one of the sundry accounts referred to in the application was the Petitioner's account for 1,993.33 dollars such fact would not in any way have influenced the Respondent Loan Company nor prevented nor deterred the Respondent Loan Company from advancing 13,500 dollars: that by an agreement dated the 3rd July 1929 the Respondent Loan Company sold and transferred all its assets (including the mortgage for 13,500 dollars) and all rights of action connected with the said assets which were capable of assignment to the Respondents the Huron and Erie Mortgage Corporation and the mortgage became vested in the Respondents the Huron and Erie Mortgage Corporation: that there was no evidence to indicate that the Respondent Loan Company did not receive the full face value of the mortgage upon the sale and transfer: that further by the agreement the Respondents the Huron and Erie Mortgage Corporation sold and transferred to the Respondents the London Loan Assets Limited certain of 40 the assets acquired from the Respondent Loan Company including the

mortgage for 13,500 dollars: that an Action was brought by Walter Herbert Biggs and Eva Vera Biggs against the Respondent Loan Company and the Respondent Consolidated Trust Corporation seeking redemption of certain properties in the City of London (including all the properties aforesaid) on payment of the principal moneys actually advanced without interest on the contention that certain mortgage transactions in respect of the said properties came within the provisions of the Interest Act of Canada: that this claim of the original Plaintiffs was dismissed by the Trial Judge and no Appeal was taken therefrom: that the Respondent Loan Company and the Respondent Consolidated Trust Corporation by a counterclaim in the Action dated the 14th November 1929 to which the rest of the Respondents were made Plaintiffs and to which the Petitioner was made a Defendant (a) claimed from Biggs and Eva Vera Biggs the amounts which might be owing on their several mortgages and (b) alleged that the mortgage for 13,500 dollars was obtained from the Respondent Loan Company through the conspiracy of the Petitioner with one McCormick or through the fraud of the Petitioner or through a breach of duty or trust by the Petitioner arising out of his fiduciary relationship with the Respondent Loan Company and the Respondents counterclaimed against the Petitioner declarations to the above effect and damages in respect of the loss which they alleged they had suffered by reason of the alleged fraud or conspiracy or breach of trust or other wrong doing on the part of the Petitioner: that the counterclaim was tried before Raney J. without a Jury: that on the 11th October 1930 Raney J. gave judgment for all the Respondents against the Petitioner for whatever balance there might be owing on the mortgage for 13,500 dollars according to the terms of the mortgages allowing credit for payments that had been made by the mortgagor and directed that upon payment by the Petitioner of such sum the mortgage should be assigned to him alternatively at the discretion of the Respondents there might be a sale under the direction of the Master of the properties covered by the mortgage subject to other encumbrances and that in the event of this course being adopted judgment should be entered against the Petitioner for the deficiency: that the Petitioner appealed and the Appeal came on for hearing in the Appellate Division of the Supreme Court of Ontario before Mulock C. J. Grant and Riddell JJ. and that on the 1st March 1932 that Court unanimously allowed the Appeal without costs: that the Respondents appealed to the Supreme Court of Canada and the Appeal came on for hearing before Rinfret Lamont Smith Cannon and Crocket JJ.: that the Supreme Court of Canada delivered judgment on the 29th March 1933 and allowed the Appeal and restored the Judgment of Raney J. subject to the variation that there should be a reference back to the Master for recalculation of the amount payable by the Petitioner and that such calculation should be upon the basis that 1,000 dollars should be deducted from the amount due under the mortgage for 13,500 dollars and that interest should be

No. 47.
Order of His
Majesty's
Privy Council
Granting
Special Leave
to Appeal.
10th November,
1933.

—continued.

No. 47.
Order of His
Majesty's
Privy Council
Granting
Special Leave
to Appeal.
10th November,
1933.

—continued.

calculated at the rate of 5 per cent. instead of 8 per cent. and that the Petitioner should pay the costs of both Appeals: And humbly praying Your Majesty in Council to grant him special leave to appeal from the Judgment dated the 29th March 1933 and / or such other relief as Your Majesty in Council may think fit:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the 10
Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Canada dated the 29th day of March 1933 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 proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.” 20

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the 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.

M. P. A. HANKEY.

Printed under the authority of HIS MAJESTY'S STA-
TIONERY OFFICE By Harrison and Sons, Ltd., 30
44-47, St. Martin's Lane, London, W. C. 2,
Printers in Ordinary to
His Majesty.

(306/8377) T Wt. 123 16 11/33 H & S Ltd. Gp. 306

Part Exhibit D

(Plaintiffs' Exhibit)

1

Extract from Minute Book of London Loan & Savings Company.

Monday, Nov. 13, 1922.

- BOARD MET—All present save Mr. Robinson. Minutes of last meeting read and confirmed. Statement of funds submitted.
- Wrights Limited - Renewal \$3049.60 at 8% confirmed.
- Chamber of Commerce - Fee of \$25 to be paid.
- 10 R. F. Wilson - Renewal \$575 at 8% confirmed.
- N. S. Williams - \$4700 at 7% laid over.
- R. Heard - - \$1000 at 8% lend.
- Lyric Theatre - Lend \$60,000 at 7½%. Schultz to guarantee payment of mortgage and give \$10,000 bonds as collateral.
- J. Crossan - - Renewal \$325 at 8% confirmed.
- Agreements, - Cash three agreements in all \$1810.26 to pay Company 8%.
- S. J. Parr - -
- 20 Stratford Imp. Co. - Renewals of Mtges. S 10 \$1627.55; S 18 \$1330.46; S 20 \$8180.64 and S 21 \$869.85 confirmed.
- Mtge. Gleason to McDonald \$3400 - Cash to pay Company 7½% with savings bank deposit of \$1200 as collateral.
- Bank of Montreal - Letters read re line of credit. File.
- Junior - - R. Dalrymple accepted on trial at \$25 a month.
- Assistant Teller - Miss O. Cossey to have "Teller's Fund" the same as previous assistant \$100 a year.
- W. H. Biggs - Lend \$18,000 at 7½% for six years with 2% bonus and no commission.
- M. J. KENT, - - - - - GEO. G. McC.,
30 Manager. President.

Exhibit 1-R

(Plaintiffs' Exhibit)

Extract from Mortgage No. 16914 (Mortgage on 116 Elmwood Avenue).

- Date - - 14th November, 1922,
- Mortgagor - Walter Herbert Biggs of the City of London in the County of Middlesex, Accountant, (his wife, Eva Viola Biggs, joining to bar dower),

*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. D.
1
Extract from
Minute Book
of London
Loan & Sav-
ings Co.,
13th November
1922.*In the
Supreme
Court of
Ontario.*
Exhibits.
Ex. 1-R
Extract from
Mortgage
No. 16914,
14th Novem-
ber, 1922.

Exhibit 21 R-1

(Defendants' Exhibit)

Debit Slip for \$300.00 re Biggs' Mortgage B-46

THE LONDON LOAN AND SAVINGS COMPANY
Debit W. H. Biggs Mtge. No. B. 46.

Account loan, paid W. H. Biggs per receipt on back hereof \$300.
London, Nov. 15/22.

London Loan & Savings Co.
of Canada
P A I D
Nov. 15, 1922
London, Ont.

M. J. KENT,
Manager.

10

(Endorsed on back)

\$300.

Nov. 15, 1922.

Received from London L. & S. Company the sum of three hundred dollars
being paid me account of my loan.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 21 R-1
Debit Slip for
\$300.00 re
Biggs' Mort-
gage B-46
15th Novem-
ber, 1922.

Exhibit DD

(Defendants' Exhibit)

1

20 **Extract Policy No. 97346 London Life Insce. Co.—Insured—Walter H. Biggs.**

Policy Number 97346 in The London Life Insurance Company.

Insured - Walter Herbert Biggs,
Plan - 5 Year Term Policy, convertible.
Amount - \$10,000.00,
Premium - \$50.57 half-yearly,
Date - 21st November, 1922.

30

Beneficiary - Estate of the Insured, with assignment attached to The
London Loan and Savings Company of Canada executed by W. H.
Biggs, bearing date October 20th, 1926: which assignment was noted
at the Head Office of The London Life Insurance Company on Octo-
ber 22nd, 1926.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. DD.
1.
Extract Policy
No. 97346
London Life
Insce. Co.—
Insured—
Walter H.
Biggs.
21st Novem-
ber, 1922.

*In the
Supreme
Court of
Ontario.*

Exhibit 21 R-2

(Defendants' Exhibit)

Debit Slip for \$200.00 re Biggs' Mortgage B-46.**THE LONDON LOAN AND SAVINGS COMPANY**

Debit W. H. Biggs Mtge. No. B. 46.

Account loan, per receipt on back hereof—\$200.

London, Nov. 22/22.

London Loan & Savings Co.
of CanadaPAID
Nov. 22, 1922
London, Ont.

(Endorsed on back)

M. J. KENT,
Manager.

10

\$200.

Nov. 22, 1922.

Received from London L. & S. Company the sum of two hundred dollars
account of my loan.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*

Exhibit 21 R-3

(Defendants' Exhibit)

Debit Slip for \$2,000.00 re Biggs' Mortgage B-46.**THE LONDON LOAN AND SAVINGS COMPANY**

Debit W. H. Biggs, Mtge. No. B46.

On account of loan paid W. H. Biggs, per receipt on back hereof, \$2000.00.

London Dec. 1st, 1922.

M. J. KENT,
Manager.

20

(Endorsed on back)

London, Dec. 1st, 1922.

Received from the London Loan & Savings Co. the sum of Two Thou-
sand Dollars, being on a/c of loan B. 46.

W. HERBERT BIGGS.

*Exhibits.
Ex. 21 R-3
Debit Slip for
\$2000.00 re
Biggs' Mort-
gage B-46
1st December,
1922.*

Part Exhibit D

(Plaintiffs' Exhibit)

2

Extract from Minute Book of London Loan & Savings Company.

Monday, Dec. 4, 1922.

BOARD MET—All present save Mr. McCormick. Minutes of last meeting read and confirmed. Statement of funds submitted.

- | | | | |
|----|--|-----|--|
| | re Pellatt & Imperial | - - | Letters from Cassels & Co. to Company's solicitors read. No action. |
| 10 | G. A. P. Brickenden's Bill of costs | - | \$75 for dismissal of action in Trusts & Guarantee vs London Loan, to be paid. |
| | Advertising Coy. | - | Pay regular account for advertising and discontinue ad for present. |
| | re Biggs loan | - | Pay no more money save on Mr. Gorwill's valuation, to extent of 50% on the building. |
| | Mrs. M. J. Brunton | - | Renewal \$1350 at 8% confirmed. |

M. J. KENT,
Manager.

GEO. G. McC.
President.

Part Exhibit D

(Plaintiffs' Exhibit)

3

Extract from Minute Book of London Loan & Savings Company.

Monday, Dec. 11, 1922.

BOARD MET—All present. Minutes of last meeting read and confirmed. Statement of funds submitted.

- | | | | |
|----|--------------------------------|-----|---|
| | Jno. Marshall & Co. | | \$10,000 wanted. Refer to Consolidated Trusts. |
| | J. Neilson | - - | Lend \$1500 at 7½%, bonus \$50 five years, no commission; \$25 repayable half yearly. |
| 30 | F. F. Harper Est. | - | Letter read from Gibbons & Company asking for back taxes \$71.63 Pay. |
| | Awning | - - | Required for front window down stairs—striped. Get quotation from Carter & Company for cut competing price with Raymond Bros. |
| | Forged draft | - | \$20 to be charged to Teller's Guarantee Fund. |
| | re Biggs W. H. | - | Solicitor reported extra security for \$3000 obtained. Loan confirmed. |

M. J. KENT,
Manager.

GEO. G. McC.,
President.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. D.

2
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
4th December,
1922.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. D.

3
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
11th December,
1922.

Exhibit 3-R

(Plaintiffs' Exhibit)

**Extract from Mortgage No. 17013
(Collateral to No. 16914)**

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 3-R.
Extract from
Mortgage
No. 17013
(collateral to
No. 16914).
11th December,
1922.

MORTGAGE

Date - - 11th December, 1922,

Mortgagor - Walter Herbert Biggs, of the City of London in the County of Middlesex, Accountant, (his wife, Eva Viola Biggs, joining to bar dower),

Mortgagee - The London Loan and Savings Company of Canada, 10

Consideration - \$3,000.00,

Lands - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being part of Lot Number Eleven, Block "B", Plan 343, for the City of London, which part of said Lot may be more particularly described as follows: COMMENCING at the Southwest angle of said Lot; Thence Easterly along the Southerly limit of the said Lot, being the Northerly limit of Elmwood Avenue, thirty-nine feet; Thence Northerly parallel with the Westerly limit of the said Lot, ninety-four feet six inches; Thence Westerly parallel with Elmwood Avenue thirty-nine feet, to the Westerly limit of the said Lot; Thence Southerly along the said Westerly limit ninety-four feet six inches, more or less, to the place of beginning. 20

**Terms of Re-
Payment** PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Three Thousand Dollars in gold coin of lawful money of Canada with interest at 8 per cent. per annum as follows: The principal sum on the Eleventh day of December, 1927, and the interest at the rate aforesaid payable half-yearly on the 11th days of June and December in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the Eleventh day of June next. 30

This Mortgage is given as collateral security to a Mortgage from Walter Herbert Biggs and wife, to the London Loan & Savings Company of Canada, dated the Fourteenth day of November, 1922, and registered in the Registry Office for the Registry Division of the City of London as Number 16914. 40

10 **Registration
Certificate**

IT IS HEREBY AGREED that no interest is to be paid under this Mortgage unless and until default is made under Mortgage 16914 aforesaid, and the Mortgagee will discharge this Mortgage upon the request of the Mortgagor at any time, after the completion of the building now started to be built on the adjoining property covered by Mortgage Number 16914.

I certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 17 for the 4th Division at 3.40 o'clock P.M. on the 11th day of Dec. A.D. 1922 as No. 17013. "J. H. Fitzallen" Dep. Registrar.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 3-R.
Extract from
Mortgage
No. 17013
(collateral to
No. 16914).
11th December,
1922.
—continued.

Exhibit V.

(Defendants' Exhibit)

Certificate of Title, G. A. P. Brickenden & Company, Re. Mortgage No. 17013.

Certificate of Title

20 IN THE MATTER OF part of Lot 11, Block "B", Plan 343, AND IN THE MATTER OF a collateral Mortgage for \$3,000.00 from Walter H. Biggs to The London Loan & Savings Company of Canada.

We hereby certify that we have investigated the title to the lands comprised in the said Mortgage, and that the same is good and sufficient for the purpose of the said Mortgage, and that the said Mortgage has been duly executed and registered and forms a first charge upon the mortgaged lands to the full amount thereby secured.

Subject, however, to two Mortgages from Walter H. Biggs to Edwin Barrell.

Dated at London this 11th day of December, 1922.

G. A. P. BRICKENDEN & CO.

30 To:—

The London Loan & Savings Company of Canada.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. V.
Certificate of
Title, G. A. P.
Brickenden &
Co. re Mort-
gage No.
17013.
11th December,
1922.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. Z.
Deposit Slip.
G. A. P.
Brickenden.
Account B-84.
\$360.00.
12th December,
1922.

Exhibit Z.

(Defendants' Exhibit)

Deposit Slip, G. A. P. Brickenden, Account B-84, \$360.00.

LONDON LOAN AND SAVINGS CO. OF CANADA

Savings Department

	.....	19
Credit G. A. P. Brickenden		London Loan & Savings Co.
Account No. B. 84	\$360.	of Canada
Biggs B. 46 Bonus.		PAID
		Dec. 12, 1922
		London, Ont.
		10

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 21 R-4.
Debit Slip for
\$720.00—W. H.
Biggs' Mort-
gage B-46.
12th December,
1922.

Exhibit 21 R-4.

(Defendants' Exhibit)

Debit Slip for \$720.00—W. H. Biggs' Mortgage B-46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs, Esq. Mortgage No. B. 46.		
On account of loan per receipt attached.....		\$720.00
And credit M. J. Kent, in tr. S. B. K. 293.....	\$360.00	
G. A. P. Brickenden, S. B. B84.....	360.00	
	<u>720.00</u>	20
\$1280 paid Mr. Biggs, December 1st, 1922.		

London, Dec. 12th, 1922.

London Loan & Savings Co.
of Canada
PAID
Dec. 12, 1922
London, Ont.

M. J. KENT,
Manager.

Exhibit 21 R-5

(Defendants' Exhibit)

Transfer Direction—W. H. Biggs to London Loan & Savings Co.—Re Mortgage B-46.

TO:—

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
Incorporated 1877

M. J. Kent,
Manager.

220 Dundas Street,
London, Can.
Jany. 13, 1923.

10

Gentlemen:—

Please transfer to my credit in the Royal Bank, London, the sum of Two thousand dollars, and charge same to my mortgage account with you. B46.

Main Branch G.A.P.B. W. HERBERT BIGGS

(Endorsed on back)

Deposited to the credit of W. H. Biggs.

Endorsement guaranteed, The Royal Bank of Canada, London, Ont.

P. H. Fisher, Pro. Manager.

Exhibit 21 R-6

(Defendants' Exhibit)

Debit Slip—\$2,000.00—W. H. Biggs—Re. Mortgage B-46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs, Mtge. No. B. 46.

Account loan, paid Royal Bank, to credit of W. H. Biggs. \$2000.00

London, Jan. 15th, 1923.

London Loan & Savings Co.
of Canada
PAID
Jan. 15, 1923
London, Ont.

M. J. KENT,
Manager.

30

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21 R-5
Transfer
Direction—
W. H. Biggs to
London Loan
& Savings Co.—
Re Mortgage
B-46.
13th January,
1923.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21 R-6.
Debit Slip—
\$2,000.00—
W. H. Biggs—
Re. Mortgage
B-46.
15th January,
1923.

Part Exhibit D

(Plaintiffs' Exhibit)

4

Extract from Minute Book of London Loan & Savings Co.

Monday, Jany. 22, 1923.

BOARD MET—All present. Minutes of last meeting read and confirmed. Statement of funds submitted.

re Accrued Interest Deferred, as to ruling.

Glen Bros. - Account \$12.20 to be paid.

M. Brody - Renewal \$1225 at 8% confirmed.

H. A. Morine - Applications submitted. File. Rate 7½% too low. 10

Bank of Montreal - Letter read. File.

Mrs. E. V. Biggs - Lend \$12000 at 7½% bonus 1½%; no commission.

M. J. KENT, GEO. G. McC.,
Manager. President.

Exhibit T

(Defendants' Exhibit)

Application for Loan, Eva V. Biggs to London Loan & Savings Co.—\$12,000.00.**APPLICATION FOR LOAN**

By Mrs. Eva Viola Biggs 20

I hereby apply for loan of \$12,000, for 5 years, with interest at rate of 7½% payable half-yearly, with repayments of \$150.00 half-yearly, after 1st half year. No commission. Bonus 1½%.

Land - - 131 ft. 6 in. frontage, Ridout St. S.
131 ft. 6 in. frontage, Ridout St. S.

Building - Solid brick dwellings, 1 to be made into duplex, 6 garages in rear.

Material - Solid brick.

No. of Rooms -

Heating - - -

Value of Land - \$5000.

Value of Buildings No. 315 \$4500.
No. 319 \$4700.
Barn \$300.

Dated Jany. 22nd, 1923.

Signature

Address

Wife's name

\$9000 wanted before corner house is made into Duplex (No. 315) \$3000; to be held until completed and six garages built. 40

(Endorsement)

Lend \$12,000 at 7½% bonus 1½%.

Jan'y 22/23
"GEO. G. McC.," President

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. D.

Extract from
Minute Book
of London Loan
& Savings Co.
22nd January,
1923.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. T.
Application
for Loan—
Eva V. Biggs
to London Loan
& Savings Co.
—\$12,000.00.
22nd January,
1923.

Exhibit 2-R

(Plaintiffs' Exhibit)

**Extract from Mortgage—Eva V. Biggs to London Loan & Savings Co.—
\$12,000.00.**

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 2-R.
Extract from
Mortgage,
Eva V. Biggs
to London
Loan & Sav-
ings Co.—
\$12,000.00.
27th January,
1923.

MORTGAGE

Date - 27th January, 1923.

Mortgagor - Eva Viola Biggs, the wife of Walter Herbert Biggs, of the City of London, in the County of Middlesex, Accountant,

Mortgagee - The London Loan and Savings Company of Canada,

10 **Consideration** \$12,000.00,

Lands - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers Eighteen and Nineteen, on the West side of Ridout Street, South, (formerly Queen Street) in the said City of London, according to registered Plan Number 399, SAVE AND EXCEPT the Westerly Sixty Feet of Lot Number Nineteen.

20 **Terms of Re-
payment** - PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Twelve Thousand Dollars in gold coin of lawful money of Canada with interest at 7½ per cent. per annum as follows: One Hundred and Fifty Dollars to become due and be paid on account of principal on the Twenty-seventh day of July, 1924; One Hundred and Fifty Dollars on the Twenty-seventh days of January and July, 1925, 1926 and 1927, and the balance of the principal sum on the Twenty-seventh day of January, 1928, and the interest at the rate aforesaid payable half-yearly on the 27th days of July and January in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the

30 Twenty-seventh day of July next.

**Registration
certificate** - I certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 17 for the 4th Division at 11.27 o'clock A.M. on the 6th day of Feb. A.D. 1923 as No. 17155. "J. H. Fitzallen" Dep. Registrar.

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. 21 R-7
Debit Slip
\$1000.00—W.
H. Biggs—re
Mortgage
B-46.
1st February,
1923.*

Exhibit 21 R-7

(Defendants' Exhibit)

Debit Slip—\$1,000.00—W. H. Biggs—Re Mortgage B-46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46.

Paid Mr. Biggs per receipt on back hereof—\$1000.

A/c loan.

London, Febry. 1/23.

London Loan & Savings Co.

of Canada

P A I D

Feb. 1, 1923

London, Ont.

M. J. KENT,

Manager.

10

(Endorsed on back)

Febry 1/23.

\$1000.

Received from London L. & S. Company the sum of one thousand dollars being paid me account of my loan on Elmwood Ave. property.

W. H. BIGGS.

Exhibit 9-R

(Plaintiffs' Exhibit)

Account, G. A. P. Brickenden against W. H. Biggs re \$12,000. mortgage.

20

LONDON LOAN BUILDING 220 DUNDAS STREET

London, February 2nd, 1923.

W. H. Biggs, Esq.,

72 Bruce Street, City.

In account with

G. A. P. BRICKENDEN

Re: Purchase from Geroge, 319 Ridout Street

To:—Investigating Title, requisitions, etc., and attending

to close sale \$ 31.00

Disbursements:—

30

Paid Search \$.45

“ Tax Certificate25

“ Search re Executions30

“ “re B. R.25

“ Registering Deed 2.00

“ Tax on Deed 9.40

\$12.65 \$ 31.00

12.65

\$ 43.65

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. 9-R.
Account,
G. A. P.
Brickenden
against W. H.
Biggs re
\$12,000.
Mortgage.
2nd February,
1923.*

Re: Mortgage to London Loan, Ridout Street

To:—Drawing Mortgage, \$12,000.00; examination of Title; attendances, etc.....	\$ 60.00	
Commission getting Loan.....	120.00	
Disbursements:—		
Paid Search.....	\$.25	
“ “re Executions.....	.55	
“ Registering Mortgage.....	1.50	
“ Registering Deed, re Stevens.....	2.00	
10 “ Search Executions & B. R. re Stevens.....	.55	
“ Tax on Deed.....	9.00	
	<u>\$13.85</u>	<u>\$180.00</u>
		13.85
		<u>\$193.85</u>
Purchase from George.....		43.65
Total.....		<u>\$237.50</u>

In the Supreme Court of Ontario.
—
Exhibits.
Ex. 9-R.
—
Account, G. A. P. Brickenden against W. H. Biggs re \$12,000. Mortgage. 2nd February, 1923.
—continued.

Exhibit 21 R-8
(Defendants' Exhibit)

Debit Slip—\$1000.00—W. H. Biggs re mortgage B-46.

20 THE LONDON LOAN AND SAVINGS COMPANY
Debit W. H. Biggs Mtge. No. B. 46 (Elmwood Ave.)
Paid per receipt on back hereof, Account loan—\$1000.
London, Febry. 3/23.
London Loan & Savings Co.
of Canada
PAID
Feb. 3, 1923
London, Ont.
\$1000.

M. J. KENT,
Manager.

(Endorsed on back)

30 Febry. 3, 1923.

Received from London L. & S. Company the sum of one thousand dollars being paid me account of my loan on Elmwood Ave. property.

W. H. BIGGS.

In the Supreme Court of Ontario.
—
Exhibits.
Ex. 21 R-8.
Debit Slip—\$1000.—W. H. Biggs—re Mortgage B-46. 3rd February, 1923.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. U.
Certificate of
Title—re
\$12,000.00
Mortgage—
315-319
Ridout Street.
6th February,
1923.

Exhibit U

(Defendants' Exhibit)

Certificate of Title—re \$12,000.00 mortgage—315-319 Ridout Street.

IN THE MATTER OF parts of Lots 18 and 19, on the West side of Ridout Street, AND IN THE MATTER OF a Mortgage from Eva Viola Biggs to The London Loan and Savings Company of Canada.

We hereby certify that we have investigated the title to the lands comprised in the above Mortgage, and that the same is good and sufficient for the purpose of the said Mortgage, and that the said Mortgage has been duly executed and registered and forms a first charge upon the mortgaged lands, to the full amount thereby secured. 10

SUBJECT HOWEVER to a Mortgage from John B. George to H. H. Chilton, dated Nov. 2, 1921, for \$2,000.00, on which there is now owing \$2,000.00, and interest from Nov. 2, 1922.

Dated at London this 6th day of February, 1923.

G. A. P. BRICKENDEN & CO.

To:—

The London Loan and Savings Company of Canada.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21 R-9.
Debit Slip—
\$1,000.00—
W. H. Biggs re
Mortgage
B. 46.
15th February,
1923.

Exhibit 21 R-9

(Defendants' Exhibit)

20

Debit Slip—\$1,000.00—W. H. Biggs—re Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46 (Elmwood Ave.)

Paid account loan \$1000 per receipt on back hereof.

London, Febry. 15/23.

London Loan & Savings Co.
of Canada

P A I D
Feb. 15, 1923
London, Ont.

M. J. KENT,
Manager.

(Endorsed on back)

30

\$1000.

Febry. 15, 1923.

Received from London L. & S. Company the sum of one thousand dollars being paid me account of my Elmwood Ave. loan.

W. H. BIGGS.

Exhibit 21 R-10

(Defendants' Exhibit)

Debit Slip—\$500.—W. H. Biggs Re Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46 (Elmwood Ave.).

Paid per receipt on back hereof account loan—\$500.

London, Febry 23/23.

London Loan & Savings Co.
of Canada
P A I D
Feb. 23, 1923
London, Ont.

10

M. J. KENT,
Manager.

(Endorsed on back)

\$500.

Febry. 23, 1923.

Received from London L. & S. Company the sum of five hundred dollars being paid me account of my loan on Elmwood Ave. property.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 21 R-10.
Debit Slip—
\$500.—W. H.
Biggs—re
Mortgage
B. 46.
23rd February,
1923.

Exhibit 21 R-11

(Defendants' Exhibit)

Debit Slip—\$1000.—W. H. Biggs—Re. Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46 (Elmwood Ave.)

Paid Mr. Biggs per receipt on back hereof \$1000. Account loan.
London, March 1/23.

London Loan & Savings Co.
of Canada
P A I D
Mar. 1, 1923
London, Ont.

30

M. J. KENT,
Manager.

(Endorsed on back)

\$1000.

March 1/23.

Received from London L. & S. Company the sum of one thousand dollars being paid me account my loan on Elmwood Ave. property.

W. H. BIGGS.

*In the
Suprem
Court of
Ontario.*
—
Exhibits.
Ex. 21 R-11.
Debit Slip—
\$1000.—W. H.
Biggs—re
Mortgage
B. 46.
1st March,
1923.

Exhibit 21 R-12

(Defendants' Exhibit)

Debit Slip—\$1000.—W. H. Biggs re Mortgage B. 46.**THE LONDON LOAN AND SAVINGS COMPANY**

Debit W. H. Biggs, Mtge. No. B. 46.

Paid on account loan \$1,000.00 per receipt on back hereof.
London, March 15th, 1923.London Loan & Savings Co.
of Canada
PAID
Mar. 15, 1923
London, Ont.M. J. KENT,
Manager.

10

(Endorsed on back)

London, March 15th, 1923.

Received from the London Loan & Savings Company the sum of one thousand dollars, being on account loan. Mtge. B. 46.

W. H. BIGGS.

Part Exhibit D

(Plaintiffs' Exhibit)

5

20

Extract from Minute Book of London Loan & Savings Co.

Monday, March 19, 1923.

BOARD MET—All present save Mr. McCormick. Minutes of last meeting read and confirmed. Statement of funds submitted.

J. W. McLaughlin	Mortgage to F. Daly \$6400.	Cash to pay Company 8%.	
Mrs. A. P. Nichols	Lend \$900 at 8%.		
W. H. Biggs	- \$8400.	Laid over.	
M. Fishbein	- Lend \$2500 at 8%.		
V. Evan Gray	- Letter read. Laid over until President's return. (re auditors).		
Monetary Times	Account \$3 subscription to 1924 to be paid.		30

M. J. KENT,
Manager.THOMAS BAKER,
V. President.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 21 R-12.
Debit Slip—
\$1000.—W. H.
Biggs—re
Mortgage
B. 46.
15th March,
1923.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. D.
5
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
19th March,
1923.

Exhibit 21 R-13

(Defendants' Exhibit)

Debit Slip—\$1500.00—W. H. Biggs Re. Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. J. Biggs Mtge. B. 46 Elmwood Ave. property.
Account loan paid per receipt on back hereof—\$1500.

London, April 7th, 1923.

London Loan & Savings Co.
of Canada
P A I D
Apr. 7, 1923
London, Ont.

M. J. KENT,
Manager.

10

(Endorsed on back)

April 7th, 1923.

\$1500.

Received from London L. & S. Company the sum of fifteen hundred dollars being paid me account of my loan B. 46 on Elmwood Ave. property.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 21 R-13.
Debit Slip—
\$1500.00—
W. H. Biggs—
Re. Mortgage
B. 46.
7th April, 1923.

Exhibit 21 R-14

(Defendants' Exhibit)

Debit Slip—\$500.—W. H. Biggs—Re. Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46 (Elmwood Ave.)

Account loan per receipt on back hereof—\$500.

London, April 21/23.

London Loan & Savings Co.
of Canada
P A I D
Apr. 21, 1923
London, Ont.

M. J. KENT,
Manager.

30

(Endorsed on back)

April 21/23.

\$500.

Received from London L. & S. Company the sum of five hundred dollars being paid me account of my Elmwood Ave. property.

W. HERBERT BIGGS.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 21 R-14.
Debit Slip—
\$500.—W. H.
Biggs—Re.
Mortgage
B. 46.
21st April,
1923.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21 R-15.
Debit Slip—
\$300.—W. H.
Biggs—
Mortgage
B. 46.
23rd April,
1923.

Exhibit 21 R-15

(Defendants' Exhibit)

Debit Slip—\$300.—W. H. Biggs—Re. Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit Mr. W. H. Biggs Mtge. No. B. 46, 315 Ridout St. property.

Paid Mr. Biggs per receipt on back hereof \$300. Account loan 315 Ridout.

London, April 23/23.

London Loan & Savings Co.
of Canada
P A I D
Apr. 23, 1923
London, Ont.

M. J. KENT,
Manager. 10

(Endorsed on back)

\$300.

April 23, 1923.

Received from London L. & S. Company the sum of three hundred dollars
being paid me account of my loan.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21 R-16.
Debit Slip—
\$1000. W. H.
Biggs—re
Mortgage
B. 46.
1st May, 1923.

Exhibit 21 R-16

(Defendants' Exhibit)

Debit Slip—\$1000.—W. H. Biggs Re. Mortgage B. 46.

20

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46 Elmwood Ave.

Account loan—\$1000. Credited him in savings bank per con No. B.

London, May 1/23.

