

30, 1936

In the Privy Council

No. of 1935.

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN :

IMPERIAL BANK OF CANADA

(Defendant) APPELLANT,

AND

MARY VICTORIA BEGLEY

(Plaintiff) RESPONDENT.

RECORD OF PROCEEDINGS

LAWRENCE JONES & COMPANY,

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for the Appellant.

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London, S.W. 1

for the Respondent.

HAMILTON:

HAMILTON TYPESETTING COMPANY, LIMITED

1935

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RECORD OF PROCEEDINGS

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No. 1.

Statement of Claim

IN THE SUPREME COURT OF ALBERTA
(Judicial District of Calgary—Trial Division)

*In the
Supreme Court
of Alberta*

No. 1
Statement of
Claim.
December
29, 1932.

BETWEEN :

MARY VICTORIA BEGLEY,

Plaintiff,

AND

IMPERIAL BANK OF CANADA,

Defendant.

10

1. The Plaintiff is a widow residing in the City of Calgary. The Defendant is a Chartered Bank incorporated under The Bank Act with an office and place of business at the City of Calgary in the Province of Alberta.

2. The Plaintiff on the 27th day of June, A.D. 1929, was and had been for upwards of ten years, a customer of the Defendant Bank and carried funds on deposit in the Bank in the Defendant's Main Branch in Calgary at the Corner of Centre Street and Eighth Avenue East.

3. On the said 27th day of June, A.D. 1929, the Plaintiff had on
20 deposit in the said Branch of the Defendant Bank a sum in excess of \$11,000.00 which was carried in the Savings Department of the said Branch under Account Number Be. 3, bearing interest at 3% per annum compounded semi-annually.

4. On or about the 24th day of June, A.D. 1929, the Plaintiff granted to one, James Wesley McElroy, a Power of Attorney on a printed form supplied by the Bank to enable her business with the said Branch to be transacted by the said James Wesley McElroy during her then proposed absence for some months from the City of Calgary.

5. Upon the said 27th day of June, A.D. 1929, and for some time
30 previously thereto, the said James Wesley McElroy had been a customer of the Defendant Bank and had become indebted to the Defendant in the sum of \$8500.00 which was regarded by the Defendant as a bad or doubtful debt, and on or about the 27th or 29th day of June, A.D. 1929, the Defendant Bank, well knowing that the duty and authority of the said James Wesley McElroy as attorney for the Plaintiff were to transact the business of the Plaintiff and not his own personal business, induced or in any case permitted the said James Wesley McElroy to draw upon the Plaintiff's funds on deposit with the Defendant Bank as aforesaid for the amount of the indebtedness of \$8500.00 owing or alleged to be
40 owing by the said James Wesley McElroy to the Defendant, and received the said money from the said McElroy.

*In the
Supreme Court
of Alberta*

No. 1
Statement of
Claim.
December
29, 1932.

—continued

6. The said drawing of funds was made by cheque on a form supplied by the Bank, filled in by the Bank and made to the order of J. W. McElroy and signed with the name Victoria Begley by her Attorney, the said James Wesley McElroy. This cheque is dated the 29th day of June, A.D. 1929, and was never endorsed by the said J. W. McElroy, but is stamped with a rubber stamp supplied by the defendant, to the following effect: "Deposited to the credit of J. W. McElroy, The Imperial Bank of Canada, Calgary, Alberta," and signed "G. Tayton, per" (here follows a signature which resembles H. P. Cairns) and is the signature of a person who was an employee of the Bank at that time and the said G. 10
Tayton at that time was an employee of the Defendant, occupying the Plaintiff believes, the position of Accountant, which cheque was charged against the Plaintiff's Savings Account Be. 3 on the 27th day of June, A.D. 1929, and the proceeds thereof were received by the Defendant.

7. The Plaintiff says that the said withdrawal was entirely unauthorized by her and was done by the said James Wesley McElroy with the connivance of the Defendant Bank and with a view to obtaining advantage by the Bank for its own benefit of funds entrusted by the Plaintiff to the Defendant Bank.

8. In the alternative, the Plaintiff repeats paragraphs 2 to 7 in- 20
clusive and says that it was the duty of the Defendant Bank before accepting from the said James Wesley McElroy funds of the Plaintiff, entrusted to the Bank for safekeeping, that the Bank should have made enquiry of the Plaintiff as to whether or not such use of her funds had been authorized and no such enquiry was made, and if such enquiry had been made the Plaintiff would have informed the Defendant Bank as the fact was and is that the said James Wesley McElroy had no such authority.

9. In the further alternative the Plaintiff says that on or about the 27th day of June, A.D. 1929, she had on deposit with the Defendant Bank 30
in Savings Account Be. 3, carried in the Branch of the Defendant Bank at the corner of Centre Street and Eighth Avenue East, funds bearing interest at 3% per annum compounded semi-annually in excess of \$8500.00 and on that day or on the 29th day of June, A.D. 1929, without the authority of the Plaintiff, the Defendant Bank loaned \$8500.00 of her funds to James Wesley McElroy and accepted therefor a note for \$8500.00 payable, the Plaintiff believes, on or about one year after the date thereof.

10. The said investment was not only unauthorized but was made by the Defendant Bank to James Wesley McElroy to enable the said James Wesley McElroy to pay to the Defendant Bank an indebtedness 40
owing by him which indebtedness the Defendant Bank regarded as unsafe and the investment as worthless.

11. In the further alternative the Plaintiff repeats paragraphs 2 and 3 hereof, and says that on or about the 27th or the 29th day of June,

A.D. 1929, the Defendant converted to its own use \$8500.00 of the Plaintiff's money on deposit with the Defendant as aforesaid.

*In the
Supreme Court
of Alberta*

12. The Plaintiff has demanded repayment of the said sum of \$8500.00 and payment of interest on the money so improperly used, which demand was refused.

No. 1
Statement of
Claim.
December
29, 1932.

13. The Defendant Bank charged against the account of the Plaintiff in the said Branch, Be. 3, on the 23rd day of July, A.D. 1929, the sum of \$1000.00, and on the 22nd day of August, A.D. 1929, \$500.00, and on the 26th day of October, A.D. 1929, \$500.00, on the 13th day of November, A.D. 1929, \$735.00, and on the 16th day of November, A.D. 1929, \$265.00, all of which charges were wholly unauthorized and in justification thereof as proper debits against the Plaintiff's account, the Defendant Bank has produced to the Plaintiff four cheques, one for \$1000.00 in favor of Strong & Dowler, one for \$500.00 in favor of John W. Moyer, one for \$500.00 in favor of Strong & Dowler, one for \$735.00 in favor of Strong & Dowler, and one for \$265.00 in favor of Canadian Acceptance Corporation, which cheques are not the Plaintiff's cheques and no other justification for the said charges was offered by the Defendant to the Plaintiff on enquiry. The money representing the charge of \$500.00 on the 22nd day of August, A.D. 1929, was subsequently repaid to the Plaintiff.

—continued

14. The Plaintiff has demanded payment from the Defendant of \$2500.00 and interest, which demand has been refused.

The Plaintiff therefore claims:

(a) Judgment for \$8500.00 and interest at 5% per annum from the 27th day of June, A.D. 1929, until payment or judgment.

(b) Judgment for \$2500.00, the total amount of the four charges detailed in paragraph 13 hereof made on the 23rd day of July, the 26th day of October, the 13th and 16th days of November, A.D. 1929, together with interest on the said sum at 5% per annum from the respective dates of the said charges and on the respective amounts thereof until payment or judgment.

Dated this 29th day of December, 1932.

No. 2.
Statement of Defence

No. 2
Statement of
Defence,
February 7,
1933.

1. On the 27th day of June, A.D. 1929, the Plaintiff was a creditor of the Defendant in an amount exceeding \$11,000.00 by virtue of deposits made from time to time to the credit of the account of the Plaintiff in the Savings Department of the Calgary Branch of the Defendant.

2. In answer to the whole of the Plaintiff's Statement of Claim the Defendant alleges as appears in the following paragraphs of this Defence;

*In the
Supreme Court
of Alberta*

—
No. 2
Statement of
Defence,
February 7,
1933.

—continued

3. For years prior to the year 1929 A.D. the Plaintiff and the said McElroy had been neighbors in the vicinity a few miles east of Calgary and had been close personal friends. That the Plaintiff's husband, R. W. Begley, died on the 24th day of December, 1928, leaving a Will in which he appointed the Plaintiff Executrix and left all his estate to the Plaintiff. That the Plaintiff appointed the said McElroy her attorney to take out Letters of Administration and to administer the said estate and the said McElroy did promptly and efficiently administer the said estate and in addition to transferring to the Plaintiff lands worth many thousands of dollars the said McElroy turned over the cash proceeds of the estate to the Plaintiff. The sum of \$13,000.00 of the said estate money was transferred by the said McElroy as Administrator to the credit of the Plaintiff in the Savings Department of the Calgary Branch of the Defendant Bank on the 21st day of June, 1929; 10

4. On or about the 24th day of June, 1929, the Plaintiff executed a General Power of Attorney appointing the said McElroy her general attorney to do all business and acts on her behalf which she herself could do. On or about the same date the Plaintiff also executed the Power of Attorney mentioned in paragraph 4 of the Statement of Claim and lodged the same with the Defendant. The said last mentioned Power of Attorney amongst other things did expressly authorize the said McElroy to draw and sign cheques against the account of the Plaintiff in the Defendant Bank and to receive the money thereon; to assign choses in action and all moneys payable in respect thereof and generally to transact any business with the Defendant which the Plaintiff could transact in person; and the Plaintiff thereby ratified whatever her said Attorney, the said McElroy did do thereafter. The said Power of Attorney did also contain a clause whereby the Plaintiff agreed with the Defendant that in consideration of the Defendant accepting the acts done under the said power that the Plaintiff will ratify and confirm all acts, assignments, transfers, agreements and other matters and things which the said McElroy may make, do sign, execute or enter into with the Defendant and that without regard to whether the transaction in question is or is not within the scope of the authority given therein; 20 30

5. On or about the 24th day of June, 1929, the Plaintiff agreed with the said McElroy to loan to the said McElroy on the security of his personal promise to repay the same such sums as he required to meet a debt of \$8500.00 which he owed to the Defendant and such other moneys as he might think it advisable to borrow from her. The said McElroy advised the Defendant of the agreement between the said McElroy and the Plaintiff for the said loan prior to the time the cheque mentioned in the following paragraph was issued; 40

6. On or about the 29th day of June, 1929, the said McElroy borrowed the said sum of \$8500.00 by issuing to himself a cheque in the Plaintiff's name against the said credit account which the Plaintiff had

in the Savings Department of the Defendant Bank. The said cheque was immediately thereafter delivered by the said McElroy to the Defendant as a credit in the personal account which the said McElroy then had with the Defendant Bank. The Defendant then charged the personal account of the said McElroy with the amount owing by the said McElroy to the Defendant, namely \$8518.00;

*In the
Supreme Court
of Alberta*

—
No. 2
Statement of
Defence,
February 7,
1933.

7. At the time the said McElroy issued to himself the said cheque for \$8500.00 and in consideration for the loan thereby effected the said McElroy made his own personal promissory note in favor of the Plaintiff in the amount of \$8500.00 with interest at 7% per annum payable on demand and left the same with the Defendant for safekeeping for the Plaintiff. The said note was exhibited to and delivered to the Plaintiff on or about the 24th day of December, A.D. 1929. On the first day of August, 1931, the Plaintiff agreed with the said McElroy to extend the time for payment of the debt secured by the said note for one year and thereupon she accepted from him a renewal note for the said debt payable one year after the first day of August, 1931, with interest at the rate of 6% per annum; and on the first day of September, 1932, the Plaintiff agreed with the said McElroy to extend the time for the payment of the said debt for two years, namely until the first day of September, 1934 A.D., and she accepted from him his promissory note in her favor in the sum of \$10,244.75 with interest at the rate of 6% per annum payable on the first day of September, A.D. 1934;

—continued

8. Throughout the year 1929 the said McElroy was worth over and above all debts and exemptions \$50,000.00. On the 29th day of June, 1929, the Defendant held adequate securities from the said McElroy on his property for the payment of the said debt of \$8500.00 owing by him to the Defendant. These securities were surrendered up by the Defendant to the said McElroy when the said debt was paid. By September of the year 1932 it was apparent to the Plaintiff that the said McElroy had little or no exigible surplus over and above the encumbrances on his property.

9. On or about the 24th day of December, A.D. 1929, and from time to time thereafter the Plaintiff was fully informed of the fact that the said cheque for \$8500.00 and the other cheques mentioned in the Statement of Claim had been issued against and charged to her account. On and after the 24th day of December, 1929, the Plaintiff was frequently in the Defendant Bank and the Plaintiff never at any time prior to the month of October, 1932, claimed or suggested to the officers of the Defendant in the said Bank or to the said Bank itself that the said cheque for \$8500.00 or any of the cheques mentioned in the Statement of Claim had been issued and charged to her account in the Defendant Bank without the authority or the agreement of the Plaintiff and the Plaintiff never at any time prior to the month of October, 1932 A.D., made any claims or demand upon the Defendant in respect to the said \$8500.00 or the said cheques or any other amount.

10. The Plaintiff not only authorized the issue by the said McElroy of the said cheque for \$8500.00 and agreed to the loan effected thereby prior to the 29th day of June, 1929, but also on various days thereafter including the 2nd day of January, 1930, and on the occasion of each and every renewal of the said note as aforesaid, ratified, adopted and confirmed the act of the said McElroy in issuing the said \$8500.000 cheque and the use thereof;

11. The Plaintiff by her conduct as aforesaid has elected to waive the wrong, if any, in connection with the said \$8500.00 cheque and to treat the transaction from the beginning thereof as a duly authorized loan of money by the Plaintiff to the said McElroy; 10

12. The Plaintiff not only authorized the issue of the cheques and charges against her account in the Defendant Bank referred to in paragraph 13 of the Statement of Claim but also on or about the second day of January, 1930, and from time to time thereafter she received and had full knowledge of each and every of the said cheques and charges and she did on the second day of January, 1930, and from time to time thereafter waive the wrong, if any, in respect thereof and did adopt, ratify and confirm the said cheques and charges and the acts of the said McElroy and of the Defendant in respect thereto; 20

13. On the 28th day of February, A.D. 1930, the Plaintiff received from the said McElroy the sum of \$270.20 as payment in full for the said charge and cheque referred to in paragraph 13 of the Statement of Claim which cheque is dated November 13th, 1929, and was in the amount of \$265.00.

14. By reason of the authorities given by the Plaintiff to the said McElroy and the said agreement with the Defendant by the Plaintiff and the said knowledge, acts, omissions, laches and conduct of the Plaintiff and by reason of the altered financial position of the said McElroy and the securities and opportunities that have been lost to the Defendant as aforesaid the Plaintiff is estopped and ought not to be heard now to make or prove the allegations set forth in the Statement of Claim; 30

15. The Defendant admits the allegations in paragraphs 1 and 12 of the Statement of Claim;

16. The Defendant denies each and every allegation contained in the Statement of Claim, except insofar as any of the said allegations are admitted expressly or by necessary intendment in this Defence. For greater certainty and without, limiting the generality of the said denial the Defendant does in particular deny;

(a) That in June, 1929, or at any time prior thereto the Defendant regarded the debt of the said McElroy to the Defendant, as either bad or doubtful; and 40

(b) That the Defendant knew of any limitation in the duty and authority of the said McElroy; and

(c) That any act of the said McElroy mentioned in the Statement of Claim was not authorized by the Plaintiff; and

(d) That the Defendant induced the said McElroy to draw upon any funds of the Plaintiff; and

(e) That the alleged withdrawal of funds by the said McElroy was done with the connivance of the Defendant; and

10 (f) That the Defendant failed to make any inquiry which it was the duty of the Defendant to make respecting the authority or acts of the said McElroy or the said cheque for \$8500.00; and

(g) That the Defendant loaned to the said McElroy any funds or sum whatsoever belonging to the Plaintiff; and

(h) That the Defendant converted to its own use \$8500.00 or any other sum belonging to the Plaintiff; and

(i) That the Defendant improperly used any fund or money of the Plaintiff; and

20 (j) That the Plaintiff had on the 27th day of June, 1929, or at any time thereafter any deposits or money or sums or funds entrusted to or carried by or in the custody of the Defendant whatsoever save insofar as the same may be deemed to be compromised in the said account of the Plaintiff in the Savings Department of the Calgary Branch of the Defendant:

30 17. The Defendant denies that any one of the charges made by the Defendant against the said credit account of the Plaintiff specified in paragraph 13 of the Statement of Claim was unauthorized. Each and every one of the said charges was authorized by the Plaintiff and each and every one of the said cheques referred to in the said paragraph was the cheque of the Plaintiff and was made and delivered as such by the Plaintiff and was paid and charged as such by the Defendant.

Dated this 7th day of February, 1933.

No. 3.

Joinder of Issue and Reply

1. In reply to the Statement of Defence the Plaintiff joins issue.
2. In further reply to paragraph three (3) of the Statement of Defence the Plaintiff denies the allegations therein and in the alternative the Plaintiff says that the same is bad in law and the facts therein alleged constitute no defence to the Plaintiff's claim.

*In the
Supreme Court
of Alberta*

No. 2
Statement of
Defence,
February 7,
1933.

—continued

No. 3
Joinder of
Issue and
Reply,
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3. In further reply to paragraph four (4) of the Statement of Defence the Plaintiff denies that she delivered any general power of attorney in favor of McElroy. The Plaintiff also denies that under the power of attorney mentioned in paragraph four (4) of the Statement of Claim the said McElroy was given authority to draw and sign cheques against the account of the Plaintiff in the Defendant Bank and to receive the money thereon. The Plaintiff further denies that by the power of attorney she ratified whatever her said attorney, the said McElroy, did do thereafter. The Plaintiff further denies that she agreed to ratify and confirm all acts, assignments, transfers, agreements and other matters and things which the said McElroy might make do, sign, execute or enter into with the Defendant and that without regard to whether the transaction in question was or was not within the scope of the authority given therein and says that on the true interpretation of the said power of attorney the said McElroy's authority was limited to transacting the Plaintiff's business with the Defendant and the Defendant may not rely upon the agreement to ratify where, as in the case alleged, the Defendant sought and seeks to benefit itself by McElroy's act in excess of his authority committed with the full knowledge and connivance of the Defendant. 10

In further reply to paragraph five (5) of the Statement of Defence 20 the Plaintiff denies that she agreed to lend the said McElroy any sum of money. The Plaintiff further says that she does not know whether or not the said McElroy informed the Bank that there was an agreement between the said McElroy and the Plaintiff for a loan and says that if the Defendant was informed by the said McElroy that there was such an agreement the Defendant was not justified in relying upon his statement which was untrue and should have inquired of the Plaintiff and did not do so although such inquiry was reasonably facile and reply would have been obtainable promptly and says that the Defendant did not make such inquiry for the reason that it was obviously doubtful that the reply would 30 have been in the affirmative for the reasons: (1) that the Defendant knew McElroy well as a customer and borrower of most unsatisfactory nature, and (2) that the amount involved to the knowledge or in the belief of the Defendant nearly all the Plaintiff's liquid assets and instead of making such inquiry the Defendant improperly relied upon the provisions of the power of attorney quoted in paragraph (4) of the Defence.

5. In further reply to paragraph (6) of the Statement of Defence the Plaintiff further denies that the said McElroy on or about the 29th day of June, 1929, himself borrowed the sum of Eight Thousand Five Hundred (\$8,500.00) Dollars by issuing to himself a cheque in the Plaintiff's name against the credit account which the Plaintiff had in the Savings Department of the Defendant Bank and asserts that the Defendant's 40 official wrote the cheque and it was signed by the said McElroy while still in the possession of the Defendant Bank at the instigation of the Defendant's officials, and without the knowledge or consent of the Plain-

tiff and that the Defendant never had possession of the cheque and never endorsed it, and the Defendant took the said cheques and charged it to the Plaintiff's account without such endorsement which is the conversion to its own use alleged in paragraph eleven (11) of the Statement of Claim.