London Loan & Savings Co.
of Canada
P A I D
May 1, 1923
London, Ont.

M. J. KENT,
Manager.

Exhibit 21 R-17

(Defendants' Exhibit)

Cheque, London Loan & Savings Co. to W. H. Biggs—\$1000.

No. 857

**THE LONDON LOAN & SAVINGS COMPANY
OF CANADA**

London, Canada, May 14th, 1923

To The Bank of Montreal (Custom House Branch)
Pay to the order of W. H. Biggs, Esq.,.....\$1,000.00
10 One thousand.....—Dollars.

Account loan. M. J. KENT,
W. B. CROLEY, Pro. Teller Manager.

Bank of Montreal (Endorsed on back) W. H. Biggs
1-348 London, Ont. Bank of Montreal Stamp
May 16 Royal Bank of Canada Stamp---Protest Waived
Dundas and Wellington Sts. May 15, 1923
A C C E P T E D

Bank of Montreal Stamp---Accepted May 16.

*In the
Supreme
Court of
Ontario.*
—
Exhibits,
Ex. 21 R-17.
Cheque, Lon-
don Loan &
Savings Co. to
W. H. Biggs—
\$1000.
14th May,
1923.

Exhibit 21 R-18

(Defendants' Exhibit)

Debit Slip \$1000. W. H. Biggs—Re. Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs, Mtge. B. 46.

Account loan, per cheque No. on Bank of Montreal per con ^{xx}/₁₀₀\$1000.00.

London, May 14th, 1923.

London Loan & Savings Co.
of Canada
PAID
May 14, 1923
London, Ont.

M. J. KENT,
Manager.

*In the
Supreme
Court of
Ontario.*
—
Exhibits,
Ex. 21 R-18.
Debit Slip—
\$1000. W. H.
Biggs—re
Mortgage
B. 46.
14th May,
1923.

30

Part Exhibit D

(Plaintiffs' Exhibit)

6

Extract from Minute Book of London Loan & Savings Co.

Monday, May 21, 1923.

BOARD MET—All present, save Mr. Hunt. Minutes of last meeting read and confirmed. Statement of funds submitted.

H. A. Morine - Letter read re selling Sterling debentures. No action.

M. Doyle - - Renew \$1000 at 8%.

P. Knibbs - Renew \$775 at 8½%.

M. Mickus - Renew \$525 at 8%.

A. E. Koivn - Renew \$925 at 9%.

re Lambert loan - Letter read from H. A. Morine. Laid over.

Mrs. E. Biggs Mtge. W. H. Biggs asks release of vacant lot. Release 30'

B. 47 - - on having the \$3000 second mortgage made a continuing collateral.

Dr. Shaw - Lend \$5000 at 8% for 6 months.

Mr. Wreay - Asks loan of \$3500 on vacant property to build on corner Emery St. and Wharncliffe Rd. Inspector to look at the property.

re Auditors - Letter Registrar read.

Dividend - Moved by Mr. Robinson, seconded by Mr. Baker, it was carried, that a dividend be declared on the stock of the Company for three months ending June 30th, 1923, at rate of 7% per annum on Paid Up Capital to shareholders of record on June 15th, 1923.

M. J. KENT, Manager. GEO. G. McC., President.

Exhibit 21 R-19

(Defendants' Exhibit)

Debit Slip—\$500.—W. H. Biggs re Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46.

Credited him in savings bank per con. Account loan—\$500.

London, May 23/23.

London Loan & Savings Co.

of Canada

PAID

May 23, 1923

London, Ont.

M. J. KENT,

Manager.

30

40

In the
Supreme
Court of
Ontario.

Exhibits.
Part Ex. D.
6

Extract from
Minute Book
of London
Loan & Sav-
ings Co.
21st May,
1923.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 21 R-19.
Debit Slip—
\$500. W. H.
Biggs—re
Mortgage
B. 46.
23rd May,
1923.

Exhibit 21 R-20

(Defendants' Exhibit)

Debit Slip—\$1000.—W. H. Biggs re. Mortgage B. 46.**THE LONDON LOAN AND SAVINGS COMPANY**

Debit W. H. Biggs Mtge. No. B. 46.

And credit W. H. Biggs in Sgs. Bank B. 446 per receipt on back hereof \$1000,
per con. Paid in cash.

London, May 31/23.

10 London Loan & Savings Co.
of Canada
PAID
May 31, 1923
London, Ont.M. J. KENT,
Manager.

(Endorsed on back)

\$1000.

May 31, 1923.

Received from London L. & S. Company the sum of one thousand dollars
being paid me account of my loan on Elmwood Ave. property.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 21 R-20.
Debit Slip—
\$1000.—
W. H. Biggs—
re Mortgage
B. 46.
31st May,
1923.**Exhibit 21 R-21**

(Defendants' Exhibit)

20 **Debit Slip—\$1000.—W. H. Biggs Re. Mortgage B. 46.****THE LONDON LOAN AND SAVINGS COMPANY**

Debit W. H. Biggs Mtge. No. B. 46 Elmwood Ave. property.

Account loan per receipt on back hereof—\$1000.

London, June 7/23.

London Loan & Savings Co.
of Canada
PAID
June 7, 1923
London, Ont.M. J. KENT,
Manager.

(Endorsed on back)

30 \$1000.

June 7/23.

Received from London L. & S. Company the sum of one thousand dollars
being paid me account my loan on Elmwood Ave. property.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 21 R-21.
Debit Slip—
\$1000. W. H.
Biggs—re
Mortgage
B. 46.
7th June, 1923.

Exhibit 21 R-22

(Defendants' Exhibit)

Debit Slip—\$300.—W. H. Biggs Re. Mortgage B. 46.**THE LONDON LOAN AND SAVINGS COMPANY**

Debit W. H. Biggs Mtge. No. B. 46 Elmwood Ave.
 Account loan per receipt on back hereof \$300.
 London, June 9/23.

London Loan & Savings Co.
 of Canada
 P A I D
 June 9, 1923
 London, Ont.

M. J. KENT,
 Manager. 10

\$300.

(Endorsed on back)

June 9, 1923.

Received from London L. & S. Company the sum of three hundred dollars
 being paid me account loan on Elmwood Ave. property.

W. H. BIGGS.

Part Exhibit D

(Plaintiffs' Exhibit)

7

Extract from Minute Book of London Loan & Savings Company. 20

Tuesday, June 12th, 1923

BOARD MET—All present save Mr. Hunt. Minutes of last meeting
 read and confirmed. Statement of funds submitted.

G. Valente - Renewal \$1900 at 8% confirmed.

Standard Reliance Account \$1364 for costs to be paid, Cassels & Co. etc.

R. Speller - Lend \$1200 at 8%.

W. H. Biggs - Asks increase. Decline to increase present loan.

G. B. Charlton - Lend \$1000 at 8%. Commn. 1% to K. McCormick.

re Taxes - Letter from Mr. Clews & Inspector of Taxation, with
 cheque for \$6866.84 over-paid. 30

re Leases for Consult with solicitors as to further protection of Com-
 Deposit boxes etc. pany.

Decorations for Old Left with Mr. Robinson with power to decorate.

Boys Week

J. Neilson - Loans (20) \$1700 each asked. Get plan and particulars.

Wrights Limited - Buy Boyd Mtge. \$1100 at 8% to apply on arrears of
 Wright Limited.

S. B. Green - Lend \$24,000 at 12% subject to first mortgages not
 exceeding \$52,000 in all; time one year, commission 1%
 to H. A. Morine; 5% interest to be paid in advance 40
 and a bonus to be allowed of \$100.

In the
 Supreme
 Court of
 Ontario.

Exhibits.
 Ex. 21 R-22.
 Debit Slip—
 \$300—W. H.
 Biggs—re
 Mortgage
 B. 46.
 9th June, 1923.

In the
 Supreme
 Court of
 Ontario.

Exhibits.
 Part Ex. D.

Extract from
 Minute Book
 of London
 Loan & Sav-
 ings Co.
 12th June,
 1923.

J. O. Paterson - To be notified for suit if interest not paid.
 E. D. Morris - Place case in suit for collection of his smaller mortgage.
 Regent Theatre - Lend \$20,000 at 8%; bonus 10%. No commission.

M. J. KENT,
 Manager.

GEO. G. McC.,
 President.

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Part Ex. D.
 7
 Extract from
 Minute Book
 of London
 Loan & Sav-
 ings Co.
 12th June,
 1923.
 —continued.

Exhibit 21 R-23

(Defendants' Exhibit)

Debit Slip—\$500.—W. H. Biggs—Re. Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

10 Debit W. H. Biggs, Mtge. B. 46.

Paid in cash, per receipt on back hereof—\$500.00. Account loan.
 London, June 15th, 1923.

London Loan & Savings Co.
 of Canada
 PAID

June 15, 1923
 London, Ont.

M. J. KENT,
 Manager.

(Endorsed on back)

London, Ont., June 15th, 1923.

Received from the London Loan and Savings Co. the sum of five hundred dollars, account loan B. 46.

20

W. H. BIGGS.

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Ex. 21 R-23.
 Debit Slip—
 \$500.—W. H.
 Biggs—re
 Mortgage
 B. 46.
 15th June,
 1923.

Exhibit 10-R

(Plaintiffs' Exhibit)

Extract from Mortgage No. 17783—W. H. Biggs—G. A. P. Brickenden—
 \$5000.00.

MORTGAGE

Date - 13th July, 1923.
 Mortgagor - Walter Herbert Biggs, of the City of London in the County
 of Middlesex, Accountant, (his wife Eva Viola Biggs joining
 to bar dower),
 30 Mortgagee - George Arthur Porte Brickenden, of the same place, Solicitor,
 in Trust,
 Consideration \$5,000.00,

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Ex. 10-R.
 Extract from
 Mortgage No.
 17783—W. H.
 Biggs—G. A. P.
 Brickenden
 \$5000.00.
 13th July,
 1923.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 10-R.
Extract from
Mortgage No.
17783—W. H.
Biggs—G. A. P.
Brickenden—
\$5000.00.
13th July,
1923.

—continued.

Lands -

All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex and Province of Ontario, and being composed of part of Lot Number Eleven, in Block "B" according to Plan registered as Number 343 for the City of London, which said Part of said Lot may be more particularly described as follows:—COMMENCING at the Southeast angle of said Lot; Thence Northerly along the Easterly limit of the said Lot being the Westerly boundary of Cathcart Street Ninety-four feet six inches: Thence Westerly parallel with the Southerly limit of the said Lot Eighty-four feet, more or less, to the Westerly limit of the said lot: Thence Southerly along said Westerly limit Ninety-four feet six inches to the Southerly limit of the said Lot being the Northerly boundary of Elmwood Avenue; Thence Easterly along the said Southerly limit Eighty-four feet, more or less, to the place of beginning. 10

Secondly: All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and Province of Ontario, and being composed of part of Lot Number Nineteen on the West side of Ridout Street, South, (formerly Queen Street), according to registered Plan Number 399, which part of said Lot may be more particularly described as follows:—COMMENCING at the North-east angle of said Lot: Thence Southerly along the Easterly limit thereof, being the Westerly boundary of Ridout Street thirty-one feet, four inches: Thence Westerly parallel with Emery Street One Hundred and Five feet: Thence Northerly parallel with Ridout Street Thirty-one feet four inches to the Northerly limit of said Lot: Thence Easterly along the said Northerly limit One Hundred and Five feet, more or less, to the place of beginning. 20 30

**Terms of Re-
payment** -

Provided this mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Five Thousand Dollars in gold coin of lawful money of Canada with interest at Eight per cent. per annum as follows: The principal sum on the Thirteenth day of July, 1925, and the interest at the rate aforesaid payable quarterly on the 13th days of July, October, January and April in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the 40

Registration Certificate - Thirteenth day of October next.
The Mortgagor is to have the privilege of paying the whole or any part of the principal sum on any Interest day.
I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 17 for the 4th Division at 3.37 o'clock P.M., on the 17 day of July, A.D. 1923, as No. 17783. "J. H. Fitzallen", Dep. Registrar.

*In the
Supreme
Court of
Ontario*
—
Exhibits.
Ex. 10-R.
Extract from
Mortgage No.
17783—W. H.
Biggs—G. A. P.
Brickenden—
\$5000.00.
13th July,
1923.

Exhibit 13-R

(Plaintiffs' Exhibit)

10 **Extract from collateral Mortgage—Eva V. Biggs to G. A. P. Brickenden—
No. 17782—\$5000.**

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 13-R.
Extract from
collateral
Mortgage—
Eva V. Biggs
to G. A. P.
Brickenden—
No. 17782—
\$5000.
13th July,
1923.

MORTGAGE

Date - 13th July, 1923.
Mortgagor - Eva Viola Biggs, wife of Walter Herbert Biggs, of the City of London, in the County of Middlesex,
Mortgagee - George Arthur Porte Brickenden, of the same place, Solicitor, in Trust.
Consideration \$5,000.00,
20 **Lands** - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers Eighteen and Nineteen on the West side of Ridout Street, South, (formerly Queen Street) in the said City of London, according to registered Plan Number 399, SAVE AND EXCEPT the Westerly Sixty feet of Lot Number Nineteen and SAVE ALSO that portion of the said lands heretofore conveyed to W. H. Biggs.
**Terms of Re-
payment** - 30 Provided this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Five Thousand Dollars in gold coin of lawful money of Canada with interest at Eight per cent. per annum as follows: The principal sum on the Thirteenth day of July, 1925, and the interest at the rate aforesaid payable quarterly on the 13th days of July, October, January and April in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 13-R.
Extract from
collateral
Mortgage—
Eva V. Biggs
to G. A. P.
Brickenden
No. 17782—
\$5000.
13th July,
1923.
—continued.

**Registration
Certificate** -

satisfied. The first payment of interest to be made on the Thirteenth day of October, next.

The Mortgagor is to have the privilege of paying the whole or any part of the principal sum on any Interest day. This Mortgage is Collateral to a Mortgage of even date from Walter Herbert Biggs to George Arthur Porte Brickenden, in Trust.

I certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 17 for the 4th Division at 10 3.35 o'clock P.M., on the 17 day of July, A.D. 1923, as No. 17782. "J. H. Fitzallen" Dep. Registrar.

Exhibit 21 R-24

(Defendants' Exhibit)

Debit Slip—\$400.—W. H. Biggs—re. Mortgage B. 46.

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B. 46 Elmwood Ave.

Balance loan per receipt on back hereof—\$400.

London, July 21/23.

London Loan & Savings Co.
of Canada
PAID
July 21, 1923
London, Ont.

M. J. KENT, 20
Manager.

(Endorsed on back)

\$400.

July 21, 1923.

Received from London L. & S. Company the sum of Four hundred dollars being balance of my loan on my Elmwood Ave. Apartment.

W. H. BIGGS.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 21 R-24.
Debit Slip—
\$400.—W. H.
Biggs—re
Mortgage
B. 46.
21st July,
1923.

Exhibit 11-R

(Plaintiffs' Exhibit)

**Extract from Mortgage No. 17944—W. H. Biggs to G. A. P. Brickenden—
\$2,000.00.**

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 11-R.
Extract from
Mortgage No.
17944—W. H.
Biggs to G. A.
P. Brickenden
—\$2,000.00.
24th August,
1923.

Date - 24th August, 1923.
Mortgagor - Walter Herbert Biggs, of the City of London, in the County of Middlesex, Accountant, (his wife, Eva Viola Biggs, joining therein to bar dower),
Mortgagee - George Arthur Porte Brickenden of the same place, Solicitor, in Trust,
10 **Consideration** \$2,000.00,
Lands - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex and Province of Ontario, and being composed of part of Lot Number Eleven, in Block "B" according to Plan registered as Number 343 for the City of London, which said Part of said Lot may be more particularly described as follows:—COMMENCING at the South-east angle of said Lot; Thence Northerly along the Easterly limit of the said Lot being the Westerly boundary of Cathcart Street ninety-four feet six inches: Thence Westerly parallel with the Southerly limit of the said Lot Eighty-four feet, more or less, to the Westerly limit of the said lot: Thence Southerly along said Westerly limit Ninety-four feet six inches to the southerly limit of the said Lot being the Northerly boundary of Elmwood Avenue: Thence Easterly along the said Southerly limit Eighty-four feet, more or less, to the place of beginning.
20
Secondly: All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and Province of Ontario, and being composed of part of Lot Number Nineteen on the West side of Ridout Street, South, (formerly Queen Street) according to registered Plan Number 399, which part of said Lot may be more particularly described as follows:—COMMENCING at the North-east angle of said Lot; Thence Southerly along the Easterly limit thereof, being the Westerly boundary of Ridout Street, Thirty-one feet four inches: Thence Westerly parallel with Emery Street, One Hundred and Five feet: Thence Northerly parallel with Ridout Street
30
Thirty-one feet four inches, to the Northerly limit of said Lot; Thence Easterly along the said Northerly limit One Hundred and Five Feet more or less to the place of beginning.
40
Thirdly: All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London,

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. 11-R.
Extract from
Mortgage No.
17944—W. H.
Biggs to G. A.
P. Brickenden
—\$2,000.00.
24th August,
1923.*

—continued.

in the County of Middlesex, and being composed of part of Lot Number Forty-five on the east side of St. George Street, in the City of London:—COMMENCING at the North-west angle of the said Lot and at the intersection of the southerly limit of Huron Street with the easterly limit of the said St. George Street: Thence Easterly along the Northerly limit of the said Lot, One Hundred and Forty feet; Thence Southerly in a straight line parallel to the Westerly limit of the said Lot, One Hundred and Twenty-four feet: Thence Westerly in a straight line to the Northerly limit of the said Lot 140 feet to the Westerly limit thereof; Thence Northerly along the said Westerly limit, One Hundred and Twenty-four feet to the place of beginning. 10

**Terms of Re-
payment**

PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Two Thousand Dollars in gold coin of lawful money of Canada with interest at 8% per annum as follows: One Hundred Dollars on account of principal to become due and payable on the 13th day of October, 1923, and on the 13th days of each and every month thereafter until September 13th, 1924, and the balance of the principal sum on the 13th day of October, 1924, and the interest at the rate aforesaid payable quarterly on the 13th days of January, April, July and October in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the 13th day of October next. 20

The interest is to be calculated on the principal owing on the preceding interest day. 30

The Mortgagor is to have the privilege of paying the whole or any part of the Principal Sum on any interest day.

**Registration
Certificate**

I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 17 for the 4th Division at 3.15 o'clock P.M., on the 31 day of August, A.D. 1923 as No. 17944. "J. H. Fitzallen", Dep. Registrar.

Exhibit 14-R

(Plaintiffs' Exhibit)

Extract from Collateral Mortgage No. 17945—Eva V. Biggs to G. A. P. Brickenden—\$2,000.00.*In the
Supreme
Court of
Ontario.**Exhibits.
Ex. 14-R.
Extract from
Collateral
Mortgage No.
17945—Eva
V. Biggs to G.
A. P. Brick-
enden—
\$2,000.00.
24th August,
1923.*

- Date** - 24th August, 1923,
- Mortgagor** - Eva Viola Biggs, wife of Walter Herbert Biggs, of the City of London, in the County of Middlesex,
- Mortgagee** - George Arthur Porte Brickenden, of the same place, Solicitor, in Trust,
- 10 Consideration** \$2,000.00,
- Lands** - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers Eighteen and Nineteen on the West side of Ridout Street, South, (formerly Queen Street) in the said City of London, according to registered Plan Number 399. **SAVE AND EXCEPT** the Westerly Sixty feet of Lot Number Nineteen, and **SAVE ALSO** that portion of the said lands heretofore conveyed to W. H. Biggs.
- 20 Terms of Re-
payment** - **PROVIDED** this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisos herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Two Thousand Dollars in gold coin of lawful money of Canada, with interest at 8% per annum as follows: One Hundred Dollars on account of principal to become due and payable on the 13th day of October, 1923, and on the 13th days of each and every month thereafter until September 13th, 1924, and the balance of the principal sum on the 13th day of October, 1924, and the interest at the rate aforesaid payable quarterly on the 13th days of January, April, July and October in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the 13th day of October next. The Interest is to be calculated on the principal owing on the preceding interest day.
- 30**
- The Mortgagor is to have the privilege of paying the whole or any part of the Principal Sum on any Interest day.
- 40**
- This Mortgage is Collateral to a Mortgage of even date from Walter Herbert Biggs to George Arthur Porte Brickenden, in Trust.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 14-R.
Extract from
Collateral
Mortgage No.
17945—Eva
V. Biggs to G.
A. P. Brick-
enden—
\$2,000.00.
24th August,
1923.

Registration Certificate - I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 17 for the 4th Division at 3.20 o'clock P.M., on the 31st day of August A.D. 1923 as No. 17945. "J. H. Fitzallen", Dep. Registrar.

—continued.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 29-R.
Statement
from G. A. P.
Brickenden
re W. H.
Biggs' Mort-
gage—
\$2000.00.
24th August,
1923.

Exhibit 29-R

(Plaintiffs' Exhibit)

Statement from G. A. P. Brickenden re W. H. Biggs' Mortgage—\$2,000.00.

BIGGS, Walter Herbert \$2000 (Mtge.)

3rd on 114-112 Elmwood and Coll. secured 10
by 140 ft. x 130 ft. on N. E. Cor. St. George and Huron—money advanced
24 Aug. /23—Int. payable ¼ly 13 April-July-Oct.-Jan. 8% \$100 off prin.
monthly.

Due 13 Oct./24.

1923

Aug. 24	Principal	\$2,000.00	Oct. 18	Int. Paid	\$ 40.00
Oct. 13	Int.	21.92	Oct. 18	Prin. Paid	100.00
Oct. 13	Prin.	100.00	Dec. 1	Prin. Paid	100.00
Nov. 13	Prin.	100.00	Dec. 27	Prin. Paid	100.00
Dec. 13	Prin.	100.00	Jan. 31	Int. Paid	38.00 20
			Jan. 31	Prin. Paid	100.00

1924

Jan. 13	Int. \$18.08 overpaid.	38.00	Mar. 1	Prin. Paid	100.00
Jan. 13	Prin.	100.00	April 5	Prin. Paid	100.00
Feb. 13	Prin.	100.00	June 30	Int.	34.00
Mar. 13	Prin.	100.00	June 12	Prin. Paid	100.00
April 13	Int.	34.00	June 30	Prin. Paid	100.00
April 13	Prin.	100.00	June 30	Prin. Paid	100.00
May 13	Prin.	100.00	June 30	Int. Paid	28.00
June 13	Prin.	100.00	July 13	Prin. Paid	100.00
July 13	Int.	28.00	Sept. 22	Prin. Paid	100.00 30
July 13	Prin.	100.00	Oct. 17	Prin. Paid	100.00
Aug. 13	Prin.	100.00	Nov. 8	Int. Paid	29.33
Sept. 13	Prin.	100.00	Nov. 8	Prin. Paid	800.00
Oct. 13	Int.	29.33			
Oct. 13	Prin. due in full.	800.00			

Part Exhibit 15-R

(Plaintiffs' Exhibit)

1

**Extract from Mortgage No. 18495, W. H. Biggs to G. A. P.
Brickenden— \$1,200.00.**

- Date** - 13th January, 1924,
- Mortgagor** - Walter Herbert Biggs, of the City of London, in the County of Middlesex, Accountant, (his wife Eva Viola Biggs joining to bar dower),
- 10 **Mortgagee** - George Arthur Porte Brickenden, of the same place, Solicitor, in trust,
- Consideration** \$1,200.00,
- Lands** - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex and Province of Ontario, and being composed of part of Lot Number Eleven, in Block "B" according to Plan registered as Number 343 for the City of London, which said part of said Lot may be more particularly described as follows:—COMMENCING at the South-east angle of said Lot: Thence Northerly along the Easterly limit of the said Lot being the Westerly boundary of Cathcart Street Ninety-four feet six inches: Thence Westerly parallel with the Southerly limit of the said Lot Eighty-four feet, more or less, to the Westerly limit of the said Lot: Thence Southerly along said Westerly limit Ninety-four feet six inches to the Southerly limit of the said lot being the Northerly boundary of Elmwood Avenue: Thence Easterly along the said Southerly limit, Eighty-four feet, more or less, to the place of beginning.
- 20
- 30 Secondly: All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex and Province of Ontario, and being composed of part of Lot Number Nineteen on the West side of Ridout Street, South (formerly Queen Street) according to registered Plan Number 399, which part of said Lot may be more particularly described as follows:—COMMENCING at the North-east angle of said Lot: Thence Southerly along the Easterly limit thereof, being the Westerly boundary of Ridout Street, Thirty-one feet four inches: Thence Westerly parallel with Emery Street One Hundred and Five feet: Thence Northerly parallel with Ridout Street, Thirty-one feet four inches, to the Northerly limit of said Lot: Thence Easterly along the said Northerly limit One Hundred and Five feet more or less to the place of beginning.
- 40

*In the
Supreme
Court of
Ontario.*Exhibits.
Part Exhibit
15-R.1
Extract from
Mortgage No.
18495. W. H.
Biggs to G. A.
P. Brickenden,
\$1,200.00.
13th January,
1924.

In the
Supreme
Court of
Ontario.

Exhibits.
Part Exhibit
15-R.

1
Extract from
Mortgage No.
18495—W. H.
Biggs to G. A.
P. Brickenden,
\$1,200.00.
13th January,
1924.

—continued.

Thirdly: All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of part of Lot Number Forty-five on the East side of St. George Street, in the City of London:—COMMENCING at the North-west angle of the said Lot and at the intersection of the Southerly limit of Huron Street with the Easterly limit of the said St. George Street: Thence Easterly along the Northerly limit of the said Lot One Hundred and Forty feet: Thence Southerly in a straight line parallel to the Westerly limit of the said Lot, One Hundred and Twenty-four feet: Thence Westerly in a straight line to the Northerly limit of the said Lot One Hundred and Forty feet to the Westerly limit thereof: Thence Northerly along the said Westerly limit, One Hundred and Twenty-four feet to the place of beginning. 10

**Terms of Re-
payment.**

PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Twelve Hundred Dollars in gold coin of lawful money of Canada with interest at Eight per cent. per annum as follows: One Hundred Dollars (\$100.00) on account of Principal to become due and payable on the Thirteenth day of April, 1924; One Hundred Dollars (\$100.00) on the Thirteenth days of each and every month thereafter until the Thirteenth day of February, 1925, and the balance of the principal sum on the Thirteenth day of March, 1925, and the interest at the rate aforesaid payable quarterly on the 13th days of January, April, July and October in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the Thirteenth day of April next. 20 30
The Interest is to be calculated on the Principal owing on the preceding Interest day.

The Mortgagor is to have the privilege of paying the whole or any part of the Principal sum on any Interest day

**Registration
Certificate.**

I certify that the within instrument is duly entered and registered in the Registry office for the Registry Division of the City of London in Book No. 18 for the 4th Division at 3.37 o'clock P.M., on the 13th day of Feb. A.D. 1924 as No. 18495. "J. H. Fitzallen," Dep. Registrar. 40

Part Exhibit 15-R

(Plaintiffs' Exhibit)

2

Extract from Collateral Mortgage No. 18494—Eva V. Biggs to G. A. P. Brickenden, \$1,200.00

Date - 13th January, 1924,
Mortgagor - Eva Viola Biggs, wife of Walter Herbert Biggs, of the City of London, in the County of Middlesex,
Mortgagee - George Arthur Porte Brickenden, of the same place, Solicitor, in Trust.
Consideration \$1,200.00,
Lands - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers Eighteen and Nineteen on the West side of Ridout Street, South, (formerly Queen Street) in the said City of London, according to registered Plan Number 399, SAVE AND EXCEPT the Westerly Sixty feet of Lot Number Nineteen, and SAVE ALSO that portion of the said lands heretofore conveyed to W. H. Biggs.

Terms of Re-payment. PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London in the Province of Ontario of Twelve Hundred Dollars in gold coin of lawful money of Canada with Interest at Eight per cent. per annum as follows: One Hundred Dollars (\$100.00) on account of Principal to become due and payable on the Thirteenth day of April, 1924; One Hundred Dollars (\$100.00) on the Thirteenth days of each and every month thereafter until the Thirteenth day of February, 1925, and the balance of the principal sum on the Thirteenth day of March, 1925, and the interest at the rate aforesaid payable quarterly on the 13th days of January, April, July and October in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the Thirteenth day of April next.

The interest is to be calculated on the Principal owing on the preceding Interest day.

The Mortgagor is to have the privilege of paying the whole or any part of the Principal sum on any Interest day.

This Mortgage is Collateral to a Mortgage of even date from Walter Herbert Biggs to George Arthur Porte Brickenden, in trust.

*In the
Supreme
Court of
Ontario.**Exhibits.
Part Exhibit
15-R.**2
Extract from
Collateral
Mortgage
No. 18494—
Eva V. Biggs to
G. A. P.
Brickenden—
\$1200.00.
13th January
1924.**—continued.*

In the
Supreme
Court of
Ontario.

Exhibits.
Part Exhibit
15-R.
2

Extract from
Collateral
Mortgage
No. 18494—
Eva V. Biggs to
G. A. P.
Brickenden—
\$1200.00.
13th January,
1924.

—continued.

**Registration
Certificate**

I certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 18 for the 4th Division at 3.35 o'clock P.M., on the 13th day of Feb. A.D. 1924, as No. 18494. "J. H. Fitzallen," Dep. Registrar.

Exhibit 30-R

(Plaintiffs' Exhibit)

Statement—G. A. P. Brickenden, Re W. H. Biggs' Mortgage, \$1200.00.

BIGGS, Walter Herbert—\$1200.—3rd Mtge. (bonus \$300) on 114-112 Elmwood and collaterally secured by Ridout and Emery Street property— 10
money advanced—\$750, Feb. 9/23—\$450—16 Feb. /24. 8% on 13
April-July-Oct.-Jan. ie. 1/4ly.—Due 13 April, 1925. \$100 off prin.
monthly com'g 13 April /24 until paid.

1924			
Feb. 13	Prin.	\$1,200.00	
April 13	Int. due.	16.00	June 30 Int. \$ 16.00
April 13	Prin. due.	100.00	June 30 Prin. 100.00
May 13	Prin. due.	100.00	June 30 Prin. 100.00
June 13	Prin. due.	100.00	June 30 Prin. 100.00
July 13	Int. due.	24.00	June 30 Int. 24.00 20
July 13	Prin. due.	100.00	July 9 Prin. 100.00
Aug. 13	Prin. due.	100.00	Sept. 22 Prin. 100.00
Sept. 13	Prin. due.	100.00	Oct. 17 Prin. 100.00
Oct. 13	Int. due.	14.00	Nov. 8 Int. 14.00
Oct. 13	Prin. to be paid.	600.00	Nov. 8 Prin. pd. in full. . . 600.00

Exhibit 5-R

(Plaintiffs' Exhibit)

3

**Mortgage No. 19476, W. H. Biggs to London Loan & Savings
Company, \$13,500.00.** 30

THIS INDENTURE, made (in duplicate) the eighth day of November, one thousand nine hundred and twenty-four.

IN PURSUANCE OF THE SHORT FORMS OF MORTGAGES ACT.

BETWEEN Walter Herbert Biggs, of the City of London, in the County of Middlesex, Accountant, hereinafter called the Mortgagor, of the First Part, The London Loan and Savings Company of Canada, hereinafter called the Mortgagee, of the Second Part, and Eva Viola Biggs, the wife of the said

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. 5-R.
3

Mortgage
No. 19476—
W. H. Biggs
to London
Loan & Sav-
ings Co.
\$13,500.00.
8th November,
1924.

Mortgagor of the Third part, WITNESSETH, that in consideration of the sum of Thirteen Thousand, Five Hundred Dollars now paid by the Mortgagee to the Mortgagor, the Mortgagor who conveys as beneficial owner doth Grant and Mortgage unto the Mortgagee, its successors and assigns:

ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex and Province of Ontario, and being composed of part of Lot Number Eleven, in Block "B" according to Plan registered as Number 343 for the City of London, which said Part of said Lot may be more particularly described as follows:—COMMENCING at the South-east angle of said Lot: Thence Northerly along the Easterly limit of the said Lot being the Westerly boundary of Cathcart Street, ninety-four feet, six inches; Thence Westerly parallel with the Southerly limit of the said Lot, eighty-four feet, more or less, to the Westerly limit of the said lot; Thence Southerly along said Westerly limit ninety-four feet, six inches to the Southerly limit of the said Lot being the Northerly boundary of Elmwood Avenue; Thence Easterly along the said Southerly limit, eighty-four feet, more or less, to the place of beginning.

SECONDLY:—
ALL AND SINGULAR that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and Province of Ontario, and being composed of part of Lot Number nineteen on the West side of Ridout Street, South, (formerly Queen Street) according to registered Plan Number 399, which part of said Lot may be more particularly described as follows:—COMMENCING at the North-east angle of said Lot; Thence Southerly along the Easterly limit thereof, being the Westerly boundary of Ridout Street, thirty-one feet, four inches; Thence Westerly parallel with Emery Street, One Hundred and five feet; Thence Northerly parallel with Ridout Street, thirty-one feet, four inches, to the Northerly limit of said Lot; Thence Easterly along the said Northerly limit, one hundred and five feet more or less to the place of beginning.

AND the said party of the third part Wife of the said Mortgagor hereby bars her dower in the said lands and agrees that the Mortgagor and Mortgagee may deal with the said lands and this mortgage by releasing parts, extending the time for payment and otherwise as may be advised without affecting this release (of dower) and may treat her in all respects as if she were principally liable.

PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Thirteen Thousand, Five Hundred Dollars in gold coin of lawful money of Canada with interest at Eight per cent. per annum as follows: Two Hundred and Fifty Dollars (\$250.00) is to be paid on account of Principal and interest on the 8th day of each month; such payment being blended principal and interest, not in advance; Interest is to be reckoned on the Principal

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 5-R.
Mortgage
No. 19476—
W. H. Biggs
to London
Loan & Sav-
ings Co.—
\$13,500.00.
8th November,
1924.

—continued.

owing the last payment day and is to be deducted from each monthly payment and the balance applied on principal; and the interest at the rate aforesaid payable monthly on the Eighth days of each month in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of blended interest and principal to be made on the Eighth day of December, next.

AND upon payment of all further advances or loans hereafter to be made by the Mortgagee to the Mortgagor as and when the same shall become due, together with all other amounts owing or to be owing by the said Mortgagor, with interest upon the said advances or amounts at the rate and in the manner aforesaid. 10

AND Taxes and performance of Statute Labor, and provided all moneys then payable charged by these presents on said lands be paid.

AND IT IS HEREBY AGREED that in case default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable, and the sum in arrears for interest from time to time as well after as before maturity shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in six months from the time of default a rest shall be made, and compound interest at the rate aforesaid shall be payable on the aggregate amount then due as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge on the said lands. 20

AND IT IS FURTHER AGREED that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of said covenants or affect the Mortgagee's right to interest at the rate and in manner aforesaid.

THE said Mortgagor COVENANTS with the said Mortgagee that the Mortgagor will pay the Mortgage money and interest and observe the above provisos. THAT the Mortgagor has a good title in fee simple to the said lands. AND that he has the right to convey the said lands to the said Mortgagee. AND that on default the Mortgagee shall have quiet possession of the said lands free from all encumbrances. AND that the said Mortgagor will execute such further assurances of the said lands as may be requisite, and that too as well before as after default. THAT the Mortgagor has done no act to encumber the said lands, and that he will not commit or permit any waste on the Mortgaged lands. THAT the Mortgagee may insure the Buildings on the said lands to the amount of not less than their full insurable value in an insurance Company to be selected by the Mortgagee with loss payable to them, and any sums paid by the Mortgagee for premiums to be a charge upon the lands and repayable forthwith with interest at the rate aforesaid, notwithstanding anything hereinbefore set out. AND the Mortgagee shall have a lien for the Mortgage debt on all insurance on the said buildings whether effected under any covenant herein contained or otherwise. PRO- 30 40

VIDED that in case of damage by fire to the buildings on the said Mortgaged premises the Mortgagee shall on receipt of the insurance money, or any part thereof, credit the same on the Mortgage or renewal thereof, less a discount at the rate of interest aforesaid, for six months.

AND the Mortgagor Doth Release to the Mortgagee ALL his claims upon the said lands subject to the said Provisos. PROVIDED that the said Mortgagee on default of payment for one month may on giving one month's notice enter on and lease or sell the said lands, and this power may be exercised on default in payment of any sum of money hereby made payable or upon
 10 discovery that any covenant is untrue or upon breach or non-observance of any covenant stipulation or proviso herein, or upon the registration of any Mechanic's Lien against the said premises, and the said notice may run concurrently with the said default, and the Mortgagee may in any case serve the notice by leaving it with any one residing on the premises at the time of service, or by posting the notice up in some place on the premises, or at the option of the Mortgagee by publishing the same once in some newspaper published in the County in which the said lands are situate, and that such notice shall be sufficient though not addressed to any person or persons by
 20 name or designation, and notwithstanding any person or persons to be affected thereby may be unknown, unascertained or under disability, and on any sale time for payment may be given, special conditions may be made, and the vendor may rescind any sale, buy in or vary any contract of sale, and on any sale at auction may buy in and re-sell without being responsible for any deficiency, and notwithstanding any irregularity or informality in any such sale a bona fide purchaser shall take a good title, and the costs of any abortive sale shall become a charge upon the lands and the Mortgagee may tack them to their mortgage debt.

PROVIDED ALWAYS that in default of payment for one month and ten days the said Mortgagee may without any notice whatever enter upon
 30 the said land and proceed under and exercise the power of sale hereinbefore conferred, and also without entry and whether in or out of possession exercise said power after said default.

INTEREST is to be calculated on the Principal owing on the preceding interest day.

THE MORTGAGOR is to have the privilege of paying the whole or any part of the principal sum on any interest day.

THE MORTGAGEE is to assume the present Mortgage for \$5,000.00 on the property registered as Number 17783 and is to pay off the same at the date of its maturity from the proceeds of this Mortgage.

W. H. B.

40 THE Mortgagor agrees that neither the execution nor registration of this mortgage shall bind the Mortgagee to advance the whole or any part of the money hereby secured, nor the advance of a part of the moneys secured hereby bind the Mortgagee to advance any unadvanced portion thereof, but

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 5-R.
Mortgage
No. 19476
W. H. Biggs
to London
Loan & Sav-
ings Co.—
\$13,500.00.
8th November,
1924.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 5-R.
Mortgage
No. 19476
W. H. Biggs
to London
Loan & Sav-
ings Co.—
\$13,500.00.
8th November,
1924.

nevertheless the estate hereby conveyed shall take effect forthwith upon the execution of these presents by the Mortgagor, and the expenses of the examination of the title and of this mortgage and valuation of the property for the purpose of this loan are to be secured hereby in any event, the same to be charged hereby upon the said lands, and shall be without demand thereof, payable forthwith with interest at the rate provided for in this mortgage, and in default, the Mortgagee's power of sale hereby given, and all other remedies hereunder shall be exercisable.

PROVIDED that in default of the payment of the interest hereby secured (or any instalment of principal) the principal hereby secured shall become payable if the Mortgagee so elects. 10

PROVIDED that until default of payment the Mortgagor shall have quiet possession of the said lands.

AND the said Mortgagor covenants with the said Mortgagee that if at any time before the expiration of three years from the date hereof the Mortgagee, by reason of any default hereinbefore mentioned, receive, from a sale or otherwise howsoever, the whole amount of the said principal, or any portion thereof, not herein specifically agreed to be received at a time certain, they shall be besides entitled to and shall be forthwith paid by the Mortgagor or may deduct from any moneys derived from the property, by sale or otherwise, a bonus equal to six months' interest in advance at the rate aforesaid on the said principal sum or on the portion thereof received. 20

AND the Mortgagor hereby attorns to and becomes tenant at will to the Mortgagee, its successors and assigns at a rent equivalent to the principal unpaid and all interest earned by this mortgage, but the Mortgagee is not to be accountable in any way for more than the actual moneys received by them.

AND the said Mortgagor covenants with the said Mortgagee that in the event of non-payment of the said principal moneys at the time or times herein provided, or within one month thereafter, with interest for said month, then the Mortgagor shall not require the Mortgagee to accept payment of said principal moneys without paying a bonus equal to three months' interest in advance on the said principal moneys. Such bonus to be in lieu of notice of intention to pay, the right to give or receive which is hereby waived. 30

AND the Mortgagor further agrees that at any time he pays or remits to the Mortgagee any sum, or sums, not sufficient to pay any instalment of principal or interest, due or maturing, the Mortgagee may deposit the said amount in its Savings department at the current rate of interest paid Savings depositors, and when a sufficient sum is at the credit of the Mortgagor in the said Savings department to pay any instalment of principal or interest, the same shall be so applied by the Mortgagee in payment first of interest and then of principal, and until such sufficient sum is so applied, interest on arrears shall continue at the rate secured by this mortgage. 40

THE Mortgagor covenants and agrees with the said Mortgagee that

upon each case of default arising under this mortgage, the Mortgagee may at any time and without the concurrence of any other person, repair, finish and put in order any building or other improvements on the mortgaged lands, and may inspect, take care of, lease, collect the rents, and manage generally the mortgaged property as it may deem expedient, and all lawful costs, charges and expenses, including the allowance for the care, pains and trouble of any officer of the Mortgagee or other person appointed for such purpose, shall be payable forthwith to the Mortgagee, and shall be a charge upon the mortgaged premises and bear interest and compound interest at the mortgage rate.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 5R.
Mortgage
No. 19476
W. H. Biggs
to London
Loan & Sav-
ings Co.
\$13,500.00.
8th November,
1924.
—continued.

AND as part of the consideration for the advance of the said Mortgage moneys, the Mortgagor agrees not to claim the benefit of, and hereby expressly waives, all rights to exemption from seizure or distress under any statute of this Province, or otherwise howsoever in case of the exercise of any right of distress under these presents, and the Mortgagor further agree that notwithstanding the provisions contained in Section 10, Chapter 120, Revised Statutes of Canada, 1906, and Section 17 Chap. 112, also Section 35, Sub-section 5, Chap. 184, Revised Statutes of Ontario, 1914, he will not pay off or redeem the principal moneys secured by this Mortgage at an earlier period than hereinbefore limited.

PROVIDED, and it is hereby agreed, that in construing these presents the words "Mortgagor" and "Mortgagee" and the personal pronoun "he" or "she" relating thereto and used therewith shall be read and construed as "Mortgagor or Mortgagors," "Mortgagee or Mortgagees," and "his," "her," or "their," respectively, as the number and gender of the party or parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Mortgagee shall be equally secured to and exercisable by his, her or their heirs, executors, administrators and assigns, or their successors and assigns as the case may be. And that all covenants, liabilities and obligations entered into or imposed upon the Mortgagor or Mortgagors shall be equally binding upon his, her or their heirs, executors, administrators and assigns, or successors and assigns.



THE Mortgagor covenants with the Mortgagee to produce to the Mortgagee on or before the 31st day of December in each year, tax receipts showing payment of the taxes against said lands for such year; and in default thereof, that the Mortgagee may obtain same and the Mortgagor will pay \$5 as and for expenses of obtaining same, which amount shall be a charge upon the said lands, payable forthwith.

Any bonus charged in connection with this loan, shall draw interest from date of mortgage at said rate. Mortgagee to have sole right of placing insurance on the mortgaged property. If loan is paid off before maturity preliminary expenses to be added to Company's claim. If from any cause

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 5-R.
Mortgage
No. 19476—
W. H. Biggs
to London
Loan & Sav-
ings Co.—
\$13,500.00.
8th November,
1924.
—continued.

whatever, there is any litigation in connection with this mortgage, or titles to the lands therein mentioned, or any of securities given collaterally, all costs, charges and expenses in connection therewith, including solicitors' and clients' costs shall be paid by the mortgagor, and be a charge on the lands hereinbefore described.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED, }
Having been first explained to the executing } W. HERBERT BIGGS, 
parties }
IN THE PRESENCE OF }
HELEN PERRY. } EVA V. BIGGS.  10

I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 18, for the 4th Division at 2.30 o'clock P.M., on the 12th day of Nov. A.D. 1924, as No. 19476. J. H. Fitzallen, Dep. Registrar.

Exhibit 4-R

(Defendants' Exhibit)

Extract from Collateral Mortgage No. 19477, Eva V. Biggs to London Loan & Savings Company, \$13,500.00. 20

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 4-R.
Extract from
Collateral
Mortgage
No. 19477—
Eva V. Biggs
to London
Loan & Sav-
ings Company
—\$13,500.00.
8th November,
1924.

Date - 8th November, 1924,
Mortgagor - Eva Viola Biggs, wife of Walter Herbert Biggs, of the City of London, in the County of Middlesex,
Mortgagee - The London Loan and Savings Company of Canada.
Consideration - \$13,500.00.
Lands - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers Eighteen and Nineteen on the West side of Ridout Street, South, (formerly Queen Street) in the said City of London, 30
according to registered Plan Number 399. SAVE AND EXCEPT the Westerly sixty feet of Lot Number Nineteen, and SAVE ALSO that portion of the said lands heretofore conveyed to W. H. Biggs.
**Terms of Re-
Payment** - PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisoes herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Thirteen Thousand Five Hundred Dollars in gold coin of lawful money of Canada with interest at Eight per cent. per annum as 40
follows: Two Hundred and Fifty Dollars (\$250.00) is to be paid on account of Principal and interest on the 8th day of

10 each month; such payment being blended principal and interest, not in advance; Interest is to be reckoned on the Principal owing the last payment day and is to be deducted from each monthly payment and the balance applied on principal; and the interest at the rate aforesaid payable half-yearly on the Eighth days of each month in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of blended interest and principal to be made on the Eighth day of December, next. Interest is to be calculated on the Principal owing on the preceding interest day.

In the Supreme Court of Ontario.
—
Exhibits.
Ex. 4-R.
Extract from Collateral Mortgage—
No. 19477—
Eva V. Biggs to London Loan & Savings Company—\$13,500.00.
8th November, 1924.

—continued.

The Mortgagor is to have the privilege of paying the whole or any part of the principal sum on any interest day.

This Mortgage is collateral to a Mortgage of even date given by Walter Herbert Biggs to The London Loan and Savings Company of Canada.

20 **Registration Certificate.**
I certify that the within Instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 18 for the 4th Division at 2.35 o'clock P.M., on the 12th day of Nov. A.D. 1924 as No. 19477. "J. H. Fitzallen," Dep. Registrar.

Exhibit 22-R

(Plaintiffs' Exhibit)

Cheque, London Loan & Savings Company, to Dymont Baker Lumber Company, \$1,507.44.

In the Supreme Court of Ontario.
—
Exhibits.
Ex. 22-R.
Cheque, London Loan & Savings Co. to Dymont Baker Lumber Co. \$1507.44.
8th November, 1924.

No. 2117
THE LONDON LOAN & SAVINGS CO., OF CANADA
London, Canada, Nov. 8, 1924

30 To THE BANK OF MONTREAL City Hall Branch
Pay to the order of Dymont Baker Lumber Co. \$1507.44
Fifteen hundred and seven..... $\frac{44}{100}$ Dollars

E. Pearson, Bank of Montreal 1-348
Teller. 2 Nov. 12, 1924 2 M. J. KENT,
Bank of Montreal Dundas & Wellington Sts. Branch, London, Ont. Manager.
London, Ont.
Nov. 12, 1924

40 DUNDAS & WELLINGTON STS.
ACCEPTED (Endorsed on back) a/c W. H. Biggs Loan
The London Loan & Savings Co. Stamps
Bank of Montreal Stamp
Pay to the order of
The London Loan & Savings Co. of Canada
The Dymont-Baker Lumber Co.

"Jno. T. Wallace" Manager.

*In the
Supreme
Court of
Ontario.*

Exhibit 23 R-6

(Plaintiffs' Exhibit)

Exhibits.
Ex. 23 R-6.
Direction—
W. H. Biggs
and Eva V.
Biggs to Lon-
don Loan &
Savings Co.—
re Dymen-
t-Baker Cheque.
8th November,
1924.

**Direction, W. H. Biggs and Eva V. Biggs to London Loan & Savings
Company, re Dymen-Baker Cheque.**

London, Ontario, November 8, 1924.

The London Loan & Savings Company,
City.

Dear Sir:—

Re Mortgage Loan \$13,500

Out of the proceeds payable to me in connection with the above loan, 10
kindly pay the Dymen-Baker Company's account in full, this amounts to
\$1507.44 and this shall be your order and authority for so doing.

Yours truly,

W. HERBERT BIGGS,
EVA V. BIGGS.

*In the
Supreme
Court of
Ontario.*

Exhibit 23 R-2

(Plaintiffs' Exhibit)

Exhibits.
Ex. 23 R-2.
Direction—
W. H. Biggs
and Eva V.
Biggs to Lon-
don Loan &
Savings Co.—
authorizing
disbursements
—\$936.46 and
\$699.68.
8th November,
1924.

**Direction, W. H. Biggs and Eva V. Biggs to London Loan & Savings
Company authorizing disbursements, \$936.46 and \$699.68.**

London, Ont., November 8th, 1924 20

The London Loan & Savings Co., of Canada,
City.

Dear Sirs:—

Re Mortgages, W. H. Biggs and Eva Viola Biggs

Let this be your authority to credit yourselves with \$936.46 on account
of First Mortgage held on Number 315 to 319 Ridout Street, and also \$699.68
on the First Mortgage on 116 Elmwood Avenue, out of the proceeds of this
\$13,500 loan and place the balance to the credit of B446.

Yours truly,

W. HERBERT BIGGS,
EVA V. BIGGS.

"W. H. B."

"E. V. B."

30

Exhibit 23 R-5

(Plaintiffs' Exhibit)

Debit Slip, \$1508.06, W. H. Biggs, Re Mortgage B. 78

THE LONDON LOAN AND SAVINGS COMPANY

Debit W. H. Biggs Mtge. No. B78 new loan.

Cheque No. 2117 on Bk. Montreal to Dymont Baker Lumber Co. \$1507.44
per order attached and stamps. 62

London, Nov. 8 /24. \$1508.06

10 London Loan & Savings Co.
of Canada
PAID
Nov. 8, 1924
London, Ont.

M. J. KENT,
Manager.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 23 R-5.
Debit Slip—
\$1508.06—
W. H. Biggs—
Re. Mortgage
B. 78.
8th November,
1924.

Exhibit 24-R

(Plaintiffs' Exhibit)

Cheque, W. H. Biggs to G. A. P. Brickenden, \$1,993.33

"B446K"

LONDON LOAN & SAVINGS CO., OF CANADA

\$1993.33.

20 London, Ont., November 8, 1924.

Pay to G. A. P. Brickenden or order

Nineteen Hundred and Ninety-three & $\frac{33}{100}$ Dollars

Account No. B446

W. H. BIGGS.

"O.K., G. A. P. B."

London Loan & Savings Co.
of Canada
PAID
Nov. 13, 1924
London, Ont.

30 (Endorsed on back) in 443B, G. A. P. Brickenden

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 24-R.
Cheque. W. H.
Biggs to
G. A. P.
Brickenden—
\$1,993.33.
8th November,
1924.

Part Exhibit 31-R

(Plaintiffs' Exhibit)

1**Cheque, W. H. Biggs to M. F. Evans, \$58.70.****THE LONDON LOAN & SAVINGS CO., OF CANADA**

"B446C"

\$58.70.

No. 1

London, Ont., November, 8, 1924

Pay to M. F. Evans or Order,

Fifty-Eight and $\frac{70}{100}$ Dollars

Account No. B446.

W. HERBERT BIGGS. 10

"O.K., G. A. P. B."

London Loan & Savings Co.

of Canada

P A I D

Nov. 14, 1924

London, Ont.

(Endorsed on back) In full of a/c Tinsmithing at Cor. Ridout and Emery Sts.,
1924. M. T. Evans

Bank of Montreal Stamps.

Part Exhibit 31-R

20

(Plaintiffs' Exhibit)

2**Cheque, W. H. Biggs to William King, \$100.00.****THE LONDON LOAN & SAVINGS CO., OF CANADA**

\$100.00

"B446K"

London, Ont., November 8, 1924.

No. 2

Pay to William King or Order.

One Hundred only Dollars.

Account No. B446.

W. HERBERT BIGGS. 30

"O.K., G. A. P. B."

London Loan & Savings Co.

of Canada

P A I D

Nov. 13, 1924

London, Ont.

(Endorsed on back) On a/c Foundation, Ridout and Emery
W. King.

Bank of Montreal Stamps. _____

*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 31-R.
1.
Cheque, W. H.
Biggs to
M. F. Evans—
\$58.70.
8th November,
1924.*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 31-R.
2.
Cheque, W. H.
Biggs to
William King
—\$100.00.
8th November,
1924.

Part Exhibit 31-R

(Plaintiffs' Exhibit)

3

Cheque, W. H. Biggs to William King, \$100.00.

THE LONDON LOAN & SAVINGS CO., OF CANADA

\$100.00.

"B446K"

London, Ont., November 8, 1924.

No. 3

Pay to William King or order,

10 One Hundred only Dollars.

Account No. B446.

W. HERBERT BIGGS.

"O.K., G. A. P. B."

London Loan & Savings Co.

of Canada

PAID

Nov. 13, 1924

London, Ont.

(Endorsed on back) On a/c of Note on Foundation at Ridout and Emery
W. King.

20 Bank of Montreal Stamps.

*In the
Supreme
Court of
Ontario.*
—
Exhibits
Part Ex. 31-R.
3.
Cheque, W. H.
Biggs to
William King
—\$100.00.
8th November,
1924.

Part Exhibit 31-R

(Plaintiffs' Exhibit)

4

Cheque, W. H. Biggs to Hobbs Hardware, \$58.26.

THE LONDON LOAN & SAVINGS CO., OF CANADA

"B446C"

No. 5

\$58.26.

London, Ont., November 11, 1924.

Pay to Hobbs Hardware or Order,

30 Fifty-Eight and $\frac{26}{100}$ Dollars

Account No. B446.

W. HERBERT BIGGS.

"O.K., G. A. P. B."

(Endorsed on back) In Full a/c Rough Hardware, Ridout and Emery Job

The Bank of Toronto Stamp

Bank of Montreal Stamps

For deposit only in The Bank of Toronto

to the credit of The Hobbs Hardware Co. Limited.

"W. J. McLeod."

*In the
Supreme
Court of
Canada.*
—
Exhibits.
Part Ex. 31-R.
4.
Cheque, W. H.
Biggs to Hobbs
Hardware—
\$58.26.
11th Novem-
ber, 1924.

Part Exhibit D

(Plaintiffs' Exhibit)

8**Extract from Minute Book of London Loan & Savings Company.**

Tuesday, Nov. 11, 1924.

BOARD MET—All present save Mr. Robinson. Minutes of last meeting read and confirmed. Statement of funds submitted.

E. and W. H. Biggs	-	\$13,500 wanted. Laid over.	
Pellatt	- -	Letter dated Nov. 4th to solicitors from Cassels & Co., read.	10
Valuations	-	Account Wrights Ltd. \$50, to be paid.	
Mortgages	- -	No Directors private mortgages to be taken in London Loan & Savings Company's name. Geo. G. McC. Solicitors to collect arrears.	
H. Lucas	- -	Manager to write requesting payment of arrears of principal.	
Kitchener Theatre L22		Now occupied by Mrs. Nash.	
Store 420 Clarence St.		Company to give new lease to Brown Bros., for 10 years from 1st June 1925, at \$100 a month for five years and \$110 a month afterwards (in advance) less 20% for prompt payment. Last 5 years to be optional with Lessee.	20

M. J. KENT,
Manager.

GEO. G. Mc.,
President.

Exhibit 5-R

(Plaintiffs' Exhibit)

2**Certificate of Title, G. A. P. Brickenden & Co. re \$13,500 Mortgage.**

IN THE MATTER of Parts of Lots Eighteen and Nineteen, West Ridout Street, Plan 399, and IN THE MATTER of Part of Eleven, Block "B," Plan 343, London, and IN THE MATTER OF two mortgages from Walter H. Biggs and Eva Viola Biggs, respectively, to the London Loan & Savings Company of Canada, for \$13,500.00, which Mortgages are registered as Numbers 19476 and 19477. 30

We hereby certify that we have investigated the title to the lands comprised in the said Mortgages and that the same is good and sufficient for the purposes of the said Mortgages, and that the said Mortgages have been duly executed and registered and form charges upon the mortgaged lands to the full amount thereby secured.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. D.
8.
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
11th Novem-
ber, 1924.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 5-R.
2
Certificate of
Title, G. A. P.
Brickenden &
Co. re
\$13,500.00
Mortgage.
12th Novem-
ber, 1924.

SUBJECT to the following Mortgages:—

- 1.—Mortgage to Edwin Barrell for \$6000.00.
- 2.—Mortgage to Edwin Barrell for \$1000.00.
- 3.—Mortgage to The London Loan for \$18000.00.
- 4.—Mortgage to The London Loan for \$3000.00.
- 5.—Mortgage from George to Chilton for \$2000.00.
- 6.—Mortgage to The London Loan for \$12,000.00.
- 7.—Mortgage to Whitfield Lancaster for \$1100.00.
- 8.—Mortgage to Huron & Erie for \$10,000.00.
- 10 9.—Mortgage to G. A. P. Brickenden for \$5000.00, which last Mortgage The London Loan is assuming.

Dated at London this 12th day of November, 1924.

G. A. P. BRICKENDEN & CO.

To:—

THE LONDON LOAN & SAVINGS CO., OF CANADA

All Mtges. to be removed except Mtges. to Edwin Barrell and Huron & Erie and London Loan on 2 Elmwood and 3 Ridout St. properties.

G. A. P. BRICKENDEN.

Notations in ink in writing of M. J. Kent.

- 20 1 and 2 on 114 Elmwood Ave. to stand.
- 3 to stand.
- 4 and 5, Coll No money to collect, release on demand.
- 6 on 315 to 319 Ridout St. to stand.
- 7 money in S.B. No. L255½ to pay as it matures—\$1945.99. Discharged see below.
- 8 on 313 Ridout St. to stand.
- 9 to be paid off in Mch., 1925. Retain money.

Notation in Writing of Evelyn Harrison:

- 30 No. 19550 this 3rd day of December, 1924.

G. A. P. B. & CO.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 5-R.
Certificate of
Title, G. A. P.
Brickenden &
Co. re—
\$13,500.00
Mortgage—
12th Novem-
ber, 1924.

—continued.

Part Exhibit 31-R

(Plaintiffs' Exhibit)

5

Cheque, W. H. Biggs to Public Utilities Commission, \$250.00.

THE LONDON LOAN & SAVINGS CO., OF CANADA

"B446K"

No. 6

\$250.00.

London, Ont., November 12, 1924.

Pay to Public Utilities Comm., or Order.

Two Hundred and Fifty Dollars.

Account No. B446.

"O.K., G. A. P. B."

W. H. BIGGS.

10

London Loan & Savings Co.

of Canada

P A I D

Nov. 14, 1924

London, Ont.

(Endorsed on back) To apply on New Stove a/c.

Bank of Montreal Stamps

The Public Utilities Commission Stamp.

20

Part Exhibit 31-R.

(Plaintiffs' Exhibit)

6

Cheque, W. H. Biggs to G. H. Belton Lumber Company, \$38.53.

THE LONDON LOAN & SAVINGS CO., OF CANADA

"B446C"

No. 8

\$38.53.

London, Ont., November 12, 1924.

Pay to G. H. Belton Lbr. Co., or Order.

Thirty-Eight and $\frac{53}{100}$ Dollars

Account No. B446.

"O.K., G. A. P. B."

W. HERBERT BIGGS.

30

London Loan & Savings Co.

of Canada

P A I D

Nov. 14, 1924

London, Ont.

(Endorsed on back) On a/c of Fir Lumber Supplied Ridout and Emery Job

The Bank of Toronto Stamp, No Protest

The Bank of Montreal Stamps

Geo. H. Belton Lumber Co. Ltd. Stamp.

40

*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 31-R.
5.
Cheque, W. H.
Biggs to Public
Utilities Com-
mission—
\$250.00.
12th Novem-
ber, 1924.*In the
Supreme
Court of
Ontario.*Exhibits.
Part Ex. 31-R.
6.
Cheque, W. H.
Biggs to
G. H. Belton
Lumber Co.—
\$38.53.
12th Novem-
ber, 1924.

Part Exhibit 31-R

(Plaintiffs' Exhibit)

7

Cheque, W. H. Biggs to Martin Coal Company, \$150.00.
THE LONDON LOAN & SAVINGS CO., OF CANADA

"B446C"
 No. 7

\$150.00.

London, Ont., November 12, 1924.

10 Pay to Martin Coal Co., or Order
 One Hundred and Fifty Dollars.
 Account No. B446.

W. HERBERT BIGGS.

"O.K., G. A. P. B."

(Endorsed on back) On a/c Note Car Coal, Elmwood Ave.
 Imperial Bank of Canada Stamps
 Martin Coal Co. Ltd. Stamp.
 Bank of Montreal Stamps

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Part Ex. 31-R.
 7.
 Cheque, W. H.
 Biggs to
 Martin Coal
 Co.—
 \$150.00.
 12th Novem-
 ber, 1924.

Part Exhibit 31-R.

(Plaintiffs' Exhibit)

8

Cheque, W. H. Biggs to Bowley Electric, \$169.14
THE LONDON LOAN & SAVINGS CO., OF CANADA

20 "B446C"
 No. 9.

\$169.14.

London, Ont., November 13, 1924.

Pay to Bowley Electric or Order
 One Hundred and Sixty-Nine and $\frac{14}{100}$ Dollars

Account No. B446.
 "O.K., G. A. P. B."

W. H. BIGGS,

30 London Loan & Savings Co.
 of Canada
 PAID
 Nov. 15, 1924
 London, Ont.

(Endorsed on back) To Balance Old a/c Elmwood Apts. and 315 Ridout St.
 Jobs. The Bowley Electric per Wm. R. Bowley.

Bank of Montreal Stamps

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Part Ex. 31-R.
 8.
 Cheque, W. H.
 Biggs to
 Bowley Elec-
 tric, \$169.14.
 13th Novem-
 ber, 1924.

Exhibit 23 R-1

(Plaintiffs' Exhibit)

Debit Slip, \$6,991.94—W. H. Biggs—re Mortgage B.78.**THE LONDON LOAN & SAVINGS COMPANY**

"2nd M"

Debit W. H. Biggs Mtge. No. B78.

Interest to 14th May /24 & ex. Int. on Mtge. B46 per con.....	\$ 699.68
and Int. on Mtge. B47 per con. to 27th July /24 & ex. Int.....	936.46
Account loan credit in Savings Bank No. B446 per con.....	5355.80
	10

Per order attached	London Loan & Savings Co. of Canada	\$6991.94
London, Nov. 13, 1924.	PAID Nov. 13, 1924 London, Ont.	M. J. KENT, Manager.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 23 R-1.
Debit Slip—
\$6,991.94—
W. H. Biggs—
re Mortgage
B. 78.
13th Novem-
ber, 1924.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 25-R.
Cheque, W. H.
Biggs to Lon-
don Loan &
Savings Co.—
\$1,000.00.
14th Novem-
ber, 1924.

Exhibit 25-R

(Plaintiffs' Exhibit)

Cheque, W. H. Biggs to London Loan & Savings Company, \$1,000.00.

"B446C"

THE LONDON LOAN & SAVINGS CO., OF CANADANo. 10. \$1000.00. 20

London, Ont., November 14, 1924.

Pay to London Loan & Savings Co., or Order	
One Thousand Dollars.	London Loan & Savings Co. of Canada
Account No. B446.	PAID
"O.K., G. A. P. B."	Nov. 14, 1924 London, Ont.
	W. H. BIGGS.

(Endorsed on back) Cr. Mtge. Z.1

Exhibit 5-R

(Plaintiffs' Exhibit)

1

Application for Loan, Eva V. Biggs and W. H. Biggs to London Loan & Savings Company, \$13,500.00.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 5-R.
—
1
Application
for Loan, Eva
V. Biggs and
W. H. Biggs to
London Loan
& Savings Co.
—\$13,500.00.
17th Novem-
ber, 1924.