6. In reply to paragraph seven (7) of the Statement of Defence the Plaintiff admits that the said McElroy made his own personal promissory note in favor of the Plaintiff in the amount of Eight Thousand Five Hundred (\$8,500.00) Dollars being the amount loaned to him by the Defendant as referred to in the preceding paragraph with interest at Seven per centum (7%) per annum payable on demand and left the same with the Defendant for safekeeping for the Plaintiff which is the loan made by the Defendant to McElroy as alleged in paragraph nine (9) of the Statement of Claim and she says that this was entirely without her consent or knowledge. The Plaintiff denies that the said note was exhibited to and delivered to her on or about the 24th day of December, A.D. 1929, or at any time. The Plaintiff admits that on or about the 1st day of August, 1931, she accepted from the said McElroy a renewal note payable one year after the date with interest at the rate of Six per centum (6%) per annum but she says that she accepted this without full knowledge of the facts and of her legal rights. The Plaintiff further denies that she agreed with the said McElroy to extend time for the payment of the said debt for another two years namely until the 1st day of September, A.D. 1934, and she denies that she accepted from him a promissory note in her favor in the sum of Ten Thousand Two Hundred and Forty-four Dollars and Seventy-five Cents (\$10,244.75) with interest at the rate of Six per centum (6%) per annum payable on the 1st day of September, A.D. 1934, and in the alternative says that she accepted the said last mentioned promissory note without knowledge of the facts and of her legal rights.

7. In further reply to paragraph seven (7) of the Statement of Defence and in the alternative the Plaintiff says the same is bad in law and the allegations therein contained constitute no defence to this action.

8. In further reply to paragraph eight (8) of the Statement of Defence the Plaintiff denies that throughout the year 1929 the said McElroy was worth over and above all debts and exemptions Fifty Thousand (\$50,000.00) Dollars. The Plaintiff further denies that on the 29th day of June, 1929, the Defendant held adequate securities from the said McElroy on his property for the payment of the said debt of Eight Thousand Five Hundred (\$8,500.00) Dollars owing by him to the Defendant. The Plaintiff does not know whether or not the Defendant surrendered up to the said McElroy these or any securities when the said debt was paid and if they did such constitutes no defence to this action. The Plaintiff further alleges that the said McElroy never had any exigible surplus over and above the encumbrances on his property and says that the Defendant was aware of this fact long before the month of September,

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A.D. 1932, and at the time when the Defendant took the Plaintiff's money from her account for their own benefit to cover McElroy's indebtedness to the Defendant.

9. In further reply to paragraph eight (8) of the Defendant and in the alternative the Plaintiff says the same is bad in law and the allegations therein contained constitute no defence to this action.

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10. In reply to paragraph nine (9) of the Statement of Defence the Plaintiff denies all allegations therein and states in the alternative that if she did not, prior to October, 1932, make any claim or demand upon the Defendant in respect to the said Eight Thousand Five Hundred (\$8,500.00) Dollars or the said cheques or any other amount prior to the month of October, 1932, that the omission on her part to do so was due to the fact that she did not have knowledge of her rights in that connection. 10

11. In reply to paragraphs ten (10), eleven (11) and twelve (12) of the Statement of Defence the Plaintiff denies all allegations therein and in the alternative says the same are bad in law and that the allegations therein constitute no defence to the Plaintiff's claim.

12. In reply to paragraph (13) of the Statement of Defence the Plaintiff states that the amount of Two Hundred and Seventy Dollars and Twenty Cents (\$270.20) was paid to her by said McElroy as and for repayment of Two Hundred and Sixty-five (\$265.00) Dollars and interest loaned by her to one McDowell and was deposited by her to her credit in her account with the Defendant and was not and was not pretended to be repayment of the Two Hundred and Sixty-five (\$265.00) Dollar item referred to in paragraph 13 of the Statement of Claim, and when she received same from McElroy she had no knowledge of the said item having been charged improperly to her account. 20

13. In reply to paragraph 14 of the Statement of Defence the Plaintiff denies that the said McElroy had the authority set forth and that an agreement was made by the Plaintiff with the Defendant for a loan of the moneys used and she further alleges that it was through the fault, neglect or wilful act of the Defendant that she was not aware of the facts or her rights and that she is not estopped from proving the allegations set forth in the Statement of Claim and the said paragraph is bad in law. 30

14. In further reply to paragraph 16, sub-paragraphs "b" and "c", the Plaintiff repeats that the Defendant should have made inquiries of the Plaintiff as to the authority of the said McElroy.

15. In reply to paragraph 16, sub-paragraphs "g", "h" and "i" of the Statement of Defence the Plaintiff refers to paragraphs 6 and 7 of the Statement of Defence where the Defendant admits the loan of her money to the said McElroy in the sum of \$8,500.00. 40

16. In reply to paragraph 16, sub-paragraph "j" of the Statement

of Defence the Plaintiff says that she never made any claim upon the Defendant on the 27th day of June, 1929, or at any time thereafter for or in respect of any deposits or money or sums or funds entrusted to or carried by or in the custody of the Defendant whatsoever save insofar as the same may be comprised in the said account of the Plaintiff in the Savings Department of the Calgary Branch of the Defendant.

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17. In reply to paragraph 17 of the Statement of Defence the Plaintiff denies that the said charges were authorized by her or that any of the said cheques referred to in paragraph 13 of the Statement of Claim
10 was the cheque of the Plaintiff and was made and delivered as such by the Plaintiff.

Dated this 13th day of February, 1933.

No. 4.

Opening Proceedings at Trial

IN THE SUPREME COURT OF ALBERTA

S.C. No. 34701

Judicial District of Calgary

BETWEEN:

MARY VICTORIA BEGLEY,

Plaintiff,

—and—

IMPERIAL BANK OF CANADA,

Defendant.

20

Evidence taken at the Trial of this Action before the HONOURABLE MR. JUSTICE BOYLE and the following Jury:

R. B. Spackman, A. V. Cocks, W. Anderson, R. H. Harrison, James B. Cross, J. W. Dickinson, at the Court House, Calgary, on the 23rd, 24th, 25th and 26th days of October. A.D. 1933.

<p>30 H. G. NOLAN, ESQ., and W. P. TAYLOR, ESQ.,</p>	<p>} appeared for the Plaintiff.</p>
<p>G. H. ROSS, ESQ., K.C., and J. T. SHAW, ESQ., K.C., and L. F. MAYHOOD, ESQ.,</p>	<p>} of Messrs. Short, Ross, Shaw & Mayhood, appeared for the Defendant.</p>
<p>GEORGE H. TAYLOR, ESQ.,</p>	<p>} Official Court Reporter.</p>

MR. SHAW: I think before my learned friend begins his address to

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the jury that the witnesses in the case ought to be excused on both sides.
MR. NOLAN: Yes, that is so.

THE COURT: All witnesses in this case both for the Plaintiff and the Defendant will please retire until you are called. There are convenient rooms where you may make yourself comfortable and you will not leave the building, you will be called as you are required as witnesses.

MR. NOLAN: There is no question Mrs. Begley is entitled to remain, of course.

THE COURT: Yes.

MR. SHAW: I may say Mr. Mackie is representing the Bank, so there is no question about him staying? 10

MR. NOLAN: None whatever.

MR. NOLAN: May it please your Lordship and Gentlemen of the Jury this is an action brought by Mrs. Mary Victoria Begley, a widow, now residing in the City of Calgary, against the Imperial Bank of Canada. You will be told in evidence as this case progresses that Mrs. Begley's husband died on the 26th of December in the year 1928. While the facts of this lawsuit are not complicated there are a few dates which will be necessary for you to keep in your mind so that you may fully appreciate the evidence that is being led by both sides. As I say Mary Victoria Begley is the Plaintiff and she is suing the Imperial Bank of Canada. Her husband, Robert W. Begley, died, as I say on the 26th of December, 1928, and she was the executrix under his will. There will be a gentleman mentioned in these proceedings on many occasions, that is Mr. J. W. McElroy and it will be shown that Mr. McElroy was an old family and personal friend of the Begleys; had known them for years and lived in and about the same district, which is in the vicinity of Chestermere Lake and Mrs. Begley asked Mr. McElroy to undertake the winding up of her husband's estate and the realization of the assets of that estate into money which task was undertaken and performed by Mr. McElroy. There is another gentleman whose name will appear, and that is Mr. Moyer, Mr. J. W. Moyer, who is a barrister and solicitor practising and carrying on his profession in the City of Calgary. You will be told that Mr. Moyer, for some years, had been the solicitor for Mr. McElroy and that McElroy introduce Mrs. Begley to Mr. Moyer, and that Mr. Moyer was the solicitor for the Estate and did those things necessary in winding it up, in which task he was assisted by another lawyer who was employed by him, one Mr. Webb 20 30

Now in January, 1929, which is shortly after her husband's death, Mrs. Begley went to Spokane and she returned from Spokane on Wednesday, the 19th of June, 1929, and that perhaps is one of the first important dates which I must ask you to remember. She came back, as I say, on Wednesday, the 19th of June, 1929, and it will be brought out in 40

evidence that on Friday, the 21st of June, in that same year, there was a meeting of Mrs. Begley and Mr. McElroy in Mr. Moyer's office. Subsequently on that day, Mrs. Begley and Mr. McElroy were in the Imperial Bank and you will be asked to find whether or not on that occasion when they were in the Bank they saw the then Manager of the Imperial Bank of Canada, Mr. A. H. Weaver. Mr. Weaver is not now the Manager of the Bank, having been moved to Eastern Canada, but, I believe will be here to give evidence in the case. I said Mr. McElroy was an old friend of the family, I should go further and tell you that it was at the request of Mr. Begley, before he died, that the matter of winding up of the estate and business affairs were entrusted to Mr. McElroy. That was Mr. Begley's own request. Now on this day, Friday, the 21st of June, there was transferred from the Estate Account of the late Mr. Begley into Mrs. Begley's savings account in the Imperial Bank of Canada at Calgary, a sum of money slightly in excess of \$13,000. I shall not trouble you with the dollars or cents. Sufficient to know there was that much money obtained out of the estate and was transferred into her Savings Account from that day, Friday, the 21st day of June. So we find she has come back from Spokane on Wednesday, the 19th, and that the transferrance of the money took place on Friday, the 21st, and on Monday, the 24th, there was another meeting in Mr. Moyer's office on which date, Monday, the 24th, a Power of Attorney was executed by Mrs. Begley, this Plaintiff, in favor of J. W. McElroy on what is known to the Bank as form 70 and that only means this, that there are powers of attorney furnished by the Imperial Bank on their own printed form which are numbered for the convenience of the Bank and that Number is 70. However, this power of attorney from Mrs. Begley to Mr. McElroy was executed on Monday, the 24th day of June. Mrs. Begley will say that as she was moving from Mr. Webb's office—he being Mr. Moyer's associate—into Mr. Moyer's office, a suggestion was made to her by Mr. McElroy that she should lend him some money and she will say that she made no answer to such a suggestion. Then there was a discussion at that time in Mr. Moyer's office as to what should be done with this money which had now found its way into this woman's Savings Account and which approximated the great sum for her, at least, of \$13,000, and you will be told that the question of the investment in Government Bonds was mentioned. She will say that her final instructions were that it was to be put in Government Bonds but perhaps you must wait and hear the evidence for the Defence too before you make up your minds what was precisely said at that time. My purpose now is to paint with a broad brush a picture of what happened so that you may understand why this lady and this Bank are taking up your time in this Court to-day. On Tuesday, the next day, the 25th of June, you will be told that Mrs. Begley again saw Mr. Moyer and went after that interview to the Imperial Bank of Canada at which time she saw a gentleman in the Bank whose name is Mr. Wilfred Graham Chambers. Mr. Chambers was then the Accountant of the Imperial Bank

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of Canada at Calgary. He no longer is the Accountant in Calgary but he has been moved to the East. On that Tuesday, the 25th of June, the fact is that she made arrangements for money to be sent to her in Hamilton, where she was then preparing to go. And she left for Hamilton on Wednesday, the 26th day of June. On the 27th day of June, which is Thursday, Mr. McElroy obtained his discharge as Administrator of this Estate by a formal order which was recorded in the Court and which will be produced. In other words, he was discharged from his duties as executor on this Thursday, the 27th day of June. Now Mr. McElroy was a customer of the Imperial Bank of Canada and owed this Institution a considerable sum of money and it will be shown to you that his direct liability, not indirect, his direct liability approximated the sum of \$8,500.00. It is made up in two ways, about \$6,200 of it consists of what is known in banking circles, and with which you may have had some personal experience, as an overdraft, which is a loan from the bank to the customer, and there was an additional indebtedness of some \$2,300 which was secured by a note of Mr. McElroy's to the Bank. So he owed them, and that in addition to which he owed them in an indirect way, approximately some \$8,500 at that time. All right. Now the last date I gave you was the date of his discharge and that was Thursday the 27th. On Saturday, the 29th day of June, 1929, Mr. J. W. McElroy issued a cheque, as attorney for Mrs. Begley on her account payable to himself in the sum of \$8,500 and that money was taken as it should be by reason of the way the cheque was made out from the account of Mrs. Begley and credited to the account of Mr. McElroy. In other words he wrote a cheque in his own favor on Mrs. Begley's account for \$8,500 on that Saturday, the 29th of June, and that money went into Mr. McElroy's own personal account in that Bank. And what happened to it? This is what happened. First of all the \$6,200.00, that is the overdraft, is immediately cleaned up by this credit into his own account because if you have an overdraft in a Bank and you put money into that Bank it takes care of your existing overdraft if there is enough money put in. And there was enough money put in, there was too much, not only enough to take care of the debt, because one or two days later the remaining \$2,300 of that \$8,500 was charged up against this account of Mr. McElroy's to take care of the promissory note which the Bank held of that gentleman and about which I have told you. So this \$8,500 that was deposited to his account was used in two ways; one, to retire the overdraft, and two, to pay off the note. So by reason of this money being paid the entire direct liability of Mr. McElroy to the Imperial Bank of Canada was paid off with her money out of her account and she was a customer of the Bank, not a debtor but a customer. Now there is another date that I should mention to you and that is this, you know that Mrs. Begley came back on the 19th of June and you know of the interview of the 21st and you know of the interview of the 24th and you know that the power of attorney was given on that Monday the 24th. You know she saw Mr. Chambers on

Tuesday the 25th. She left for Hamilton on Wednesday the 26th. It was on Thursday the 27th that Mr. McElroy was discharged as administrator and it was on Saturday the 29th, all in that same week, that this money passed from her account into Mr. McElroy's account and eventually to the Bank. Perhaps I should say to you that when this cheque was made out in the Bank for the \$8,500 it was signed by Mr. McElroy but the body of the cheque itself was made out by Mr. Chambers, who was the Accountant of the Bank, who also made out the deposit slip and a note was taken in favor of Mrs. Begley for \$8,500 payable upon demand. Now she went away as we know to Hamilton on Wednesday, June 26th, and she came back from Hamilton about the 15th of December of that same year, 1929. So she was away from June until December. Soon after she came back, it may have been the 1st or 2nd day of January, 1930, there was another transaction between Mrs. Begley and Mr. McElroy, he, at that time, borrowed from Mrs. Begley, the sum of \$1,400 for which she gave him her own cheque, which money forms no part of this litigation because it was repaid by Mr. McElroy to Mrs. Begley. Its importance will appear in another way but I merely, at this stage, want to remind you at that time, either the first or second of January, 1930, he borrowed \$1,400 from her which she lent him by giving him her own cheque. Now there will be a good deal said to you about what took place between January and June, 1930, and Mrs. Begley will say that her anxiety was to obtain from Mr. McElroy some idea as to how her financial affairs stood at that time and that she was unsuccessful. She was ill in June and we know she went into the Hospital. She will say immediately before going into the Hospital, on or about the 6th day of June, 1930, that is a year later, she was in the Bank and again saw Mr. Chambers and that on this occasion she understood Mr. Chambers to say that Mr. McElroy had had \$4,500.00 of her money. I understand that Mr. Chambers will say that he told her \$8,500 but as to that you will be judges after the evidence has been led. Furthermore there is some dispute as to when this conversation with Mr. Chambers took place and that too you will have to judge after hearing the evidence. Mrs. Begley will say it took place in June, 1930. Mr. Chambers will say it took place some months earlier, perhaps as early as December of the preceding year, 1929. Then Mrs. Begley will say that when she was in the Hospital Mr. McElroy came to see her and told her about the \$4,500, as she understood, and said that that was some money which he owed to the Imperial Bank. She left the Hospital at Calgary on the 21st June, 1930, and on the last day of the Stampede of that year went to Spokane with Mr. McElroy and with his son and with her daughter. They motored down there after she had had her operation, she was suffering from goitre and that was the reason why she was in the Hospital from about the 6th of June until the 21st of June. Now she came back from Spokane about the middle of August of that year, 1930, and after she got back she went to the Bank and got McElroy's note from the Bank and put it in the

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Bank of Montreal because on September 30th, 1930, she changed her Bank account from the Imperial Bank to the Bank of Montreal. This \$8,500 for which there was a note in her favor was not paid back to her and in August, 1931, that is the next year, a renewal note was taken and that she took to the Bank of Montreal and she will say that when she put it in the Bank she noticed that the note was for \$9,492.00, which would be \$8,500 plus interest and that that was the first time she realized that he had, that that amount of money was involved. For the understanding she had was that \$4,500 only had been used but that when she went to the Bank of Montreal she saw to her amazement that it was \$9,492.00. She 10 consulted Mr. Moyer. She saw Mr. McElroy. She went to Victoria and she came back about the 1st of September, 1931, and she subsequently got this note of Mr. McElroy's and took it to Mr. Moyer. I think it is sufficient to say that eventually Mrs. Begley went to see Mr. L. F. Mayhood, who is a solicitor connected with the firm which locally represented the Imperial Bank and for quite good and quite sufficient reasons Mr. Mayhood came to the conclusion that he perhaps was not the proper person to advise her in the predicament in which she then was and eventually Mrs. Begley went to Mr. W. P. Taylor and as a consequence of their inter- 20 views, this action was brought. This action is brought to recover from the Bank the sum of \$8,500 which was taken out of Mrs. Begley's account to pay the debt of Mr. McElroy which he owed to the Imperial Bank. It is more than that, there are five other cheques at issue, and this is the last thing I have to tell you, and these cheques amount to \$3,000. One has been paid back and that was a loan made to Mr. Moyer by Mr. McElroy. Mr. Moyer has repaid that money with interest and did so before this litigation started. The other cheques, as you will learn, are cheques drawn on her account by Mr. McElroy the bulk of which went to a local firm known as Strong & Dowler. Now we say to the Bank: "We want these moneys back, this \$8,500.00, and you are responsible to us in 30 addition to that for this \$2,500 which Mr. McElroy took out of our account and used for other than our purposes." And you say to me: "Why all this dispute?" Well, the Imperial Bank take this position, they say in the first place there was this Power of Attorney that Mrs. Begley gave to Mr. McElroy and on that they rely and in the second place they say there was an agreement between Mrs. Begley and Mr. McElroy whereby Mrs. Begley agreed to lend Mr. McElroy the \$8,500.00. That, of course, we deny. Then the Bank go one step further and say that by reason of Mrs. Begley taking these notes, the first one from McElroy and a renewal from McElroy and by reason of the Bank giving up the security which 40 they held for McElroy's debts to them, which they gave back to McElroy, that they have changed their position and that Mrs. Begley by her act and conduct has ratified and adopted and confirmed all these things which have been done. That, Gentlemen, is broadly what this case is about and as I say that is why your time is being taken up. There is just one other point to which my attention has been drawn and that is this, that it will

be shown to you in the evidence in the case that Mrs. Begley was not asked by the Imperial Bank of Canada if she was lending this \$8,500 to Mr. McElroy which money went to the Bank to pay off his debts to that institution. That is all I have to say. Perhaps at this stage I can agree with my learned friend that the order of discharge of Mr. McElroy may be put in by agreement or by consent from the records below?