10 Mrs. E. V. Biggs and W. H. Biggs desire a further loan of \$13,500 on their properties on Ridout Street and Elmwood Ave., London South, at 8% repayable with interest blended in equal consecutive monthly instalments of \$250 each until loan is fully paid. The interest to be payable monthly and deducted from each monthly payment and balance applied on principal.

A bonus of \$1000 to be allowed Company for the accommodation.

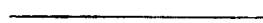
20 Money to be applied to pay the arrears of interest on Company's present mortgages of \$18,000 and \$12,000 respectively and sundry accounts amounting to \$7500, and a second mortgage of \$5000 held by G. A. P. Brickenden which will mature about March 1925 and as security, Company will receive a new mortgage for \$13,500 on the property already mortgaged to Company, namely apartment house in London South valued at \$33,000 by applicant; Nos. 315-319 on Ridout Street, valued by applicant at \$20,000 including 6 garages; also No. 114 Elmwood Ave., valued by applicant at \$11,500 (this property is subject to a mortgage held by Ed. Barrell of \$7000) margin being \$4500 and House No. 313 Ridout Street, valued by applicant at \$20,000 (this property is subject to mortgage held by Huron & Erie of \$10,000.00).

Mr. Gorwill valued properties as follows:—

1st property mentioned	\$31,800
2nd property mentioned	14,500
Garages	2,000
	\$48,300

exclusive of the margins in other properties.

Nov. 17, 1924, E. & W. Biggs \$13,500. Wanted---"Lend at 8%---with bonus of \$1,000." GEO. G. McC., President.



Part Exhibit D

(Plaintiffs' Exhibit)

9

Extract from Minute Book of London Loan & Savings Company.

Monday, Nov. 17, 1924

BOARD MET—All present save Mr. Robinson. Minutes of last meeting read and confirmed. Statement of funds submitted.

G. M. Clode	-	Renewal \$3090.48 at 8% confirmed. Commission of 1/2% to H. A. Morine.	
H. and K. Dixon	-	Renewal \$1225 at 8% confirmed.	10
L. Hartman et al	-	\$80,000. Lend at 7%.	
E. and W. Biggs	-	Lend \$13,500 at 8%, bonus \$1000.	
re Debenture of		Allow 5 1/2% rate on over-due Bond until paid but	
W. Frewin \$2000 odd		Company require endorsement.	
M. J. KENT,		THOMAS BAKER,	
Manager.		Vice-President.	

Part Exhibit 31-R

(Plaintiffs' Exhibit)

9

Cheque, W. H. Biggs to Public Utilities Commission—\$25.70. 20

“B446K”

THE LONDON LOAN & SAVINGS CO., OF CANADA

\$25.70.

No. 18.

London, Ont., November 24, 1924.

Pay to Public Utilities Comm. or Order,

Twenty-Five and ⁷⁰/₁₀₀ Dollars.

London Loan & Savings Co.

of Canada

PAID

Nov. 28, 1924

London, Ont.

Account No. B446.

“O.K., E. H.”

W. H. BIGGS. 30

(Endorsed on back)

Bank of Montreal Stamps

The Public Utilities Commission Stamp

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. D.
9.
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
17th Novem-
ber, 1924.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 31-R.
9.
Cheque, W. H.
Biggs to Public
Utilities Comm.
\$25.70.
24th Novem-
ber, 1924.

Part Exhibit 31-R

(Plaintiffs' Exhibit)

10

Cheque, W. H. Biggs to Ontario Denison Tile Company, \$100.00.

THE LONDON LOAN & SAVINGS CO., OF CANADA

"B446K"

\$100.00.

No. 28

London, Ont., December 11, 1924

Pay to Ontario Denison Tile Co., or Order,

One Hundred only Dollars. London Loan & Savings Co.

10 Account No. B446.

of Canada

P A I D

W. H. BIGGS.

"O.K., G. A. P. Brickenden."

Dec. 15, 1924

London, Ont.

(Endorsed on back) Ontario Denison Tile Co.

The Royal Bank of Canada Stamps, Protest Waived

Bank of Montreal Stamps

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 31-R.
10.
Cheque, W. H.
Biggs to
Ontario
Denison Tile
Co.—\$100.00.
11th December,
1924.

Exhibit 23 R-3

(Plaintiffs' Exhibit)

Cheque, London Loan & Savings Company to G. A. P. Brickenden, \$5000.00.

20

No. 2293.

THE LONDON LOAN & SAVINGS CO., OF CANADA

London, Canada, Jan. 22, 1925

To THE BANK OF MONTREAL, City Hall Branch

Pay to the order of G. A. P. Brickenden, Esq.,

\$5000

Five Thousand Dollars.

Bank of Montreal

London, Ont.

Jan. 22, 1925

E. PEARSON,

Teller.

Dundas & Wellington Sts.

P A I D

M. J. KENT,

Manager.

A C C E P T E D

30 (Endorsed on back) Re Biggs Mtge. Pay to The Bank of Montreal.

G. A. P. Brickenden

Bank of Montreal Stamp

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 23 R-3.
Cheque, Lon-
don Loan &
Savings Co. to
G. A. P.
Brickenden—
\$5000.00.
22nd January,
1925.

*In the
Supreme
Court of
Ontario.*

Exhibit 23 R-4

(Plaintiffs' Exhibit)

Debit Slip—\$5,110.00—W. H. Biggs—re Mortgage B78.

Exhibits,
Ex. 23 R-4.
Debit Slip—
\$5,110.00—
W. H. Biggs—
re Mortgage
B. 78.
22nd January,
1925.

“2nd M” THE LONDON LOAN AND SAVINGS COMPANY
Debit W. H. Biggs Mtge. No. B.78.
Cheque No. 2293 on Bk. Montreal to G. A. P. Brickenden \$5000
and stamps 1
and credit G. A. P. Brickenden in Sgs. Bank B443 Int. to date 109
In full for Biggs Mtge. 5110

10

London, Jany. 22/25.

London Loan & Savings Co.
of Canada
P A I D
Jan. 22, 1925
London, Ont.

M. J. KENT,
Manager.

*In the
Supreme
Court of
Ontario.*

Part Exhibit Q

(Defendants' Exhibit)

1

Valuation, S. B. Gorwill.

Exhibits,
Part Ex. Q.
I.
Valuation
S. B. Gorwill.
6th October,
1925.

Oct. 6/25. 20

London Loan & Savings Co.,
Gentlemen:

I have to-day examined the properties of Mr. W. H. Biggs, of this city. The two properties No. 114 and 116 Elmwood Ave., are both apartment houses and are in first class condition. No. 114 has two apartments. Each apartment has good three piece bath, electric grate and stationary tubs and the whole building is heated by hot air furnace. There is also a large frame garage about 30 x 36 ft. with cement floor. In this there is room for 6 or 7 cars.

On this property I have placed the following valuations: 30

House \$10,500 00
Garage 2,000 00
Lot 1,200 00
\$13,700 00

No. 116 Elmwood Ave. has six apartments. Each apartment here is also fitted with three piece bath, electric grate and stationary tubs.

Value Building \$30,000 00
Lot 1,800 00
\$31,800 00

Those buildings are both floored throughout with hardwood and each apartment has an electric stove.

No. 311 and 313 Ridout St. is a two story red rug brick building. This is a new building, having three apartments. The whole building is floored with hardwood. Each apartment has three piece bath, electric grate, electric stove and stationary tubs and in front of the house is a large brick verandah with two floors.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. Q.
1.
Valuation,
S. B. Gorwill.
6th October,
1925.

—continued.

Value House.....	\$13,800 00
Lot.....	1,000 00

10

\$14,800 00

No. 315 and 317 is a brick house that has been made over and stuccoed. This house has two apartments each having three piece bath, electric grate, electric stove and stationary tubs and all floors hardwood.

Value House.....	\$13,500 00
Lot.....	1,000 00

\$14,500 00

No. 319 is a two story brick house that has lately been made over. The house is 24 x 28 ft. with cellar under half of house. House is floored with hardwood, has bath and hot air furnace.

20

Value House.....	\$4,500 00
Lot.....	1,000 00

\$5,500 00

At the back of No. 319 is a frame garage 18 x 60 ft., which is made into apartments for five cars.

Value.....	\$1,000 00
------------	------------

S. B. GORWILL.

Part Exhibit Q

(Defendants' Exhibit)

2

30

**Letter, M. J. Kent, Manager, London Loan & Savings Company to
Benson & Ball.**

THE LONDON LOAN & SAVINGS CO., OF CANADA

London, Canada, Oct. 9, 1925

Messrs. Benson & Ball,
Auditors, London Loan Co.,
City.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. Q.
2.
Letter, M. J.
Kent, Manager,
London Loan
& Savings Co.
to Benson &
Ball.
9th October,
1925.

re Biggs

Gentlemen:—

As promised, I now enclose you a report from Mr. Gorwill as to the values of the properties in our mortgages from W. H. Biggs. And I also enclose you a list of the encumbrances against said properties, which show a surplus of \$21,290 in value above the indebtedness.

Yours truly,

M. J. KENT,
Manager.

K

re Biggs

10

The foregoing properties appear to be covered by several mortgages held by London Loan & Savings Company, as security for loans as follows:—

Mtge. B46.....	\$ 18,000
Mtge. B47.....	12,000
Mtge. B78.....	13,210

Total principal.....\$ 43,210

Subject to the following mortgages:—

George to Chilton for \$2000 for payment of which money has been deposited in the savings bank L255½.

Mortgage to Ed. Barrell, for \$7000.

20

Mortgage to Huron & Erie Company for \$10,000.

RECAPITULATION
VALUATION

No. 1 Mr. Gorwill's report.....	\$ 13,700 00
No. 2 " " ".....	31,800 00
No. 3 " " ".....	14,800 00
No. 4 " " ".....	14,500 00
No. 5 " " ".....	5,500 00
No. 6 " " ".....	1,000 00
	<hr/>
	\$ 81,500 00 30

MORTGAGES

B 46 London Loan.....	\$ 18,000 00
B47 " ".....	12,000 00
B78 " ".....	13,210 00
Huron & Erie Mtge.....	10,000 00
Ed. Barrell's Mtge.....	7,000 00
	<hr/>
	60,210 00
Surplus.....	\$ 21,290 00

E. & O.E.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. Q.
2.
Letter, M. J.
Kent, Manager.
London Loan
& Savings Co.
to Benson &
Ball.
9th October,
1925.

—continued.

Part Exhibit D

(Plaintiffs' Exhibit)

10

Extract from Minute Book of London Loan and Savings Company.

June 15th, 1926.

BOARD MET—All present. Minutes of last meeting read and confirmed. Statement of funds submitted.

- 10 **Danforth Woodbine Theatre, Mtge. D.35** Letter from H. A. Morine, dated June 8/26 asking release of collateral security. Read. Get assessed valuation of collateral.
- S. H. Lumb, L.43** Letter from Brickenden & Co., dated June 12/26, asking for cheque for \$1500. Granted.
- Weismiller and Mackenzie -** Letters from H. A. Morine, dated May 19/26 and June 8/26. Accept Morine's cheque for \$134 and send him Roubles as requested.
- Real Estate -** Letter from H. A. Morine, read. File.
- Taylor, T.18 -** Property 247 Pall Mall St. Get repairs done as recommended by Gorwill.
- 20 **W. H. Biggs and Mrs. E. V. Biggs Lumb, Mtge. L.43** Statement of arrears on Mtges. B46, 47, 78 submitted. Laid over until next meeting.
- Wrights Limited -** Letter from Morine read, submitting contract of Otis Fensom for elevator. Company to sign contract, with clause added "The whole when completed, to be satisfactory to the London Loan & Savings Company of Canada." Amount of contract to be \$3376.00.
- **Manager.** Letter read, and Mr. Nelles, Manager, appeared before Board, regarding rearrangement of Firm's loans. New loan to be arranged, and rate reduced, with privileges.
- 30 **.....** GEO. G. McC.,
President.

In the Supreme Court of Ontario.
—
Exhibits. Part Ex. D. 10.
Extract from Minute Book of London Loan & Savings Co. 15th June, 1926.

Part Exhibit D

(Plaintiffs' Exhibit)

11

Extract from Minute Book of London Loan & Savings Company.

June 22nd, 1926.

BOARD MET—All present. Minutes of last meeting read and confirmed. Statement of funds submitted.

- G. B. Beattie, Mortgage B.31** Renew for \$12000 at 7%.

In the Supreme Court of Ontario.
—
Exhibits. Part Ex. D. 11.
Extract from Minute Book of London Loan & Savings Co. 22nd June, 1926.

*In the
Supreme
Court of
Ontario.*
Exhibits.
Part Ex. D.
11.
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
22nd June,
1926.
—continued.

Danforth-Woodbine Theatre, Mtge. D.35 - If \$4000 paid release collateral security.
Alex. Palmer, Mortgage P.11 - - - - Give notice to pay first mortgage in full.
W. H. Biggs, Mortgages B46, 47, 78 - Statement of arrears submitted. Laid over.
George McNeil, Mortgage Mc. 36 - - - - Asks release of vacant land east of store. Get
Hay Mercantile Co. - - - - mortgage paid.
 Asks Co. to accept \$15 for June rent. Mr. Hambly to arrange. 10

M. J. KENT,
Manager.

GEO. G. McC.,
President.

*In the
Supreme
Court of
Ontario.*
Exhibits.
Part Ex. Q.
3.
Valuation,
S. B. Gorwill.
2nd July, 1926.

Part Exhibit Q

(Defendants' Exhibit)

3

Valuation, S. B. Gorwill.

THE LONDON LOAN & SAVINGS CO., OF CANADA

July 2, 1926.

re Mtge. B78.

Name—Walter Herbert Biggs, 20

Property—Ridout St. & Elmwood Ave.

Valuation—Mr. Gorwill valued properties as follows:

1st property mentioned.....	\$ 31,800 00
2nd property mentioned.....	14,500 00
Garages.....	2,000 00
	\$ 48,300 00

exclusive of the margins in other properties.

Part Exhibit DD

(Plaintiffs' Exhibit)

2

**Extract Insurance Policy No. 145063—London Life Insurance Company—
Insured—W. H. Biggs—\$10,000.00.**

Policy Number 145063 in THE LONDON LIFE INSURANCE COMPANY.

Insured - Walter Herbert Biggs,
Plan - Jubilee Ordinary Life,
Amount - \$10,000.00,
10 **Premium** - \$166.10 half-yearly,
Date - 13th November, 1926,

Beneficiary Eva V. Biggs, wife of insured.
with assignment attached to The London Loan and Savings Company of
Canada executed by Eva Viola Biggs and W. H. Biggs, bearing date January
11th, 1927.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. DD.
2.
Extract Insur-
ance Policy
No. 145063—
London Life
Insee. Co.—
Insured—
W. H. Biggs—
\$10,000.
13th Novem-
ber, 1926.

Part Exhibit DD

(Plaintiffs' Exhibit)

3

20 **Extract from Insurance Policy No. 383617 Great-West Life Assce. Company
—Insured—Eva V. Biggs—\$10,000.00.**

Policy Number N.383617 in The Great-West Life Assurance Company.

Insured - Eva Viola Biggs,
Plan - Ordinary Life, without profits,
Amount - \$10,000.00.
Premium - \$65.50 quarterly.
Date - 25th March, 1927.

30 **Beneficiary** Walter Herbert Biggs, husband of insured.
with assignment attached to The London Loan and Savings Company of
Canada executed by Eva Viola Biggs and W. H. Biggs, bearing date May 6th,
1927; which assignment was recorded in the books of The Great-West Life
Assurance Company on May 13th, 1927.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. DD.
3.
Extract from
Insurance
Policy No.
383617—
Great-West
Life Assce. Co.
—Insured—
Eva V. Biggs—
\$10,000.
25th March,
1927.

Exhibit R

(Defendants' Exhibit)

Valuation, S. B. Gorwill, 116 Elmwood Avenue.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. R.
Valuation,
S. B. Gorwill—
116 Elmwood
Ave.
19th April,
1927.

Mtge. Biggs to Barrell \$6000, dated July 1 /22
Mtge. Biggs to Barrell \$1000 same date.
"Presume they are 5 year mtges." due.

April 19th, 1927.

The house No. 114 Elmwood Ave., the property of Mr. W. H. Biggs, is a two storey brick and stuccoed house about 24 x 44 ft., with full basement. There are two apartments, one on the first floor and another on the second. The whole house has oak floors and since I inspected the property a few years ago a verandah has been built in front and on the second floor is a sunroom. 10

Each apartment has a three piece bath and the whole house is heated by hot air.

At the back is a frame and stuccoed garage about 24 x 33 ft.

Value:

House	\$ 8,000 00
Garage	2,000 00
Lot 33 ft.	1,320 00

\$ 11,320 00 20

S. B. GORWILL.

MTGE. A2.

W. H. BIGGS

Mtge. for \$13,500.00 payable \$250.00 monthly. Interest at 8% monthly.
Mtge. dates Nov. 8/24. Balance as Mar 4/27, \$13,210.00. Int. paid to Jan. 8/25. Land: 1 Pt. Lot 11, Blk. B, plan 343, Elmwood Ave.
2 Pt. lot 19, W.S. Ridout St., plan 399.
3. (Coll.) Lot 18, pt. lot 19 W.S. Ridout St.
Policy for \$10,000.00 in London Life.

Val'n: By Gorwill:

1st	\$ 31,800 00	30
2nd	14,500 00	
3rd	2,000 00	

\$ 48,300 00

First mtge. on parcel 1, to E. Barrell for \$7000; on parcel 2 to H. and E., for \$10,000.00. Pay off 1st mtge. to E. Barrell.

GEO. G. McC.

Exhibit 6-R

(Defendants' Exhibit)

Extract from Mortgage No. 23113—W. H. Biggs to Consolidated Trusts Corporation—\$20,000.00.*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. 6-R.
Extract from
Mortgage No.
23113—W. H.
Biggs to Con-
solidated
Trusts Corp.—
\$20,000.00.
1st December,
1927.

- Date** - - 1st December, 1927,
- Mortgagor** - Walter Herbert Biggs, of the City of London in the County of Middlesex, Accountant, (his wife Eva Viola Biggs joining to bar dower),
- Mortgagee** - Consolidated Trusts Corporation,
- 10 **Consideration** - \$20,000.00,
- Lands** - All and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of part of Lot Number Eleven, in Block "B," according to Plan registered as Number 343, for the City of London, which said part of said Lot may be more particularly described as follows:—
COMMENCING at the Southeast angle of said Lot; Thence Northerly along the Easterly limit of said Lot being the Westerly boundary of Cathcart Street, Ninety-four feet six inches: Thence Westerly parallel with the Southerly limit of the said Lot forty-five feet: Thence Southerly parallel with Cathcart Street, Ninety-four feet, six inches, more or less, to the Southerly limit of the said Lot, being the Northerly boundary of Elmwood Avenue: Thence Easterly along the said Southerly limit, Forty-five feet, more or less, to the place of beginning.
- 20
- Terms of Re-
Payment** - PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisos herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Twenty Thousand Dollars in gold coin of lawful money of Canada with interest at $7\frac{1}{2}$ per cent. per annum until the 14th day of November, 1928, and thereafter $6\frac{1}{2}\%$ per annum as follows:—One Hundred and Fifty Dollars (\$150.00) on account of principal to become due and be paid on the First days of June and December in the years 1928, 1929, 1930 and 1931: One Hundred and Fifty Dollars (\$150.00) on the First day of June 1932, and the balance of the principal sum on the First day of December, 1932, and the interest at the rate aforesaid payable half-yearly on the First days of June and December in each and every year both before and after default and before and after maturity and until the whole amount shall have been fully paid and satisfied. The first payment of interest to be made on the First day of June next.
- 30
- 40

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 6-R.
Extract from
Mortgage No.
23113—W. H.
Biggs to Con-
solidated
Trusts Corp.—
\$20,000.00.
1st December,
1927.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. 7-R.
Extract from
Mortgage No.
23114—Eva V.
Biggs to Con-
solidated
Trusts Corp.
—\$13,600.00.
1st December,
1927.

Registration Certificate - I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 20 for the 4th Division at 3.15 o'clock P.M., on the 4th day of Jan. A.D. 1928 as No. 23113. "J. H. Fitzallen," Dep. Registrar.

Exhibit 7-R

(Defendants' Exhibit)

Extract from Mortgage No. 23114—Eva V. Biggs to Consolidated Trusts Corporation—\$13,600.00.

Date - 1st December, 1927, 10

Mortgagor - Eva Viola Biggs, wife of Walter Herbert Biggs, of the City of London in the County of Middlesex, Accountant, and the said Walter Herbert Biggs,

Mortgagee - Consolidated Trusts Corporation,

Consideration \$13,600.00,

Lands - All and Singular that certain parcel of tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers Eighteen and Nineteen, on the West side of Ridout Street, South, (formerly Queen Street) in the said City of London, according to registered Plan Number 399, SAVE AND EXCEPT the Westerly Sixty feet of Lot Number Nineteen. 20

**Terms of Re-
Payment** - PROVIDED this Mortgage to be void on observance and performance by the Mortgagor of all covenants and provisos herein and on payment at the office of the said Mortgagee in the City of London, in the Province of Ontario, of Thirteen Thousand Six Hundred Dollars in gold coin of lawful money of Canada with interest at 6½ per cent. per annum as follows: One Hundred Dollars (\$100.00) on account of principal to become due and be paid on the First day of June and December in the years 1928, 1929, 1930 and 1931: One Hundred Dollars (\$100.00) on the First day of June, 1932, and the balance of the principal sum on the First day of December, 1932, and the interest at the rate aforesaid payable half-yearly on the First days of June and December in each and every year both before and after default and before and after maturity and until the whole amount shall have 30

**Registration
Certificate**

been fully paid and satisfied. The first payment of interest to be made on the First day of June next.

I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the City of London in Book No. 20 for the 4th Division at 3.20 o'clock P.M., on the 4th day of Jan. A.D. 1928 as No. 23114. "J. H. Fitzallen," Dep. Registrar.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 7-R.
Extract from
Mortgage No.
23114—Eva V.
Biggs to Con-
solidated
Trusts Corp.—
\$13,600.00.
1st December,
1927.

—continued.

Part Exhibit DD

(Defendants' Exhibit)

10

4

**Extract from Policy No. 410633—Great-West Life Assce. Company—
Insured—W. H. Biggs—\$3,000.00.**

Policy Number N.410633 in The Great-West Life Assurance Company.

Insured - Walter Herbert Biggs,

Plan - Ordinary Life, without profits,

Amount - \$3,000.00,

Premium - \$80.85 yearly,

Date - 10th December, 1927,

Beneficiary - Eva Viola Biggs, wife of insured.

20 with assignment attached to The London Loan and Savings Company of Canada executed by W. H. Biggs and E. V. Biggs, undated: which assignment was recorded in the books of The Great-West Life Assurance Company on June 5th, 1928.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. DD.
4.
Extract from
Policy No.
410633—
Great-West
Life Assce. Co.
—Insured—
W. H. Biggs—
\$3,000.
10th December,
1927.

Part Exhibit DD

(Defendants' Exhibit)

5

**Extract from Policy 409195—Great-West Life Assce. Co.—Insured—
Eva V. Biggs—\$2,000.00.**

Policy Number N.409195 in The Great-West Life Assurance Company.

30 **Insured** - Eva Viola Biggs,

Plan - Ordinary Life, without profits,

Amount - \$2,000.00,

Premium - \$51.70 yearly,

Date - 15th December, 1927,

Beneficiary - Walter Herbert Biggs, husband of insured.

with assignment attached to The London Loan and Savings Company of Canada executed by E. V. Biggs and W. H. Biggs, bearing date May 28th, 1928: which assignment was recorded in the books of The Great-West Life Assurance Company on June 5th, 1928.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. DD.
5.
Extract from
Policy 409195
—Great-West
Life Assce. Co.
—Insured—
Eva V. Biggs—
\$2,000.00.
15th December,
1927.

Part Exhibit P

(Defendants' Exhibit)

1**Valuation and Report—H. R. Clewes.**

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. P.
I.
Valuation and
Report—
H. R. Clewes.
21st December,
1927.

The Consolidated Trusts Corporation,
City.

Re W. H. Biggs

Gentlemen:

I have to-day inspected the properties at 116 Elmwood Avenue, City, and the two properties known as Nos. 315 to 319 Ridout Street South, City, owned by W. H. Biggs and upon which The London Loan and Savings Company have first mortgages. I report on these properties as follows: 10

(1) **116 Elmwood Avenue** (N.W. corner of Cathcart Street).

This is an apartment house known as the Elmview Apartments. The size of this building is 42 ft. by 60 ft. and about 30 ft. high from the ground. It is of red rug brick and tile construction on concrete foundation. The roof is of tar and gravel and the outside walls are built up all round. There is a front entrance with hall and stairs to all apartments. There is also a rear entrance and stairs to all apartments and enclosed balconies. There are six apartments in the building, including two basement apartments. Each apartment above ground consists of living room with electric fire-place, dining-room, sun-room, two bedrooms, and three-piece bathroom. Each apartment is equipped with electric stove. All apartments in the building have oak floors and the trim and doors is fir. Three apartments rent at \$70.00 per month, one at \$65.00, one basement apartment at \$50.00, and the other basement apartment is occupied by the janitor. The basement apartments have only one bedroom. 20

The building is efficiently heated by a large hot water boiler and there is apparently sufficient radiators. Hot water is supplied by both gas and electric heaters in the basement and there is a hundred gallon tank to hold the water. There is a soft water cistern and large tank with automatic electric pump to give soft water at city pressure. The building appears to be well constructed and is in good condition. The total rental per month is at present \$325.00. The janitor's apartment should be worth \$40.00 per month making a total rental value of \$365.00. I consider this higher than the average. 30

The assessed value is:

Land	\$ 1,090 00
Building	14,710 00
Total	\$ 15,800 00

I value the property as follows:

Land—42 ft. at \$45 per foot.....	\$ 2,025 00
Building (88,200 cubic feet at 35c).....	30,870 00
	\$ 32,895 00

H. R. CLEWES.

*In the
Supreme
Court of
Ontario.*
Exhibits.
Part Ex. P.
I.
Valuation and
Report—
H. R. Clewes.
21st December,
1927.

—continued.

Dec. 21st, 1927.

(2) **315 to 319 Ridout Street South.**

The properties included in this mortgage are two old houses, one of which has been stuccoed and made into a duplex and the other, Mr. Biggs' own residence, is being altered to make two apartments.

Nos. 315 and 317 Ridout Street South.

This is, I understand, a solid brick house about 26 ft x 40 ft. on solid concrete foundation. It is two storeys high. The basement is not full size, being about 12 ft. x 26 ft. The house has a slate roof and the walls have been stuccoed on the outside. A red rug brick verandah has been built across the front of the building and each apartment has a separate entrance. Each apartment has rooms and three-piece bath and electric stove. All floors are oak and the trim is pine. The building is heated by a hot water boiler. Each apartment is rented for \$55.00 per month.

20 **No. 319 Ridout Street South.**

The other building is a solid brick house, two storeys high, cement foundation, and asphalt shingle roof. It is about 24 ft. x 30 ft. and contains eight rooms. It has hot water heating system and three piece bath. The basement is about 26 ft. x 18 ft. Mr. Biggs is at present building a frame addition to this house and altering the house to make two complete apartments, each of which will be heated by hot water and will have three piece bath. The floors will be of oak throughout. On the rear of this property is a long low building used as a garage with room for six cars. There is a partition between each car space. There is no floor. The land upon which these two buildings stand is 66ft. frontage. The depth varies from 105 to 165 feet.

The assessed value of these properties is as follows:

315 and 317 Ridout St. S. Land.....	\$ 325 00
Buildings.....	6,075 00
	Total.....\$ 6,400 00
319 Ridout Street South Land.....	\$ 795 00
Building.....	2,605 00
	Total.....\$ 3,400 00
Total for both properties.....	\$ 9,800 00

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. P.
1.
Valuation and
Report—
H. R. Clewes.
21st December,
1927.

I value these properties as follows:

Land—66 ft. at \$35 per foot.....	\$ 2,310 00
Buildings—315-317 Ridout St.....	7,200 00
Building—319 Ridout St.....	5,500 00
Garage.....	1,000 00
Total.....	<u>\$ 16,010 00</u>

Dated at London, Ontario, this 21st day of December, 1927.

H. R. CLEWES.

—continued.

Exhibit 16-R

(Defendants' Exhibit)

10

Application for Loan—W. H. Biggs and Eva V. Biggs to Consolidated Trusts Corporation—\$20,000.00—116 Elmwood Avenue.

THE CONSOLIDATED TRUSTS CORPORATION

Head Offices

LONDON — CANADA

Application for Mortgage Loan on City Property

I, Walter Herbert Biggs and Eva Biggs, (Office Manager), permanent mail address 319 Ridout Street South, London, Ontario, hereby apply for a loan of \$20,000.00, repayable \$150.00 half-yearly; balance at end of 5 years. Interest $7\frac{1}{2}\%$ per annum for 1st year, $6\frac{1}{2}\%$ per annum thereafter to be paid 20 together with the half-yearly principal payments in June 1st and Dec. 1st, on property known as (street No.) 116 on the North side of Elmwood Avenue, N.W. cor. Cathcart St. and Elmwood Avenue, in the City of London. Frontage of lot 42 ft., depth of lot, 94 ft. 6". Is there any side drive or rear lane? Yes.

Building used for apartment house, 6 Apts. Material: foundation concrete; walls; red rug brick; roof, tar and gravel; size 40 x 60; 2 storeys high and basement, 5 years old, state of repair, good, insurance in force \$20,000. Selling value of land, \$2,000; buildings, \$35,000. Total selling value \$37,000. Assessment \$15,800.00. The property was built 5 years ago for \$..... The property is occupied by tenants. Monthly rental—(1) \$70.00, (2) \$70.00, (3) \$70.00, 30 (4) \$65.00, \$50.00. Is building complete or in course of erection? complete. Building is lighted by elec., is heated by hot water boiler. Is there a proper sewer connection? Yes. What plumbing is there? Full plumbing in all apts. Is the street paved? Yes. Has this Company ever held a mortgage on the property? No. Does it hold one now? No. Purpose of loan? To pay off existing 1st mortgage. Total amount of all existing mortgages, \$20,000 held

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 16-R.
Application for
Loan—W. H.
Biggs and Eva
V. Biggs to
Consolidated
Trusts Corp.
\$20,000.00.
27th December,
1927.

by London Loan and Savings Co. Does any other person claim any right whatsoever over any part of the property aside from the above mortgages? No.

Applicant's Signature } EVA VIOLA BIGGS,
 } W. H. BIGGS.

(Endorsed on back)

Submitted to Directors Dec. 27, 1927. Accepted for \$20,000. Ins'ce \$20,000. \$150.00 each half year on principal. Interest rate 6½% (7½% for 1st year).

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Ex. 16-R
 Application for
 Loan—W. H.
 Biggs and Eva
 V. Biggs to
 Consolidated
 Trusts Corp.—
 \$20,000.00
 27th December,
 1927.

—continued.

Exhibit 17-R

(Defendants' Exhibit)

10

**Application for Loan—W. H. Biggs to Consolidated Trusts Corporation—
 315-319 Ridout St.—\$13,600.**

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Ex. 17-R
 Application for
 Loan—W. H.
 Biggs to Con-
 solidated
 Trusts Corp.—
 315-319 Ridout
 St.—\$13,600.
 27th December,
 1927.

THE CONSOLIDATED TRUSTS CORPORATION

Head Offices

LONDON — CANADA

Application for Mortgage Loan on City Property

I, Walter Herbert Biggs, (Office Manager), permanent mail address, 319 Ridout St. South, London, Ontario, hereby apply for a loan of \$13,600 repayable \$100.00 yearly; balance at end of 5 years. Interest 6½% per annum to be paid together with the half-yearly principal payments in Dec. and June, on property known as (street No.) 315-319 on the West side of Ridout St., S., between Emery St. and Base Line, in the city of London. Frontage of lot, 60 ft., depth of lot, 165 ft. Is there any side drive or rear lane? Yes.

Building used for: 315-317 Ridout St., residence duplex, foundation concrete, walls solid brick, roof slate, size 26 x 40, 2 storeys high, 10 years old; state of repair, good.

Building used for, 319 Ridout St., residence duplex, Material: foundation concrete; walls solid brick; roof asphalt shingle, size 24 x 30, 2 storeys high, 10 years old; state of repair, good.

Building used for garages; foundation, none; walls frame; roof asphalt; size 50 x 10, 1 storey, 5 years old; state of repair, fair.

Selling value of land, \$3,000; Assessment, \$9,800. The property was purchased 5 years ago for \$... The property is occupied by tenants and myself. Monthly rental (1) \$55.00, (2) \$55.00, (3) I occupy the 3rd apt. and one apartment not yet rented. Is building complete or in course of erection? One complete, other not quite finished as to second apartment. Building is lighted by electric, heated by hot water boilers. Is there a proper sewer connection? Yes. What plumbing is there? Full plumbing in all apts. Is the street

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 17-R.
Application for
Loan—W. H.
Biggs to Con-
solidated
Trusts Corp.
315-319 Ridout
St.—\$13,600.
27th December,
1927.

paved? Yes. Has this Company ever held a mortgage on the property? No. Does it hold one now? No. Purpose of loan? To pay off existing first mortgages. Total amount of all existing mortgages \$13,300 held by London Loan & Savings Co'y. Does any other person claim any right whatsoever over any part of the property aside from the above mortgages? No.

Applicant's Signature W. H. BIGGS.

(Endorsed on back)

Submitted to Directors Dec. 27, 1927. Accepted for \$13,600.00. Ins'ce \$13,600.00. \$100.00 each half year on principal. Interest rate 6½%.

Exhibit 20-R

10

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. 20-R.
Direction—
W. H. Biggs
and Eva V.
Biggs to Con-
solidated
Trusts Corp.—
Disbursements
—\$33,542.26.
30th December,
1927.

**Direction—W. H. Biggs and Eva V. Biggs to Consolidated Trusts Corporation
—Disbursements—\$33,542.26**

London, Ontario, December 30th, 1927

The Consolidated Trusts Corporation,
220 Dundas Street, City.

Dear Sirs:—

We have to-day executed two mortgages to your Company for \$20,000.00 and \$13,600.00 respectively. This is your authority to pay out of the proceeds of the said mortgages \$33,542.26 to the London Loan & Savings Company of Canada for a discharge of their mortgages numbers 16914 and 17155 and to pay the balance of the proceeds (\$57.74) of our mortgages to G. A. P. Brickenden & Company for fees and disbursements in connection with the mortgages and we authorize you to hold the discharges of the above mentioned mortgages to the London Loan & Savings Company unregistered until such a time as the second and third mortgages on my property are paid off or postponed so that the mortgages now given to you will become first mortgages.

Yours very truly,

EVA VIOLA BIGGS,

W. H. BIGGS.

30

Part Exhibit P.

(Defendants' Exhibit)

2

Ledger Sheets—B.12, B.13—of Consolidated Trusts Corporation re Biggs' Loans—\$20,000. and \$13,600.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. P.
2.
Ledger Sheets
—B. 12, B. 13
—re Consoli-
dated Trusts
Corp. re Biggs'
loans—\$20,000
and \$13,600.
31st December,
1927.

THE CONSOLIDATED TRUSTS CORPORATION

No. B-12

Name—Walter Herbert Biggs, Insurance
Address—319 Ridout St., City Br. Crown---\$10,000. expires Apl. 14/29
10 Mortgage date Dec. 1st, 1927 Norwich ---\$3,000. " Jan. 6/29
Registration No. 23113. " ---\$3,000 " Feb. 3/29
Merchants---\$4,000 " Mar. 24/31
Principal \$20,000 payable \$150, half-yearly, com. June 1, 1928, balance Dec. 1, 1932. Int. 7½% half-yearly, June 1 and Dec. 1.
Collateral: 100 shares Huron & Erie Mtge. Corpn. fully paid stock. Certificate No. 12467.
Rate 7½ until Nov. 14/28 thereafter 6½%.
Remarks—Interest rate 7½% until Nov. 14/1928, thereafter 6½% per annum, half-yearly.

20 Land—In the municipality of city of London, 116 Elmwood Ave., part Lot No. 11 in Block "B." Registered Plan No. 343. Frontage 42' x 94'6". Inspected by H. R. C. (Clewes), Dec. 21, 1927, Land, \$2025; Building, \$30870; Total \$32895.

Date	Particulars	Int.	Principal		Balance
			Dr.	Cr.	
1927 Dec. 31	To cash.....		\$ 20,000 00		\$ 20,000 00
1928 June 28	By cash.....	\$300 00			
July 19	By cash.....	81 67			
30 Aug. 11	By cash.....	150 00			
Oct. 3	To insurance premium		24 00		20,024 00
Nov. 1	By payt. Int. & arrears Of Int. to date... 100 90				

THE CONSOLIDATED TRUSTS CORPORATION

No. B-13

Name—Walter Herbert Biggs,
Address—319 Ridout Street South, City.
Mortgage Date December 1st, 1927. Rate 6½%.
Registration No. 23114.
Principal—\$13,600, payable \$100 half-yearly, com. June 1st, 1928, balance
40 Dec. 1, 1932. Int. half-yearly June 1 and Dec. 1.
Privilege—\$100.00 principal due June 1/28 allowed to stand over.
Insurance \$5,000 Anglo S. expires Jan. 11/31

In the Supreme Court of Ontario.
 Exhibits. Part Ex. P. 2.
 Ledger Sheets—B. 12. B. 13.—re Consolidated Trusts Corp. re Biggs' loans—\$20,000 and \$13,600. 31st December, 1927.

5,000 N.Y. Underwriters expires Nov. 10/29
 1,500 Fed. Fire expires Dec. 15/30
 2,500 Amer. Ins. expires Nov. 14/28
 Remarks—Additional security transferred to Trust Co. as collateral 100 shares Huron & Erie, fully paid stock, Cert. No. 12467.
 Lands—In the municipality of city of London, Ont., 315-319 Ridout Street. Lots Nos. 18 and 19 w.s. of Ridout Street, South except Westerly 60 feet of Lot No. 19. Registered Plan No. 399.
 Frontage 60 ft. x 165 ft.

Inspected by H. R. Clewes, Dec. 21, 1927, Land, \$2,310. 10
 315 Ridout St. 317 Ridout St., Total \$7,200, 319 Ridout St., \$5,500.
 Garage, \$1,000.—total \$16,010.

Date	Particulars	Int.	Principal		Balance
			Dr.	Cr.	
1927					
Dec. 31	To cash.....		\$ 13,542	26	\$ 13,542 26
Dec. 31	To cash.....			57 74	13,600 00
1928					
June 28	By cash.....	\$200 00			
July 19	By cash.....	168 33			
Oct. 3	To Ins. prems.....			77 50	13,677 50 20
Nov. 1	By cash.....	2 43			
Dec. 31	By cash.....	446 72			

Exhibit K

(Defendants' Exhibit)

In the Supreme Court of Ontario.
 Exhibits. Ex. K.
 Agreement to Assign Mortgages, London Loan & Savings Co. to Consolidated Trusts Corp.—re Mortgages Nos. 16914 and 17155. 31st December, 1927.

Agreement to Assign Mortgages, London Loan & Savings Company to Consolidated Trusts Corporation—re Mortgages Nos. 16914 and 17155.

THIS AGREEMENT made this Thirty-first Day of December, 1927,
 BETWEEN:—

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA, 30
 Of the First Part,

—AND—

THE CONSOLIDATED TRUSTS CORPORATION,
 Of the Second Part.

WHEREAS The London Loan and Savings Company of Canada holds certain mortgages made by Walter Herbert Biggs and Eva Viola Biggs.

AND WHEREAS The Consolidated Trusts Corporation has agreed to make a loan of Thirty-three Thousand, Six Hundred Dollars (\$33,600.00) to Walter Herbert Biggs and Eva Viola Biggs, secured by two first mortgages for Twenty Thousand Dollars and Thirteen Thousand, Six Hundred Dollars, 40

respectively, dated the First day of December, 1927, and intended to replace two first mortgages now held by The London Loan and Savings Company of Canada, registered as Number 16914 and 17155, and the amount owing on the said mortgages to The London Loan and Savings Company of Canada, namely Thirty-three Thousand, Five Hundred and Forty-two and 26/100 Dollars (\$33,542.26) has been paid to them out of the proceeds of the above mentioned new mortgages.

AND WHEREAS The London Loan and Savings Company of Canada has agreed to guarantee the above mentioned new mortgages.

10 NOW THEREFORE The London Loan and Savings Company of Canada COVENANTS with The Consolidated Trusts Corporation that Walter Herbert Biggs and Eva Viola Biggs will pay to The Consolidated Trusts Corporation all the moneys owing under the said mortgages dated the First day of December, 1927, and will fully pay off and satisfy the said mortgages.

AND The London Loan and Savings Company of Canada further agrees to execute Assignments to The Consolidated Trusts Corporation of mortgages Number 16914 and 17155 and to execute such postponements of mortgages as may be necessary, so that the Consolidated Trusts Corporation may 20 become first Mortgagee as to all the properties covered by the said Mortgages, dated the First day of December, 1927.

WITNESS the Corporate seal of the Parties hereto and the hands of the proper Officers thereof.

Witness:

E. P. Fletcher

} GEO. G. McCORMICK,
President.
} JNO. H. HAMBLY,
Manager.



Exhibit L.

(Defendants' Exhibit)

30

Assignment of Mortgage, London Loan & Savings Company to Consolidated Trusts Corporation—Mortgage No. 16914—\$18,000.

ASSIGNMENT OF MORTGAGE (unregistered)

Date - - 31st December, 1927,
Assignor - The London Loan and Savings Company of Canada, a Corporation having its head office in the City of London, in the County of Middlesex and Province of Ontario,
Assignee - The Consolidated Trusts Corporation, a Corporation having its head office in the said City of London,
40 **Particulars of Mortgage Assigned** Mortgage dated November 14th, 1922, and registered in the Registry Office for the Registry Division of the City

In the Supreme Court of Ontario.
Exhibits.
Ex. K.
Agreement to Assign Mortgages London Loan & Savings Co. to Consolidated Trusts Corp.—re Mortgages Nos. 16914 and 17155.
31st December, 1927.

—continued.

In the Supreme Court of Ontario.
Exhibits.
Ex. L.
Assignment of Mortgage, London Loan & Savings Co. to Consolidated Trusts Corp.—Mortgage No. 16914—\$18,000.00.
31st December, 1927.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. L.

Assignment of
Mortgage.
London Loan
& Savings Co.
to Consolidated
Trusts Corp.—
Mortgage No.
16914—
\$18,000.00.
31st December,
1927.

—continued.

Consideration	-	\$20,195.50.	10
Lands	- - -	ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of London, in the County of Middlesex, and being composed of Part of Lot Number Eleven, in Block "B," according to plan registered as number 343, for the City of London, which said part of said Lot may be more particularly described as follows:—COMMENCING at the Southeast angle of said Lot: Thence Northerly along the Easterly limit of said Lot being the Westerly boundary of Cathcart Street, ninety-four feet six inches: Thence Westerly parallel with the Southerly limit of the said Lot forty-five feet: Thence Southerly parallel with Cathcart Street ninety-four feet six inches, more or less, to the southerly limit of the said Lot, being the Northerly boundary of Elmwood Avenue: Thence Easterly along the said southerly limit, forty-five feet, more or less, to the place of beginning.	20

Exhibit M.

(Defendants' Exhibit)

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. M.

Assignment of
Mortgage.
London Loan
& Savings Co.
to Consolidated
Trusts Corp.—
Mtge. No.
17155—
\$12,000.00.
31st December,
1927.

Assignment of Mortgage, London Loan & Savings Company to Consolidated Trusts Corporation—Mortgage No. 17155—\$12,000.00. 30

ASSIGNMENT OF MORTGAGE (unregistered)

Date	-	31st December, 1927.	
Assignor	-	The London Loan and Savings Company of Canada, a corporation having its head office in the City of London in the County of Middlesex and Province of Ontario,	
Assignee	-	The Consolidated Trusts Corporation, a corporation having its head office in the said City of London,	
Particulars of Mortgage Assigned	-	Mortgage dated January 27th, 1923, and registered in the Registry Office for the Registry Division of the City	40

of London as No. 17155, made by Eva Viola Biggs, the wife of Walter Herbert Biggs, of the City of London, in the County of Middlesex, Accountant, in favour of the said The London Loan and Savings Company of Canada, for securing the payment of \$12,000.00; upon which there is owing for principal money the sum of \$12,012.08 with interest thereon from the 27th of July, 1926.

10 **Consideration** - \$13,346.76.
Lands - - ALL and Singular that certain parcel or tract of land and premises situate lying and being in the City of London, in the County of Middlesex, and being composed of Lots Numbers Eighteen and Nineteen, on the west side of Ridout Street South, (formerly Queen Street) in the said City of London, according to registered plan number 399, Save and Except the Westerly Sixty feet of Lot Number Nineteen.

In the Supreme Court of Ontario.
 Exhibits.
 Ex. M.
 Assignment of Mortgage, London Loan & Savings Co. to Consolidated Trusts Corp.—
 Mgt. No. 17155—
 \$12,000.00.
 31st December, 1927.
 —continued.

Exhibit N

(Defendants' Exhibit)

20 **Cheque, Consolidated Trusts Corporation to London Loan & Savings Company**
\$33,542.26.

"Folio 103—Line 21" Cheque No. 558

THE CONSOLIDATED TRUSTS CORPORATION

London, Canada, December 31st, 1927.

To the BANK OF MONTREAL (Dundas and Wellington Sts. Branch) 1-348
 Pay to the order of London Loan & Savings Company of Canada,

Thirty-three Thousand Five Hundred and Forty-two 26/100 Dollars,
\$33,542.26.

30 For In full proceeds of two loans made to W. H. Biggs and Eva Biggs as follows: \$20,000.00
 \$13,542.26
 ----- \$33,542.26

These amounts paid by order.....\$33,542.26

GEO. G. McCORMICK, President.	Bank of Montreal 1-348 London, Ont. Dec. 31, 1927 City Hall Branch ACCEPTED	H. R. CLEWES, PAID Manager.
----------------------------------	---	--------------------------------

(Endorsed on back)

The London Loan & Savings Stamp

In the Supreme Court of Ontario.
 Exhibits.
 Ex. N.
 Cheque, Consolidated Trusts Corp. to London Loan & Savings Co.—
 \$33,542.26.
 31st December, 1927.

Exhibit O

(Defendants' Exhibit)

Cheque, Consolidated Trusts Corporation to G. A. P. Brickenden—\$57.74.

No. 27-483 "Folio 103—Line 27" "C216K" \$57.74

THE LONDON LOAN & SAVINGS CO., OF CANADA

London, Ont., December 31st, 1927

Pay to G. A. P. Brickenden & Company or Order,

Fifty-seven 74/100 Dollars.

Account No. C-216.

The Consolidated Trusts Corporation,

10

Countersigned

"GEO. G. McCORMICK".

London Loan & Savings Co.
of CanadaPAID
Dec. 31, 1927
London, Ont.per H. R. CLEWES,
Manager.

(Endorsed on back)

Balance of loan of \$13,600.00 to W. H. Biggs and Eva Biggs. Paid by
order. "G. A. P. BRICKENDEN & CO."**Exhibit CC.**

(Plaintiffs' Exhibit)

**Guarantee Agreement, London Loan & Savings Company to Consolidated
Trusts Corporation—\$33,600.00. re Mortgages 16914 and 17155.**

20

THIS AGREEMENT made this Thirty-first Day of December, 1927,
BETWEEN:—THE LONDON LOAN AND SAVINGS COMPANY OF CANADA,
Of the First Part,

—AND—

THE CONSOLIDATED TRUSTS CORPORATION,

Of the Second Part.

WHEREAS The London Loan and Savings Company of Canada holds 30
certain mortgages made by Walter Herbert Biggs and Eva Viola Biggs.AND WHEREAS The Consolidated Trusts Corporation has agreed to
make a loan of Thirty-three Thousand, Six Hundred Dollars (\$33,600.00) to
Walter Herbert Biggs and Eva Viola Biggs, secured by two first mortgages for
Twenty Thousand Dollars and Thirteen Thousand, Six Hundred Dollars,
respectively, dated the First day of December, 1927, and intended to replace*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. O.
Cheque, Con-
solidated
Trusts Cor-
poration to
G. A. P.
Brickenden—
\$57.74.
31st December,
1927.*In the
Supreme
Court of
Ontario.*Exhibits.
Ex. CC.
Guarantee
Agreement,
London Loan
& Savings Co.
to Consolidated
Trusts Corp.—
\$33,600.00—re
Mortgages
16914 and
17155.
31st December,
1927.

two first mortgages now held by The London Loan and Savings Company of Canada, registered as Number 16914 and 17155, and the amount owing on the said mortgages to The London Loan and Savings Company of Canada, namely Thirty-three Thousand, Five Hundred and Forty-two and 26/100 Dollars (\$33,542.26) has been paid to them out of the proceeds of the above mentioned new mortgages.

AND WHEREAS The London Loan and Savings Company of Canada has agreed to guarantee the above mentioned new mortgages.

10 NOW THEREFORE The London Loan and Savings Company of Canada COVENANTS with The Consolidated Trusts Corporation that Walter Herbert Biggs and Eva Viola Biggs will pay to The Consolidated Trusts Corporation all the moneys owing under the said mortgages dated the First day of December, 1927, and will fully pay off and satisfy the said mortgages.

AND The London Loan and Savings Company of Canada further agrees to execute assignments to The Consolidated Trusts Corporation of mortgages Number 16914 and 17155 and to execute such postponements of mortgages as may be necessary, so that The Consolidated Trusts Corporation may become first Mortgagee as to all the properties covered by the said Mortgages, dated the First day of December, 1927.

20 WITNESS the Corporate seal of the Parties hereto and the hands of the proper Officers thereof.

WITNESS:

E. P. FLETCHER. } GEO. G. McCORMICK, President. } JNO. H. HAMBLY, Manager. (Seal)

Part Exhibit S

(Defendants' Exhibit)

1

30 Certificate of Title, G. A. P. Brickenden to Consolidated Trusts Corporation re Mortgage No. 23114.

IN THE MATTER OF parts of Lots Eighteen and Nineteen, West Ridout Street, South, Plan 399, and IN THE MATTER OF a mortgage from Eva Viola Biggs and W. H. Biggs to The Consolidated Trusts Corporation, registered as Number 23114.

We hereby certify that we have investigated the title to the lands comprised in the said Mortgage and that the same is good and sufficient for the purpose of the said Mortgage and that the said Mortgage has been duly executed and registered and forms a charge upon the mortgaged lands to the 40 full amount thereby secured.

In the Supreme Court of Ontario. Exhibits. Ex. CC. Guarantee Agreement. London Loan & Savings Co. to Consolidated Trusts Corp.—\$33,600.00—re Mortgages 16914 and 17155. 31st December, 1927. —continued.

In the Supreme Court of Ontario. Exhibits. Part Ex. S. 1 Certificate of Title, G. A. P. Brickenden to Consolidated Trusts Corp. re Mge. 23114. 5th January, 1928.

*In the
Supreme
Court of
Ontario.*
Exhibits.
Part Ex. S.
1
Certificate of
Title, G. A. P.
Brickenden to
Consolidated
Trusts Corp.
re Mtge.
23114.
5th January,
1928.

—continued.

SUBJECT TO:—

Mortgage Number 17155, Eva V. Biggs to The London Loan & Savings Company for \$12,000.00.

Mortgage Number 19477, Eva V. Biggs to The London Loan & Savings Company for \$13,500.

Mortgage Number 19546, W. H. and Eva V. Biggs to W. Lancaster for \$900.00.

The above first mentioned mortgage, Number 17155, is now replaced by your mortgage and The London Loan & Savings Company have agreed to postpone their second mortgage or to assign the old first mortgage to you, so that your mortgage may be treated as a first charge. 10

There is also registered against the lands described in your mortgage a mortgage to The Huron & Erie Mortgage Corporation for \$10,000.00 and a collateral mortgage to The London Loan & Savings Company for \$13,500.00. These mortgages are registered on the Easterly One Hundred and Five feet front on Emery Street and the Northerly Thirty-one feet, Two inches on Ridout Street, on which is a property that is not included in the application for loan and not counted in your valuation.

DATED at London this 5th day of January, 1928.

G. A. P. BRICKENDEN & CO. 20

To The Consolidated Trusts Corporation,
220 Dundas Street,
London, Ontario.

Part Exhibit S

(Defendants' Exhibit)

2

*In the
Supreme
Court of
Ontario.*
Exhibits.
Part Ex. S.
2
Certificate of
Title, G. A. P.
Brickenden to
Consolidated
Trusts Corp.
re Mtge. No.
23113.
5th January,
1928.

**Certificate of Title, G. A. P. Brickenden to Consolidated Trusts Corporation
re Mortgage No. 23113**

IN THE MATTER OF Part of Lot Eleven, Block "B", Plan 343, London,
and IN THE MATTER OF a Mortgage from W. H. Biggs and Wife 30
to The Consolidated Trusts Corporation, registered as Number
23113.

We hereby certify that we have investigated the title to the lands comprised in the said Mortgage and that the same is good and sufficient for the purpose of the said Mortgage and that the said mortgage has been duly executed and registered and forms a charge upon the mortgaged lands to the full amount thereby secured,

SUBJECT TO:—

Mortgage from W. H. Biggs to The London Loan and Savings Company, Number 16914, for \$18,000.00.

Mortgage from W. H. Biggs to The London Loan and Savings Company, Number 19476, for \$13,500.00.

Mortgage from W. H. Biggs to Whitfield Lancaster, Number 19546, for \$900.00.

The first mentioned Mortgage, Number 16914, is being replaced by your mortgage and you have an Agreement from The London Loan and Savings
10 Company to postpone their second mortgage or to assign their first mortgage to you, so that your mortgage may be treated as a first charge.

DATED at London this 5th day of January, 1928.

G. A. P. BRICKENDEN & CO.

To The Consolidated Trusts Corporation,
220 Dundas Street,
London, Ontario.

Exhibit X

(Defendants' Exhibit)

Letter, G. A. P. Brickenden & Company to Consolidated Trusts Corporation.

20 G. A. P. Brickenden & Co.,

London, Canada, January 11th, 1928

The Consolidated Trusts Corporation,
220 Dundas Street,
City.

Dear Sirs:—

Re Biggs and London Loan

We have now completed the two loans from Mr. and Mrs. Biggs to your Company and enclose herewith:—

- 1.—Mortgage W. H. Biggs to the Consolidated Trusts Number 23113.
- 30 2.—Mortgage Eva V. and W. H. Biggs to Consolidated Trusts Number 23114.
- 3.—Agreement in duplicate from The London Loan to the Consolidated Trusts Corporation.
- 4.—Mortgage Eva Viola Biggs to the London Loan Number 17555.
- 5.—Mortgage W. H. Biggs to the London Loan Number 16914.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. S.
2

Certificate of
Title, G. A. P.
Brickenden to
Consolidated
Trusts Corp.
re Mtge. No.
23113.
5th January,
1928.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. X.
Letter, G. A. P.
Brickenden &
Co. to Con-
solidated
Trusts Corp.
11th January,
1928.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. X.
Letter, G. A. P.
Brickenden &
Co. to Con-
solidated
Trusts Corp.
11th January,
1928.

—continued.

- 6.—Mortgage W. H. Biggs to Brickenden in trust, discharged.
- 7.—Mortgage E. V. Biggs to Brickenden in trust, discharged.
- 8.—Mortgage George to Chilton, discharged.
- 9.—Vouchers by W. H. and Eva Biggs for loans of \$20,000.00 and \$13,600.00 respectively.
- 10.—Applications for loan (2).
- 11.—Order E. V. and W. H. Biggs to the Consolidated Trusts as to paying out of moneys.
- 12.—Certificates of title (2).

We have not searched taxes because these are being taken care of by the London Loan & Savings Company. Insurance Policies are in the possession of the London Loan and transfer of these is being arranged with your Mr. Clewes. 10

Yours very truly,

G. A. P. BRICKENDEN & CO.,

By EVELYN HARRISON.

EH/IS.
Encls.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. D.

12
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
12th March,
1929.

Part Exhibit D

(Plaintiffs' Exhibit)

20

12

Extract from Minute Book of London Loan & Savings Company.

Tuesday, March 12th, 1929

BOARD MET—Messrs. Coles, Braden, Hunt and Gorman present. Minutes of last meeting read and confirmed. Statement of funds submitted. **Mrs. A. J. Walker, Agreement B30.** - Application for renewal for \$1,350.00 repayable \$25 quarterly, interest at 7% quarterly, for period of five years from Feb. 13th, 1929. Approved.

Re W. H. Biggs, A2. Moved by Mr. Braden, that the Manager be instructed to co-operate with The Consolidated Trusts Corporation, and insist that the rentals in connection with the property covered by this mortgage be collected by The Consolidated Trusts Co., and on condition that Mr. Biggs pay a portion of his salary each year in reduction of the mortgages, there be no charge for collection of the rents. Seconded by Mr. Gorman. Carried. 30

- Re Dr. Walsh,
Rooms 4 and 5,
L.L. Block.** - Mr. Braden instructed to take steps to get possession of these offices.
- Tenants** - - Moved by Mr. Braden, that a report be brought in re tenancies in the building, showing the amount of rent paid by each, when the leases expire, etc. Seconded by Mr. Hunt. Carried.
- Signatures on
cheques, etc.** - Moved by Mr. Gorman that all cheques, etc., be signed by the President, or the first vice-president, or the second-vice president, and the Manager or acting Manager. Seconded by Mr. Hunt. Carried.
- Bank Account** - Moved by Mr. Braden that the bank account be changed from the Bank of Montreal to the Bank of Toronto, when the present arrangements under way between the President and the Local Manager have been completed. Seconded by Mr. Hunt. Carried.
- Salaries of staff** - Laid over.
- JNO. H. HAMBLY,
Manager.
- WM. G. COLES,
President.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. D.
12
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
12th March,
1929.

—continued.

20

Part Exhibit D

(Plaintiffs' Exhibit)

13

Extract from Minute Book of London Loan & Savings Company.

April 2nd, 1929

- Edward Grange** Application for loan on property 570-2 Waterloo Street London, for \$8,000 with interest at 7% payable half-yearly, principal to be repaid \$200.00 half-yearly, balance at the end of five year term. Approved on motion of Mr. Hunt, seconded by Mr. Braden.
- 30 W. H. Biggs** - Manager instructed to secure complete statement from Mr. Biggs as to the total mortgage liability he owes and also complete statement of rental returns on properties on which such mortgages exist.

JNO. H. HAMBLY,
Manager.

WM. G. COLES,
President.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. D.
13
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
2nd April, 1929.

Part Exhibit D

(Plaintiffs' Exhibit)

14**Extract from Minute Book of London Loan & Savings Company.**

Monday, April 29th, 1929

BOARD MET—All present. Minutes of last meeting read and confirmed. Statement of funds submitted.

- A. E. Baker, Mtge. 58** - Application for renewal of above mortgage on lots located in the Township of North York, according to plan 1801, for \$1,410.35, approved for a further five year period, repayable \$25 quarterly, balance at the end of the five year period, interest in the meantime at 8% payable quarterly. 10
- Re Dance Hall** - Letters received from E. E. Harris and George Banghart with offers to rent dance hall for further term of one year, at rental of \$800 per annum, payable monthly in advance. Left in hands of Manager to arrange.
- Re A. E. Taylor, R.E. T18.** Tenders received for roofing and repairs to these 20
J. Whitehead, R.E. 54 - properties. Laid over to receive further tenders, and work authorized to be done. New tenders to called, lowest tender to receive contract.
- Re Buckingham Apts.** - Letter received from Messrs. Braden & McAlister explaining H. A. Morine's position re Buckingham Apartments. Moved by Mr. Hunt, seconded by Mr. Robinson, that the matter be placed in the hands of the Solicitors to take any action considered necessary to recover the losses sustained by the Company by reason of H. A. 30
 Morine being released from the covenant on the London Loan Mortgage. Carried.
- Re E. A. Reinhart, 412** - Letter received from Messrs. R. B. Rice & Sons in regard to repairs to ceiling at 737-743 Danforth Avenue, Toronto, to cost approximately \$225 to \$250. Instructions to have repairs made. Moved by Mr. Robinson, seconded by Mr. Hunt, that the fire insurance carried in connection with this loan be reduced to \$65,000 and also that Solicitors be instructed to take what- 40

ever steps are necessary to effect a sale of the property. Carried.

Re W. H. Biggs, A2. - Application from Mr. Biggs to instal frigidaire units in duplex on Ridout Street and also in duplex on Elmwood Avenue, at a cost of \$245.00 per unit, 10% to be paid down, the balance spread over a two year period, not approved by the Board.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Part Ex. D.
14
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
29th April,
1929.

—continued.

10 JNO. H. HAMBLY,
Manager.

WM. G. COLES,
President.

Exhibit G

(Defendants' Exhibit)

**Triparte Agreement, London Loan & Savings Company, Huron & Erie Mort-
gage Corporation and London Loan Assets, Limited.**

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. G.
Triparte Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
Mortgage
Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.

THIS AGREEMENT made in triplicate this 3rd day of July, 1929.

BETWEEN:

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA
hereinafter called the "Loan Company" Of the First Part,

—and—

20 THE HURON AND ERIE MORTGAGE CORPORATION
hereinafter called the "Mortgage Corporation" Of the Second Part.

—and—

THE LONDON LOAN ASSETS LIMITED
hereinafter called the "New Company" Of the Third Part.

WHEREAS the Loan Company and the Mortgage Corporation have been duly incorporated under the laws of the Province of Ontario (and the Mortgage Corporation also under the laws of the Dominion of Canada), to carry on the general business of loan and savings companies, and with power to purchase the assets of any other company carrying on a similar business:

30 AND WHEREAS the Loan Company has agreed to sell and the Mort-
gage Corporation has agreed to purchase the assets of the Loan Company
upon the terms and subject to the conditions of this agreement:

AND WHEREAS the New Company has been incorporated under the laws of the Province of Ontario for the purposes of this agreement:

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. G.
Tripartite Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
Mortgage
Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.
—continued.

AND WHEREAS the Mortgage Corporation has agreed to sell and the New Company has agreed to purchase assets of the Loan Company representing the surplus over and above the amount of liabilities of the Loan Company to the public upon the terms and subject to the conditions of this agreement:

NOW THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements herein contained and of the consideration hereinafter set forth, the parties hereto agree each with the other as follows:—

PART I

1—The Loan Company agrees to sell and sells to the Mortgage Corporation, and the Mortgage Corporation agrees to purchase and purchases from the Loan Company the entire assets and undertaking of the Loan Company including:— 10

First:—The goodwill of the said business of the Loan Company, with whatever rights are or may be capable of being transferred to use the name of the London Loan and Savings Company of Canada in connection with the business so purchased and to hold out and represent the Mortgage Corporation as carrying on such business in continuation of the Loan Company's business and in succession thereto, and to use the words "formerly The London Loan and Savings Company of Canada" or any other words indicating that the business is carried on in continuation of or in succession to the said Loan Company. 20

Second:—All the freehold and leasehold properties belonging to the Loan Company.

Third:—All mortgages, stocks and debentures and securities for money owned by the Loan Company.

Fourth:—All the book and other debts due or to become due to the Loan Company in connection with the said business, and the full benefit of all securities for such debts.

Fifth:—The full benefit of all contracts and engagements, covenants and provisos to which the Loan Company is or may be entitled in connection with the said business. 30

Sixth:—All rights of action arising out of or incidental or appurtenant to ownership of any assets hereby assigned or conveyed or affecting the value thereof insofar as these rights of action are capable of being transferred.

Seventh:—All cash in hand and at any bank, and all bills and notes held by the Loan Company in connection with said business.

Eighth:—All other assets and property to which the Loan Company is or may become entitled in connection with the said business.