MR. SHAW: Yes, my Lord.

MR. NOLAN: My Lord, by agreement with my friend we are going to put in, and we will mark it when it arrives, the order discharging Mr. McElroy as administrator of this Estate. That was an order made by Mr. Justice Tweedie. We are not going to call any Court Official to prove it, it is in the Court Record and can go in.

(Document in question is now marked Exhibit "1".)

MR. NOLAN: I am going to put in portions of the Examination for Discovery of Norman Stuart Mackie. Perhaps, my Lord, I should just say a word of explanation to the Jury, who may not quite understand why this goes in as evidence. This, Gentlemen of the Jury, in the event none of you have taken part in litigation in any manner whatsoever, is what is known as an Examination for Discovery, and it simply means that I, as Counsel for Mrs. Begley, am entitled to examine an officer to be selected by the Bank, who informs himself of the facts and then I examine him on oath and whatever he says may be used against the Bank and I am at liberty to read into the record of His Lordship's Court, both questions and answers that were taken down on this examination of this Bank Official. In the same way, of course, the Bank have the privilege of examining the Plaintiff, Mrs. Begley, and finding out from her on Discovery certain things that they want to know before we come here. So I am going to read to you certain of these questions and answers, which are evidence in this case, binding upon the Bank and which go into the record as part of the case. The gentleman who was examined was Norman Stuart Mackie. Mr. Mackie, as I say, was the officer which the Bank selected to submit for examinations for discovery. I am going to read, my Lord, certain of these questions and I will give the Reporter a list of them. The questions I am going to put in all inclusive, are: 1 to 6, 12 to 35.

EXAMINATION FOR DISCOVERY of Norman Stuart Mackie, the officer of the Defendant Bank produced for Examination for Discovery taken before V. R. JONES, Esq., Clerk of the Supreme Court of Alberta, Judicial District of Calgary, at the Court House, Calgary, on the 12th day of May, A.D. 1933, at 10 a.m.

H. G. NOLAN, Esq.,

{ of Messrs. Bennett, Hannah &
Sanford, appeared for the Plaintiff.

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Norman S.
Mackie,
Part
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for Discovery.
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L. F. MAYHOOD, ESQ.,

{ *of Messrs. Short, Ross, Shaw &
Mayhood, appeared for the Defendant.*

H. E. CUTLER, ESQ.,

{ *Official Court Reporter.*

NORMAN STUART MACKIE, having been first duly sworn, examined by MR. NOLAN, said:

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1. Q. Mr. Mackie, you are Norman Stuart Mackie, and have been sworn? A. Yes.
2. Q. You are the officer selected to submit for examination on behalf of the Defendant, the Imperial Bank of Canada? A. Yes.
3. Q. And the Imperial Bank of Canada is a chartered Bank incorporated under the Bank Act? A. Yes. 10
4. Q. With head office in the City of Toronto? A. Yes.
5. Q. And an office and place of business in the City of Calgary? A. Yes.
6. Q. On the corner of Centre Street and 8th Avenue? A. Yes.
* * * * *
12. And you, Mr. Mackie, are the Accountant of the Centre Street Branch of the Imperial Bank of Canada? A. Yes.
13. Q. And have been in this Branch for a number of years? A. Yes.
14. Q. How long? A. Since 1926, this last time, I have been in and 20 out of it for 20 years but the last time since June, 1926.
15. Q. And was Mr. Chambers there in 1926? A. No.
16. Q. What were you in 1926? A. The Assistant Accountant.
17. Q. Then Mr. Chambers came when? A. Well that is something I cannot tell you to be sure but I think about 1928.
18. Q. And left in 1930? A. And left in September, 1930.
19. Q. He was there a matter of about two years? A. Yes.
20. Q. And he was the accountant? A. He was the accountant at that time.
21. Q. And since you came back in 1926 Mr. Weaver was the Manager? 30
A. Up until recently.
22. Q. Yes, and his name was Allan Henry Weaver? A. Yes.
23. Q. And Mr. Chambers' name was? A. Wilfred Graham Chambers.
24. Q. And Mr. Chambers left in September, 1930? A. Yes, I think that is it.
25. Q. And Mr. Weaver left? A. November, December, 1932.
26. Q. And you have taken steps to inform yourself of the matters pertaining to this lawsuit? A. Yes.
27. Q. Now, Mr. Mackie, when did Mrs. Mary Victoria Begley, the Plaintiff, first become a customer of the Imperial Bank? A. Many 40 years ago.
28. Q. Is there anything to indicate when her account opened? I show you, what do you call this? A. A pass book.

29. Q. That is the proper word, "A pass book?" A. Yes.
30. Q. I show you a pass book will you tell me if that is the pass book issued to Mary Victoria Begley by the Imperial Bank? A. It is.
31. Q. Now is there anything on that to indicate how long she has been a customer of the Bank? A. At least since April 4th, 1918.
32. Q. I notice that it is No. BE-271, Mr. Mackie? A. Yes.
33. Q. And then I notice that that number has been altered and now the account is known as number . . . A. BE-3.
- 10 34. Q. And that is an account carried in the Savings Department of the Defendant Bank? A. Yes.
35. Q. And can you tell me from that number BE-271 that it goes back as far as 1918? A. Yes, well together with the date in the pass book.
- MR. MAYHOOD: You have the ledger sheet for that?
- MR. NOLAN: Perhaps we might have the book marked.
 (Pass Book No. BE-3 marked as Exhibit "1".)
 (Pass Book is now marked as Exhibit "2".)
36. Q. You are producing to me the Savings Account Ledger sheet of Mary Victoria Begley? A. Yes.
- 20 37. Q. And on what date does that open according to that? A. April 4th, 1918.
42. Q. Now, Mr. Mackie, if you will be good enough to look at the ledger sheet, Exhibit 2, was there an account carried in your Bank for the late Mr. Begley? A. Yes, there was.
43. Q. And his name was? A. R. W.
44. Q. Robert W. Begley and he died, do you know when he died? A. December 26th, 1928.
45. Q. And after that time there was an account carried in the name of R. W. Begley Estate? A. Yes, or the Estate of R. W. Begley, I am not just sure.
- 30 46. Q. All right and in the month of June, 1929, there was transferred from that Begley, from the Estate of R. W. Begley, a considerable sum of money in to the Savings Account of Mrs. Mary Victoria Begley, the widow, the account being No. BE3? A. Yes.
47. Q. How much money was it, does that show on her ledger sheet? A. Yes, but I am under the impression that there is something else on the same deposit.
48. Q. It is approximately the sum of? A. \$13,000.
49. Q. \$13,081.35? A. Approximately, yes.
- 40 50. Q. On the 21st day of June, 1929? A. Right.
51. Q. And have you the deposit slip covering that item? A. We have the cheque.
52. Q. All right, let us see the cheque then? A. Do you want to change that to the exact amount?
53. Q. No, and for the most part this credit item was made up by a deposit of the cheque for \$13,006.35 dated June 21st, 1929? A. Yes.

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54. Q. Signed by J. W. McElroy, Administrator of the Estate of R. W. Begley, and the cheque was made payable to Victoria Begley and endorsed by her, that is right? Is it not? A. Right.
55. Q. And the proceeds found their way into the account on June 21st, 1929, that is right is it not? A. Yes.
(Cheque for \$13,006.35 is now marked Exhibit "3".)
THE COURT: That is the cheque for thirteen thousand odd dollars that was deposited to her credit?
MR. NOLAN: Yes, on June 21st, 1929. The money that was realized out of the Estate. I think the Jury will understand that. 10
56. Q. There was also Power of Attorney on the Bank form, Mr. Mackie? A. Yes.
57. Q. Granted by Mrs. Begley to Mr. McElroy, have you that? A. Yes.
(Power of Attorney produced and marked Exhibit "4".)
(MR. NOLAN read Power of Attorney to the Jury.)
58. Q. And that is on a printed form supplied by the Imperial Bank of Canada? A. Yes.
59. Q. Being Bank form No.? A. 70.
60. Q. Now there has been some mention made of J. W. McElroy, is that James Wesley McElroy? A. Yes. 20
61. Q. He also was a customer of the Imperial Bank of Canada? A. Yes.
62. Q. And had been for sometime? A. Yes.
63. Q. And you have brought with you to-day the liability ledger sheet of the James Wesley McElroy accounts have you not? A. From the year 1925 on, yes.
64. Q. And are they numbered in any particular way? A. No, there is no numbering of the page or anything, there is the Cook & Son, Makers, number on, but nothing which will identify them. 30
(Liability ledger sheets J. W. McElroy marked as Exhibit "5".)
MR. NOLAN: Those are the liability ledger sheets, my Lord, of J. W. McElroy marked as Exhibit "5" in this case and I think there is no purpose to be served in referring to them at any length at this stage.
78. Q. Well then turn your attention for a moment, to his current account ledger, how much of his overdraft in June, 1929? A. On what particular date?
79. Q. What date can you tell me? A. I can tell you almost any date, the 29th of June \$6,197.72.
80. Q. That is overdraft? A. Overdraft. 40
81. Q. And he had had an overdraft throughout the month of June? A. Yes.
82. Q. And his overdraft on the 4th of June was \$4990? A. Yes, that is right.
83. Q. And his overdraft in May was \$4974? A. Yes.
84. Q. Now there was a startling circumstance on or about the 27th,

28th or 29th of June, 1929, what was the day that Mr. McElroy's account received a large deposit, what was the actual date? A. I do not know whether it was startling or not but the deposit was made on the 29th of June of \$8,518.78.

85. Q. Now there was a cheque deposited then was there not, you produce to me, Mr. Mackie, a cheque dated the 29th of June, 1929, for \$8500? A. Yes.

(Cheque for \$8500.00 is now marked Exhibit "6".)

10 86. Q. And looking at Exhibit "6" I observe that, will you tell me who is the maker of that? A. Victoria Begley, per J. W. McElroy, Attorney.

87. Q. And it is in favor of? A. J. W. McElroy.

88. Q. And it is for the sum of \$8500? A. Yes.

89. Q. And it is dated? A. June 29th, 1929.

90. Q. Who filled in the body of that cheque, do you know? A. It is in the writing of Mr. Chambers.

91. Q. And then turning it over I observe it is not endorsed by Mr. McElroy is it? A. No.

20 92. Q. Why was it not? A. Because, apparently because when it was presented to the teller the teller neglected to obtain an endorsement of Mr. McElroy's.

93. Q. Do you know whether or not Mr. McElroy or Mr. Chambers presented it to the teller? A. I do not know, I presume it was, if I am allowed to presume I suppose it was Mr. McElroy.

94. Q. Well what has been placed on the back of it, just read me those words would you mind? A. "Deposited to the credit of J. W. McElroy in the Imperial Bank of Canada, Calgary." "G. Tayton per H. P. Cann."

30 95. Q. And who was G. Tayton, Mr. Mackie? A. Tayton on the 29th of June, 1929, was the paying teller.

96. Q. And this endorsement is not in Mr. Tayton's handwriting? A. No.

97. Q. Is it in Mr. Cann's handwriting? A. Yes.

98. Q. Now do I understand from that that Mr. Cann was relieving Mr. Tayton at that point? A. Yes, well apparently the endorsement, the missing endorsement was not caught until the following day when the endorsements are checked.

40 99. Q. Yes. A. And on the following day in order to allow me to go on holidays Mr. Tayton had turned over his cash to Mr. Cann and Mr. Cann was then the paying teller.

100. Q. Now did Mr. Cann himself have authority to put on that endorsement? A. The tellers do, yes.

101. Q. But he was not teller? A. On the 29th, he would be the receiving teller and then following, I think it was the next day or a Sunday or a holiday but the following day when this thing was caught he had been moved up to the paying teller's cage and was then the

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- paying teller.
102. Q. Replacing Mr. Tayton who was the regular paying teller? A. Yes.
103. Q. Why does he have to put Mr. Tayton's name on it per "Cann"?
A. The reason that he probably did so was because the omission was not made by himself, the omission to obtain the endorsement was Mr. Tayton's and it is to show that Tayton was the man that should have had it endorsed.
104. Q. Yes. A. Just to show that he was not the man that made the error. 10
105. Q. Quite so, now this cheque which is Exhibit "7" Mr. Mackie was charged against the Savings Account of Mary Victoria Begley?
A. Yes.
106. Q. Account Savings BE-3? A. Yes.
107. Q. On what date was it charged against her account? A. On the 29th of June, 1929.
108. Q. On the same date, the 29th of June Mr. Mackie, let me put it to you, looking at your Savings Account ledger sheet Mrs. Begley, being Exhibit "2", I observe that the date under which this cheque was charged to the account was the 27th of June, is that right? 20
A. Well it is either intended for a "9" or it must be an error.
109. Q. Well there is nothing wrong with the date on the cheque, Exhibit "6" is there? A. No.
110. Q. It was made on the 29th? A. The 29th of June.
111. Q. Then how could it be charged to Mrs. Begley on the 27th? A. It couldn't.
112. Q. It couldn't? A. Absolutely could not, or either that is supposed to be a "9" and she has closed it in or else it has been put in there, the 27th, instead of the 29th in error.
113. Q. When you say "She closed it in" you do not mean Mrs. Begley? 30
A. No, I mean our ledger sheet, in making the "9" in a hurry instead of making a loop has made it look like the 27th or else it has been entered in error.
114. Q. And Mr. Tayton was not the Accountant was he? A. Well no he was taken out of the cage for the beginning of July and was then the Assistant Accountant.
115. Q. Replacing you who had gone on holiday? A. Yes, replacing me who had gone on holiday.
116. Q. I understand, and perhaps I should ask you before I forget it, that Mrs. Begley has demanded repayment of this sum of \$8,500 40 from the Imperial Bank and you have refused her demand? A. Yes.
117. Q. Now there are certain other cheques charged against her account, being the Savings Account, BE-3, and perhaps there are some, you have them there, have you? A. Yes.
118. Q. Are they five in number? A. Yes.
119. Q. Perhaps I can do this, the 23rd of July, 1929, for a thousand

dollars? A. Do you want the date of the cheque, the cheque is the 22nd of July.

120. Q. Then read them to me? A. July 22nd, 1929, \$1,000 payable to Strong & Dowler Limited; August 21st, 1929, payable to John W. Moyer, for \$500; October 25th, 1929, payable to Strong & Dowler for \$500; November 13th, 1929, payable to the Canadian Acceptance Corporation for \$265.00; November 13th, 1929, payable to Strong & Dowler for \$735.00.

121. Q. And how are those cheques signed, Mr. Mackie? A. J. W. McElroy, Attorney for M. V. Begley.

10 122. Q. That is not the same wording as the signature on the cheque Exhibit "7" because Exhibit "7" reads "Victoria Begley per J. W. McElroy, Attorney," that is right, is it not, that is what Exhibit "7" reads? A. Well the actual wording is different.

MR. NOLAN: And that, gentlemen, is to clear up any difficulty that might arise because it looks on the ledger sheet as if this money was charged against Mrs. Begley's account on the 27th. It could not have been because the cheque was only dated the 29th and as Mr. Mackie is endeavoring to explain it is because she made her nine to look like a 20 seven, but the true date, the date we will all agree about is the 29th of June.

129. Q. Perhaps I will have these five cheques marked as Exhibit "8"?

THE COURT: It is oftentimes convenient to mark them separately.

MR. NOLAN: I will do so.

THE COURT: I think it is better.

MR. NOLAN: The first is a cheque to J. W. Moyer, \$500, August 21st, 1929.

(Document in question is now marked Exhibit "7".)

MR. NOLAN: The second is a cheque to Strong & Dowler for One 30 Thousand dollars, dated the 22nd of July, 1929.

(Document in question is now marked Exhibit "8".)

MR. NOLAN: The third is another cheque to Strong & Dowler for \$500 dated October 25th, all in the year 1929.

(Document in question is now marked Exhibit "9".)

MR. NOLAN: The fourth is a cheque to the Canadian Acceptance Corporation in the sum of \$265, and dated the 13th of November, 1929.

(Document in question is now marked Exhibit "10".)

MR. NOLAN: And the last is a cheque to Strong & Dowler for \$735.00 dated the 13th day of November, 1929.

40 (Document in question is now marked Exhibit "11".)

MR. NOLAN: And these cheques now, my Lord, comprise Exhibits 7 to 11 inclusive.

130. Q. Now, Mr. Mackie, there was a deposit slip made out in respect of that \$8,500 cheque too, was there not? A. Yes.

131. Q. And what date is that? A. The 29th of June, 1929.

132. Q. Then that fixes the day definitely, doesn't it? A. It does.

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133. Q. And in whose writing is that deposit slip? A. In Mr. Chambers, the Accountant.
134. Q. In its entirety? A. Yes, I think so.
135. Q. There is more on that deposit slip than the \$8,500? Is there not? A. Yes.
136. Q. There is cash deposited that day in the sum of \$18.78? A. There is \$18.78 which I do not know whether it was cash or what it was.
137. Q. It does not show? A. It does not show, it might either be cash or a cheque.

MR. NOLAN: I tender the deposit slip, my Lord, as Exhibit 12 in the 10 case.

(Deposit Slip is now marked Exhibit "12".)

153. Q. To make a long story short, this \$8,518.78 paid off everything that McElroy owed the Bank? A. \$8,518.78 went to McElroy's credit.
154. Q. Yes. A. And in doing so it paid off the \$6,197.72.
155. Q. Which was the overdraft? A. Yes.
156. Q. And it paid off the demand note? A. And on the 2nd, which is two or three days later, the demand note was charged to him, which paid off the demand note. 20
157. Q. In the sum of \$2,321.06, that is right, is it not? A. Yes.
158. Q. Now so far as those five cheques are concerned, one of them was subsequently repaid by Mr. Moyer, you know that, do you? A. I have been informed.
159. Q. In the sum of \$500.

MR. MAYHOOD: It was not repaid to the Bank?

WITNESS: No, it was not to us.

160. Q. Anyway the cheque of, there was a payment made by Mr. McElroy into Mrs. Begley's account was there not in the sum of \$500 in December, 1929? A. I will have to see the deposit slip. 30

MR. MAYHOOD: It was in May, 1930, I think.

161. Q. Anyway you can tell me that there was \$530.00 paid into her account on the 14th of May, 1930? A. There was, yes.
162. Q. And the deposit slip is produced? A. Yes, that one was paid in by Mrs. Begley herself. I think likely that is the one which was done.

MR. NOLAN: Perhaps that should go in too, my Lord, it being a deposit slip with a memorandum on the 14th of May, 1930, in the sum of \$530 and it will be Exhibit "13" in the case?

MR. SHAW: Perhaps, my Lord, I should register my objection to this for it is merely a record brought from the Bank. As far as we are concerned I do not think it is admissible at this stage surely. 40

THE COURT: Do you object to it going in.

MR. SHAW: I want to register my objection, yes.

THE COURT: If you object to it it should not go in. I do not see that it is of any service to the Plaintiff.

MR. NOLAN: Then I will not put it in.