- 2—The consideration for the sale by the Loan Company to the Mortgage Corporation shall be as follows:—
- (a) The Mortgage Corporation undertakes and agrees with the Loan Company to pay, satisfy and perform all the debts, liabilities, contracts and engagements of the Loan Company in relation to the said business:
- (b) The Mortgage Corporation agrees to transfer and assign to the Loan Company, or its nominees 20,000 shares of the capital stock of the New Company (being all the capital stock of the New Company) which are to be received by the Mortgage Corporation as hereinafter provided as part of the consideration for the transfer of certain assets to the New Company.
- (c) The Mortgage Corporation agrees to pay to the Loan Company the sum of \$720,000 in cash forthwith after the ratification of this agreement as required by law.
- (d) As part of the consideration for the said sale, The Mortgage Corporation shall at all times keep the Loan Company indemnified against any debts, liabilities, obligations, contracts and engagements of the Loan Company and against all actions, proceedings, costs, damages, claims, demands and other proceedings in respect thereof.
- 3—The Mortgage Corporation shall accept such title to the properties, mortgages and other assets hereby agreed to be transferred as the Loan Company possesses and the titles to all such properties, mortgages and other assets and the certificates thereof are to be deemed prima facie valid and sufficient.
- 4—Any right of action hereby assigned or transferred by the Loan Company to the Mortgage Corporation may be exercised or enforced, and any proceedings which may have been commenced by the Loan Company in connection therewith at the date of ratification of this agreement may be continued in the name of the Mortgage Corporation or in the name of the Loan Company, for the benefit of the Mortgage Corporation. Nevertheless, nothing in this agreement shall derogate from or extinguish any right of action now vested in the Loan Company in connection with the business of the Loan Company prior to the ratification of this agreement which is not capable of assignment or transfer, and any such right of action shall remain vested in and enforceable by the Loan Company and the Loan Company may take any proceedings to enforce, exercise or realize upon such rights of action in its own name and for the benefit of its own shareholders.
- 5—This agreement is conditioned upon receiving the ratification of shareholders and assent of the Lieutenant-Governor-in-Council required by law, but subject thereto, the agreement shall be effective and all adjustments made as of September 1st, 1929, provided, however, that, notwithstanding anything herein contained, the Loan Company shall,

*In the
Supreme
Court of
Ontario.*

—
Exhibits.

Ex. G.
Triparte Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
Mortgage
Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.

—continued.

*In the
Supreme
Court of
Ontario.*

Exhibits.

Ex. G.
Triparte Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
Mortgage
Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.

—continued.

until this agreement is duly ratified and assented to as required by law, be at liberty to carry on its business in the same manner as heretofore so as to maintain the same as a going concern and for the purposes of carrying on its business as aforesaid the Loan Company may sell, assign, exchange, convey, appropriate, lease, surrender, charge, mortgage, pay out, or otherwise deal with its property in the usual and ordinary course of its business in such manner as to the Loan Company may seem best, but from and after the date of this agreement the Loan Company shall not make any extraordinary or unusual use or disposition of any of its assets that may have the effect of impairing their value, 10
except with the consent of the Mortgage Corporation.

6—As soon as practicable after the ratification of and assent to this agreement required by law, the Loan Company will deliver to the Mortgage Corporation possession of all its property and assets hereinbefore agreed to be sold, subject to existing tenancies and encumbrances, and at the same time the Mortgage Corporation shall pay and satisfy the consideration for this sale hereinbefore mentioned and thereupon the Loan Company and all other necessary parties (if any) over whom the Loan Company has control, shall execute and do all such assurances and things as may reasonably be required for vesting the said assets in the Mortgage Corporation and giving to it the full benefit of this agreement. 20

7—If this agreement is duly ratified the Loan Company shall make provision for the immediate payment to its shareholders out of the moneys received from the Mortgage Corporation as consideration for this sale, of the sum of Thirty-five dollars in cash for each fully paid up share of capital stock of the Loan Company owned by its shareholders and the Loan Company shall, at the same time, deliver to its shareholders one share of the capital stock of the New Company for each fully paid up share of the capital stock of the Loan Company owned by its shareholders. 30
The shareholders of the Loan Company shall only be entitled to this payment and delivery upon surrender of the shares of the capital stock of the Loan Company duly endorsed and transferred to three trustees to be named at the general meeting of shareholders of the Loan Company at which this agreement is ratified. These trustees shall have power to represent the shareholders of the Loan Company at subsequent meetings of the company and to take all such action as the shareholders themselves could take for the carrying out of the provisions of this agreement and the protection of the rights and interests of the shareholders in all matters affecting the Loan Company. 40
Any balance of moneys remaining after the payment to shareholders of the Loan Company as herein provided shall be applied as the Directors of the Company may deem best as remuneration or honorarium to the officers and staff of the Loan Company for past services and for the relinquishment of their positions with the Company, in payment of

the costs of this transaction or of any future proceedings required for the protection of the interests of the shareholders.

- 8—All corporate powers of the Loan Company necessary or useful for the exercise of rights of action mentioned in paragraph Number Four hereof and for the administration and distribution of the money and other consideration to be received for the sale of its assets under the terms of this agreement and for the effective carrying out of the intention of this agreement shall persist unimpaired insofar as is necessary to give full effect to this agreement.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. G.
Tripartite Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
Mortgage
Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.

—continued.

10

PART II

- 9—Subject to the ratification of this agreement as required by law, the Mortgage Corporation hereby agrees to sell to the New Company, and the New Company hereby agrees to purchase from the Mortgage Corporation the assets formerly belonging to the Loan Company, which are listed in the Schedule to this agreement, representing the surplus over and above the liabilities of the Loan Company to the public, which schedule is duly verified by the signatures of the parties hereto and deposited for record purposes with the Registrar of Loan Corporations for Ontario and hereinafter referred to as "The Schedule".
- 20 10—The New Company hereby accepts the title of the Mortgage Corporation to the assets listed in the Schedule, subject to any charges or encumbrances which may exist against the same when transferred by the Loan Company to the Mortgage Corporation.
- 11—It is hereby understood and agreed that the New Company shall have all rights of action arising out of or incidental or appurtenant to ownership of any assets purchased by the New Company or affecting the value thereof, together with the right to take or continue any proceedings for the enforcement of such rights of action in the name of the New Company or of the Mortgage Corporation or both, for the benefit of the
- 30 New Company.
- 12—As consideration for the sale of the assets listed in the Schedule to the New Company, the New Company hereby covenants and agrees with the Mortgage Corporation, to issue and allot, or secure the transfer, to the Mortgage Corporation or its nominees, of 20,000 shares of the capital stock of the New Company (being all the capital stock of the New Company) forthwith after the completion of this agreement and to pay or cause to be paid to the Mortgage Corporation, on or before September 1st, 1934, the sum of \$720,000 (hereinafter called the purchase money) with interest on the amount from time to time unpaid at
- 40 the rate of 6% per annum from September 1st, 1929 until the whole sum is fully paid, such interest to be payable quarterly on the first day of December, March, June and September in each year, the first pay-

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. G.
Triparte Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
Mortgage
Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.

—continued.

- ment of interest to become payable on December 1st, 1929; provided, however, that if on September 1st, 1934, the New Company is not in default in payment of interest due hereunder and has reduced the amount of the purchase money owing the Mortgage Corporation to the sum of \$200,000.00 or less, the time for payment of such purchase money shall be extended, if the New Company requests such extension, for a further period of two years from September 1st, 1934, subject to the terms of this agreement.
- 13—The New Company may pay to the Mortgage Corporation any sum on account of the principal due under this agreement at any time without notice or bonus, but the New Company hereby covenants and agrees that in each twelve month period after September 1st, 1929, it will pay to the Mortgage Corporation a sum on account of principal due hereunder of not less than \$100,000.00, provided, that, if in any such period the New Company pays a larger sum than the said \$100,000.00 on account of principal, the amount of such excess shall be credited to the New Company as payment on account of subsequent annual instalments as and when due. 10
- 14—While not in default in payment of any purchase money or interest due hereunder, and subject to the provisions of this agreement, the New Company shall be entitled to control, manage, administer and liquidate the assets listed in the Schedule, and the properties which they represent, and without restricting in any way this general authority, the New Company, may,—provide for the maintenance, repair and protection of the properties and securities, collect and receive instalments of principal and interest rents and other revenues from the said properties and securities: Sell, assign, exchange, lease, surrender, charge and otherwise deal with the properties and securities for such consideration and upon such terms and conditions as the New Company may deem advantageous; Take proceedings for the collection of interest or principal or of rents and other charges owing in respect of the property; Exercise powers of sale or foreclosure and undertake any legal proceedings or use any other lawful means that may appear to the New Company desirable or necessary in order to realize upon or secure the benefit of the properties and securities listed in the Schedule and of any rights incidental to or connected therewith. Any such legal proceedings may be taken either in the name of the New Company or in the name of the Mortgage Corporation or both, as circumstances may require. 20 30
- 15—The New Company covenants with the Mortgage Corporation that it will, during the continuance of this agreement, pay all taxes, rates and assessments against the property and assets listed in the Schedule, maintain adequate insurance of any buildings on the properties or covered by the mortgages and generally maintain, protect and pre- 40

serve the said assets until the claim of the Mortgage Corporation under this agreement has been fully paid and satisfied, or until individual items of property or assets affected are released by the Mortgage Corporation as hereinafter provided.

- 10 16—The New Company shall use all possible diligence in collecting all moneys due for interest and principal of all mortgages or other securities for money listed in the Schedule and in converting into money all other assets so listed and in applying the proceeds thereof, as herein provided, to the reduction of the amount of purchase money due the Mortgage Corporation under this agreement. In pursuance hereof the New Company agrees that it will not, except with the written consent of the Mortgage Corporation, renew any mortgage or loan included in the said assets or extend the time for payment of any indebtedness unnecessarily or re-invest any proceeds of the said assets in any other security until the whole amount of the claim of the Mortgage Corporation has been paid and satisfied.
- 20 17—The New Company hereby covenants and agrees with the Mortgage Corporation that it will indemnify and save harmless the Mortgage Corporation from all loss, costs and charges arising from: (a) Any proceeding of whatsoever nature commenced or carried on by the New Company in the name of the Mortgage Corporation, (b) Any proceedings for an accounting or otherwise in connection with any of the assets listed in the Schedule, (c) Liabilities of the Loan Company (if any) not shown on the books of the Loan Company at the time of ratification of this agreement and (d) any failure of title or priority of any mortgage security of the Loan Company as transferred to the Mortgage Corporation under this agreement. If by this agreement the Mortgage Corporation becomes the owner of the Consolidated
- 30 Trusts Corporation now owned by the Loan Company, the New Company further covenants and agrees that it will indemnify the Mortgage Corporation from similar losses in connection with the liabilities and assets of the Consolidated Trusts Corporation, or from any undisclosed liability arising from the administration of estates, trusts or agencies by the Consolidated Trusts Corporation prior to 1st September, 1929.
- 40 18—The New Company shall keep true and accurate accounts of all dealings with the assets listed in the Schedule. The said accounts shall be open to inspection by a duly authorized officer or officers of the Mortgage Corporation at the offices of the New Company, at any time upon request of the Mortgage Corporation. In the said accounts, the New Company shall divide all revenue from the said assets into separate accounts for principal and interest in the case of mortgages and agreements for sale, and for capital and income in the case of other assets and shall keep any special or additional accounts and records in such form as the Mortgage Corporation may request.

*In the
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Exhibits.
Ex. G.
Triparte Agree-
ment, London
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ings Co.,
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Mortgage
Corp., and
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3rd July, 1929.
—continued.

*In the
Supreme
Court of
Ontario.*
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Exhibits.
Ex. G.
Tripartite Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
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Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.

—continued.

- 19—There is allotted to each item in the Schedule and specified therein a certain portion of the principal sum owing, or of the book value of the asset, to represent the portion of the proceeds thereof which shall be applied, upon realization, in payment of the purchase money due the Mortgage Corporation under this agreement. That portion of all revenue on account of principal or capital derived from the individual assets, which the amount specified in the Schedule bears to the total principal owing or the book value of the assets, shall be set aside and earmarked for the Mortgage Corporation and paid over from time to time as realized by the New Company to the Mortgage Corporation 10
on account of the purchase money due under this agreement.
- 20—The Mortgage Corporation hereby agrees to convey, transfer or release to the New Company or its nominees, upon the request and at the expense of the New Company, any mortgage or property listed in the Schedule, upon payment to the Mortgage Corporation of the amount specified in the Schedule as hereinbefore provided or of such less amount as the Mortgage Corporation may be willing to accept in cases in which the property or security does not realize the full amount specified in the Schedule. All such transfers, releases or documents shall be prepared, and the legal work in connection therewith performed by the Solicitors of the New Company and the New Company shall not be chargeable with any further or other legal expense incurred by the Mortgage Corporation in connection therewith. 20
- 21—At any time while not in default in payment of any instalment of interest or principal due the Mortgage Corporation under this agreement, the New Company may apply any revenue not earmarked for the Mortgage Corporation as hereinbefore provided, either in the maintenance, preservation or protection of the remaining assets of the New Company, the expenses of management and administration of the New Company, or in distribution to its shareholders. 30
- 22—Subject to the provisions of the next succeeding paragraph, the Mortgage Corporation covenants and agrees that it will, at the expense of the New Company, and upon payment of the full balance of the purchase money and interest due under this agreement, finally convey, transfer, assign and release to the New Company or its nominees all the remainder of the assets listed in the Schedule not previously conveyed, released or assigned to or for the New Company.
- 23—In order to provide security to the Mortgage Corporation for the covenants of indemnity herein given by the New Company for some period after the final payment of purchase money due under this agreement, 40
it is hereby understood and agreed:—
1. That the New Company shall give to the Mortgage Corporation as a condition precedent to the final release and conveyance of assets provided for in paragraph 22 hereof security in an

amount not exceeding \$10,000 in a form satisfactory to the Mortgage Corporation to be held by the Mortgage Corporation for a period of one year after the final payment of purchase money due hereunder to secure the performance by the New Company of its covenants of indemnity contained in this agreement.

10 2. If the final payment of purchase money due under this agreement is made before September 1, 1935, the New Company shall give to the Mortgage Corporation as a condition precedent to the release and conveyance of assets provided for in paragraph 22 hereof security in an amount not exceeding \$50,000 in a form satisfactory to the Mortgage Corporation to be held by the Mortgage Corporation until September 1st, 1935, to secure the performance by the New Company of its covenants of indemnity contained in this agreement.

20 24—In case of default in payment of any purchase money or interest thereon due the Mortgage Corporation under this agreement, the Mortgage Corporation may, upon giving the New Company three months notice in writing of its intention to do so, and if the New Company is still in default at the time of the expiry of the notice, revoke this agreement insofar as it relates to the administration of assets by the New Company, and thereupon the New Company shall deliver up possession of any assets or property listed in the Schedule not previously released or conveyed by the Mortgage Corporation, and of all books, records and accounts relating thereto.

30 The Mortgage Corporation shall thereupon proceed to realize upon the said assets and convert them into money at such times and in such manner and upon such terms as the Mortgage Corporation shall think proper, and in doing so may use its absolute discretion in the same degree as if the Mortgage Corporation were the absolute owner of the assets. For its services in connection with the management, administration and conversion of the said assets, after default by the New Company, the Mortgage Corporation shall be entitled to be reimbursed for all out-of-pocket expenses incurred therein, and to be paid a reasonable remuneration, the amount of which shall be fixed upon application to a Judge of the County Court of the County of Middlesex, upon the same basis as would be allowed as remuneration to a receiver or liquidator in the administration of an estate.

40 When the Mortgage Corporation has realized from the said assets a sum sufficient to pay the balance of the purchase money owing it, with interest thereon at the rate herein provided, together with the disbursements and remuneration of the Mortgage Corporation as hereinbefore provided, the Mortgage Corporation shall transfer and convey to the New Company the remaining assets, if any, and any balance of moneys remaining in its hands, together with a statement of

*In the
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Exhibits.
Ex. G.
Tripartite Agree-
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ings Co.,
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Mortgage
Corp., and
London Loan
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3rd July, 1929.

—continued.

its administration and all books, records, and accounts relating to the remaining assets.

PART III

25—The New Company shall have the option to buy from the Loan Company at any time prior to the ratification of this agreement at the price of \$153.00 per share in cash the 2493 shares of the capital stock of the Consolidated Trusts Corporation which are under this agreement purchased by the Mortgage Corporation from the Loan Company.

26—The Loan Company and the Mortgage Corporation shall procure this agreement to be submitted for ratification and confirmation by their respective shareholders at meetings thereof duly called for that purpose forthwith after the execution of these presents. If this agreement is not completed and carried out by reason of the failure of the shareholders of the Mortgage Corporation to ratify the same, the Mortgage Corporation shall pay the Loan Company all costs, charges and disbursements paid or incurred by the Loan Company in, about or incidental to this agreement or preliminary thereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their corporate seals. 20

SIGNED, SEALED AND DELIVERED
in the presence of

(Sgd.) E. P. Fletcher
As to Execution by
London Loan & Savings Co.

THE LONDON LOAN & SAVINGS CO. OF CANADA (Corporate Seal)
(Sgd.) Wm. G. Coles, President
(Sgd.) John H. Hambly,
Manager

(Sgd.) D. McEachern
As to Execution by
The Huron & Erie Mortgage Corporation

THE HURON & ERIE MORTGAGE CORPORATION (Corporate Seal)
(Sgd.) H. Cronyn, President 30
(Sgd.) M. Aylsworth,
General Manager

(Sgd.) E. P. Fletcher
As to Execution by
London Loan Assets Limited

LONDON LOAN ASSETS LIMITED (Corporate Seal)
(Sgd.) Wm. G. Coles, President
(Sgd.) J. A. E. Braden,
Vice-President.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. G.
Tripartite Agree-
ment, London
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ings Co.,
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Mortgage
Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.
—continued.

CREST
ONTARIO

EXECUTIVE COUNCIL OFFICE

Copy of an order-in-council approved by the Honourable The Lieutenant Governor dated the 29th day of August, A.D., 1929.

10 Upon consideration of the indenture of agreement dated the 3rd day of July, 1929, duly executed by the London Loan and Savings Company and the Huron and Erie Mortgage Corporation, and ratified and confirmed by the shareholders thereof, respecting the sale of the assets of the London Loan and Savings Company to the Huron and Erie Mortgage Corporation, and of the report thereon of the registrar of loan corporations bearing date the 27th day of August, 1929, and upon the recommendation of the Honourable G. H. Ferguson, Acting Attorney-General, minister in charge of the department of insurance, the committee of council advise that your honour may be pleased to give your assent to the said agreement pursuant to section 60 of the Loan and Trust Corporations Act.

Certified:

C. F. BULMER, (Seal)

Clerk, Executive Council.

20

CREST
ONTARIO

In the matter of the Loan and Trust Corporations Act and in the matter of the sale under the said act of the assets of the London Loan and Savings Company of Canada to the Huron and Erie Mortgage Corporation.

30 The Attorney-General for the Province of Ontario, being the minister under whose direction the Loan and Trust Corporations Act of the said Province is administered, hereby certifies that, pursuant to the said act, an agreement for the sale of the assets of the Loan Corporation known as The London Loan and Savings Company of Canada, to the loan corporation known as The Huron and Erie Mortgage Corporation, bearing date the third day of July, 1929, and duly executed by the directors of the London Loan and Savings Company of Canada and ratified and confirmed by the shareholders thereof on the twenty-sixth day of August, A.D., 1929; also duly executed by the directors of The Huron and Erie Mortgage Corporation and ratified by the shareholders on the twenty-sixth day of August, A.D., 1929; was by order-in-council approved on the twenty-ninth day of August, A.D., 1929 by His Honour the Lieutenant-Governor in Council; and that on, from and after

*In the
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Exhibits.
Ex. G.
Triparte Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
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Corp., and
London Loan
Assets, Ltd.
3rd July, 1929.

—continued.

*In the
Supreme
Court of
Ontario.*
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Exhibits.
Ex. G.
Triparte Agree-
ment, London
Loan & Sav-
ings Co.,
Huron & Erie
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3rd July, 1929.

—continued.

the said first day of September, 1929, the said agreement took effect as the sale, transfer and conveyance to the said Huron and Erie Mortgage Corporation, to its own use of all the assets, business, rights, property and goodwill of the said The London Loan and Savings Company of Canada, as in the said agreement more fully set out; and that on, from and after the said first day of September, 1929 all the terms, provisions and conditions of the said agreement and of the said The Loan and Trust Corporations Act relating thereto went into full force and effect.

A copy of the said agreement is annexed hereto and forms part of this certificate. 10

This certificate is given under section 61 of the said The Loan and Trust Corporations Act, being chapter 223 of the revised statutes of Ontario, 1927.

Given in triplicate under my hand and seal of office this 27th day of September, A.D., 1929.

Seal

WILLIAM H. PRICE (Seal)

Attorney-General.

CREST

ONTARIO

Certificate of Registrar of Loan Corporations. (Revised statutes of Ontario, 1927, Chapter 223, sec. 62). 20

I undersigned, the Registrar of Loan Corporations, under The Loan and Trust Corporations Act, hereby certify that there has been filed in my office one of the duplicate originals of the indenture of agreement for the sale of the assets, business, rights, property and goodwill of The London Loan and Savings Company of Canada, to The Huron and Erie Mortgage Corporation, bearing date the third day of July, A.D., 1929, duly executed by the directors of The London Loan and Savings Company of Canada, and ratified and confirmed by the shareholders thereof on the twenty-sixth day of August, A.D., 1929; also duly executed by the directors of The Huron and Erie Mortgage Corporation and ratified by the shareholders on the twenty-sixth day of August, A.D., 1929; and that the printed indenture of agreement attached to the copy of the certificate of The Honourable the Attorney-General of the Province hereto annexed, and below referred to is a true copy of said agreement; also that pursuant to the said act the assent of His Honour, the Lieutenant-Governor of Ontario in council was given to the said printed indenture of agreement by order-in-council approved on the twenty-ninth day of August, A.D., 1929, and that attached hereto is a true copy of the said order-in-council; also that there has been filed in my office one of the triplicate originals 30

of the certificate of The Honourable the Attorney-General of the said Province certifying to the said assent and to the said sale. And that a true copy of the said certificate is to this certificate attached.

Given under my hand and seal of office this 28th day of September, 1929.

Seal

R. LEIGHTON FOSTER,

Registrar of Loan Corporations.

I certify that the within printed and typewritten papers are true copies of agreement entered and registered in the registry office for the Registry Division of the City of London on the 24th day of October, A.D., 1929, in 10 liber 16 for the General Register at 11.00 o'clock P.M. And of all certificates and endorsements thereon or attached thereto.

Given under my hand and official seal this 7th day of May, A.D., 1930.

J. H. FITZALLEN,

Registrar of the Registry Division of the City of London.

(Seal)

P. T.

Part Exhibit D

(Plaintiffs' Exhibit)

15

20 **Extract from Minute Book of London Loan & Savings Company.**

London, July 9th, 1929

BOARD MET—All present. Minutes of last meeting read and confirmed. Statement of funds submitted.

W. G. Mann - - Application for loan of \$7,000.00 on 415-425 York Street, London, declined.

H. O. E. Braden - Account for \$45.00 in connection with inspection of applications for loans in the City of Hamilton received and ordered paid.

30 W. H. Biggs, Mtge. A2. Statements received from Edwin Barrell, Huron & Erie Mortgage Corporation and Consolidated Trusts Corporation and London L. & S. Co., showing the total indebtedness against the properties covered by the above mortgage, approximately \$75,000.00. Also, letter received from Miss Harrison in connection with the same matter, all of which was laid over for further consideration, pending receipt of a new valuation on the property.

In the Supreme Court of Ontario.

Exhibits.
Ex. G.
Triparte Agreement, London Loan & Savings Co., Huron & Erie Mortgage Corp., and London Loan Assets, Ltd.
3rd July, 1929

—continued.

In the Supreme Court of Ontario.

Exhibits.
Part Ex. D.
15
Extract from Minute Book of London Loan & Savings Co.
9th July, 1929.

*In the
Supreme
Court of
Ontario.*

Exhibits,
Part Ex. D.
15
Extract from
Minutes Book
of London
Loan & Sav-
ings Co.
9th July, 1929.

—continued.

W. H. Biggs, A2.	-	Account received from B. N. Campbell for fire insurance premiums in connection with this loan amounting to \$146.57. Ordered paid.	
C. S. Lucas, 191 & 211	-	Account received from Braden & McAlister in regard to re-arranging the payments due under these mortgages and providing, with Mr. Lucas, for the payment of arrears, amounting to \$400.26, of which Mr. Lucas is to pay \$125.00, balance to be paid by the Company. Account approved and ordered paid on this basis.	10
Trans-Canada Theatres	vs	Account received from Cassels, Brock & Kelly in connection with the above action, for \$324.40.	
London L & S Co.	-	Ordered paid.	
Boomers' Ld.	-	Account for \$4.45, ordered paid.	
Russian Bonds	-	Moved by Mr. Braden, seconded by Mr. Hunt, that the London L. & S. Co. purchase from the Consolidated Trusts the External Russian Bonds at present held by the Consolidated Trusts, at book value at which they are carried, on or before 1st September, 1929. Carried.	20

JNO. H. HAMBLY,
Manager.

WM. G. COLES,
President.

Exhibit EE

(Plaintiffs' Exhibit)

Agreement and Release, W. H. Biggs and G. A. P. Brickenden.

THIS AGREEMENT made in duplicate this 16th day of July, A.D., 1929.

BETWEEN:—

WALTER HERBERT BIGGS, of the City of London, in the County of Middlesex, Accountant, and EVA VIOLA BIGGS, his wife hereinafter called the Parties

Of the First Part,

—and—

GEORGE ARTHUR PORTE BRICKENDEN, of the same place, Barrister-at-law, hereinafter called the Party

Of the Second Part.

*In the
Supreme
Court of
Ontario.*
Exhibits,
Ex. EE.
Agreement and
Release, W. H.
Biggs and
G. A. P.
Brickenden.
16th July,
1929.

WHEREAS the Parties of the First Part claim as mortgagors to have overpaid the Party of the Second Part in satisfaction of mortgages given by them to the Party of the Second Part and Registered in the Registry Office for the Registry Division of the City of London as Numbers 17782, 17783, 17944, 17945, 18494 and 18495, by way of bonuses and contrary to the provisions of the Interest Act R.S.C. 1927, Chapter 102. And also claim to have overpaid the Party of the Second Part in respect of certain commissions and bills of Costs for concessions obtained and services rendered for and to the said Parties of the First Part by the said Party of the Second Part.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. EE.
Agreement and
Release, W. H.
Biggs and
G. A. P.
Brickenden.
16th July,
1929.

—continued.

- 10 AND WHEREAS the Party of the Second Part claims a further unsatisfied Bill of Costs for services rendered to the Parties of the First Part and also to have a personal claim for an unascertained amount against the Parties of the First Part arising out of certain dealings in connection with the property known as 618 Talbot Street, London.

AND WHEREAS the parties hereto have agreed to adjust and settle the said matters upon the payment of the sum of One Thousand Dollars to the Parties of the First Part by the Party of the Second Part.

- 20 NOW THEREFORE these presents witnesseth that in consideration of the premises and of the sum of One Thousand Dollars (\$1000.00) of lawful money of Canada, now paid by the Party of the Second Part to the Parties of the First Part, the receipt whereof is hereby by them acknowledged, the Parties of the First Part do hereby severally release, acquit and forever discharge the Party of the Second Part, his heirs, executors, administrators and assigns of and from all claims, actions, demands, which they now have or may hereafter have against him in connection with or arising out of any overpayment of moneys in respect of said mortgages bearing Registry Numbers 17782, 17783, 17944, 17945, 18494 and 18495, by way of bonuses or otherwise and also in connection with or arising out of all commissions paid to the Party of the Second Part for obtaining and arranging the above or any
30 other mortgages for the Parties of the First Part and also in connection with or arising out of all Bills of Costs for services rendered paid to the Party of the Second Part.

- 40 AND the Party of the Second Part in consideration of the premises and of the sum of One Dollar (\$1.00) of lawful money of Canada now paid by the Parties of the First Part to the Party of the Second Part doth hereby release, acquit and forever discharge the Parties of the First Part their heirs, executors, administrators and assigns of and from all claims, actions, demands which he now has or may hereafter have against them or either of them in respect of or arising out of the property known as Number 618 Talbot Street in the City of London and also of and from any claim he may have against them or either of them for costs up to the present date whether bills have been rendered or not.

*In the
Supreme
Court of
Ontario.*

IN WITNESS WHEREOF the said Parties hereto have hereunto set their hands and seals.

*Exhibits.
Ex. EE.*

SIGNED, SEALED AND DELIVERED

*Agreement and
Release, W. H.
Biggs and
G. A. P.
Brickenden.
16th July,
1929.*

in the presence of "Evelyn Harrison"	}	"W. H. BIGGS," "EVA V. BIGGS," "G. A. P. BRICKENDEN"	Seal. Seal. Seal.
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—continued.

COUNTY OF MIDDLESEX, TO WIT:	}	I, Evelyn Harrison, of the City of London, in the County of Middlesex, Solicitor, make oath and say:
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- 1.—THAT I was personally present and did see the within or annexed Instrument and a Duplicate thereof duly signed, sealed and executed by Walter Herbert Biggs and Eva Viola Biggs two of the parties thereto. 10
- 2.—That the said Instrument and Duplicate were executed by the said parties at the City of London.
- 3.—THAT I know the said parties.
- 4.—THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City of London, in the County of Middlesex, this 17th Day of July, 1929.	}	"EVELYN HARRISON."	20
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"JAMES F. McMILLAN,"
A Commissioner &c.

COUNTY OF MIDDLESEX, TO WIT:	}	I, of the City of London, in the County of Middlesex, make oath and say:
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- 1.—THAT I was personally present and did see the within or annexed instrument and a Duplicate thereof duly signed, sealed and executed by George Arthur Porte Brickenden, one of the parties thereto.
- 2.—THAT the said Instrument and Duplicate were executed by the said Party at the City of London. 30
- 3.—THAT I know the said party.
- 4.—THAT I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the City of London, in the County of Middle- sex, this of July, 1929.	}	day
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A Commissioner &c.

Part Exhibit D.

(Plaintiffs' Exhibit)

16

Extract from Minute Book of London Loan & Savings Company.

London, July 25th, 1929.

BOARD MET—All present. Minutes of last meeting read and confirmed. Statement of funds submitted.

- 10 **re W. H. Biggs, A2.** New valuation certificates on the property covered by the above mortgage, were received from Wm. Howie, placing the valuation thereof at \$56,300. In view of the fact that the present total mortgage indebtedness against the property, together with arrears of taxes, exceeds the sum of \$76,000 it was moved by Mr. Hunt, and seconded by Mr. Gorman, that the settlement of the mortgages held by the Consolidated Trusts Corporation and The London Loan & Savings Co., amounting to approximately \$55,339.23, be left in the hands of Mr. Braden, with authority to accept \$40,000 in settlement of the above Companies' claims. The above offer was made in response to a request received from Miss Evelyn Harrison in regard to paying off the Companies' claims.
- 20 **re Dale Furniture R.E. 55** An account which was received from Messrs. Braden & McAlister for \$286.15 in connection with negotiating sale of the property covered by this mortgage was ordered paid on motion of Mr. Hunt and seconded by Mr. Robinson.
- 30 **re V. Evan Gray** - Moved by Mr. Hunt and seconded by Mr. Robinson that the sum of \$1500 be paid Mr. V. Evan Gray on account of his services in connection with negotiating sale to the Huron & Erie Mortgage Corporation. Carried.
- re E. A. Reinhart, No. 412** An account was received from Messrs. Braden & McAlister for \$750.00 for services rendered in connection with negotiating sale of the property covered by the above mortgage to the Kitchener Finance Co. Moved by Mr. Hunt and seconded by Mr. Robinson that same be paid. Carried.

40 JNO. H. HAMBLY,
Manager.

WM. G. COLES,
President.

*In the
Supreme
Court of
Ontario.*

—
Exhibits,
Part Ex. D.

16
Extract from
Minute Book
of London
Loan & Sav-
ings Co.
25th July,
1929.

Exhibit H.

(Defendants' Exhibit)

Agreement, Consolidated Trusts Corporation and Canada Trust Company.