163. Q. And this deposit slip which has been marked Exhibit "10" is a deposit of \$530.00? A. Yes.
164. Q. Made by whom? A. Victoria Begley.
165. Q. And deleting that \$500 from that list of cheques which you read to me being Exhibit "8" the amount of the remaining cheques would be \$2,500 would they not? A. That is right.
166. Q. And the Plaintiff has demanded repayment from you of this sum of \$2,500? A. Yes.
- 10 167. Q. Which you have refused to pay? A. Yes.
168. Q. Now at the time this \$8,500 was charged up against Mrs. Begley's Savings Account BE-3, did Mr. McElroy make out a note at that time? A. He did.
169. Q. And you produce to me, Mr. Mackie, a note dated the 1st of July, 1929, made by J. W. McElroy on demand to the order of Victoria Begley in the sum of \$8,500? A. Yes, together with interest.
- MR. NOLAN: And that, my Lord, is the promissory note signed by J. W. McElroy on demand dated July 1st, 1929, for \$8,500 promising to
- 20 pay that sum to the order of Victoria Begley at the Imperial Bank of Canada.
- (Document in question is now marked Exhibit "13".)
170. Q. Now, Mr. Mackie, perhaps you can read this interest clause, can you, can you read it to me, "With interest at the rate of seven per cent. per annum before and after maturity until paid." Now this note was obtained from Mr. McElroy, was it? A. Yes.
171. Q. By whom? I mean on the 1st of July or whenever it was? A. It was signed and left at the Bank by McElroy on the 29th.
172. Q. Well, did McElroy bring the note in to the Bank or was the note filled out in the Bank? A. It was filled out in the Bank.
- 30 173. Q. By Mr. Chambers? A. Yes.
174. Q. And the body of the note again is in Mr. Chambers' handwriting? A. Yes.
175. Q. And why is that the 1st of July, 1929, if McElroy obtained the money on the 29th of June, do you know? A. No, I am not in a position to tell you.
176. Q. The fact is that the note given by McElroy is dated the 1st of of July, 1929? A. Yes.
177. Q. Now, Mr. Mackie, what happened to that note that day that
- 40 McElroy signed it, namely the 1st of July, 1929, what was done with it? A. Well, McElroy gave it back to us to hold on collection for the account of Mrs. Begley.
178. Q. McElroy gave it to the Bank to hold for collection on behalf of Mrs. Begley? A. Yes.
179. Q. Would it be fair to say it was left with the Bank for safe-keeping? A. Well, that I am not in a position to tell you but it

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- was entered in our collection register so I presume it was left for collection.
180. Q. And have you the collection register here? A. I didn't bring it with me.
181. Q. We can get that if we want it? A. Yes.
182. Q. And the note for \$8,500 is entered? A. Is entered therein.
183. Q. In the Imperial Bank collection register? A. Yes.
184. Q. Which enumerates those notes being held for collection? A. Yes.
185. Q. That is right, is it? A. That is right, I do not know the date when it was entered. 10
186. Q. Anyway Mr. Mayhood will be good enough to obtain for me the date upon which it was put in the collection register for collection? A. Yes.
187. Q. MR. MAHOOD: Again I am not sure that it appears entered under any particular date, I think that is the difficulty and you will have to go back to the memory of Mr. Chambers about that.
WITNESS: I do not know about that.
188. Q. MR. NOLAN: Perhaps a note to Mr. Chambers would get that information for us?
MR. MAYHOOD: Mr. Chambers' testimony is that it was for safe- 20
keeping, I think.
WITNESS: And it may have been done that way.
189. Q. Mr. Mackie, you will go so far as this with me, to say that you do not know on what date it was placed in the collection register for collection? A. Not without the register.
190. Q. Can you tell from the register? A. I may be able to or I may not, according to what is entered there.
191. Q. MR. MAYHOOD: The register will be available to you at any time.
* * * * *
303. Q. Would you please have marked for me the deposit slip for \$1,400 on the 2nd of January, 1930? A. That is McElroy's de- 30
posit slip.
304. Q. Yes. A. Yes.
MR. NOLAN: I tender the deposit slip.
MR. SHAW: I just question whether my learned friend should put that in.
MR. NOLAN: If there is any question it won't go in.
305. Q. And there is a cheque debiting Mrs. Begley's account with that amount of money at that time, is there not, the 2nd of January, 1930? A. Yes.
306. Q. And that was a cheque made by Mrs. Begley herself? A. Yes. 40
307. Q. In favor of Mr. McElroy? A. Yes.
308. Q. Dated the 2nd of January, 1930? A. Yes.
309. Q. And for \$1,400? A. Yes.
MR. NOLAN: This is a cheque, my Lord, dated the 2nd of January, 1930, made by Victoria Begley in favor of J. W. McElroy in the sum of

\$1,400. There being no objection I will ask to have that marked Exhibit "14".

(Document in question is now marked Exhibit "14".)

323. Q. Would you just mind turning to your head office file No. 3, Mr. Mackie, which opens in January, 1927? A. Yes.

324. Q. And will you just produce to be marked a letter dated December 20th, 1927, from the Assistant General Manager to Mr. Weaver? A. Yes, now that is a copy.

10 325. Q. That is a copy of the Assistant General Manager's letter, who was he? A. I do not know who he would be at that time.

MR. NOLAN: Letter December 20th, 1927. There is no objection to it going in. It will be Exhibit "15".)

(Document in question is now marked Exhibit "15".)

326. Q. And would you please turn to the head office file No. 2 which would open in January, 1928? A. Yes.

327. Q. And look at a letter of November 23rd, 1928, from the Assistant General Manager to the Western Superintendent at Winnipeg? A. Yes.

20 328. Q. Now is that from the Assistant General Manager to the Western Superintendent? A. Yes.

329. Q. That is a copy of the letter? A. Yes.

MR. NOLAN: Letter November 23rd, 1928, from the Assistant General Manager of the Imperial Bank to the Western Superintendent at Winnipeg.

(Document in question is now marked Exhibit "16".)

330. Q. And also in that same file on December 4th, 1928, from the Western Superintendent to the General Manager? A. Yes.

331. Q. That is the original you are producing? A. Yes, that is the original.

30 MR. NOLAN: Letter dated 4th December, 1928, from the Western Superintendent to the General Manager, Toronto.

(Document in question is now marked Exhibit "17".)

332. Q. And a letter of December 11th, 1928, from the Assistant General Manager to Mr. Weaver? A. Yes.

40 MR. NOLAN: This is a letter dated December 11th, 1928, from the Western Superintendent to Mr. Weaver, so the transcript of evidence is not quite accurate, my Lord, when it says it is a letter from the Western Superintendent to the General Manager, that is not so. This is a letter from the Western Superintendent to Mr. Weaver, a copy of which letter has been sent to the General Manager. There is nothing turns on it but that is more accurate and it reads: (Document read to the Court.)

(Document in question is now marked Exhibit "18".)

333. Q. And if you will just turn to Head Office file No. 1, Mr. Mackie, please, and produce a letter of the 3rd of January, 1929? A. Yes.

MR. NOLAN: This is a letter from Mr. Weaver, the Manager of the Bank at Calgary, to the General Manager at Toronto in which he states:

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(Document read to the Court.)

(Document in question is now marked Exhibit "19".)

334. Q. That is from Mr. Weaver to whom? A. To the General Manager.

335. Q. And a letter of January 8th, 1929, from the Assistant General Manager to Mr. Weaver? A. Yes.

MR. NOLAN: Letter from the Assistant General Manager to Mr. Weaver, dated the 8th of January, 1929.

(Document in question is now marked Exhibit "20".)

336. Q. And a letter, Mr. Mackie, of the 15th of January, 1929, from Mr. Weaver to the General Manager? A. Yes. 10

MR. NOLAN: Letter dated the 15th of January, 1929, from Mr. Weaver to the General Manager at Toronto.

(Document in question is now marked Exhibit "21".)

(At this stage the hearing was adjourned until 2 p.m.)

2 P.M. SESSION

MR. NOLAN: May it please your Lordship and Gentlemen of the Jury, when His Lordship adjourned at half past 12 I was reading to you portions of this Examination for Discovery and that is almost completed. I am now reading question 337, and the letter of the 25th of February, 1929. 20

337. Q. And a letter of the 25th of February, 1929, from the Assistant General Manager to Mr. Weaver? A. Yes.

(Document in question is now marked Exhibit "22".)

338. Q. There are no letters in either the head office file or the Calgary office files, Mr. Mackie, from Mrs. Begley or Mr. McElroy in respect of this \$8,500 cheque? A. Not so far as I know.

MR. NOLAN: There are not?

MR. MAYHOOD: None at all.

MR. NOLAN: I just want to clear up, that there is no correspondence in connection with this matter? 30

MR. MAYHOOD: Other than this that there is a report of the Bank being paid.

MR. NOLAN: Yes, but there is no correspondence about the \$8,500 cheque?

MR. MAYHOOD: None at all.

339. Q. That is right? A. That is right.

* * * * *

366. Q. The situation is that so far as Mr. McElroy's indebtedness to the Bank was concerned demands had been made upon him for payment of his account? A. No pressing demands. 40

367. Q. But demands had been made for payment? A. Yes.

368. Q. And the Bank kept after him consistently for the money which he owed to the Bank? A. Yes.

369. Q. And the Head Office was anxious to have this account paid?

A. They would like to have seen it paid, yes.

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373. Q. And Mrs. Begley was not asked by the Bank if she was going to lend the money to McElroy? A. Not so far as I know.
374. Q. It was never mentioned? A. Not so far as I know.
375. Q. No letter was written to her? A. Until after it was
- MR. MAYHOOD: No letter was written?
- WITNESS: No.
376. Q. Prior to the 29th day of June the question of this money being loaned to McElroy was never taken up by the Bank with Mrs. Begley? A. Not so far as I know.
- 10 377. And you do know because you have ascertained? A. Yes, so far as
378. Q. So far as you can find out? A. So far as I can find out.
379. Q. And at no time was Mrs. Begley told by the Bank that McElroy had used the money to pay his debt to the Bank? A. No until . . .
- MR. MAYHOOD: Prior to her conversation with Chambers, that is right.
380. Q. Will you answer it that way? A. Yes, prior to her conversation with Mr. Chambers, no.
- 20 381. Q. And do you say Mr. Chambers told her the money had been used to pay the Bank, at any rate certainly not prior to the time she discussed the matter with Mr. Chambers? A. No.
382. Q. Which you say was? A. On the 24th of December, 1929.
383. Q. You might make a statement which will explain this, I will put it to you, you can go further and say that prior to June, 1930, there was no intimation to Mrs. Begley that the money had been used to pay off the Bank? A. That is right.
384. Q. And who told her in June, 1930?
- MR. MAYHOOD: We do not know what Mr. Chambers will say about that conversation.
- 30 WITNESS: He does not admit telling her here, well I do not know whether it was admitted then or told to Mrs. Begley in June.
385. Q. You do not know whether Mr. Chambers told her in June, 1930, that the money had actually gone to the Bank? A. No
386. Q. But you can find out whether he did or not? A. Only by asking him.
387. Q. You will do that for me?
- MR. MAYHOOD: You want his answer to that?
- MR. NOLAN: Yes.
- MR. MAYHOOD: All right, we will correspond with him and ask him.
- 40 388. Q. In June, 1929, before this \$8,500 passed, McElroy did not tell the Bank that he was going to marry Mrs. Begley? A. No.
389. Q. And there was no conversation between the Bank and Mrs. Begley which would inform Mrs. Begley what McElroy owed the Bank prior to June, 1929? A. No.
- * * * * *
404. Q. You have already told me that you took a note from McElroy

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on the 2nd of July, 1929, which has been marked as an exhibit in this case, that is right, is it not? A. It is dated the 1st, I think.

MR. MACKIE: You mean a note in favor of Mrs. Begley?

405. Q. Yes, in favor of Mrs. Begley? A. Was it then or the 29th.

406. Q. You took the notes dated the 2nd of July? A. The 1st of July.

MR. MAYHOOD: Mr. Chambers says he took it at the same time as the cheque went through.

407. Q. This note is dated, you took the note from Mr. McElroy dated the 1st of July, 1929, in favor of Mrs. Begley for \$8,500? A. Yes, Mr. Chambers did. 10

408. Q. You had no instructions from Mrs. Begley to take that note from Mr. McElroy? A. Mr. McElroy was Mrs. Begley's attorney.

409. Q. Quite right but you had no instructions from Mrs. Begley herself to take that note? A. No, except through McElroy the attorney.

* * * * *

411. Q. So far as the Manager of the Bank, Mr. Weaver, is concerned it is perfectly clear that he never told Mrs. Begley that McElroy had used her money to pay the Bank? A. That is right.

412. Q. And I suppose it is equally clear, Mr. Mackie, that the Bank never suggested to Mrs. Begley that she might have a claim against the Bank for the return of the \$8,500? A. Well we have never admitted that she had. 20

* * * * *

414. Q. You didn't tell her she might have? A. We did not, no.

415. Q. But you didn't tell her? A. No.

* * * * *

422. Q. Mr. Mackie, it is perfectly clear and the Bank knew, it was known to the Bank that Mr. McElroy was looking after the affairs of the R. W. Begley Estate prior to June 29th, 1929? A. Yes.

423. Q. Had been looking after them? A. Yes.

424. Q. And the Bank also knew that the sum of approximately Thirteen Thousand dollars odd passed from the Estate into Mrs. Begley's account? A. The Bank must have, yes. 30

425. Q. Therefore, the Bank, it follows that the Bank knew that the \$8,500 which Mr. McElroy was borrowing, as you say, came out of that Thirteen thousand dollars? A. It came out of her credit and the credit came from the Estate.

426. Q. The answer is "yes" is it not? A. Yes.

427. Q. And, Mr. Mackie, there was no security obtained by Mrs. Begley from McElroy for the \$8,500 other than the note of Mr. McElroy's in favor of Mrs. Begley? A. No.

MR. MAYHOOD: You mean through the Bank?

428. Q. Yes, through the Bank? A. No. 40

I will call Mrs. Begley, my Lord.

MARY VICTORIA BEGLEY, having been duly sworn, as a witness on her own behalf, examined by MR. NOLAN, testified as follows:

Q. Mrs. Begley, you are the Plaintiff in this action brought against the Imperial Bank of Canada? A. Yes.

Q. Speak up so I can hear you and these gentlemen sitting here can also hear you? That is right, is it not? A. Yes.

Q. You are a widow of the late R. W. Begley? A. Yes.

Q. And we hear that he died on or about the 26th of December, 1928? A. That is right.

10 Q. You knew Mr. J. W. McElroy? A. Yes.

Q. How long have you known him? A. Over 30 years.

Q. Did he live near you? A. Between five and six miles.

Q. Where was that, what part of the country? A. Northeast of the City, about almost east.

Q. Northeast of the City? A. Yes.

Q. It is in the Chestermere Lake District, I wonder my Lord, with your permission this witness may sit down?

THE COURT: Yes, just sit down and if you do not mind if you can speak a little louder so the Jury can hear you.

20 MR. NOLAN: And do not nod your head to me because this gentleman who is right here in front of you cannot take down a nod. You have to say "yes" or "no".

Q. You were living in the Chestermere Lake District, were you not? A. No we were not.

Q. Well somewhere in that vicinity? A. Yes.

Q. How many miles from Mr. McElroy were you? A. Well something between five and six miles I would imagine.

Q. Was he or wasn't he a personal friend of your late husband?

A. He was.

30 Q. Would you say he was a close friend or a distant friend? A. He was a close friend.

Q. A close friend? A. Yes.

Q. Was he his closest friend? A. Well we were always good friends.

Q. And after your husband died you were the executrix under his Will, Mrs. Begley? A. Yes.

Q. But you did not carry on as executrix, did you? A. No.

Q. Well, what happened why didn't you? A. Well, I asked Mr. McElroy. My husband spoke of Mr. McElroy to do the business for me.

40 Q. When did he speak of him?

MR. SHAW: I am just wondering to what extent, if at all, conversations between Mr. McElroy and this lady are properly admissible in evidence.

THE COURT: I think this is admissible.

MR. SHAW: I mention it now because

THE COURT: Yes, I know. I do not think he is going too far with

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this, that part is admissible.

MR. NOLAN: That point is going to come squarely before us very soon. I do not know whether we had better decide it now or not, or perhaps when the occasion arises.

THE COURT: I think we will decide it when the question comes up. What was her answer?

Q. What is the answer to that, when did he speak to you? A. Just before he took sick.

MR. NOLAN: Was there any reason why Mr. McElroy acted, any other reason pertaining to yourself? A. No. 10

Q. What about your health, did that have anything to do with it or did it not? A. That is why I did not undertake it alone because I was not well.

Q. What was the matter with you? A. I did not know at the time, but it was an inward goitre.

Q. It was an inward goitre, yes, I see. Now after your husband died in December, 1928, you left Calgary soon after that? A. Yes, just about a month.

Q. About a month, that would bring it about the end of January, 1929? A. Yes. 20

Q. Where did you go? A. Spokane.

Q. Where—why did you go to Spokane? A. Because my sister came over and got me to go over there because I was not fit to be left here alone.

Q. And when did you return from Spokane? A. It was June.

Q. It was in the middle of June, was it? A. Just about the middle of June.

Q. That would be in the year 1930, would it not or 1929, I beg pardon? A. Yes, 1929.

Q. And do you know what day in June it was, anything that can help you fix the day you came back? A. Well I was just here one week and I left on the 26th. 30

Q. You were here one week and you left on the 26th? A. Yes.

Q. So you came back on or about the 19th, didn't you? A. Yes.

Q. And were here until the 26th of June, all right. Who was the solicitor for the Estate of your late husband? A. Mr. Moyer.

Q. J. W. Moyer? A. J. W. Moyer.

Q. When did he become solicitor for the Estate? A. Right after, as soon as we started doing business.

Q. Yes. Did you give him the instructions or did you not? A. Mr. McElroy took me to him. 40

Q. Was that the first time you had met Mr. Moyer? A. Yes, he made me acquainted with him.

Q. He made you acquainted with him? A. Yes.

Q. When you came back on or about the 19th of June, did you have

any conversation with Mr. McElroy that day? A. No, no I never saw him.

Q. Did you try to see him? A. I think I called him up that night but I could not get him.

Q. Yes, well then when did you see him. You did not see him the day you came back, did you see him the next day? We think the next day would be Thursday? A. I think it was Thursday.

Q. You think it was Thursday? A. Yes.

10 Q. Do you remember making an appointment with him? A. When I met him in East Calgary I was with Mrs. Macdonald and he was driving with Mrs. Beattie.

Q. What date was that? A. I think that was Thursday we made the appointment and met on Friday at Mr. Moyer's office.

Q. You met on Friday at Mr. Moyer's office. Who was Mrs. Beattie? A. His lady friend.

Q. So you did not see him on Thursday and the first you saw of him by way of interview was on Friday, that is right, is it? A. Yes.

Q. And that was in Mr. Moyer's office? A. Well, he called at Mrs. Macdonald's for me. I was stopping with Mrs. Macdonald.

20 Q. How did you get to Mr. Moyer's office that day? A. Mr. McElroy called for me.

Q. Were you in Mr. Moyer's office a part of the day or the entire day? A. We were there in the morning for a while and then went back in the afternoon.

Q. And then went back in the afternoon? A. Yes.

Q. Did you go any place else that day with Mr. McElroy? A. We had lunch together.

Q. And after lunch where did you go? A. Back to the office. Mr. Moyer's office.

30 Q. And then where did you go. Did you go any place? A. To Mrs. Macdonald's where I was stopping.

Q. Did you go any other place with Mr. McElroy that afternoon? We are speaking of Friday now the 21st. See if I can help you

A. Well, we were in the Bank, we went there though right from lunch.

Q. Who did you see in the Bank? A. I saw Mr. Weaver.

Q. Who is Mr. Weaver? A. He is the Manager of the Bank.

Q. He was the Manager of the Bank then? A. Yes.

40 Q. Did you have any conversation with him? A. Well, he came up and shook hands and told me about how Mr. McElroy, he made a joke about it being so cross with him about sending me money to Spokane.

Q. Mr. McElroy was cross? A. No, Mr. Weaver said Mr. McElroy and Mr. Moyer were cross with him for sending me money. They said he had no right to do it.

Q. Did they say why he had no right to do it? A. I suppose they took it out of the Estate.

Q. That was said, wasn't it? A. Yes.

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Q. There was no quarrel about this, was there, Mrs. Begley? A. I did not hear it, he said they were pretty cross at him. I did not hear it.

Q. Was it said in a serious tone or an amusing tone? A. He said it in a serious tone.

Q. You are quite clear you saw Mr. Weaver, the Manager of the Bank, there that day? A. Yes, he shook hands with me.

Q. You had been away as I understand you since the preceding January? A. Yes.

Q. And you had come back to Calgary? A. Yes.

Q. Now on Monday did anything happen that you can tell us about, perhaps before we come to Monday was there any transaction that day in the Bank about your money? A. (No answer.) 10

Q. Let me put it to you this way, you had money coming to you out of your husband's Estate, hadn't you? A. Yes.

Q. How much? A. \$13,000

Q. What? A. Well, I forget the amount.

Q. Well, about how much? A. \$13,000 I think it was and something.

Q. All right never mind about the dollars and cents. There was about \$13,000. Well was anything done about that when you were in the Bank on Friday the 21st? A. Well I really forget just what was done. 20

Q. Well was there any discussion with Mr. Weaver about that \$13,000? A. No, I cannot remember anything being said to him or by him.

Q. You see it has been said in evidence already that on that day, the 21st of June, that \$13,000 got into your own Savings Account, you see? A. Yes.

Q. Did you know that that day that that was being done? A. Yes.

Q. How did you know it? A. Well just they told me, that was all. 30

Q. All right, that was part of what took place.

Q. THE COURT: Who told you? A. Mr. McElroy or Mr. Moyer, I cannot say just which one.

Q. MR. NOLAN: When you were talking to Mr. Weaver that day did he ask you or did he not whether you had agreed to lend any money to Mr. McElroy? A. Did Mr. Weaver, did you say?

Q. Did Mr. Weaver? A. No, he never mentioned it.

Q. Are you clear about it? A. I am positive.

Q. You understand the question do you, you are clear? You say you are clear? A. Yes. 40

Q. And he never mentioned it to you? A. No.

Q. All right. Now there was another meeting for Monday, was there not? A. Yes.

Q. Where did that take place? A. At Mr. Moyer's office.

Q. Yes, and did you execute any document that day did you? A. Yes.

Q. What was it? A. Well it was fixed that Mr. McElroy was to put my money out in Government Bonds for me.

Q. What was the document that you signed if you know. Do you know what you signed that day? Just think about it, Mrs. Begley, because we are not in a hurry. I want you to compose your mind and think about what happened that day. You went down there that day with Mr. McElroy did you go down with him? A. Yes, he called.

Q. To Mr. Moyer's office and you signed something didn't you?
A. Yes.

10 Q. And do you remember what it was you signed. Just think about it? Let me put it to you this way, did you go to the Bank before you went into Mr. Moyer's office on that Monday the 24th? A. I cannot remember.

Q. I am going to show you a document that has been marked as an exhibit in this case, Exhibit No. 4, that is your signature? A. Yes.

Q. Do you remember when you signed that? A. Well I cannot remember.

Q. No you do not remember when that was signed. A. No.

20 Q. Well do you remember what you were doing in Mr. Moyer's office that day. Why were you there, Mrs. Begley? A. Well I was there to see about getting my money put out.

Q. Yes. And in connection with that, did you not sign something or do you remember? A. I do not remember.

Q. THE COURT: You were there Friday to get your money out. What did you do about it, to get your money out?

MR. NOLAN: I do not think the witness said to get it out but to put it out. A. That was to put my money out.

THE COURT: What did you do about putting it out? A. Well I appointed Mr. McElroy.

30 Q. Who? A. Mr. McElroy was to put it out in Government Bonds.

Q. MR. NOLAN: I see at this meeting in Mr. Moyer's office on this Monday was there anything said, did you agree or did you not to lend your money to Mr. McElroy? A. I did not.

Q. Did he ask you to borrow

MR. SHAW: Surely now

MR. NOLAN: Perhaps that is the point, do not answer until my friend has made his objection.

40 MR. SHAW: If I apprehend correctly the conversation which my friend is speaking about is a conversation in the office of Mr. Moyer apparently at a time when the witness McElroy and Moyer were all present.

MR. NOLAN: That is right.

MR. SHAW: I presume obviously at a time when the Bank was not present or any party to the conversation whatever. I suggest that that conversation is absolutely inadmissible in this action as being the purest kind of hearsay evidence.

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MR. NOLAN: My Lord, it is just this kind of an action in which it is admissible for this reason, this Bank says

MR. SHAW: Perhaps, my Lord, if we are going to have an argument about the matter the Jury should not be auditors of the argument in any event.

MR. NOLAN: It may take a minute or two, my Lord, and perhaps they had better retire.

THE COURT: Gentlemen of the Jury, it sometimes happens in a case at trial, in fact oftentimes happens that some question of law arises, the decision on which rests entirely with the Judge, not with the Jury, and in such cases it is customary to ask the Jury to retire so that they will not get confused in their minds the questions of law with the questions of fact, when they are required to find one way or the other. In this case I will just ask you to retire for a few moments. I make this explanation to you so that you will know it is not the desire of any person to hold anything back from you, if you will retire now. 10

(Jury retired at 2:33 P.M.)

MR. NOLAN: My Lord, my point is this, we say to this Bank: "Pay us back this money of our clients which you got paid to you by McElroy on a debt of his own which we did not incur nor owe to the Bank." They say: "No, we won't do that because there was an agreement between Mrs. Begley and Mr. McElroy whereby Mrs. Begley agreed to lend this money to Mr. McElroy." Now, my Lord, the fact is as will be made quite clear that the Bank made no inquiry from this lady at that time as to whether there was an agreement or not and it is equally true that there were some conversations between her and Mr. McElroy. I respectfully ask you is this Court going to be in a position to judge whether or not there was in fact any agreement unless we find out what happened between the parties which the Bank set up as being the two parties who made the agreement. Now I say, my Lord, in my respectful submission that this is what is known as the *res gestae* in this case. It is these facts or transactions in issue and really when it is all boiled down what it amounts to is this. Did this Plaintiff woman agree to lend this man \$8,500? If she did, it is very serious from her point of view. If she did not it is very serious from the Bank's point of view and that is what we are quarreling about. The Bank, of course, did not come into the picture in the earlier stage because they made no inquiry of this woman at all. Surely these conversations did take place when the Bank were not there but the Bank is now saying that there was an agreement to lend when they were not there. So surely I am entitled to bring to the Court any evidence I may have and perhaps it is the duty of my friend to bring any evidence he may have so that the Court may be advised what actually took place in order that it may determine whether or not there was an agreement. If I am not able to lead any evidence because the Bank was not there I do not see how this transaction is going to be fully brought before the Court in all its complexi- 20 30 40

ties and my submission in a word is this, that it is the *res gestae*. It is part of the fact or transaction in issue and that being so evidence is admissible to show whether or not in fact there was an agreement between them. But, of course, it is a matter for your Lordship to decide.

10 MR. SHAW: My Lord, I think it is very clear that hearsay evidence is not admissible. It may be that my learned friend can ask her as to whether or not, the one question as to whether or not there was any agreement authorizing McElroy to borrow but I suggest conversations between McElroy and this lady are wholly inadmissible and perhaps are or might be self-serving statements and at a time when the Bank was not present, had nothing to do with it whatever, and should not be admissible as against it, however much they might be admissible against Mr. McElroy.

THE COURT: Oh I think they are admissible. I would have to hold they are admissible. All right.

MR. SHAW: I do want, of course, my Lord, the objection to be put on the record as I assume it has been.

THE COURT: Oh yes.

20 MR. ROSS: My Lord, there is another objection to the question as to whether or not she ever agreed to lend this money to McElroy. I think we should put our objection even to that question on the record because by her subsequent conduct we contend she is estopped from denying the agreement and we just want to raise the objection now so as to have the objection on the record.

THE COURT: Just what is your objection again?

MR. ROSS: We object to any evidence to the effect that she refused to make this loan to McElroy, that is the \$8,500 loan. Of course, I can see your Lordship will have to admit the evidence but I want it admitted subject to our objection because she has by her subsequent conduct . . .

30 THE COURT: I do not have to admit any evidence unless it is admissible.

MR. ROSS: I say that because you have not heard the subsequent evidence which will have the effect of estopping her from denying it, that is my point. I just want to have the objection on the record objecting to any evidence of that kind on account of her subsequent conduct which will estop her from denying the making of the loan.

THE COURT: Well I think the evidence is admissible. The fact does not seem to be in dispute that the Bank got the money and used it to pay McElroy's debt to the Bank. That seems to be common ground.

40 MR. SHAW: No, my Lord, the Bank got McElroy's money to pay McElroy's debts.

THE COURT: Oh I don't think so.

MR. SHAW: However McElroy may have got it.

THE COURT: That may be the result in law but I do not think I could hold that is the case on the present evidence. No, I think it is admissible, we will hear it, bring in the Jury.

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(Jury returned at 2:40 P.M.)

Q. MR. NOLAN: Now, Mrs. Begley, I am going to put this question to you, did you in the month of June, 1929, or in any other month in that year or at any time agree with Mr. McElroy to lend him any of your money? A. I did not.

Q. For any purpose whatsoever, did you? A. No.

Q. Now at this meeting that took place in Mr. Moyer's office on the 24th of June was there some discussion about a loan between you and Mr. McElroy at that time? A. A loan of the money?

Q. A loan of any money? 10

THE COURT: A loan of any money to whom?

Q. MR. NOLAN: To him? A. No. But Mr. McElroy asked me in an undertone voice if I would not let him have some money where he would pay me seven per cent. interest, where, if I put it out in Government Bonds, as I asked him he said I would only get four or four and a half or something and I ignored it, I never let on I heard him say it at all. I said I wanted my money put out in Government Bonds.

Q. That was on Monday the 24th, was it, of June. Was, it, Mrs. Begley? A. Yes.

Q. At this meeting on the 24th of June was there or was there not anything said about Mr. Moyer's part in the transaction, was he to do anything? A. Yes, Mr. Moyer, Mr. McElroy said he did not care to handle it alone and I said, "You can have Mr. Moyer," so it was settled Mr. McElroy was not to do anything without Mr. Moyer's consent. 20

MR. SHAW: I assume, my Lord, my objection will apply to all these conversations at which the Bank were not present.

THE COURT: Yes.

Q. MR. NOLAN: Now passing from Monday the 24th, did you go back to Mr. Moyer, on Tuesday the 25th, or did you not, do you remember? A. Yes, I was up just for a minute, he gave me some papers, I have just forgotten what it was but I took it and put it in my safety deposit box in the Bank. 30

Q. In what Bank? A. The Imperial Bank.

Q. So you were in the Imperial Bank on Tuesday the 25th of June? A. Yes.

Q. Did you see any of the Bank officers? A. Yes, Mr. Chambers fixed out

Q. Who was Mr. Chambers? A. He was the Assistant Manager at the time.

Q. The Assistant Manager, you saw him that day, did you? A. Yes. 40

Q. You had a conversation with him? A. Yes.

Q. What did he do for you? A. Well I got some, made an arrangement for \$500 to be put in the Hamilton Imperial Bank for me to use while I was in Hamilton.

Q. Why did you want money in Hamilton? A. I was stopping

down there for a few months.

Q. You mean you were going to Hamilton? A. I was going to Hamilton.

Q. When were you going? A. I left here on the 26th of June.

Q. How do you know you left on the 26th, you did not seem quite clear about the date you got to Calgary, why are you clear about the date you went away? A. It was my husband's birthday.

Q. And you fixed it in your mind? A. Yes.

10 Q. That is Wednesday the 26th of June you went to Hamilton, Ontario? A. Yes.

Q. And it was with Mr. Chambers with whom you had the conversation? A. Yes.

Q. Did Mr. Chambers say anything to you about you lending your money to McElroy? A. No.

Q. That he might pay the Bank? A. No.

Q. That day? A. No.

Q. Did Mr. Chambers ever tell you that? A. No.

Q. Did Mr. Weaver ever tell you that? A. No.

20 Q. Did anybody in the Bank ever tell you? A. No, they did not.

Q. You went away on Wednesday the 26th of June? A. Yes.

Q. When did you come back? A. I came back around the middle of December.

Q. Of that same year, December of that year? A. Yes.

Q. And that year is 1929? A. Yes.

Q. We are talking about 1929, are we not? A. Yes.

Q. Now when you came back in December, 1929, I suppose you had other conversations with Mr. McElroy did you, you saw him when you came back? A. He met me at the train.

30 Q. Did you know then what was happening to your money or what had happened to it? A. No.

Q. Did you make any effort to find out? A. No I do not think I did.

Q. Did you ask anybody? A. I thought everything was all right then.

Q. Did you make any inquiry about it? A. No I did not.

Q. Did you mention it to Mr. McElroy? A. I just asked

MR. SHAW: Just a moment please. These are conversations I assume with McElroy at the time the Bank was not present?

MR. NOLAN: No, the Bank was not present, no doubt about that.

40 MR. SHAW: It is a period of some six months after these June conversations.

THE COURT: This question is admissible, I do not know whether the next one will be or not. This one is.

MR. SHAW: I know the question remains unanswered, my Lord, I merely wanted to raise my objection now.

Q. MR. NOLAN: Well now you have told us, Mrs. Begley, that you

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did not agree to nor did you lend any money to Mr. McElroy for any purpose in 1929. Did you lend him any money in 1930? A. Yes.

Q. How much? A. \$1,400.

Q. \$1,400 and did he tell you why he wanted it? A. He said he had some

MR. SHAW: Just a moment

Q. MR. NOLAN: I won't ask you that question, I will ask you this, did you give him cash or did you give him a cheque? A. I gave him a cheque.

Q. Did you write out the cheque? A. I think he wrote it out and I signed it. 10

Q. You signed it, what is that? Exhibit No. 14 in this case, take a good look at it? A. That is my signature.

Q. Yes, and what is this cheque for? A. For \$1,400.

Q. And is that your signature to it? A. Yes.

Q. What did you do with it after you signed it? A. I gave it to Mr. McElroy.

MR. NOLAN: This is the cheque, my Lord, in favor of Mr. McElroy for \$1,400 dated the 2nd of January and it is signed by Victoria Begley.

Q. I take it from the date on that cheque that that was given, or do you know when you did write out that cheque? It is dated the 2nd of January. A. I think it was New Year's night. 20

Q. That would be the night of the 1st? A. Yes.

Q. It was dated the 2nd? A. Yes.

Q. Had he asked you for this money before or when did the conversation first come up? A. No he never mentioned it before.

Q. Do not give the conversation but tell me were you asked for the money the day you made out the cheque or were you asked for it the day before or the week before or the month before? A. Right then when the cheque was made out. 30

Q. Did you make it out right away? A. Yes.

Q. As soon as he asked you for it? A. Right after.

Q. Is that the first you heard of the \$1,400 being wanted by him? A. Yes.

Q. You are clear, are you? A. Yes.

Q. Now, Mrs. Begley, you were in Calgary, we know, for some months after you came back from Hamilton, that is right, is it not? A. Yes.

Q. Just to link it up, when did you go away again? A. It was around the 10th of July, I think. 40

Q. If I mention the Stampede, does that help you? A. It was the last day of the Stampede.

Q. The last day of the Stampede, you went where? A. To Spokane.

Q. Between January and June had you made any effort to find out how your affairs stood so far as Mr. McElroy was concerned? Did you ask him about it? A. Yes, I had asked him several times.

Q. With what result? A. What he had done with my money and how it was invested.

Q. Yes, did you get any satisfaction from him or didn't you? A. No, I did not, he always put me off and said it was out with farmers. He never would explain it to me.

Q. When this \$1,400 was lent did you discuss that with any of the Bank Officials? A. No.

Q. Are you sure about that, you say you did not? A. No, I did not.

Q. You did not discuss it with Mr. Chambers then? A. No.

10 Q. It was all done there and then? A. Yes.

Q. All right. Now you say you saw Mr. Chambers sometime before you went into the Hospital which was when? A. I think it was the 6th of June.

Q. Is there any way by which that date is fixed in your mind, the 6th of what? A. The 6th of June.

Q. That is 1930. Is there anything that fixes that date in your mind or do you remember? A. Well I just remember it was then.

Q. All right, the 6th of June, 1930, you went into the Hospital and how long were you there? A. About two weeks.

20 Q. What was done to you? A. I was operated on for an inward goitre.

Q. Had you seen Mr. Chambers before you went into the Hospital? A. Yes, I went in on or about . . . I went in to see about getting some money to let out with the Northern Trusts.

Q. Yes. A. I had made arrangements with them to give some money to them to invest for me.

Q. When did you see him about that? A. It was on Friday as I went into the Hospital on Sunday.

30 Q. You went into the Hospital on Sunday and it was Friday preceding you saw Mr. Chambers? A. Yes.

Q. Yes, and you had a conversation with him, did you? A. Yes.

Q. Can you give me that conversation as best as you can remember it? A. Well I happened to be looking at my Bank book and I saw where I had taken a debit for a credit.

THE COURT: You had taken what, I could not hear. A. I had taken a debit for a credit and I found out I did not have the money to invest that I thought I had.

MR. NOLAN: Who told you you did not have it? A. Mr. Chambers was watching me evidently, he came up to me and he said, "What is 40 wrong, you look so worried?" I said, "I have not got the money in my Bank book I thought I had." "Well," he said, "didn't you know that Mr. McElroy, we are holding a note" I understood him to say for \$4,500.

Q. He said, "Didn't you understand that we are holding a note," you understood him to say for \$4,500? A. Yes.

Q. A note of whose? A. For the Bank.

Q. Yes, but whose note? A. Mr. McElroy's note.

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Q. What did you say? A. I said I did not know. Well he said "We are" and he went away and got it and held it up to me.

Q. Yes, all right, and then did you know how much that note was for? A. I did not read it over, I just took his word for it, I thought he said \$4,500 and I still thought it was.

Q. You found out as you told us that you did not have the money to invest? A. I had no money to invest.

Q. You say you mistook a debit for a credit? A. Yes.

Q. In what, when did you make that mistake? A. In the Bank book. 10

Q. And then do I understand you to mean, and correct me if I am wrong, that you had seen \$8,500 written in this book? A. Yes.

Q. There was \$8,500 written in the book? A. Yes.

Q. To what? A. It was a debtor instead of a creditor.

Q. What did you think it was? A. I thought it was money I had in the Bank.

Q. I see. Now you were telling us about a conversation you had with Mr. Chambers? A. Yes.

Q. And he has said to you, "Didn't you know that we had a note of Mr. McElroy's here for you?" and you said . . . is that what he said? A. Yes. 20

Q. And what did you say? A. I said I did not know it.

Q. Did anybody say anything else, what did Mr. Chambers say and what did you say? A. I was so worried and I was sick at the time that I do not think there was anything said, I think I just walked out and went away. I was going to the Hospital.

Q. Yes, all right. Well then when you were in the Hospital did you learn anything more about this money of yours that had gone? A. Mr. McElroy came up to see me and I asked him about it and he said . . .

MR. SHAW: Just a moment, please, the same objection again. 30

MR. NOLAN: Do not answer that question if you please.

Q. You learned after sometime that the Imperial Bank of Canada got this money of yours, didn't you? A. Yes.

Q. You learned that? A. Yes.

Q. When did you learn it, do you remember when you learned that? You see what I am trying to get at, Mrs. Begley, we all know now here to-day that that money was used to pay Mr. McElroy's debt to the Bank. You know it, don't you? A. Yes.

Q. When did you first learn that?

THE COURT: How did you find it out and when? 40

MR. NOLAN: Yes, how did you find it out and when? You see you have been away and you have come back from Spokane, you have come back from the East and went into the Hospital in June. Did you know then when you went into the Hospital? A. Well I knew about \$4,500.

Q. Did you know the Bank had it? A. I forget.

Q. You see, Mrs. Begley, you have been telling me that Mr. Cham-

bers did not tell you and that Mr. Weaver did not tell you but you found it out? A. I think it was Mr. McElroy that told me.

Q. When did he tell you? A. When he was renewing the note.

Q. When he was renewing the note, yes. That is sometime afterwards? A. Yes.

Q. And am I clear in understanding that your first intimation that the money had gone to the Bank came from Mr. McElroy, not from the Bank that is right? A. Yes, came from Mr. McElroy.