THIS AGREEMENT made in quadruplicate the sixth day of November, 1929.

BETWEEN:

THE CONSOLIDATED TRUSTS CORPORATION,
hereinafter called "the Vendor"

Of the First Part, 10

—AND—

THE CANADA TRUST COMPANY,
hereinafter called "the Purchaser,"

Of the Second Part.

WHEREAS each of the parties hereto is a Trust Company incorporated by a special Act of the Parliament of Canada, has its Head Office in Ontario and is registered under The Loan and Trust Corporations Act:

AND WHEREAS the business, rights, powers and property of the Vendor are such as the Purchaser is authorized to carry on, exercise and hold:

NOW THIS AGREEMENT WITNESSETH that in pursuance of the Trust Companies Act and of The Loan and Trust Corporations Act and subject to the conditions in the said Acts set forth, and in consideration of the reciprocal covenants and stipulations hereinafter contained, the Boards of Directors of the Vendor and of the Purchaser do hereby enter provisionally into this joint Agreement under the corporate seal of each of the said parties for the purposes hereinafter set forth, and the said parties hereby covenant and agree with each other as follows:— 20

1.—THE Vendor hereby agrees to sell and sells to the Purchaser, and the Purchaser agrees to purchase and purchases from the Vendor the whole of the assets, business, rights, powers and property of the Vendor (including the goodwill of the Vendor and the exclusive right to use the name of the Vendor in connection with the business so purchased so that the Purchaser may represent itself as carrying on such business in succession to the Vendor) to the end that all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the Vendor shall be vested in and bind and be enforceable against the Purchaser as fully and effectually as if it had been originally named as the fiduciary, and that whenever in any instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in, or administered or managed by, or put in the charge of the Vendor as the fiduciary, the name 30 40

of the Purchaser shall be deemed to be substituted for the name of the Vendor, and such instrument shall vest the subject matter therein described in the Purchaser according to the tenor of, and at the time indicated or intended by the instrument, and the Purchaser shall be deemed to stand in the place and stead of the Vendor, and that where the name of the Vendor appears as executor, trustee, guardian or curator in a Will or Codicil such Will or Codicil shall be read, construed and enforced as if the Purchaser were so named therein, and that the Purchaser shall, in respect of such Will or Codicil, have the same status and rights as the Vendor, and that in all probates, administrations, guardianships, curatorships or appointments of administrator or guardian ad litem heretofore issued or made by any Court of Ontario to the Vendor from which at the date of this Agreement takes effect the Vendor has not been finally discharged, the Purchaser shall be substituted therefor.

2.—In consideration for the sale of the assets, business, rights and property of the Vendor as aforesaid, and upon such sale taking effect after fulfilment of the conditions set forth in the said Acts, the Purchaser will pay to the Vendor or its nominees the sum of \$394,755.30 and the Purchaser will, in addition to such sum, pay on demand all of the reasonable costs, charges and expenses incurred by or on behalf of the Vendor in distributing the said sum among its Shareholders and in procuring it to be finally dissolved.

3.—The Purchaser assumes all of the outstanding duties, obligations, and liabilities of the Vendor.

4.—The Vendor shall be deemed to have been carrying on its business from and after the First day of January, A.D. 1929, for the benefit of the Purchaser and the Purchaser shall, upon this Agreement becoming effective according to law, take over the assets, business, rights, powers and property of the Vendor including all profits accrued and accruing from the date first mentioned.

5.—The parties hereto shall procure this Agreement to be submitted for consideration and approval in accordance with the said Acts to meetings of their respective Shareholders duly called for that purpose as soon as possible after the execution of these presents, and upon such approval being given this Agreement shall be forthwith submitted by the said parties to the Treasury Board for its approval thereof and filed with the Registrar for submission to the Lieutenant-Governor in Council for his assent thereto.

6.—FROM and after the date of such final assent and approval possession of all the property hereinbefore described shall be given to the Purchaser and contemporaneously therewith the consideration aforesaid shall be paid and the Vendor shall at the same time execute and do and/or cause to be executed and done all such assurances and things as may be necessary for vesting in the Purchaser all of the said assets, business, rights, powers and property including the goodwill aforesaid.

7.—THE Purchaser shall accept the vendor's title to the assets hereby

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. H.
Agreement,
Consolidated
Trusts Corp.
and Canada
Trust Co.
6th November,
1929.

—continued.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. H.
Agreement,
Consolidated
Trusts Corp.
and Canada
Trust Co.
6th November,
1929.
—continued.

transferred and the documents of title to the said assets shall be deemed prima facie to be valid and sufficient.

8.—THE Vendor shall, upon this Agreement becoming effective according to law, absolutely cease to carry on business, except so far as it is necessary to give effect to this agreement, and shall forthwith proceed to liquidate its affairs by distributing among its Shareholders, the said sum of \$394,755.30 by paying in respect of each fully paid share, One hundred and Fifty-three dollars (\$153.00) and in respect of each partly paid share a sum bearing the same proportion to One hundred and Fifty-three Dollars (\$153.00) as the amount paid thereon bears to the par value thereof (provided that if any Shareholder is at that time indebted to the Purchaser, by reason of the transfer of assets hereunder or otherwise, the sum payable to such Shareholder shall be first applied in payment of such indebtedness) and the Vendor shall thereafter, when required by the Purchaser, procure itself to be finally dissolved. 10

IN WITNESS whereof the parties hereto have hereunto set their corporate seals under the hands of their proper officers in that behalf.
SIGNED, SEALED & DELIVERED

In the presence of	}	THE CONSOLIDATED TRUSTS CORPORATION	20
J. P. COLLYER		(Sgd.) H. E. GATES, President. (Sgd.) R. M. WINSLOW Manager. (Seal)	
G. L. SPRY	}	THE CANADA TRUST COMPANY	
		(Sgd.) T. G. MEREDITH, Chairman of the Board. (Seal) (Sgd.) D. McEACHERN, Secretary.	

Certified a true Copy

"D. McEACHERN"
Secretary. "J.H.F." 30

CREST
ONTARIO
EXECUTIVE COUNCIL OFFICE

Copy of an order-in-council, approved by the Honourable the Lieutenant-Governor, dated the 21st day of January, A.D., 1930.

Upon consideration of the indenture of agreement dated the 6th day of November, 1929, duly executed by the Consolidated Trusts Corporation and The Canada Trust Company and ratified and confirmed by the shareholders thereof, respecting the sale of the assets of The Consolidated Trusts Corporation to The Canada Trust Company, and upon the report herein of the 40

Registrar of Loan Corporations bearing date the 9th day of January, 1930, and upon the recommendation of The Honourable the Attorney-General, minister in charge of the department of insurance, the committee of council advise that your honour may be pleased to give assent to the said agreement pursuant to section 60 of The Loan and Trust Corporations Act.

Certified.

Sgd. C. F. BULMER,
Clerk, Executive Council.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. H.
Agreement,
Consolidated
Trusts Corp.
and Canada
Trust Co.
6th November,
1929.
—continued.

10

CREST
ONTARIO
DEPARTMENT OF INSURANCE
PROVINCE OF ONTARIO

In the matter of The Loan and Trust Corporations Act and in the matter of the sale under the said act of the assets of The Consolidated Trusts Corporation to The Canada Trust Company.

The Attorney-General for the Province of Ontario, being the minister under whose direction The Loan and Trust Corporations Act of the said Province is administered, hereby certifies that, pursuant to the said act, an agreement for the sale of the assets of the trust company known as The Consolidated Trusts Corporation, to the trust company known as The Canada Trust Company, bearing date the sixth day of November, 1929, and duly executed by the directors of The Consolidated Trusts Corporation, and ratified and confirmed by the shareholders thereof on the seventeenth day of December A.D. 1929; also duly executed by the directors of The Canada Trust Company and ratified by the shareholders on the seventeenth day of December A.D. 1929; was by order-in-council approved on the twenty-first day of January, A.D. 1930 by His Honour The Lieutenant-Governor in Council; and that on, from and after the said first day of January, 1930, the said agreement took effect as the sale transfer and conveyance to the said Canada Trust Company, to its own use of all the assets, business, rights, property and goodwill of the said The Consolidated Trusts Corporation, as in the said agreement more fully set out; and that on, from and after the said first day of January, 1930, all the terms, provisions and conditions of the said agreement and of the said The Loan and Trust Corporations Act relating thereto went into full force and effect.

A copy of the said agreement is annexed hereto and forms part of this certificate.

This certificate is given under section 61 of the said The Loan and Trust Corporations Act, being chapter 223 of the revised statutes of Ontario, 1927.

Given in triplicate under my hand and seal of office this 29th day of January A.D. 1930.

Seal.

Sgd. WILLIAM H. PRICE,
Attorney-General.

CREST
ONTARIO

DEPARTMENT OF INSURANCE

CERTIFICATE OF REGISTRAR OF LOAN CORPORATIONS

(REVISED STATUTES OF ONTARIO, 1927, CHAPTER 223, SEC. 62).

*In the
Supreme
Court of
Ontario.*

*Exhibits.
Ex. H.
Agreement,
Consolidated
Trusts Corp.
and Canada
Trust Co.
6th November,
1929.*

--continued.

I, undersigned, the Registrar of Loan Corporations under The Loan and Trust Corporations Act, hereby certify that there has been filed in my office one of the duplicate originals of the indenture of agreement for the sale of the assets, business, rights, property and goodwill of The Consolidated Trusts Corporation, to The Canada Trust Company, bearing date the sixth day of November, A.D. 1929, duly executed by the directors of The Consolidated Trusts Corporation, and ratified and confirmed by the shareholders thereof on the seventeenth day of December, A.D. 1929; also duly executed by the directors of The Canada Trust Company and ratified by the shareholders on the seventeenth day of December, A.D. 1929; and that the printed indenture of agreement attached to the copy of the certificate of The Honourable The Attorney General of the Province hereto annexed, and below referred to is a true copy of said agreement; also that pursuant to the said act the assent of His Honour The Lieutenant Governor of Ontario in council was given to the said printed indenture of agreement by order-in-council approved on the twenty-first day of January A.D. 1930 and that attached hereto is a true copy of the said order in council; also that there has been filed in my office one of the triplicate originals of the certificate of The Honourable the Attorney General of the said province certifying to the said assent and to the said sale, and that a true copy of the said certificate is to this certificate attached.

Given under my hand and seal of office this 31st day of January, 1930.
Seal.

R. LEIGHTON FOSTER,
Registrar of Loan Corporations.

I certify that the within typewritten paper and printed paper are true copies of agreement entered and registered in the registry office for the registry division of the City of London on the 14th day of February 1930 in liber 16 for the general register at 3.45 o'clock P.M. as No. 5277 and of the certificates endorsed thereon or attached thereto.

Given under my hand and official seal this 7th day of May A.D. 1930.

(Seal).
J. H. FITZALLEN,
Registrar of the Registry Division of the
City of London.
P. T.

Part Exhibit I

(Defendants' Exhibit)

1

Letter, George T. Walsh to Slight & Cowan.

GEORGE T. WALSH, K.C.

Toronto 2, Canada, March 5, 1930.

Messrs. Slight & Cowan,
 Barristers &c.,
 Sterling Towers,
 Toronto, 2.

10

Dear Sirs,—

London Loan v. Biggs and Brickenden.

As arranged with you this case has now been adjourned to be tried at the London Non Jury sittings commence on May 5, 1930, my clients are very anxious to proceed on this date and if your clients have any objection to the parties to the action and consider there should be any parties dropped, or added, or if there should be any other amendments to be made I would be obliged if you would let me know now, so that all necessary steps can be taken. We consider all proper parties are before the Court and everything is in order
 20 that justice may be done. If you have any suggestions please let me know now as we do not want any adjournment. If I do not hear from you I will assume that you are quite satisfied as matters stand.

Yours truly,

GEO. T. WALSH.

W/C

*In the
 Supreme
 Court of
 Ontario.*
 Exhibits.
 Part Ex. I.
 1
 Letter, George
 T. Walsh to
 Slight &
 Cowan.
 5th March,
 1930.

Part Exhibit I.

(Defendants' Exhibit)

2

Copy of Letter, A. G. SLAGHT to George T. Walsh.

March 8, 1930

GEORGE T. WALSH, Esq., K.C.,
Barrister & Solicitor,
330 Bay Street,
Toronto, Ont.

Dear Sir:—

10

Re: London Loan v. Brickenden.

I have your letter of the 5th.

You must take the responsibility of what parties you have before the Court or fail to have there, and we do not propose to make any suggestions to you in this regard. We leave the full responsibility for the constitution of your action upon you, and this letter, of course, is not a waiver of any rights we may have by misjoinder or non joinder of parties.

Yours truly,

"A. G. SLAGHT."

AGS/McL.

20

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. I.
2
Copy of Letter,
A. G. Slaght
to George T.
Walsh.
8th March,
1930.

Exhibit A.

(Plaintiffs' Exhibit)

Abstract of Title—114-116 Elmwood Avenue.**ONTARIO REGISTRY OFFICE, CITY OF LONDON**

"114-116 Elmwood Ave."

Dated at London, Ont., this 5th day of May, A.D. 1930 at 10.00 o'clock A.M.

I do certify the following are correct Extracts from the only Instruments recorded in this office which mention or refer to the Southerly ninety-four feet six inches of Lot 11, Block B in Plan 343, since and including No. 16499, —4th Division only.

This abstract does not purport to give entries from the General Register nor Bankruptcy Books.

\$2.55.

Reg. No.	Instru- ment	Its Date and Date of Reg- istration	Grantor and Grantee	Consid'n. or Amount of Mort- gage	Quantity of Land
20	16499 Mtge.	25 July, 1922 27 July, 1922	Walter H. Biggs et ux to Edwin Barrell	\$6000.00	W. 39' of S. 94' 6" of said Lot 11.
	16522 Grant	1 Aug., 1922 3 Aug., 1922	Thos. H. Rob- inson et ux to Walter H. Biggs, Jr.	5000.00	S. 1/2 (S. 129' 6") of said lot 11.
30	288 Deposit	21 Aug., 1922			Agmt. for sale of S94'6" of said lot from T. H. Robinson to C. Hopkins with assignment en- dorsed thereon to Walter H. Biggs.
40	16590 Mtge.	25 July, 1922 25 Aug., 1922	Walter H. Biggs Jr. et ux to Edwin Barrell	\$1000.00	W. 39' of S. 94' 6" of said Lot.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. A.
Abstract of
Title—114-
116 Elmwood
Avenue.
5th May, 1930.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. A.
Abstract of
Title—114—
116 Elmwood
Avenue.
5th May, 1930.
—continued.

Reg. No.	Instrument	Its Date and Date of Registration	Grantor and Grantee	Consid'n. or Amount of Mortgage	Quantity of Land.	
16914	Mtge.	14 Nov., 1922 15 Nov., 1922	Walter H. Biggs et ux to London Loan & Savings Co. of Can.	\$18000.00	E. 45' of S. 94'6" of said Lot.	10
17013	Mtge.	11 Dec., 1922 11 Dec., 1922	Walter H. Biggs et ux to London Loan & Sav'gs. Co. of Can.	\$3000.00	W. 39' of S. 94'6" of said Lot.	
17783	Mtge.	13 July, 1923 17 July, 1923	Walter H. Biggs et ux to Geo. A. P. Brickenden, in Trust.	\$5000.00	S. 94'6" of said Lot 11.	20
17944	Mtge.	24 Aug., 1923, 31 Aug., 1923	Walter H. Biggs et ux to Geo. A. P. Brickenden, in Trust.	\$2000.00	S. 94'6" of said Lot 11.	
18495	Mtge.	13 Jan., 1924 13 Feb., 1924	Walter H. Biggs et ux to Geo. A. P. Brickenden, in Trust.	\$1200.00		30
19469	Dis. of 17944	11 Nov., 1924 12 Nov., 1924	Geo. A. P. Brickenden to Walter H. Biggs.			

Reg. No.	Instrument	Its Date and Date of Registration	Grantor and Grantee	Consid'n. or Amount of Mortgage	Quantity of Land
19472	Dis. of 18495	11 Nov., 1924 12 Nov., 1924	Geo. A. P. Brickenden to Walter H. Biggs.		
10 19476	Mtge.	8 Nov., 1924 12 Nov., 1924	Walter H. Biggs et ux to London Loan & Sav. Co. of Can.	\$13,500	S. 94' 6" of said Lot 11.
19546	Mtge.	1 Aug., 1924 3 Dec., 1924	Walter H. Biggs and Eva V. his wife to Whitfield Lancaster.	\$ 900.00	S. 94' 6" of said Lot 11.
20 23113	Mtge.	1 Dec., 1927 4 Jan., 1928	Walter H. Biggs et ux to The Consolidated Trusts Corp.	\$20000.00	E. 45' of S. 94' 6" of said Lot 11.
30 23116	Dis. of 17783	22 Jan., 1925 5 Jan., 1928	Geo. A. P. Brickenden to Walter H. Biggs.		

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. A.
Abstract of
Title 114-
166 Elmwood
Avenue.
5th May, 1930.
—continued.

J. H. FITZALLEN,

Registrar p.t. (Seal).

Exhibit C.

(Plaintiffs' Exhibit)

Abstract of Title—315-317-319 Ridout Street.

ONTARIO REGISTRY OFFICE, CITY OF LONDON

Dated at London, Ont., this 5th day of May, A.D. 1930 at 10.00 o'clock A.M.

I do certify the following are correct Extracts from the only instruments recorded in this office which mention or refer to Lot 19 in plan 399, 4th Division except (1) Westerly sixty feet (2) part conveyed to W. H. Biggs being N. $31\frac{1}{2}$ feet frontage of E. 105 ft. of said lot. Since and including No. 17153 10 only.

This abstract does not purport to give entries from the General Register nor Bankruptcy Books.

\$2.95.

Reg. No.	Instrument	Its Date and Date of Registration	Grantor and Grantee	Consid'n. or Amount of Mortgage	Quantity of Land
17153	Grant	3 Feb., 1923 6 Feb., 1923	Frederick E. Stevens and Daisy M. his wife to Eva V. Biggs	\$5000.00	All of said Lot 19 except west 20 60 ft. thereof.
17155	Mtge.	27 Jan., 1923 6 Feb. 1923	Eva V. Biggs to London Loan & Savings Corp.	\$12000.00	All of said lot except W. 60'.
17782	Mtge.	13 July, 1923 17 July, 1923	Eva V. Biggs to Geo. A. P. Brickenden in Trust	\$5000.00	All of said lot 30 except W. 60' and except part in No. 17574, conveyed to W. H. Biggs, viz., N. $31\frac{1}{2}$ ".

Reg. No.	Instrument	Its Date and Date of Registration	Grantor and Grantee	Consid'n. or Amount of Mortgage	Quantity of Land.	<i>In the Supreme Court of Ontario.</i> Exhibits. Ex. C. Abstract of Title—315-317-319 Ridout Street. 5th May, 1930. —continued.
17945	Mtge.	24 Aug., 1923 31 Aug., 1923	Eva V. Biggs to Geo. A. P. Brickenden in Trust	\$2000.00	Lands as in above No. 17782.	
10 18494	Mtge.	13 Jan., 1924 13 Feb., 1924	Eva B. Viggs to Geo. A. P. Brickenden in Trust	\$1200.00	Lands as in No. 17782	
18546	Mtge.	1 Feb., 1924 4 Mar., 1924	Walter H. Biggs et ux to Whitfield Lancaster	\$1100.00	All of said lot 19 except (1) W. 60' (2) N. 31'4".	
20 19470	Dis. of 17945	11 Nov., 1924 12 Nov., 1924	Geo. A. P. Brickenden to Eva V. Biggs			
19471	Dis. of 18494	11 Nov., 1924 12 Nov., 1924	Geo. A. P. Brickenden to Eva V. Biggs			
30 19477	Mtge.	8 Nov., 1924 12 Nov., 1924	Eva V. Biggs to London Loan and Sav. Co. of Can.	\$13500.00	Lands as described in No. 18546	
19546	Mtge.	1 Aug., 1924 3 Dec., 1924	Walter H. Biggs and Eva V. Biggs to Whitfield Lancaster	\$ 900.00	All of said lot 19 except W. 60' thereof.	

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. C.
Abstract of
Title—315-
317-319
Ridout Street.
5th May, 1930.

Reg. No.	Instru- ment	Its Date and Date of Reg- istration	Grantor and Grantee	Consid'n. or Amount of Mort- gage	Quantity of Land.
19550	Dis. of 18546	29 Nov., 1924 3 Dec., 1924	Whitfield Lancaster to Walter H. Biggs		
23114	Mtge.	1 Dec., 1927 4 Jan., 1928	Eva V. Biggs and Walter H. Biggs to The Consoli- dated Trusts Corp.	\$13,600.00	All of said lot 19 except W. 10 60' thereof
23118	Dis. of 17782	22 Jan., 1925 5 Jan., 1928	Geo. A. P. Brickenden to Eva V. Biggs J. H. FITZALLEN, Registrar p.t.		20
	Cert.	\$.50			
	Sch.	.25			
	Insts.	1.35			
	Copy	.85			
		<u>\$2.95</u>	(SEAL).		

Exhibit E.

(Plaintiffs' Exhibit)

Abstract of Title—309-311-313 Ridout Street.**ONTARIO REGISTRY OFFICE, CITY OF LONDON**

Dated at London, Ont., this 5th day of May, A.D. 1930 at 10.00 o'clock A.M.

I do certify the following are correct Extracts from the only instruments recorded in this office which mention or refer to the Northerly thirty-one feet and four inches front of Easterly one hundred and five feet of Lot 19, East
10 Ridout St. in plan 399, since and including the registration of No. 17574 only.

This abstract does not purport to give entries from the General Register nor Bankruptcy Books.

\$2.65

Reg. No.	Instru-ment	Its Date and Date of Reg-istration	Grantor and Grantee	Consid'n. or Amount of Mort-gage	Quantity of Land
20	Grant	14 May, 1923 22 May, 1923	Eva V. Biggs to Walter H. Biggs	\$ 1.00	N. 31'2" front of E. 105' (measured parallel with St. lines) of said Lot 19
	Mtge.	10 May, 1923 25 May, 1923	Walter H. Biggs et ux to Huron & Erie Mtge. Corp.	\$18000.00	Lands as de- scribed in above No. 17574
30	Mtge.	13 July, 1923 17 July, 1923	Walter H. Biggs et ux to Geo. A. P. Brickenden in Trust	5000.00	N. 31'4" front of E. 105' of said Lot 19 and other lands
40	Mtge.	24 Aug., 1923 31 Aug., 1923	Walter H. Biggs et ux to Geo. A. P. Brickenden in Trust	2000.00	do. do.

*In the
Supreme
Court of
Ontario.*

Exhibits.
Ex. E.
Abstract of
Title—309-
311-313
Ridout Street.
5th May, 1930.

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. E.
Abstract of
Title—309-
311-313
Ridout Street.
5th May, 1930.
---continued.

Reg. No.	Instru- ment	Its Date and Date of Reg- istration	Grantor and Grantee	Consid'n. or Amount of Mort- gage	Quantity of Land	
18495	Mtge.	13 Jan., 1924 13 Feb., 1924	Walter H. Biggs et ux to Geo. A. P. Brickenden in Trust	\$1200.00	N. 31'4" front of E. 105' of said Lot 19	10
18685	Mtge.	3 Apr., 1924 15 Apr., 1924	Walter H. Biggs et ux to Huron & Erie Mtge. Corp.	\$10,000.00	do. do.	
18695	Agmt.	17 Apr., 1924 19 Apr., 1924	Geo. A. P. Brickenden to Huron & Erie Mtge. Corp.	1.00	do. do. granting prior- ity to No. 20 18685 over 17783, 17944, and 18495	
18724	Dis. of 17592	24 Apr., 1924 28 Apr., 1924	Huron & Erie Mtge. Corp. to Walter H. Biggs			
19469	Dis. of 17944	11 Nov., 1924 12 Nov., 1924	Geo. A. P. Brickenden to Walter H. Biggs			30

(Deleted)

"Does not affect
Lands in this
Certificate.
J.H.F."

Reg. No.	Instrument	Its Date and Date of Registration	Grantor and Grantee	Consid'n. or Amount of Mortgage	Quantity of Land
19472	Dis. of 18495	11 Nov., 1924 12 Nov., 1924	Geo. A. P. Brickenden to Walter H. Biggs		
10	19476 Mtge.	8 Nov., 1924 12 Nov., 1924	Walter H. Biggs et ux to London Loan and Sav. Co. of Can.	\$13,500.00	Lands as in 17783
20	19546 Mtge.	1 Aug., 1924 3 Dec., 1924	Walter H. Biggs and Eva V. Biggs to Whitfield Lancaster	900.00	Lands as in No. 17783 and other lands
	23114 Mtge.	1 Dec., 1927 4 Jan., 1928	Eva V. Biggs and Walter H. Biggs to The Consolidated Trusts Corp.	13,600.00	do. do.
30	23116 Dis. of 17783	22 Jan., 1925 5 Jan., 1928	Geo. A. P. Brickenden to Walter H. Biggs		

In The
Supreme
Court of
Ontario.
Exhibits.
Ex. E.
Abstract of
Title—309-
311-313
Ridout Street,
5th May, 1930.
—continued.

J. H. FITZALLEN,

Registrar p. t. (SEAL).

Exhibit 27-R.

(Plaintiffs' Exhibit)

*In the
Supreme
Court of
Ontario.*

Ledger Sheet, G. A. P. Brickenden—London Loan & Savings Company.

Exhibits.
Ex. 27-R.
Ledger Sheet,
G. A. P.
Brickenden—
London Loan
& Savings Co.
Various Dates.

I, Ellen Patricia Young, do hereby certify that the ledger sheet attached hereto, known as sheets No. 24 and No. 25 of account B84 under name of G. A. P. Brickenden, are the original ledger sheets of the said account No. B84, wherein the savings account of the said G. A. P. Brickenden was kept in the books of The London Loan and Savings Company of Canada.

10 I also certify that I was employed by the London Loan and Savings Company of Canada as an assistant bookkeeper from October 1st, 1922, until September 1st, 1929, and during that time did work on the said ledger sheets, and was familiar with all the books and records of The London Loan and Savings Company of Canada.

Witness my hand this Seventeenth day of October, 1931.

E. P. YOUNG.

THE LONDON LOAN & SAVINGS CO., OF CANADA

Sheet No. 24

Account No. 84

Name—G. A. P. Brickenden,

Address—London Loan Bldg.

	Date	3 D B	Dr.	Principal	
				Cr.	Balance
20	1924				
	Oct. 9	B84		\$ 329 39	\$ 329 39
	10	Pillsworth mtge. P. 36		14 00	343 39
	11		\$ 22 00		321 39
	13			54 40	375 79
	13			42 00	417 79
	14		15 00		402 79
	14		3 69		399 10
	14			20 00	419 10
30	15		16 25		402 85
	16		25 23		377 62
	16	Reed R. 30		74 02	451 64
	17		2 00		449 64
	17			250 00	699 64
	17	Dis. W. 28 Thos. Wallace		3 00	702 64
	17	Solrs. exps. re mtge. F29, Freeman		25 00	727 64
	18		30 00		697 64
	18		25 00		672 64
	18		20 00		652 64
40	18		18 00		634 64
	20		43 05		591 59

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 27-R.
Ledger Sheet.
G. A. P.
Brickenden—
London Loan
& Savings Co.
Various Dates.
—continued.

21.....		20 00	611 59
21 Solrs. acct. re auction sale mtge. L34.....		399 80	1,011 39
22 Solrs. costs auction sale re Bayley.....		75 41	1,086 80
22.....		3 00	1,089 80
23.....	31 22		1,058 58
23.....		5 00	1,063 58
23 3 Dis. Kay, K19, K23 & G45.....		10 00	1,073 58
25.....	25 00		1,048 58
25.....	22 00		1,026 58
25.....		10 00	1,036 58 10
25 Armstrong A12 Coll. Mtge. Dis.....		4 00	1,040 58
25 Credit of Oct. 17/24 trans. to B443.....	250 00		790 58
27.....	324 80		465 78
28.....	15 00		450 78
28.....		100 00	550 78
28.....	16 50		534 28
28.....	3 00		531 28

THE LONDON LOAN & SAVINGS CO., OF CANADA

Account No. 84

Sheet No. 24

Name—G. A. P. Brickenden,

20

Address—London Loan Bldg.

Date		Dr.	Principal Cr.	Balance
1924	3 D B			
Oct. 29.....		25 00		506 28
29.....		31 03		475 25
29.....		9 00		466 25
29 Royal Agr'l. Winter Fair.....		76 15		390 10
29.....			20 80	410 90
30.....		25 00		385 90
30.....			994 40	1,380 30 30
30.....		150 00		1,230 30
31.....		60 00		1,170 30
31 B84.....		1,170 30		
		2,454 22	2,454 22	
Oct. 31 B 84.....			1,170 30	1,170 30
31.....		114 00		1,056 30
31.....		134 50		921 80
Nov. 1.....			66 86	988 66
1.....		30 00		958 66
1.....		25 00		933 66 40
1.....		20 00		913 66
1.....		12 75		900 91
1.....		75 00		825 91

	1	5 00	820 91	<i>In the Supreme Court of Ontario.</i> — Exhibits. Ex. 27-R. Ledger Sheet. G. A. P. Brickenden —London Loan & Savings Co. Various Dates. —continued.
	1	Andrews.....		10 00	830 91	
	3	.....		400 00	1,230 91
	4	Gallagher & Levach dis. L7.....		4 00	1,234 91	
	4	Everingham dis. coll.....		3 00	1,237 91	
	5	Midland Woodworths & Gaffney M 33 M. 34 Dis.....		8 00	1,245 91	
	5	McIntosh & Doyle Dis. Mc 40.....		4 00	1,249 91	
	5	.....	1 75		1,248 16
10	5	.....	25 00		1,223 16
	6	.....	55 52		1,167 64
	6	.....	8 90		1,158 74
	6	.....	8 00		1,150 74
	6	.....	1 10		1,149 64
	6	.....	36 13		1,113 51
	6	.....	15 01		1,098 50
	6	.....		10 25	1,108 75
	Nov. 6	.....	25 00		1,083 75
	7	Donovan Deed D 5.....		8 00	1,091 75	
20	7	Billen and English Dis. B 17.....		3 00	1,094 75	
	7	.....	18 70		1,076 05
	8	.....		46 75	1,122 80
	8	.....	25 00		1,097 80
	8	.....	22 00		1,075 80
	8	.....		20 00	1,095 80
	13	B.443.....		500 00	1,595 80	
	11	.....	25 00		1,570 80
	11	.....	15 00		1,555 80
	12	.....	510 75		1,045 05
30	13	.....		700 00	1,745 05
	13	.....	25 00		1,720 05
	13	Thornton & Scott T14-Dis.....		3 00	1,723 05	
	14	.....	40 00		1,683 05
	14	.....		12 00	1,695 05
	15	.....		67 17	1,762 22
	15	Sol. costs Mtge. B77.....		114 55	1,876 77	
	15	.....	20 00		1,856 77
	15	.....	30 00		1,826 77
40	15	B84.....	1,826 77			
			3,150 88	3,150 88		

Nov. 13/24.

From November 18th to 27th '24 inclusive Miss Evelyn Harrison and James Fenwick McMillan will issue cheques on, and endorse cheques—for deposit in account No. B.84 **Both** parties to sign.

See G. P. Atty, No. 800.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 27-R.
Ledger Sheet.
G. A. P.
Brickenden—
London Loan
& Savings Co.
Various Dates.
—continued.

Date 1924	3 D B	Dr.	Principal Cr.	Balance
Dec. 20			200 00	1,550 58
20		35 00		1,515 58
20		8 00		1,507 58
20		9 00		1,498 58
20		22 00		1,476 58
23		25 00		1,451 58
23		27 70		1,423 88
23		25 00		1,398 88 10
24		9 50		1,389 38
24		5 00		1,384 38
24		5 00		1,379 38
24		5 00		1,374 38
24		25 00		1,349 38
24		10 00		1,339 38
27		20 00		1,319 38
27		30 00		1,289 38
27		45 00		1,244 38
27		100 00		1,144 38 20
27		7 25		1,137 13
27		25 00		1,112 13
29	G. N. Weekes	304 44		807 69
29		24 04		783 65
29	B84	783 65		
		2,094 52	2,094 52	

THE LONDON LOAN & SAVINGS CO., OF CANADA

Sheet No. 25

Account No. 84

Name—G. A. P. Brickenden,

Address—London Loan Bldg.