10 Q. When you left the Hospital you went again to Spokane, didn't you? A. Yes.

Q. Why did you go to Spokane? A. The Doctor ordered me away for my health, to get built up after my operation?

Q. And who went with you? A. My daughter and Mr. McElroy and Gerald.

Q. Mr. McElroy and who? A. His son Gerald.

Q. There were four of you went down there? A. Yes.

Q. Did you come back together? A. No I came back on the train.

20 Q. You came back when? A. In the middle of June or the middle of August.

Q. Yes, I see, the middle of August, 1930. When did you change from the Imperial Bank to the Bank of Montreal? A. I think it was about the 10th of September.

Q. You have told me that Mr. Chambers when you saw him just before you went into Hospital in June, 1930, showed you a note? A. Yes.

Q. Did you take it away with you? A. No.

Q. What did you do with it? A. I did not have it at all, Mr. Chambers held it in his hand, I walked out of the Bank.

Q. When did you get that note into your own possession, do you remember? A. Well it was a good while after that.

30 Q. How long after, did you have it when you came back from Spokane in August? A. Oh no.

Q. Oh no? A. No.

Q. If you changed your Bank from the Imperial to the Bank of Montreal did you get it then? A. No I did not.

40 Q. When did you get it? A. Well we were down in Mr. Moyer's office, doing some business and he was, there was a Mr. Morasch owed me \$400. Mr. Moyer asked me to go to the Bank and get this note that the Bank was holding for this \$400 and Mr. McElroy said, "Well you might just as well get my note that is in there for I am going to pay you off next month," so I took the two notes.

Q. From the Imperial Bank? A. Yes.

Q. Who did you get them from? A. Mr. Mackie.

Q. Where did you take them to, what did you do with the Morasch note? A. Took it to Mr. Moyer.

Q. What did you do with the McElroy note? A. I took it up and

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put it in my safety deposit box, the safety deposit box in the Bank of Montreal.

Q. What year are we talking about? A. 1930.

Q. Let us go back, Mr. Begley died in 1928? A. Yes.

Q. It was in the month of June, 1929, you went to Hamilton? A. Yes.

Q. You came back from Hamilton in December, 1929? A. Yes.

Q. You were in Calgary until the last day of the Stampede in June, 1930? A. Yes.

Q. The last day of the Stampede in July rather 1930 and you came back to Calgary about the middle of August, 1930? A. Yes. 10

Q. You changed your Bank about the 30th, did you say, of September? A. About the 10th.

Q. About the 10th of September, 1930, but it was after that you got the note, wasn't it? A. Yes.

Q. That this conversation about Morasch took place? A. Yes.

Q. How long after, was it that year or the next year, or do you remember? A. I do not remember just.

Q. Was it sometime after you got back, was it weeks or months or do you know. A. I cannot remember. 20

Q. Well never mind, Mrs. Begley. Mrs. Begley, did you owe any money to the Imperial Bank of Canada? A. No.

Q. You had no indebtedness to them? A. No.

Q. Now there have been put in evidence in this case some exhibits, Numbers 7 to 11, inclusive, and they are cheques drawn by J. W. McElroy and the larger portion of them is payable to Strong & Dowler? A. That is not mine.

Q. Well that was your money, what did you have to do with the transactions with Strong & Dowler? A. None.

Q. Who are they? A. They are grain people, that is all I know. 30

THE COURT: They are what? A. Dealing in grain in some way.

MR. NOLAN: Were you dealing in grain in some way? A. No.

Q. Are you sure? A. Positive I was not.

Q. Were you ever in their office? A. No.

Q. Did you or did you not authorize anybody to deal in grain for you on your behalf? A. No.

Q. What transactions did you have with the Canadian Acceptance Corporation? A. I did not have any.

Q. There is a cheque drawn in your account on the 13th of November for \$265.00, what has that got to do with you? A. Nothing with me. 40

Q. Did you ever authorize it? A. No.

Q. Or authorize anybody to transact any business with the Canadian Acceptance Corporation? A. No.

Q. Who were they, do you know? A. I do not know.

Q. Do you know what they do? A. No.

Q. Well they are a company . . . well perhaps I should not tell

you. And then I observe there is a cheque here to John W. Moyer for \$500 of your money, what is that about? A. Well I did not know.

Q. Did you authorize it? A. No.

Q. Are you sure you did not? A. No I know I did not.

Q. When did you first learn, no, let me put it to you another way, you say that in the early days of the history of this transaction you thought the amount involved was \$4,500? A. Yes.

Q. You were wrong about that weren't you? A. Yes.

Q. When did you first find out that you were wrong in the amount?

10 A. When the note was renewed.

Q. When the note was renewed and when was that? A. The 1st day of August.

Q. In what year?

THE COURT: Show her.

Q. MR. NOLAN: Will it help you if you thought about the time you went to Victoria? A. Well it was the day before I left for Victoria.

Q. Do you remember when you left for Victoria? A. Well I left for Victoria I know on Sunday morning.

20 Q. Was it in August or September or when? Well, nothing very much turns on this, Mrs. Begley, perhaps my learned friend will let me know? A. I think it was 1930.

Q. No I think it was 1931, wasn't it in 1931 you went to the Coast? A. Yes, well it was the next year.

Q. So it was 1931? A. Yes.

Q. Then you did find what, when you looked at the note just before you went to the Coast in that year of 1931 what did you find? A. I saw it was Nine thousand dollars and something.

Q. Was that or was it not the first time that you knew this amount of money was involved. A. That was the first time.

30 Q. Mrs. Begley, you are suing the Imperial Bank of Canada and a writ was issued on your instructions, that is right, is it not? A. Yes.

Q. So somebody told you that you had a cause of action against the Imperial Bank, didn't they? A. Yes.

Q. Who told you? A. Mr. Taylor told me.

Q. Who was the first person to intimate to you that you had a cause of action against the Imperial Bank? A. Mr. Mayhood.

Q. That perhaps is a little unfair to Mr. Mayhood.

MR. SHAW: Obviously wrong.

40 Q. MR. NOLAN: Let us clear that up in justice to Mr. Mayhood. Mr. Mayhood felt that it would not be proper for him to continue to act for you, that is right, is it not? A. Yes.

Q. Consequently he invited you to leave? A. Yes.

Q. And you did? A. Yes.

Q. You went to Mr. Taylor? A. Yes.

Q. But before that time . . .

MR. ROSS: He refused to act at all?

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MR. NOLAN: Yes.

Q. When was that, do you know, you had been to the Coast we understand in 1931, was it after you came back? A. Yes.

Q. Was it that year or the next year? A. It was the next year.

Q. The next year, that would be 1932? A. Yes.

Q. Had anybody, Mr. Moyer or the Bank or Mr. McElroy or any of these people intimated to you before that conversation with Mr. Mayhood that you might have a claim against the Bank? A. Nobody.

Q. Are you clear about that? A. Yes.

Q. In order that there may be no misapprehension I mentioned the 10
cheque of Mr. J. W. Moyer, a cheque to him for \$500 of your money?
A. Yes.

Q. That was repaid? A. Yes.

Q. With interest? A. Yes.

Q. Do you know when, well if you do not all right, you asked about it didn't you? A. Yes.

Q. Was it paid back soon after you asked or a long time after? A. Right after.

Q. Now, Mrs. Begley, if you will just answer my learned friend Mr. Shaw. 20

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CROSS-EXAMINATION of the same witness by MR. SHAW:

Q. Mrs. Begley, you told just a moment ago about a conversation you had with Mr. Mayhood and is it not true that Mr. Mayhood, when you told the story about these matters, that he told you that he could not investigate them, that he was acting as solicitor for the Bank and that he did not want to even discuss them with you, is that not true? A. He did not say not to discuss it with him.

MR. NOLAN: I hope I have left no impression on anybody's mind, particularly the Jury's, that Mr. Mayhood did anything other than that which was perfectly proper that should be done. What happened, Mrs. 30
Begley went to Mr. Mayhood's office and upon examination he came to the conclusion that she should go elsewhere and told her to.

MR. SHAW: My point is I do not want any suggestion before the Court that Mr. Mayhood advised her she had any claim against the Bank. As long as my learned friend agrees with me there, I am quite content.

MR. NOLAN: Well I go this far, my Lord . . .

THE COURT: What difference does it make whether he thought she had a claim against the Bank or not. It was sufficient for his purpose when he was acting for the Bank that he would send her to somebody else.

MR. SHAW: Quite right and quite properly. 40

THE COURT: Quite regardless of whether he thought she had a claim or not?

MR. SHAW: She rather left the impression in the language she used that Mr. Mayhood said she had a claim against the Bank, and I want that very clearly negated. I assume my learned friend agrees with me in that connection.

MR. NOLAN: I go this far and say Mr. Mayhood's attitude of mind was indicated by the fact he asked the lady to go elsewhere, and that should be sufficient for my friend's purpose.

MR. SHAW: Now Mrs. Begley, in the Will of your deceased husband you were named as executrix? A. Yes.

Q. For any reason that you may have you did not care to act yourself and you appointed Mr. McElroy to act for you? A. Yes.

Q. The Bank had nothing whatever to do with that arrangement of yours? A. No.

10 Q. And then you selected Mr. Moyer as your solicitor? A. Yes.

Q. Or as solicitor for the Estate? And you did that after consultation with various people but I think you will be frank enough to say the Bank had nothing whatever to do with your selection of Mr. Moyer as solicitor? A. No.

Q. Just for the purpose of, at the outset, seeing if we cannot get these dates somewhat clearly in mind, your husband died on December 26th, 1928? A. Yes.

Q. You went to Spokane in January, 1929? A. Yes.

20 Q. Having previously appointed Mr. McElroy to act and Mr. Moyer to act as solicitor? A. Yes.

Q. I think also, Mrs. Begley, that you did give a Power of Attorney at that time to Mr. McElroy to handle your own personal affairs for you? A. Yes.

Q. Now you, as you say, left for Spokane in January, 1929, you returned in June, 1929? A. Yes.

Q. So that you were there from January to June? A. Yes.

Q. Then you stayed in Calgary a week? A. Yes.

Q. And on the 26th of June you set sail for Ontario? A. Yes.

Q. You remained there until the middle of December, 1929? A. Yes.

30 Q. Then you stayed in Calgary from the middle of December, 1929, until what time? A. The 10th of July.

Q. Until the 10th of July, 1930? A. I am not sure whether it was the 9th or 10th.

Q. It was the last day of the Stampede? A. Yes.

Q. Until the 10th or the 9th of July, 1930, and then you went to Spokane again? A. Yes.

Q. And that was the occasion on which you were driven there by Mr. McElroy? A. Yes.

Q. You stayed there for a period of about a month? A. Yes.

40 Q. And then you returned to Calgary? A. Yes.

Q. Where you stayed how long? A. Until the next 1st of August.

Q. Until the 1st of August, 1931? A. 1931, yes.

Q. And that was the time on which you went to Victoria, wasn't it?

A. Yes.

Q. You stayed in Victoria how long? A. A month.

Q. One month? A. Yes.

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Q. So that you would come back about the 1st of September, 1931?
A. Yes.

Q. And do I understand that since that time you have continuously resided in the City of Calgary? A. I was over at Spokane.

Q. Oh yes. We just got to that visit to Victoria and then you stayed in Calgary until the following July, was it, or August? A. June.

Q. Until the following June and then you left for Spokane? A. Yes.

Q. And how long did you stay in Spokane that time? A. About two months.

Q. So that you would return then again about the 1st or September, 1932, would you? A. I came back in August some time.

Q. It would be the latter part of August? A. Yes.

Q. The latter part of August, 1932. So that in the period between your husband's death and the latter part of August, 1932, you had this one trip to Ontario and three trips to Spokane? A. Yes.

Q. Now your first return from Spokane was in June, you think about the middle of June, 1929, the first visit to Spokane after your husband's death? A. Yes.

Q. Was in June, 1929? A. Yes.

Q. And at that time the estate affairs of your husband which had been in the hands of Mr. McElroy and Mr. Moyer were closed up to your satisfaction? A. Yes.

Q. Mr. McElroy was discharged as administrator? A. Yes.

Q. And the moneys of the Estate were transferred from the administration account, the Estate account to your own personal account? A. Yes.

Q. And that represented a transfer to your account of some Thirteen thousand dollars? A. Yes.

Q. Now you had had an account, a personal account of your own in the Imperial Bank for many years previous to that, hadn't you? A. Yes.

Q. You had on occasions, I suppose, deposited money and taken out moneys during the years you had this personal account of your own? A. A little.

Q. The account dated back, I think, to about 1918, didn't it? A. I think it was.

Q. And do I understand that the Estate moneys were transferred into this account which you had been carrying on since 1918? A. Yes.

Q. Mr. McElroy, you will recall, I think gave you a cheque for Thirteen thousand dollars to yourself and you endorsed the cheque on the back, didn't you? A. Well I do not just remember doing it.

Q. You do not remember it? A. No.

Q. Would you recognize the cheque, you would recognize the cheque if you saw it of course, if I present to you, Mrs. Begley, Exhibit 3, would that be the cheque? A. I do not recognize that cheque.

THE COURT: I did not catch what you said, I do not think the Jury heard you either.

Q. MR. SHAW: You said you do not recognize the cheque? A. I do not recognize the cheque.

Q. Is that your signature on the back of the cheque? A. Yes.

Q. So here is a cheque dated the 21st of June, 1929, pay to Victoria Begley, \$13,006.35, signed by J. W. McElroy, Administrator of the Estate of R. W. Begley, and endorsed by you? A. Yes.

Q. And you do not remember it, do you remember it now? A. It is mine all right, I just forgot about . . . signing so many things I have forgotten.

10 Q. Now a pass book was issued to you at that time, or, at least, you got a pass book, did you, you had a pass book? A. I had a pass book.

Q. Have you got that pass book, Mrs. Begley? A. Mr. Nolan has it or Mr. Taylor.

Q. MR. NOLAN: It is in as Exhibit 2.

MR. SHAW: I present to you Exhibit "2", Mrs. Begley, and ask you if that is the pass book which you had at the particular time we are talking of, namely June, 1929? A. Yes, that is it.

Q. You recognize it, do you not? A. Yes.

20 Q. Now I believe, Mrs. Begley, that this particular pass book, Exhibit 2, you took with you to Ontario? A. Yes.

Q. And when you came back from Ontario you had it in your possession? A. Yes.

Q. I observe, Mrs. Begley, that in this Bank Pass Book, Exhibit 2, under the date June 21st, there is an item, can you see it? A. Yes.

Q. Perhaps if you take it then you can see it, what does it say? A. A credit of Thirteen thousand dollars.

Q. Yes, credited with \$13,081.35? A. Yes.

Q. That, Mrs. Begley, will represent the amount of the cheque together, I take it, with some other items or some accrued interest? A. Yes.

30 Q. I suppose, Mrs. Begley, that in connection with your own account in the Bank, which you had been operating since 1918 you would occasionally take it into the Bank to get it marked up or checked up? A. Since my husband's death, do you mean?

Q. No I mean prior to that? A. Yes.

Q. Which? A. Yes.

Q. Now have you, Mrs. Begley, the Power of Attorney or a copy of the Power of Attorney which you gave to Mr. McElroy at the time you left for Spokane on the first occasion after your husband's death? A. Have I a copy or . . .

40 Q. Have you got it or a copy of it? A. I haven't, everything went to Mr. Taylor.

MR. TAYLOR: No, they never left Mr. Moyer's office, he still has them.

MR. SHAW: It is the Power of Attorney you gave to Mr. McElroy, did you, the Power of Attorney we are now speaking about? A. For what, for when I went . . .

Q. You gave a Power of Attorney before you went to Spokane in

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January, 1929? A. Yes.

Q. Yes, to Mr. McElroy, in favor of Mr. McElroy? A. Yes.

Q. What did you do with that Power of Attorney, did you deliver it to Mr. McElroy? A. Mr. Moyer had it.

Q. But did you deliver it to McElroy? A. Well I did not, Mr. Moyer must have.

Q. Well Mr. Moyer prepared it for you? A. Yes.

Q. You signed it there did you and left it with Mr. Moyer? A. Yes.

Q. Now the Power of Attorney that is in evidence here, dated the 24th of June, 1929, was executed by you up in Moyer's office? A. Yes. 10

Q. Was it left with Moyer to be delivered to Mr. McElroy? A. Yes.

Q. Or delivered to the Bank? A. Well I took something to the Bank I do not know what it was.

Q. So it is altogether likely, Mrs. Begley, that you took the Power of Attorney yourself to the Bank? A. Well that was just what I put in my safety deposit box, I did not give anything to the Bank.

Q. In any event you gave instructions to Moyer or McElroy that this Power of Attorney dated the 24th of June, 1929, was to be delivered to the Imperial Bank, that would be correct would it not? A. Well I do remember telling them so. 20

Q. Well you intended that anyway? A. Yes.

Q. Now, Mrs. Begley, in this week or more that you were in Calgary in June, 1929, you saw McElroy, I understand, several times in Moyer's office? A. Yes.

Q. And I believe also that you during that same week you met him twice out at his cousin's place? A. Yes.

Q. And I believe also that you drove out with him to a farm in the country owned by a man by the name of Andrews? A. Yes.

Q. A distance of some 20 miles out? A. Yes.

Q. And I think you also told him to get your money working for you didn't you? A. Not that night. 30

Q. Well I mean sometime during that week? A. Yes.

Q. At that particular time we are talking about, June, 1929, McElroy's crop prospects were excellent were they not? A. He said he had good prospects.

Q. I mean you knew as a matter of fact that he had, didn't you? A. Well I had his word for it.

Q. Didn't you make any inquiry from anybody else? A. No.

Q. You knew he had some 1,600 acres in wheat, didn't you? A. He said so. 40

Q. You had no reason to doubt it, did you? A. No.

Q. You knew he has been farming out in that area in a large way for a great many years? A. Yes.

Q. Now up to the time I am speaking about, June, 1929, you had had, of course, no instructions or, at least, you had had no conversations with any officers of the Bank with respect to your moneys or what you

proposed to do with them or anything of that kind? A. No.

Q. And then you went to Ontario, didn't you? A. Yes.

Q. Can you . . . but before I ask you that question, you lived out in the neighborhood where McElroy lived, didn't you, during your married life? A. Yes.

Q. And, of course, you would know something about the amount of land which he was farming, didn't you? A. I know he was supposed to have a good big farm.

Q. Can you tell me what that means in that country, does it mean
10 1,000 or 10,000 acres? A. Oh I think he had two or three sections.

Q. And, of course, you know that at that particular time conditions were pretty good, were they not? A. Yes, I think so.

Q. Yes, you remember that, of course. And land values at that time were fairly high out in that area? A. Yes.

Q. And since that time. I am speaking now of since June, 1929, conditions have very greatly changed out in that area, haven't they? A. Yes.

Q. You know, of course, that the price of wheat has gone down?
A. Oh yes.

Q. The price of hogs, the price of all farm products have gone down?
20 A. Yes.

Q. Very greatly and as a result, Mrs. Begley, the values of farm lands have necessarily greatly depreciated also? A. Yes.

Q. Now you went to Ontario about the 26th of June. Well you say you started on the 26th of June? A. Yes.

Q. And there, I believe, you took treatments for your health which did you a great deal amount of good? A. I took treatments.

Q. And they did you a great deal of good? A. Well not very much.

Q. Not very much? A. No.

Q. Did not people tell you down there that you were looking very
30 much better as a result of some of these treatments, had improved very greatly, I mean some of your friends? A. I did not notice that I did.

Q. You do not know. Now I think Mr. McElroy wrote you a very short time before your return and made, what you considered a proposal of marriage to you? A. I did not think it was, I thought it was a joke.

Q. Was it couched in language appropriate for that purpose? A. For a proposal?

Q. For a proposal, yes. A. Well, he said he had two six-cylinder cars, a radio, a gramophone and all he lacked with a companion and he wanted to know what, would I consider being that.

Q. Most people would look upon that as a proposal I assume? A.
40 Well I took it as a joke. We were always joking.

Q. In any event you came back and he met you at the train? A. Yes.

Q. And I think he assisted you in getting a place, in the way of getting an apartment and that sort of business? A. Well he wrote and said he would.

Q. And when you got here he did assist you in getting an apart-

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ment? A. He showed me two that he had . . .

Q. That he had been out selecting for you? A. I told him I would look one up for myself.

Q. But he did assist you in whatever way a man can properly assist a lady in getting an apartment for you? A. Yes.

Q. Looked after your baggage and a few things like that? A. Yes.

Q. Now you arrived home, Mrs. Begley, you told my learned friend about the middle of December? A. Yes.

Q. And I think one of the first things you do is to make a visit to the Bank, that is to the Imperial Bank, which you did on December 20th, didn't you? A. Well I do not just remember the date. I know I was there but I cannot tell you just when. 10

Q. And I think you were also in the Bank on the 24th of December, Mrs. Begley? A. I might have been, I do not remember just . . .

Q. You do not remember it and I think you were also in the Bank on the 2nd of January, 1930, were you not? A. I cannot tell you what days I was there. I know I went down different times.

Q. It would be fair to say that in the period between the time of your return and the 2nd of January you were probably there three or four times? A. I guess I was. 20

Q. Yes, now I believe that is your custom, Mrs. Begley, when you go to the Bank on your business to take your Bank pass book with you? A. Usually.

Q. So it would be safe to say in accordance with your usual custom on those visits you made to the Bank you would have this Bank pass book No. 2 with you, would it not? A. I did not always, but usually.

Q. Yes, usually. You do that as a matter of fact, it is your ordinary practice? A. Yes.

Q. Now during any one, upon the occasion of any one or more of these visits did you have a conversation with Mr. Chambers, the Assistant Accountant, or at least, the Accountant of the Bank? A. Before this time? 30

Q. I say on any one of these three or more occasions you were in the Bank between the middle of December and the 2nd of January did you have any conversations with Mr. Chambers, the Accountant? A. I cannot remember that at all.

Q. But you may have had some? A. Well I do not remember at all, just at that time.

Q. You are not saying that you did not have any conversation with him? A. No I cannot say that.

Q. Did you discuss with Mr. Chambers the matter of this proposed \$1,400 loan? A. No. 40

Q. Now, Mrs. Begley, are you quite positive about that? A. I am quite positive I did not speak to anyone in the Bank.

Q. You are quite positive about that? A. Yes.

Q. You remember I examined you upon discovery in connection

with this matter, do you not? A. Yes.

Q. At 546 I asked you this question: "546. Q. Did you discuss with Mr. Chambers of the Imperial Bank the lending of \$1,400 to Mr. McElroy?" and your answer was: "Well, I don't remember it." Now this examination for discovery was held sometime in March last? A. Yes.

Q. And that is the statement that you made to me under oath at that time, would that be correct, Mrs. Begley? A. Well I cannot remember of speaking to him about it at all.

Q. So that that would be your answer, that you do not remember
10 about it? A. Yes.

Q. But you are not saying that it did not take place, are you? A. Well I do not think it did.

Q. You do not think it did? A. No.

Q. But you do not remember anything about it. Did Mr. Chambers at that time suggest to you that you should get security from McElroy?
A. No he did not.

Q. Did he suggest that at any time? A. No.

Q. You are quite positive about that? A. Yes.

Q. Now at question 1199: "Do you remember, Mrs. Begley, Mr.
20 Chambers telling you that you should get security from McElroy? A. Well, he might have, but I don't remember it. Mr. Moyer was doing my business. I went right to him." Now that was your statement on examination for discovery, do you wish to contradict that now? A. No, I do not know any different.

Q. What is that? A. No difference now.

Q. You have said to-day that Mr. Chambers had no conversation with you at any time regarding you getting security from McElroy? A. None that I can remember of.

Q. But on the 20th of March you said in answer to question 1199:
30 "Well, he might have, but I don't remember it." A. No I don't remember it.

Q. That is what you want to say now, not that Mr. Chambers did not have any conversation with you but rather that you do not remember?

THE COURT: What is the difference between the two statements?

MR. SHAW: She says there, she does not remember but there might be a possibility.

THE COURT: Of course, anything might happen.

MR. SHAW: Yes, quite right.

THE COURT: But she has said that she did not remember. She said
40 she did not think it happened, what could be clearer than that.

MR. SHAW: There is a lot of difference between not remembering, my Lord, and the thing never having happened, that is the only point.

THE COURT: I am bound to say if the thing had happened, it was an important matter and she would have remembered it.

MR. SHAW: Perhaps. There may be some evidence in connection with that.

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Q. Now, Mrs. Begley, on your return from Ontario, you did get your pass book marked up, didn't you? A. I expect I did, I do not remember just, it is quite awhile ago.

Q. Did you, Mrs. Begley, at this particular time, to the best of your recollections now make any particular inquiries from Chambers as to your Bank account? A. I did not make any, no.

Q. And he did not tell you anything about it, I am speaking about this week or so following your return? A. No.

Q. You told us that Mr. McElroy asked you for a loan of \$1,400 in your apartment? A. Yes. 10

Q. On New Year's Day or night? A. Night.

Q. And you gave him a cheque which was cashed the next day? A. Yes.

Q. Now do you recall any conversation with Chambers prior to the conversation that you have told us about in June before you went into the Hospital. I think you told my learned friend you had no conversation at all, that would be correct, would it? A. Yes, I had no conversation except just what passed . . .

Q. So it would be correct then, your statement now is that from the time of your return from Ontario until June of 1930 you had no conversation with Chambers about your financial affairs whatever? A. Well I could not just say to that. 20

Q. Well can you give me any idea as to any conversation you had, other than the one with regard to this \$8,500 cheque? A. Well I remember there was something said about that \$500.

Q. Can you tell me when that was, you are speaking now about what \$500 item? A. That Mr. Moyer had.

Q. You had a conversation with whom with respect to the Moyer item? A. That was with Mr. Chambers.

Q. It took place, of course, in the Bank? A. Yes. 30

Q. And at what time approximately? A. I cannot remember.

Q. Was it before your conversation with Chambers in June of 1930? A. I do not remember.

Q. You do not remember? A. No.

Q. Do you remember, Mrs. Begley, when this Moyer money was paid back? A. It was paid back right after.

Q. Do you remember the date? A. No.

Q. I mean approximately, give me the month, can you do that? Can you give me the year? Now there are only two or three years in question, 1929, 1930 and 1931? A. I think it was in 1930. 40

Q. By reference to the pass book could you tell me? A. I do not think it is down there.

Q. I shall look up for you 1930. Now, Mrs. Begley, I observe here an item of \$530 on the 14th of May as you will observe 1930. You observe that do you? A. Yes.

Q. That is the payment of the Moyer money or rather this repre-

sents the deposit of the Moyer money to your account, does it not?

THE COURT: The payment back of the Moyer money loaned? A. Yes, I guess it is.

MR. SHAW: So it would be fair to say on the 14th of May, 1930, the Moyer money was deposited in the Imperial Bank? A. Yes.

Q. Now we fix that date, now did you have any conversations with Chambers about the Moyer money? A. Well there was something said before by both Mr. Chambers and the Manager, Mr. Weaver.

10 Q. Well then the conversation must have been before the payment of the moneys back would it not? A. Yes.

Q. The moneys were paid back on the 14th of May, 1930, so sometime between your return from Ontario and the 14th of May, 1930, you had a talk with Mr. Chambers about the Moyer moneys, hadn't you? A. Yes.

Q. Now you told me, Mrs. Begley, on your Examination for Discovery, that you thought that was the end of February, 1930, would that be correct? A. Well I really do not remember just when it was, I cannot say.

Q. You do not remember now? A. No.

20 Q. Do you remember telling me on the Examination for Discovery that it was in February, 1930? A. I do not remember that, I do not remember the date.

Q. Well now you came in and asked Mr. Chambers about this item, didn't you? A. Well I remember speaking about it to him but I do not remember when.

Q. You would not be speaking about the \$530, you would be speaking about the \$500 that Moyer got, wouldn't you? A. Yes.

30 Q. I want you to refer to Exhibit "2" again and I observe an item, August 22nd, Moyer, \$500, now that is the item that you must have asked Mr. Chambers about, is it not? A. Yes.

Q. You saw that item there didn't you before you saw Chambers at all? A. No it was Mr. Chambers told me about that.

Q. Now Mr. Chambers told you about that and how did he come to tell you about it? A. We were talking about something and he told me, I do not know how.

Q. What is that? A. I do not know just how.

Q. Well now you knew before you saw Mr. Chambers at all that this \$500 item dated August 22nd was a deduction of \$500 from your account didn't you? A. I do not know, I do not know whether I did or not.

40 Q. What is that? A. I do not think I knew it until Mr. Chambers told me, we were looking over the books.

Q. You came into the Bank and you were looking over the books with Mr. Chambers, is that correct? A. I do not remember looking over it with him excepting the one time.

Q. You are talking about the \$8,500 item? A. Yes.

Q. But, Mrs. Begley, you told me a long story on the Examination

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for Discovery of how the end of February you had gone in there and you and Mr. Chambers had discussed this particular item? A. Probably I did, I have forgotten about it.

Q. Now you think that you went in there and you were discussing various items, going over your Bank book as you say with Mr. Chambers?

A. Yes.

Q. And this was one of the items which came up at that time? The Moyer item, wasn't it? A. Yes.

Q. And then Mr. Chambers went down and got the cheques didn't he, he got this cheque, the Moyer cheque issued by McElroy? A. He did not get any cheque for me. 10

Q. What is that? A. I do not think he got any cheque for me.

Q. Are you quite sure about that? A. I do not remember any cheque.

Q. You see it was the result of your efforts at this time that you got in touch with McElroy and within a very short time Moyer paid the \$530, wasn't it? A. Yes, Mr. Weaver said he would just like to get something on him and take his gown from him.

Q. Yes, so then Mr. Weaver, you must have had some conversation with Mr. Weaver about the item? A. Mr. Weaver came in while we were talking. 20

Q. While you and Chambers were talking? A. Yes.

Q. Now, Mrs. Begley, did not Mr. Chambers bring up this identical cheque, because he would not know anything about it, he would have to go and look it up and find out what it was, wouldn't he? A. Well he had the Bank book.

Q. How could he tell what a particular item was, he did not know any more than you did except it was a \$500 deduction from your account. Is it not a fact he went and got the Moyer cheque? The cheque issued by McElroy in favor of Moyer? A. Yes, he might have. 30

Q. Yes, and then, of course, he would be able to tell you that that was a cheque issued by McElroy and then it was that Weaver said that he would like to get after him and get his gown away from him? A. Yes.

Q. Of course, you understood what he meant by that, he wanted to have him disbarred? Or something like that? A. Yes.

Q. Now you knew, of course, Mrs. Begley, that all the items in an account must be either a credit item or a charge item? A. Yes.

Q. You knew of course, when you saw this Moyer item that was a charge item against your account? A. Well I didn't at first.

Q. In any event Mr. Chambers would make that very clear to you when he presented the cheque? A. He may have done. 40

Q. What is that? A. I knew when he told me, yes.

Q. Yes, you knew when he told you. Now can you tell me, Mrs. Begley, whether or not on this particular occasion we are speaking about all these cheques were not brought up and examined by you and Mr. Chambers at this time or do you recall that? A. No, I do not remember.

Q. You do not remember that? A. No.

Q. Do you remember that you were in the Bank a considerable period of time on this particular occasion? That it was a matter of some 15 or 20 minutes? A. Yes.

Q. And do you remember a girl going away and getting the cheques, the Savings Bank female employee, being sent away by Mr. Chambers to get the particular cheques on this account that had been issued? A. I do not remember her doing it.

Q. You will be fair enough to say that it might have happened?

10 A. Yes, it might.

Q. Now, Mrs. Begley, you were in the Bank on a considerable number of occasions between the 2nd of January and the time of your departure for Spokane, your second visit to Spokane, let me perhaps outline it in terms of dates, between the 2nd of January, 1930, and June 18th, 1930, when you left for Spokane? A. Yes.

Q. I think you are quite satisfied are you not, Mrs. Begley, that you were in the Bank on the 20th of December, 1929, that is from the records that you have seen? A. That I was in the Bank?

20 Q. Yes. From the records that you have seen? A. Well I know I was in different times, I do not remember the date.

Q. And can you tell me now after having seen these records on the Examination for Discovery as to whether or not you were there on the 20th of December, on the 24th of December, 1924, and on the 2nd of January, 1930? A. Well, I do not remember being there, I know I was in different times.

30 Q. I want to call your attention for a few moments, Mrs. Begley, to your Bank pass book again. You see here is the year we are dealing with, 1929, and I notice on December 20th there is a charge against your account of \$25.00, do you remember being in there to get that money? A. This is the 20th?

Q. The 20th of December, 1929.

THE COURT: Who got that money?

MR. SHAW: Yes, who drew out that money. Let me present to you this cheque? A. That is my signature.

Q. That is your cheque dated December 20th, 1929? A. Yes.

Q. It shows you got \$20 cash? A. Yes.

Q. So obviously you must have been in the Bank on that date? A. Yes.

40 Q. Now on December 24th I observe a sum of \$53.00. Do you remember being in the Bank, that is the 1929 we are still dealing with, do you remember being in the Bank on that occasion? A. Well I do not remember just the date it was.

Q. Well that would probably be correct would it? A. Yes.

Q. And then on January 2nd I observe that you issued a cheque for cash, is that your cheque? A. Yes.

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Q. You will observe it is January 2nd, 1930. You drew out that day \$35.00? A. Yes.

Q. So obviously you were in the Bank on that date? A. Yes.

Q. Mrs. Begley, you deposited on the 7th of January \$5.00 to your trust account, do you remember that, that is your signature? A. Well that was my daughter's savings.

Q. It is in your name in trust? A. Yes.

Q. You have another account in the Bank besides your own personal account? A. Yes.

Q. It is merely in your name in trust for your daughter? A. She 10 was not old enough to have it in her own name.

Q. So that you were in the Bank on the 7th of January as well, that is your writing is it not? A. Yes.

Q. Now just by reference to that cheque, can you tell me whether or not you were in the Bank on the 5th of February, 1930? A. Well I must be by that cheque?

Q. That shows it very clearly doesn't it? A. Yes.

THE COURT: There are no other endorsements on the back of these cheques are there?

MR. SHAW: No, my Lord, they are all payable in cash. 20

THE COURT: A cheque payable to cash might not necessarily be drawn in that Bank, it would not necessarily be paid in that Bank, it might have been paid in some other Bank.

MR. SHAW: It does not show any Clearing House Stamp, my Lord.

Q. As a matter of fact these cheques that are payable to cash would be on occasions that you would go in and get money out yourself, draw it out personally? A. Yes.

Q. Now perhaps you would be good enough to look at this cheque also. It will help to refresh your memory, that is your cheque dated the 13th of February, 1930, is it not? A. Yes. 30

Q. And that is a cheque for cash too? A. Yes.

Q. So that clearly you were in the Bank on that date, is that not true? A. Yes.

Q. And then, Mrs. Begley, you had a safety deposit box in the Imperial Bank? A. Yes.

Q. And you frequently would go into that particular box to examine the contents and so on? A. Yes.

Q. For your own business? A. Yes.

Q. You did on a number of occasions I presume between January and July, 1930? A. I was in it I know a few times. 40

Q. That deposit box is, of course, a deposit box which could be opened only by yourself?

Q. I see a signature by you for entrance to this deposit box at 1:40 P.M. on the 14th of February, 1930, so that clearly you would be there at that time, that is your own signature, is it not? A. Yes.

Q. So you would be there on that date in the Bank? A. Yes.

Q. That is your signature, Mrs. Begley, at the bottom? A. Yes.

Q. And that represents a deposit by you on March 1st, 1930, of \$270.20, doesn't it? A. Yes.

Q. So that you were clearly in the Bank on the 1st of March, 1930?
A. Yes.

Q. Now perhaps you can tell me by looking at these, at this document as to whether or not you were in the Bank on the 13th of March, 1930? A. Yes, I was.

Q. That is very clear? A. Yes.

10 Q. Can you tell me, Mrs. Begley, whether or not by reference to this document you were in the Bank on the 27th of March, 1930? A. Yes, I must have been.

Q. There is no manner of doubt about that? A. No.

Q. Can you tell me whether or not you were in the Bank on April 9th, 1930? A. Yes.

Q. That is very clear? A. Yes.

Q. Can you tell me whether or not you were in the Bank on the 13th of May, 1930? A. Yes.

Q. There is no doubt about that? A. No.

20 Q. Now here is a deposit slip, Mrs. Begley, is that your signature at the top? A. Yes.

Q. And that represents the deposit of \$530. That will be the Moyer money will it not? A. Yes.

Q. So you deposited the money yourself? A. Yes.

Q. So that you were in the Bank on that particular date too? A. Yes.

Q. Which is the 14th of May, 1930. And then can you tell me whether or not you were in the Bank on the 22nd of May, 1930? A. Yes.

Q. You are quite sure about that by reference to this document?

A. Yes.

30 Q. And then I ask you to look at a cheque dated May 30th, 1930, can you tell me whether or not you were in the Bank on that particular date? A. Yes.

Q. That is the 30th of May, 1930. I am not going to bother putting these in, my Lord. It will simply encumber the record and the dates are all admitted now. Can you tell me whether you were in the Bank on the 9th of July, 1930? A. Yes.

Q. That is very clear; were you in the Bank on the 31st of August, 1930? A. Yes.

40 A. Yes sir.

Q. Can you tell me whether you were in the Bank on the 4th of September, 1930? A. Yes.

Q. You are certain of that because of the cheque I produce to you?
A. Yes.

Q. Can you tell me whether you were in the Bank on the 21st of September, 1930? A. Yes.

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Q. You are certain of that by looking at this cheque? A. Yes.

Q. Can you tell me whether you were in the Bank on the 2nd of October, 1930, in examining this cheque I present to you? A. Yes.

Q. Now, Mrs. Begley, in addition to the times I have specifically drawn your attention to there is no manner of doubt in your mind that in that period between January and June you may have been in the Bank on a number of additional occasions? A. Yes.

Q. And you probably were? A. Yes.

Q. Now I come, Mrs. Begley, to your conversation with Chambers, which you recall, about the \$8,500. You, I gather from your evidence, 10 have seen the item of \$8,500 in your Bank book? A. Yes.

Q. And you discovered that it was a charge item instead of it being a credit item? A. Yes, that is what I thought at first.

Q. Well you thought at first that it was a credit item? A. Yes.

Q. But you made up your mind by looking at it I suppose that it was a charge item? A. When I went to get out money I saw that it was.

Q. The occasion for you finding out about this was when you found that you did not have as much money as you thought? A. Yes.

Q. And so then you saw that the \$8,500 had been charged instead of being a credit to your account? A. Yes. 20

Q. And then you went to Mr. Chambers about it, didn't you, I say you spoke to Mr. Chambers about it? A. Yes, Mr. Chambers came to me.

Q. And you told him in introducing the subject, "I have just noticed where there is \$8,500 I have taken for a credit instead of it being a debit." That was the language that you used to him wasn't it? A. I do not just remember what I said.

Q. That was the effect of it? A. I told him I thought I had more money in my Bank book than I had.

Q. And didn't you tell him that you had taken debits for the credits? A. Yes. 30

Q. And you found out you were being charged with \$8,500? A. I do not remember saying that.

Q. Probably this will refresh your memory, Mrs. Begley, here was your statement of that conversation on the Examination for Discovery, question 573: "Q. What was your conversation with Mr. Chambers? A. He saw me looking over the Bank book and looking kind of worried, and he asked me, 'Was there anything wrong?' and I said, 'I thought I had lots more money.' I said, 'I have just noticed where there is \$8,500, I have taken the debits for the credits.'" A. Yes.