30

Date 1924	3 D B	Dr.	Principal Cr.	Balance
Nov. 15	B. 84		1,826 77	1,826 77
15			45 00	1,871 77
15			19 70	1,891 47
17		75 00		1,816 47
18		2 00		1,814 47
19		37 10		1,777 37
20	Spanner J. 6, Dis		4 00	1,781 37
20			19 40	1,800 77 40
29			22 50	1,823 27
20			107 60	1,930 87
22		22 00		1,908 87

	22	.....	30 90	1,939 77
	24	.....	8 93	1,930 84
	24	.....	50 00	1,880 84
	25	.....	33 32	1,847 52
	29	.....	34 78	1,882 30
	29	McNeill Par. Dis. Mc 36	4 00	1,886 30
	29	.....	25 00	1,861 30
10	29	.....	60 00	1,801 30
	29	.....	30 00	1,771 30
	29	.....	20 00	1,751 30
	29	.....	172 80	1,578 50
Dec.	1	.....	25 00	1,553 50
	2	.....	5 00	1,548 50
	2	.....	75 00	1,473 50
	2	St. Imp. Co. Par. Dis. M-S18	5 00	1,478 50
	3	.....	4 50	1,474 00
	3	St. Imp. Co. S18 Par. Dis	5 00	1,479 00
20	3	Phone calls to H. A. Morine	14 05	1,493 05
	3	.....	250 00	1,243 05
	3	.....	151 53	1,394 58
	3	.....	114 25	1,280 33
	3	St. Imp. Co., Credited in error	5 00	1,275 33
	4	.....	18 00	1,257 33
	4	.....	25 00	1,232 33
	4	.....	26 50	1,205 83
Dec.	5	.....	87 35	1,293 18
	5	.....	16 00	1,277 18
30	5	.....	26 80	1,250 38
	5	.....	5 55	1,244 83
	5	.....	63 00	1,181 83
	5	Allen's Coll. Th. A2, Fees	29 00	1,210 83
	6	Newell N10	4 00	1,214 83
	6	.....	4 50	1,210 33
	6	.....	4 00	1,206 33
	6	.....	36 88	1,169 45
	6	B84	1,169 45	.....
			2,410 58	2,410 58

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 27-R.
Ledger Sheet,
G. A. P.
Brickenden—
London Loan
& Savings Co.
Various Dates.

—continued.

THE LONDON LOAN & SAVINGS CO., OF CANADA

Account No. 84
40 Name—G. A. P. Brickenden.
Address—London Loan Bldg.

Sheet No. 25

Date		Dr.	Principal	Balance
1924			Cr.	
Dec. 6	B84	.....	1,169 45	1,169 45

THE LONDON LOAN & SAVINGS CO., OF CANADA

Sheet No. 4

Account No. 443

Name—G. A. P. Brickenden,
Private a/c.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 26-B.
Ledger Sheet.
G. A. P.
Brickenden—
Account B.443.
Various Dates.

—continued.

	Date	4½	Principal		Balance
			Dr.	Cr.	
	1924				
	Oct. 17	B443		\$ 272 84	\$ 272 84
	18		\$ 25 00		247 84
10	18		146 85		100 99
	21		25 00		75 99
	24		50 00		25 99
	25	Trans. from a/c. B84-Credit of Oct. 17, 1924:		250 00	275 99
	30		107 50		168 49
	Nov. 8		10 00		158 49
	11			55 00	213 49
	13			1,993 33	2,206 82
	13	Dep. in B84	500 00		1,706 82
20	13		24 10		1,682 72
	15		173 45		1,509 27
	15		25 00		1,484 27
	17		400 00		1,084 27
	17		49 45		1,034 82
	28			140 00	1,174 82
	Dec. 2		1,000 00		174 82
	13		23 05		151 77
		1924 Dec. 31st, Interest		4 14	155 91
	23	L.L. div		183 75	339 66
30	24			50 00	389 66
	26			65 62	455 28
	30		10 00		445 28
	1925				
	Jan. 2			50 00	495 28
	3		121 28		374 00
	6		11 90		362 10
	6		18 50		343 60
	7		100 00		243 60
	9		54 81		188 79
40	20			15 00	203 79
	22	Int to date re Biggs mtge		109 00	312 79
	24		86 60		226 19
	26		42 00		184 19
	31		14 17		170 02

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. 26-R.
Ledger Sheet.
G. A. P.
Brickenden—
Account B.443.
Various Dates.
—continued.

Date	1925	4½	Dr.	Principal Cr.	Balance
Feb. 16			16 20		153 82
Mar. 26				100 00	253 82
	27	L.L. div.		183 75	437 57
Apr. 2				180 00	617 57
	6		18 50		599 07
	7		9 68		589 39
	7		41 55		547 84
	11		50 00		497 84 10
	16		31 50		466 34
	25		55 68		410 66
May 2			66 50		344 16
	2	B443	344 16		
			3,652 43	3,652 43	

THE LONDON LOAN & SAVINGS CO., OF CANADA

Account No. 443

Sheet No. 4

Name—G. A. P. Brickenden,
Private acct.

Date	1925	4½	Dr.	Principal Cr.	Balance
May 2		B443		\$ 344 16	\$ 344 16
May 2			\$ 26 10		318 06
	5		29 82		288 24
	11		10 00		278 24
	12		57 75		220 49
	15		176 00		44 49
	19	L.403		40 00	84 49
	22			12 00	96 49
	23		66 13		30 36 30
	28		16 00		14 36
June 10			11 82		2 54
	12			5 00	7 54
	12		6 90		64
June 30		1925 Interest		3 39	4 03
June 29		L.L. Div.		183 75	187 78
July 3			151 00		36 78
	3		12 00		24 78
	4		20 00		4 78
	6			2 00	6 78 40
	10		5 00		1 78
	17			500 00	501 78
	18		29 92		471 86

Date	1925	4½	Dr.	Principal	Cr.	Balance	In the Supreme Court of Ontario.
July	18		25 00			446 86	—
	21		181 00			265 86	Exhibits. Ex. 26-R.
Aug.	1		37 10			228 76	Ledger Sheet, G. A. P.
	5		22 70			206 06	Brickenden— Account B.443.
	6		166 80			39 26	Various Dates.
	6		12 45			26 81	—continued.
	7		2 25			24 56	
10	7		18 83			5 73	
Sept.	9			50 00		55 73	
	21		23 30			32 43	
	22			405 00		437 43	
	28	L.L. Div'd.		183 75		621 18	
	28		1 50			619 68	
	29		100 00			519 68	
	29		300 00			219 68	
Oct.	5			50 00		269 68	
	5		44 16			225 52	
20	5		33 52			192 00	
	6		100 15			91 85	
	12			160 00		251 85	
	14		111 30			140 55	
	15		60 00			80 55	
	23		25 00			55 55	
	30		30 00			25 55	
	30	B443.	25 55				
			1,939 05		1,939 05		

Exhibit AA

(Defendants' Exhibit)

30

Mortgage Ledger Sheet, Eva V. Biggs—London Loan & Savings Co.—Nos. 47-35.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. AA.
Mortgage
Ledger Sheet—
Eva V. Biggs—
London Loan
& Savings Co.
—Nos. 47-35.
Various Dates.

THE LONDON LOAN & SAVINGS COMPANY OF CANADA

No. 47 and 35

Name: Mrs. Eva V. Biggs,

Address: 21 Marley Place, London.

Mortgage date January 27, 1923. Rate 7½%. Insurance American I. Co.
\$2500 Bldg. \$1000 Con's Quebec \$2000.

Registration No. 17155.

40 Principal \$12,000.00 at 7½% half yearly, payable in seven equal consecutive

In the
Supreme
Court of
Ontario.

Exhibits.
Ex. AA.

Mortgage
Ledger Sheet —
Eva V. Biggs —
London Loan
& Savings Co.
—Nos. 47-35.
Various Dates.

—continued.

half-yearly payments of \$150.00 each, first due July 27/24, balance \$10,950 on January 27, 1928.

Privilege: None.

Collateral: Policy No. 97346 in London Life Insurance Company for \$10,000 on life of W. H. Biggs held as Coll. Sec'y. Also two policies in The London Life Insce. Co. for \$10,000. Each assigned as Coll. Also policy for \$10,000 in The Great West Life Assce. Co. ins. Eva V. Biggs.

Remarks: First mtge. to H. H. Chilton dated Nov. 2/21 \$2,000, 7%. Falls due Nov. 2, 1926.

L. 255½ S. B. K. 398½ Chilton \$2042.81 at 7%. 10
May 15/23 Pt. L. 19. 31'2" x 105' rel'd.

C. of 2, G. A. P. B. \$12000 M/B. 22/1/23. B.

Land: In the municipality of London, Ridout S., lots 18 and 19, on West Side Ridout St. South. Pl. 399. Dwgs. No. 315 Ridout St. and dwgs. No 319 Ridout St.

Inspected by S. B. Gorwill, Jan. 19, 1923, Land, \$5,000; Building, \$9,500; Total \$14,500.

Account 47

Date, 1923		Particulars	Int.	Dr.	Principal Cr.	Balance	
Feb. 3	To Cash			\$ 7,030 52		\$ 7,030 52	20
9	To Cash			2,042 81		9,073 33	
June 1	To Cash			500 00		9,573 33	
19	To Cash			500 00		10,073 33	
July 3	To Cash			500 00		10,573 33	
10	To Cash			500 00		11,073 33	
13	To Cash			500 00		11,573 33	
Oct. 4	To bal. per con. B47 S342, S. B. B446, 84			426 67		12,000 00	
Oct. 4	By per c. int to July 27 '23 & ex.		342 00				
Nov. 13	By M. B. 78 per con. int. to July 27/24 & ex.		936 46				30
1925							
Sept. 16	By S. B. int. to Jan. 27/25		471 80				
Nov. 2	By int. to 27 July /25 & ex.		461 05				
1926							
June 29	By int. to 27 Jan. 26		463 40				
Sept. 28	By int. to 27 July 26		456 85				
Nov. 1	To bal. H. H. Chilton mtge. S. B. 322½			12 08		12,012 08	40
	Transferred to New Mtge. Ledger Account 35.						
1927							
Dec. 31	By ppl. & int. to 31 Dec. 27		1334 68		12,012 08		

Exhibit BB

(Defendants' Exhibit)

Mortgage Ledger Sheet—W. H. Biggs—London Loan & Savings Company—
Nos. 79 and 82.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Ex. BB.
—
Mortgage
Ledger Sheet—
W. H. Biggs—
London Loan
& Savings Co.
—Nos. 79 and
82.
Various Dates.

THE LONDON LOAN & SAVINGS CO., OF CANADA
Account No. 78 & A2.

Name—Wm. H. Biggs,
Address—Empire Brass Co., City.
Mortgage date Nov. 8/24.

- 10 Registration No. 19476 19477 Coll. Rate 8% \$13,500. Insurance Globe & Rutgers \$8,500 Liverpool L. & G. \$5,000.

Principal \$13,500 at 8% 1/12-yearly, payable in = con. mthly. pay'ts of \$250. each, first due Dec. 8/24. Int. to be deducted mthly. & bal. applied on Prin.

Privilege: To pay any sum on any interest day.

Collateral: See two policies in London Life Insurance Co., for \$10,000.00, each, assigned as Coll. Security.

Remarks—Re No. 1 1st m's to E. Barrell \$6,000 and \$1,000. No. 2 1st m to Huron & Erie \$10,000.

- 20 Land—In the municipality of London, 1, pt. Lot 11, Blk "B". Plan 343. Elmwood Ave. 2, pt. Lot 19, W. S. Ridout St. S. Pl. 399. Coll. L. 18 and Pt. Lot 19, W. S. Ridout St. S. Pl. 399.

Inspected By S. B. Gorwill—See former mtges. 1st, \$31,800; 2nd, \$14,500; Garages, \$2,000—Total \$48,300.

THE LONDON LOAN & SAVINGS CO., OF CANADA

Sheet No. Loan No. A2.

Account No. 78

Date	Particulars	Int.	Principal		Balance
			Dr.	Cr.	
1924					
30 Nov. 8	To Cash		\$ 1,508 06		\$ 1,508 06
	13 To Cash		6,991 94		8,500 00
1925					
Jan. 22	By int. to Dec. 8/24, a/c P. & ex. \$59 20			\$ 200 00	8,300 00
	22 To G. A. P. Brickenden Mtge. & Dis.		5,110 00		13,410 00
Mar. 2	By int. to Jan. 8/25, a/c P. & ex. 58 20			200 00	13,210 00
Account No. A2 Transferred to New Ledger					
1928					
Jan. 17	To G. L. for taxes 1925 and 26.		1,403 65		14,613 65
40 Mar. 28	By cash a/c. Int. to 8 Jan. '28.	300 00			
Dec. 7	By cash a/c. Int. to 8 Oct. '28.	300 00			

In the
Supreme
Court of
Ontario.
Exhibits.
Ex. Y.
Mortgage
Ledger Sheet—
W. H. Biggs—
Nos. B. 46 and
34.
Various Dates

Exhibit Y

(Defendants' Exhibit)

**Mortgage Ledger Sheet—W. H. Biggs—London Loan & Savings Company—
Nos. B. 46 and 34.**

THE LONDON LOAN & SAVINGS COMPANY OF CANADA

Account B46 and
Account No. 34.

Name: Walter H. Biggs,

Address: C/o Empire Brass Co. London, Ont.

Mortgage date November 14, 1922, 10

Registration No. 16914,

Principal \$18,000.00 at 7½% half yearly, repayable in nine equal consecutive half-yearly payments of \$250.00 each, first due May 14th, 1924, balance \$15,750.00 on November 14th, 1928.

Privilege: To pay \$250.00 additional to said payments.

Collateral: Mortgage on No. 114 Elmwood Avenue, \$3000.00 to be released if demanded when building complete; Policy No. 97346 in the London Life Insurance Company for \$10,000.00, also policy No. 145063 in the London Life Insurance Company for \$10,000.00; also policy for \$10,000 in the Great West Life Assurance Co., re Eva V. Biggs. 20

Remarks:

Land: In the municipality of London, being part lot 11, Block "B" Plan 343. Apartments No. 116 Elmwood Avenue, London, Ontario.

Valuation by S. B. Gorwill, 1922, Land, \$1800.00; Buildings \$30,000.00; Total \$31,800.00.

Account No. B 46

Principal

Date	Particulars	Int.	Dr.	Cr.	Balance
1922					
Nov. 15	To Cash		\$ 300 00		\$ 300 00
22	To Cash		200 00		500 00 30
Dec. 1	To Cash		1,280 00	Cr. B446	1,780 00
12	To Cash		720 00		2,500 00
1923					
Jan. 15	To Cash		2,000 00		4,500 00
Feb. 1	To Cash		1,000 00		5,500 00
3	To Cash		1,000 00		6,500 00
15	To Cash		1,000 00		7,500 00
23	To Cash		500 00		8,000 00
Mar. 1	To Cash		1,000 00		9,000 00
15	To Cash		1,000 00		10,000 00 40
April 7	To Cash		1,500 00		11,500 00

Date	Description	Principal		Balance
		Dr.	Cr.	
1924	3 D B			
21	To Cash	500 00		12,000 00
23	To Cash	300 00		12,300 00
May 1	To Cash	1,000 00		13,300 00
14	To Cash	1,000 00		14,300 00
23	To Cash	500 00	Cr. B446	14,800 00
31	To Cash	1,000 00		15,800 00
June 7	To Cash	\$ 1,000 00		\$ 16,800 00
10 7	By Ford B46		\$16,800 00	
7	To Ford B46	16,800 00	16,800 00	
9	To Cash	300 00		16,800 00
15	To Cash	500 00		17,100 00
July 21	To Cash	400 00		17,600 00
1924				18,000 00
Feb. 21	By int. to May 14/23 and ex.	\$260 45		
Sept. 6	By int. to Nov. 14/23 & ex. per S. Bk.	700 90		
20 Nov. 13	By M. B 78 per co. Int. to May 4/24 and ex.	699 68		
1925				
July 2	By int. to Nov. 14/24 and ex.	707 34		
1926				
April 28	By int. to 14 May /25 and ex.	724 25		
	Transferred to new Ledger Acct. No. 34			
Dec. 31	By int. to 14 Nov. /25. a/c.	681 50		
1927				
June 14	By int. a/c. to 14 May /27	300 00		
30 Aug. 5	By int. a/c. to 14 May /27	300 00		
Nov. 1	By int. a/c. to 14 May /27	300 00		
Dec. 31	By ppl. and int. to 31 Dec. /27	2,195 50		
			18,000 00	

In the Supreme Court of Ontario.
 Exhibits.
 Ex. Y.
 Mortgage Ledger Sheet—
 W. H. Biggs—
 Nos. B. 46 and 34.
 Various Dates.
 —continued.

Exhibit 28-R

(Plaintiffs' Exhibit)

**Savings Ledger Sheet—W. H. Biggs—London Loan & Savings Company—
 Account B. 446.**

In the Supreme Court of Ontario.
 Savings Ledger Sheet—
 W. H. Biggs—
 London Loan & Savings Co.
 —Account B. 446.
 Various Dates.

I, Ellen Patricia Young, do hereby certify that the ledger sheet attached hereto, known as sheet No. 1, of account B446, under name of W. H. Biggs, is the original ledger sheet of the said account No. B446, wherein the savings account of W. H. Biggs was kept in the books of The London Loan and Savings Company of Canada.

In the
Supreme
Court of
Ontario.
—
Savings Led-
ger Sheet—
W. H. Biggs—
London Loan
& Savings Co.
—Account B.
446.
Various Dates.
—continued.

That I was from the year 1922 to September 1st, 1929, employed by The London Loan and Savings Company of Canada as an assistant bookkeeper, and during that time had access to the books and records of the said company.

That the pencil notations appearing on the margin of the said account were to my knowledge in the books of the said Company on the said ledger sheet from the month of November, 1924 onward, and the said instructions were duly carried out.

Witness my hand this Seventeenth day of October, 1931.

E. P. YOUNG.

THE LONDON LOAN & SAVINGS CO., OF CANADA

10

Sheet No. 1

Account No. B446

Name: W. H. Biggs,

Address: C/o McCormick Mfg. Co., City.

Date 1921	Particulars	Dr.	Cr.	Balance
Aug. 13			\$ 20 00	\$ 20 00
31			15 25	35 25
Sept. 3		9 55		25 70
12		3 88		21 82
13			6 00	27 82 20
14		10 00		17 82
Oct. 1			5 50	23 32
8		4 00		19 32
14		13 60		5 72
25		5 50		22
29			2 00	2 22
Nov. 4		2 02		20
12			11 50	11 70
25		11 00		70
Dec. 10			8 80	9 50 30
14		9 00		50
Feb. 1			12 00	12 50
Mar. 1			11 75	24 25
22		5 08		19 17
24			1 75	20 92
27		20 00		92
April 3			4 00	4 92
26		4 00		92
28			5 00	5 92
May 1		3 36		2 56 40
20			2 75	5 31
July 3		5 31		
Dec. 1	Mtge. B46		1,280 00	1,280 00

Date	Particulars	Dr.	Cr.	Balance	
1922					
Dec. 1		1,280 00			
1923	Acct. Loan				
May 1	Mtge. B46		1,000 00	1,000 00	
1		125 00		875 00	
7		875 00			
23	Act. loan		500 00	500 00	
25		500 00			
10 June 1	Mtge. B47		500 00	500 00	
6		500 00			
July 3			500 00	500 00	
3		500 00			
Oct. 4	Mrs. E. V. Biggs		84 67	84 67	
27		30 00		54 67	
31		50 00		4 67	
	1924 June 30th, Interest		10	4 77	
Nov. 13			5,355 80	5,360 57	
13		1,993 33		3,367 24	
20 13		100 00		3,267 24	
13		100 00		3,167 24	
Nov. 13	B446	3,167 24			
		9,326 87	9,326 87		
All cheques on this acct. to be marked O.K. by G. A. P. Brickenden.					
Nov. 13	B446		\$ 3,167 24	\$ 3,167 24	
13		58 26		3,108 98	
13		150 00		2,958 98	
14		38 53		2,920 45	
30 14		1,000 00		1,920 45	
14		58 70		1,861 75	
14		250 00		1,611 75	
14		1,000 00		611 75	
Nov. 15		\$ 169 14		\$ 442 61	
17		207 05		235 56	
18		100 00		135 56	
19		25 00		110 56	
22			100 00	210 56	
24		100 00		110 56	
25		3 00		107 56	
40 25		50 00		57 56	
26		29 10		28 46	
28		25 70		2 76	
Dec. 1			250 00	252 76	
2		24 00		228 76	
2		18 75		210 01	

In the
Supreme
Court of
Ontario.
—
Savings Led-
ger Sheet—
W. H. Biggs—
London Loan
& Savings Co.
—Account
B. 446.
Various Dates.
—continued.

In the
Supreme
Court of
Ontario.
—
Savings Led-
ger Sheet—
W. H. Biggs—
London Loan
& Savings Co.
—Account
B. 446.
Various Dates.
—continued.

Date	Particulars	Dr.	Cr.	Balance
1924				
4.		275 00	485 01
5.	100 00		385 01
8.	18 20		366 81
8.		155 00	521 81
9.	50 00		471 81
9.	200 00		271 81
9.	9 70		262 11
12.	50 65		211 46 10
13.	8 63		202 83
15.	100 00		102 83
15.	3 85		98 98
15.	57 32		41 66
16.	29 15		12 51
	1924 Dec. 31st., Interest.....		75	13 26
Dec. 23.		194 35	207 61
23.	25 00		182 61
31.		400 00	582 61
				20
1925				
Jan. 2.	200 00		382 61
2.	200 00		182 61
2.	50 00		132 61
2.	8 92		123 69
3.	20 25		103 44
6.	50 00		53 44
7.	11 15		42 29
7.	20 00		22 29
Jan. 7	B446.....	22 29		.....
		\$ 4,542 34	\$ 4,542 34	30

Exhibit NN

(Plaintiffs' Exhibit)

List of Rentals—W. H. Biggs Trust.

	Property	Monthly Rental	Particulars
	114 Elmwood Avenue (lower)	\$50.00	
	114 Elmwood Avenue (upper)		Vacant. Was vacant before we were appointed.
10	116 Elmwood Avenue (Apt. 2)	50.00	
	116 Elmwood Avenue (Apt. 3)	65.00	Vacant.
	116 Elmwood Avenue (Apt. 4)	70.00 Less 1%	
	116 Elmwood Avenue (Apt. 5)	70.00	
	116 Elmwood Avenue (Apt. 6)	70.00	
	116 Elmwood Avenue	40.00	Vacant.
20	309 Ridout Street	45.00	Vacant.
	311 Ridout Street		Vacant. Was vacant before we were appointed.
	313 Ridout Street	65.00	
	315 Ridout Street	55.00	
	315 Ridout Street	50.00	
	317 Ridout Street	60.00	
	319 Ridout Street	60.00	
	319½ Ridout Street	Biggs	
	Hydro and water accounts, Elmwood	\$280.51	Ridout \$246.66
30	Janitor accounts, Elmwood	\$118.90	Ridout 312.80
	Heating Elmwood and Ridout	937.37	

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Ex. NN.
List of
Rentals—
W. H. Biggs
Trust.
Various Dates.

Part Exhibit 32-R

(Plaintiffs' Exhibit)

1

Memorandum of Mortgages covering 114 Elmwood Avenue.

BIGGS vs. LONDON LOAN

re

114 Elmwood Avenue being west 39 feet of South 94 feet 6 inches of Lot 11,
Block "B", Plan No. 343.

This property is subject to the following mortgages:

- 1st—No. 16499—dated 25th July, 1922, registered 27th July, 1922. 10
W. H. Biggs to Edwin Barrell to secure \$6,000.
Still existing.
- 2nd—No. 16590—dated 25th July, 1922, registered 25th August, 1922.
Walter H. Biggs to Edwin Barrell for \$1,000.
Still existing.
- 3rd—No. 17013—dated 11th Dec. 1922, registered 11th December, 1922.
Walter H. Biggs, et ux to London Loan & Savings Co. for
\$3,000. collateral to mortgage for \$18,000 on 116 Elmwood
Avenue. Still existing.
- 4th—No. 17783—dated 13th July, 1923, registered 17th July, 1923. 20
Walter H. Biggs et ux to Geo. A. P. Brickenden for \$5,-
000.00. Discharged by No. 23116.
- 5th—No. 17944—dated 24th Aug. 1923, registered 31st August, 1923.
Walter H. Biggs, et ux to Geo. A. P. Brickenden for \$2,000.
Discharged by No. 19469.
- 6th—No. 18495—dated 13th January, 1924, registered 13th Feb. 1924.
Walter H. Biggs et ux to Geo. A. P. Brickenden for \$1200.00,
discharged by No. 19472.
- 7th—No. 19476—dated 8th Nov. 1924, registered 12th November, 1924.
Walter H. Biggs, et ux to London Loan & Savings Co. for 30
\$13,500.00, still existing.
- 8th—No. 19546—dated 1st August, 1924, registered 3rd December, 1924.
Walter H. Biggs and Eva, his wife to Whitfield Lancaster
for \$900.00. Still existing.
- 9th—No. 23113—dated 1st December, 1927, registered 4th Jan'y. 1928.
Walter H. Biggs et ux to Consolidated Trusts Corp'n. for
\$20,000.00. Still existing.

Part Exhibit 32-R

(Plaintiffs' Exhibit)

2**Memorandum of Mortgages covering 116 Elmwood Avenue.**

BIGGS vs LONDON LOAN

Re:

116 Elmwood Avenue, London, being east 45 feet of south 94' 6'' of Lot 11, Block B plan 343. This property is subject to the following mortgages:

- 10 1. 16914, dated November 14, 1922, Walter H. Biggs
November 15, 1922
to The London Loan and Savings Company for \$18,000.
2. 17783, dated July, 13, 1923, Walter H. Biggs et ux
July 17, 1923
to Geo. A. P. Brickenden to secure \$5,000.00, this mortgage also covers 114 Elmwood Avenue, discharged by 23116.
3. 17944, dated August 24, 1923, Walter H. Biggs, et ux
August 31, 1923
to Geo. A. P. Brickenden, for \$2,000.00, this mortgage also covers 114 Elmwood Avenue.
- 20 4. 18495, dated January 13, 1924, Walter H. Biggs et ux
February 13, 1924
to Geo. A. P. Brickenden for \$1,200.00, this mortgage also covers 114 Elmwood Avenue.
5. 19476, dated November 8, 1924, Walter H. Biggs
November 12, 1924
to London Loan & Savings Company for \$13,500.00, this mortgage also covers 114 Elmwood Avenue.
- 30 6. 19546, dated August 1, 1924, Walter H. Biggs and
December 3, 1924
Eva V. Biggs his wife, to Whitfield Lancaster for \$900.00. This mortgage also covers 114 Elmwood Ave.
7. 23113, dated December 1, 1923, Walter H. Biggs et ux to
January 4, 1928
Consolidated Trusts Corporation, \$20,000.00.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 32-R.
2
Memorandum
of Mortgages
covering 116
Elmwood Ave.
Various Dates.

Part Exhibit 32-R

(Plaintiffs' Exhibit)

4

Memorandum of Mortgages covering 315-317-319 Ridout Street.

BIGGS v LONDON LOAN AND SAVINGS CO.

Re:

315, 317, 319 Ridout Street, South London, Ont., being all of Lot 19 except the West 60 feet of said Lot, Plan 399.

- 1st. 17155 dated 27 Jany. 1923 Eva V. Biggs
to
6 Feby. 1923 London Loan & Savings Co. of Canada for \$12,000. Still existing. 10
See Mortgage to Consolidated Trusts Corp'n. No. 23114.
- 2nd. 17782 dated 13 June 1923 Eva V. Biggs
to
17 July 1923 G. A. P. Brickenden, for \$5,000.
Collateral to 17783 being mortgage to G. A. P. Brickenden covering 114, 116 Elmwood Avenue, also 309, 311, 313 Ridout Street South.
- 3rd. 17945 dated 24 Aug. 1923 Eva V. Biggs 20
to
31 Aug. 1923 Geo. A. P. Brickenden, for \$2,000 being collateral to mortgage No. 17944 to G. A. P. Brickenden covering 114 and 116 Elmwood Ave. and 309, 311, 313 Ridout Street. Discharged.
- 4th. 18494 dated 13 Jany. 1924 Eva V. Biggs
to
13 Feby. 1924 George A. P. Brickenden, for \$1,200.
Collateral to mortgage for same amount to G. A. P. Brickenden, No. 18495 covering 114 and 116 Elmwood Ave., 309, 311, 313 30 Ridout St. Discharged.

- 5th. 19477 dated 8 Nov. 1924 Eva V. Biggs
to
12 Nov. 1924 London Loan & Savings Co. of Canada.
\$13,500. collateral to mortgage for same amount registered No.
19476 covering 114, 116 Elmwood Ave. and 309, 311 and 313
Ridout St. Still in existence.
- 6th. 19546 1 Aug. 1924 Walter H. Biggs
and Eva, his wife,
3 Dec. 1924 to Whitfield Lancaster, \$900. Still existing.
- 10 7th 23114 dated 1 Dec. 1927 Eva V. Biggs and Walter H. Biggs
to
4 Jan. 1928 Consolidated Trusts Corp'n. \$13,600. Still
existing.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 32-R.
4
Memorandum
of Mortgages
covering 315-
317-319
Ridout Street.
Various Dates.
—continued.

Part Exhibit 32-R

(Plaintiffs' Exhibit)

3

Memorandum of Mortgages covering 309, 311, 313 Ridout Street.

BIGGS v. LONDON LOAN & SAVINGS COMPANY.

20 Re 309, 311 and 313 Ridout Street, South London, being part of Lot Number
19, Plan 399, Fourth Division and known as the East 105 feet of the
North 31 feet 2 inches parallel with Street lines of Lot 19.

1st.
17783 dated 13 July 1923 Walter H. Biggs et ux
17 July 1923 to
George A. P. Brickenden for \$5000 covering
also 114 and 116 Ridout Streets, discharged by 23116.

2nd.
17944 dated 24 August 1923 Walter H. Biggs
31 August 1923 to
30 George A. P. Brickenden for \$2000 also
covering 114 and 116 Elmwood Ave. Discharged by 19469.

*In the
Supreme
Court of
Ontario.*
—
Exhibits.
Part Ex. 32-R.
3
Memorandum
of Mortgages
covering 309-
311-313
Ridout St.
Various Dates.

In the
Supreme
Court of
Ontario.
—
Exhibits.
Part Ex. 32-R.
3
Memorandum
of Mortgages
covering 309-
311-313
Ridout St.
Various Dates.
—continued.

- 3rd.
18495 dated 13 January 1924 Walter H. Biggs
13 February 1924 to
George A. P. Brickenden \$1200, also cover-
ing 114 and 116 Elmwood Ave. Discharged by 18495.
- 4th.
18685 dated 3 April 1924 Walter H. Biggs et ux
15 April 1924 to
Huron & Erie Mtge. Corp., for \$10,000. Still
in existence. 10
By an agreement registered as No. 18695 the above three mortgages
held by G. A. P. Brickenden as Numbers 17783, 17944 and 18495
were postponed to mortgage No. 18685 leaving 18685 as a first mort-
gage.
- 5th.
19476 dated 8 November 1924 Walter H. Biggs to
12 November 1924 London Loan & Savings Company of
Canada for \$13,500, this mortgage also
covers 114 and 116 Elmwood Ave. Still existing.
- 6th.
19546 dated 1 August 1924 Walter H. Biggs and Eva V. Biggs to Whit- 20
3 December 1924 field Lancaster \$900. This mortgage
also covers 114 and 116 Elmwood Ave.
- 7th.
23114 dated 1 December 1927 Eva V. Biggs and
4 January 1928 Walter H. Biggs
to
Consolidated Trust Corporation \$13,600.