Q. That is a correct statement of your conversation with him? A. 40 Yes.

Q. That you had taken the debits for the credits? And so Mr. Chambers spoke to you and told you about the McElroy note, did he? A. Yes.

Q. And you understood Mr. Chambers to say that McElroy had used \$4,500 of your money? A. Yes, that is what I thought he said.

- Q. You are clearly mistaken about that aren't you? A. Yes.
- Q. You must be mistaken? A. Yes.
- Q. There would be no reason in the world why Mr. Chambers would say \$4,500? A. I just misunderstood him.
- Q. You are not blaming Mr. Chambers for that? A. No.
- Q. You probably misunderstood him? A. Yes.
- Q. Then Mr. Chambers, I believe, went and got the note, didn't he?
- A. Yes.
- Q. And he presented you with the note? A. No he just showed me
10 the note.
- Q. He told you that McElroy had used your money, I suppose, to the extent of the note? A. Yes.
- Q. And what was the amount of the note, Mrs. Begley? A. I thought it was \$4,500, I did not read it, I just took Mr. Chambers' word.
- Q. You had just misunderstood him? A. Yes.
- Q. How would that satisfy your mind about the \$8,500, because you went in there worrying about \$8,500? A. Well . . .
- A. THE COURT: I do not think she said she went in worrying about \$8,500, Mr. Shaw?
- 20 Q. MR. SHAW: Perhaps I should not said gone in there worried about it. She said, "I have taken the debits for the credits and I notice where there is \$8,500 I have taken the debits for the credits." Perhaps if I could get that note, Mr. Chambers showed you this particular note?
- A. He showed me the note, I cannot say . . .
- Q. You cannot say whether that is the note or not? A. No I cannot. I did not look at it.
- Q. You did not bother looking at it? A. No I just took his word.
- Q. Well that would not explain, Mrs. Begley, the question that you were interested in and that was \$8,500. I mean if you came away thinking that McElroy had \$4,500 that would not explain the \$8,500, would it?
- 30 A. No.
- Q. Is it not altogether likely that there must have been something else said about it? A. There was nothing said, I walked right out.
- Q. You walked right out? A. Yes.
- Q. And that would be you say just before you went to the Hospital in June, 1930? A. Yes.
- Q. And then you told my learned friend you called in Mr. Moyer, you called Mr. Moyer to the Hospital I think you said? A. Yes.
- Q. And then you called in Mr. McElroy after you came back from
40 the Hospital? A. Yes.
- Q. And you had a conversation with Mr. McElroy about it? A. No we did not get a chance to, when he came back the house was full.
- Q. But McElroy did tell you that the money had, that he had paid the money to the Imperial Bank? A. He told me that when I was in the Hospital.
- Q. I think it was at this particular time that McElroy told you

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that you did not need to worry about the amount, that he was going to pay it that Fall? A. Yes.

Q. You were quite satisfied with that, were you, I mean you thought he would pay it? A. I do not know as I was just satisfied. Well I thought he would.

Q. I asked you two questions. But you did think he would pay it that Fall? A. Yes.

Q. You knew that that particular year he had some 1,600 acres in wheat? A. Yes.

Q. And of course, the prospects at that particular time were favor- 10
able, I mean the crop prospects were favorable? A. Yes.

Q. This conversation that you had with McElroy I believe, Mrs. Begley, was some four or five days before you left for Spokane, of course, you told me you had one in the Hospital but you had another one four or five days before you left for Spokane? A. I have forgotten.

Q. In any event you knew at that time that McElroy had taken your money or some of your money? A. Yes.

Q. There is no manner of question about that at all is there? A. No.

Q. And that was the occasion on which you went with him to Spokane or, at least, he drove you down to Spokane? A. Yes. 20

Q. His car I suppose? A. Yes.

Q. And then I believe you stayed there for a month or so, didn't you? A. Yes.

Q. But he returned very shortly? A. Three days.

Q. In a matter of three days? A. Yes.

Q. You mean he stayed there three days? A. Yes.

Q. During his stay there, Mrs. McElroy, pardon me, Mrs. Begley, he was entertained by I suppose your friends? A. My sister.

Q. And were you staying with her too? A. Yes.

Q. Now on your return from Spokane you saw Mr. McElroy very 30
shortly? A. Not for quite a little while.

Q. When was the first occasion on which you saw him, Mrs. Begley? About when? Do you remember the date? A. It was just before I changed Banks.

Q. Yes, just before you changed Banks. I think you told my learned friend if I remember correctly it was about the 1st of September you changed your Bank, you went from the Imperial Bank to the Bank of Montreal? A. Yes.

MR. NOLAN: The 10th? A. Yes, I think it was the 10th.

MR. SHAW: At that time you went to the Imperial Bank . . . 40

THE COURT: I suppose you will be some further time?

MR. SHAW: Yes, my Lord.

THE COURT: The Court will adjourn until 10 o'clock. Before we adjourn, Gentlemen of the Jury, I might remind you again of what I said before, do not talk to any person other than among yourselves about this case and do not let any person discuss it with you. Court will now ad-

journal until to-morrow morning at 10 o'clock.

TUESDAY, 24th OCTOBER, 1933, A.M. SESSION.

Q. MR. SHAW: Now I want to go back for a few moments this morning, Mrs. Begley, after your conversation with Mr. Chambers you went to the Hospital? A. Yes.

Q. And then on account of what Mr. Chambers told you you called on Mr. Moyer, didn't you? A. I called Mr. Moyer up on the 'phone.

Q. And then you also had a conversation with Mr. McElroy in the Hospital? A. Yes.

10 Q. And after your return from the Hospital? A. Sometime after.

Q. Sometime before your going to Spokane in July of 1930? A. Yes.

Q. Now as a result of the information which you got you knew that McElroy had taken some of your money and used it to pay his debt to the Bank, didn't you? A. Yes.

Q. You knew that before you took this trip to Spokane with Mr. McElroy? A. Yes.

Q. Now you knew, of course, at that time that that was a very wrong thing for Mr. McElroy to do, didn't you? A. For to take the money?

20 Q. Yes? A. Yes.

Q. You knew at that time, of course, it was a very wrong thing for the Bank to have used the money in that particular way didn't you? A. I did not know that they should not, I did not know about that.

Q. You did not know about that? A. No.

Q. Didn't you think it was improper for them at that time to have taken the money without any instructions from you to McElroy and used it for paying his indebtedness to the Bank? A. Well I do not remember just what I did think about it.

30 Q. You would have thought there was something wrong about it anyway, put it that way? A. Yes.

Q. Didn't you? A. Yes.

Q. In any event regardless of what you thought about it you were satisfied from the conditions generally that McElroy would pay it back? A. I thought he would.

Q. And that he would pay it back that Fall? A. He said so.

Q. Well you must have been satisfied weren't you that he would do it? A. I thought he would all right.

Q. And so you were prepared to wait until the crop season was over? A. Yes.

40 Q. Now this trip to Spokane by Mr. McElroy was not on business of his own, he was rather just taking you there? A. He told me in the first place he had a sister in Portland and he would drive my daughter and I to Spokane.

Q. He did not go to Portland did he? A. No.

Q. I think as you told us yesterday he and you were both entertained by your sister in Spokane? A. Yes.

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Q. Now how many days did it take you to drive to Spokane, two I suppose or more? A. We left Saturday morning and got there 12 o'clock Sunday night.

Q. And it took you two days to drive to Spokane? A. Yes.

Q. You were very friendly with Mr. McElroy, were you not? A. We were good enough friends, I had a pillow and was lying down most of the time.

Q. You and he would be sitting, of course, in the front seat and the two children in the back? A. For a little while.

Q. I assume you would have ample opportunity to discuss with him all your business transactions wouldn't you? A. We did not discuss them, not then. 10

Q. Did you discuss them during those two days at all? A. We had a row in Spokane.

Q. I am not talking about Spokane, I am talking about on the way down to Spokane? A. No, because we had the children in the seat with us most of the way because it was so hot they could not sit out in the rumble seat.

Q. So that you were all in the front seat? A. Yes.

Q. All the time? A. Most of the time. 20

Q. During the time the children were in the rumble seat did you have an opportunity of discussing with Mr. McElroy your business affairs or did you discuss them? A. Well I suppose we could have but we did not.

Q. Now you had a row you say with Mr. McElroy in Spokane? A. Yes.

Q. And was that the reason he came home so hurriedly is it? A. I do not know.

Q. Or after such a short stay? A. I do not know.

Q. What did you row about, this particular business or something else? A. Yes. 30

Q. Yes, that particular business. Did you make up this difficulty before he left? A. Yes.

Q. So all was peace again before he left? A. Yes.

Q. Now you returned I think you said about, was it the first of September approximately? A. No the middle of August.

Q. You saw McElroy then did you, about the 10th of September? A. Yes.

Q. Now was that the occasion on which he brought you the money to pay his \$1,400 note? A. He paid \$400 of it in July and he brought the One thousand dollars on the 10th. 40

Q. He had already paid you some and he brought the balance on the 10th of September? A. Yes.

Q. And I believe drove you down to the Bank so you could deposit it in the Bank? A. Yes.

Q. What Bank did you deposit it in? A. The Montreal.

Q. So that it is obvious by the 10th of September you had changed your Bank from the Imperial Bank to the Bank of Montreal? A. Yes.

Q. And in that connection you had taken your papers from the Imperial Bank and deposited them also in the Bank of Montreal? A. Not for sometime after.

Q. Well when was it? A. I think it was between Christmas and New Year's, the last of the year.

Q. Between Christmas and New Year's? A. Sometime around there, it was near the last of the year.

10 Q. Would it be before the end of October, 1930? A. Well I thought it was between Christmas and New Year's.

Q. I think you told me on Examination for Discovery, if I recollect correctly, it would be before the end of October, 1930. Would that be right, do you know? A. Well I do not remember.

20 Q. In any event, perhaps just to convince you on that matter at question 1287 you were asked: "1287. Q. Yes, this was taken . . . this note Exhibit 'P' was taken to the Bank of Montreal before the end of October, 1930? A. Yes." Now that was your recollection on the Examination for Discovery, would that be correct do you think? A. Well I really could not say.

Q. Well now you had gone, I suppose, this note was in your safety deposit box was it in the Imperial Bank? A. Which note.

Q. We are talking now about the note, the \$8,500 note? A. I never had it in any except the Montreal Bank.

Q. You and I are speaking about two different notes, Mrs. Begley. I am speaking about the first note, which Mr. Chambers showed you at the Imperial Bank? A. I never took that note you know.

Q. Did you ever take it out of the Imperial Bank? A. I think that I took that one to Mr. Moyer, yes.

30 Q. That is the one I am talking about and that would be according to your Examination for Discovery sometime before the end of October, 1930, would it not? A. I guess it was, I cannot remember.

Q. All right. Well you remember getting the note anyway don't you, from the Bank? A. Yes.

Q. I think you told us you got it from Mr. Mackie? A. I did, yes.

Q. And you took it over to the Bank of Montreal? A. Yes.

Q. And you deposited it there in your safety deposit box didn't you?

Q. How long did you keep it there?

40 THE COURT: Did you move it again or is it there yet? A. No I know I got it but just when it was I have forgotten.

Q. MR. SHAW: Give us some idea, Mrs. Begley, we have got it over to the Bank of Montreal at the end of October, 1930. Now when did it get out of there? A. I cannot remember.

Q. Can you give me any idea at all? A. No I cannot.

Q. You cannot give me any idea, you do not know whether it was there for a day, a month or a year, do you? A. Oh I think when I came

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back from Victoria is when I went and got it and took it to Mr. Moyer.

Q. As a matter of fact you got a renewal note for this indebtedness on the 1st of August, 1930, didn't you? A. Yes.

Q. Have you got that note? A. Mr. Taylor has it.

Q. What is this document, Mrs. Begley? A. Well that is Mr. McElroy's note.

Q. That is the note and what is the date of it? A. August 1st.

Q. 1931? A. Yes.

Q. Now that comes out of the possession of your lawyers so you must have given it to them? A. I gave it to them. 10

MR. SHAW: I am going to ask to have this marked as an exhibit.

(Document in question is now marked Exhibit "23".)

Q. This is a note of \$9,419.11, Calgary, August 1st, 1931. One year after date I promise to pay to the order of M. V. Begley \$9,419.11 at the Royal Bank of Canada, Calgary, Alberta, value received with interest at the rate of six per cent. per annum as well after as before maturity, J. W. McElroy. In whose handwriting is that note, Mrs. Begley, do you observe? A. Mr. McElroy's.

Q. That is Mr. McElroy's handwriting? A. Yes.

Q. Now do you remember the occasion on which you got that note? A. That is when I got, before I left for Victoria. 20

Q. And the date mentioned is the date that it was actually delivered to you? A. Yes, 1931.

Q. Now I believe, Mrs. Begley, that you went the day before to the Bank of Montreal and got out the \$8,500 note, did you not? A. Well I guess I did.

Q. You got it out at the same time you got your ticket for Victoria? A. Yes.

Q. And then Mr. McElroy, according to arrangement came up and saw you on August 1st? A. Yes, he was to be there at ten o'clock and he came about twenty minutes to 12. 30

Q. And then you figured up, you and he figured up the amount that was due on that note, that is the \$8,500 note? A. Well he did, I was busy getting ready because the Bank closed at 12 o'clock.

Q. In any event he figured it up on paper that was provided in your apartment? A. Yes.

THE COURT: I did not hear what she said.

MR. NOLAN: Speak out because His Lordship and the Gentlemen of the Jury do not hear you.

Q. THE COURT: What did you say about renewing the note, how did you come to meet Mr. McElroy? A. Mr. McElroy was to be in at ten o'clock Saturday morning to have the note fixed up and he did not come until just about a quarter to 12 and we had to rush then to get down to get it into the Bank. I did not take time to look at it until I was putting it in the deposit box and I noticed then it was Nine thousand dollars and something . . . 40

Q. MR. SHAW: Yes, now you had told McElroy before this that you wanted to get this note renewed hadn't you, it was your suggestion that you should get a renewal of this note? A. Yes.

Q. And so he came up and the amount was figured out in your apartment, he gave you this new note which is now Exhibit 23 to you and you gave him back the \$8,500 note, is that not right? A. Yes.

Q. And then he drove you down to the Bank so that you could put in the Bank the \$9,400 note which you had, which he had just given to you? A. Yes.

10 Q. I notice that the original note for \$8,500 was with interest at seven per cent. I believe there was an arrangement by which that was to be reduced to six per cent.? A. Yes, he asked me, he said you are only getting six per cent. from others why do I have to pay you seven? I said, "You pay me up in September and you can have it for six too."

Q. The understanding was that he was to pay, although the note was taken for a year, he was to pay as much as he could or all of it if possible, or all of it out of that year's crop? A. Yes.

Q. Or from any other source I suppose? A. Yes.

20 Q. You say you put the \$9,400 note in the Bank of Montreal? A. Yes.

Q. Now then I believe, Mrs. Begley, that you went to Victoria? A. Yes.

Q. And you stayed there for what length of time? A. A month.

Q. On your return did you see Mr. McElroy? A. Not for sometime I did not.

Q. Beg pardon, I did not catch your answer? A. I did not see him for a little while after I came back.

Q. Well shortly after you came back? A. Yes.

30 Q. Did you discuss with him the matter of getting security for this indebtedness at that time? A. Yes.

Q. We are talking about 1931? A. Yes, I did.

Q. There was something wrong with the crop that year, wasn't there? A. A poor price or something.

Q. It was either a failure or hail or poor price or something? A. Yes, something I do not know what it was.

Q. So you wanted security? A. Yes.

Q. Then I believe, Mrs. Begley, at this time we are speaking about, August or September, 1931, you went to your solicitor? A. Yes.

40 Q. And he, of course, would at once ask you for the note, wouldn't he? A. Yes.

Q. So that . . .

THE COURT: Which solicitors did you go to at that time? A. Mr. Moyer.

Q. MR. SHAW: You went to Mr. Moyer? A. Yes.

Q. You took the note I assume then down to Mr. Moyer, at that time? A. I showed it to the Bank Manager first.

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Q. I am not concerned with him, I am talking about Mr. Moyer?
A. He told me to take it to Mr. Moyer.

Q. This was in the Fall of 1931? A. Yes.

Q. Well now you had frequent communications with your solicitor
I suppose wanting to get something down or get some security in con-
nection with the matter? A. Yes, I did.

Q. Now this note remained I assumed in his possession, in the pos-
session of your lawyer? A. Yes.

Q. From the Fall of 1931 until what time? Well when did you get
it back from him, put it that way? A. Well I do not remember of hav- 10
ing it back at all.

Q. It may be that your solicitor got it direct from Mr. Moyer is
that right? A. From Mr. Moyer?

Q. Yes? A. He was my solicitor at that time.

Q. I know but what I want to know is when did it leave Mr. Moyer's
hands? Did you take it yourself or did somebody else take it away from
Mr. Moyer? We have it here to-day you see?

THE COURT: Mr. Nolan has it now. A. Well I took it to Mr. May-
hood.

Q. MR. SHAW: Yes, that would be in the Fall of 1932, wouldn't it? 20
A. Yes, I think so.

Q. So that what must have happened is you went up to Moyer's
office in the Fall of 1932 and got your papers, went first to Mr. Mayhood
and then Mr. Mayhood gave you back your papers and you went up to
Mr. Taylor's office, is that right? A. Yes.

Q. So that it must be that for a year Mr. Moyer was engaged on
your behalf in connection with the collection of this particular note? A.
Yes, he was trying to get protection for me.

Q. And trying to get protection, you mean by getting protection
getting security? A. Getting security, yes. 30

Q. THE COURT: You said a moment ago that before you gave that
note to Mr. Moyer, you showed it to the Manager of the Bank, the Man-
ager of what Bank? A. The Bank of Montreal.

Q. MR. SHAW: In connection with getting security you know, of
course, that Mr. McElroy had sold some of his lands to a fellow by the
name of Halverson? A. Yes.

Q. In that period? A. Yes.

Q. You wanted to get security on that particular Agreement of Sale,
didn't you? A. Well yes, or anything I could get.

Q. And then you so instructed your solicitor I suppose? A. Yes. 40

Q. Were any arrangements made for the getting of any security to
your knowledge? A. I could not get anything.

Q. Were any papers drawn up in connection with it by your solici-
tor? A. They was supposed to be. They kept at it for months, I kept
going but they were never made out.

Q. Are you sure about that, Mrs. Begley? A. Well they told me

since that they were but I never knew it.

Q. Did your solicitors draw up any papers on your behalf do you know for security? I mean in that period of the year we are discussing?

A. I did not see any.

Q. In any event you and McElroy were up in Moyer's office on a number of occasions in connection with this matter of getting security were you not? A. I remember being there a couple of times.

Q. You were there when Mr. McElroy was there? A. Yes.

Q. And discussions took place between you? A. Yes.

10 Q. As to getting security? A. Yes.

Q. But so far as you know you, at least, executed no documents?
A. No.

Q. You do not know whether McElroy did or not? A. I do not know.

Q. Now you heard, of course, many people suggesting to you that you had lent McElroy money?

THE COURT: What is that?

Q. MR. SHAW: You heard suggestions from various people that you had lent McElroy money at or about the times we mentioned, this last year

20 I mean? A. I had heard it yes.

Q. You had, you said nothing about it? I mean you thought it was none of their business? A. I thought it was none of their business, I did not say anything.

Q. Your reason for keeping quiet as you told me was you wanted to shield McElroy? A. Well I did not think it was anybody's business, I did not say anything about it.

Q. More than that, didn't you want to shield McElroy? A. Well I do not know.

THE COURT: Shield him in what way?

30 Q. MR. SHAW: Protect him I suppose in some way or other, I do not know what you meant by it, it is your own language on the Examination for Discovery. You can tell us what you meant?

THE COURT: Mr. Shaw, you cannot do that, you know that yourself. If you want to examine her on her discovery you must confront her with the specific question she was asked and her answer.

MR. SHAW: I was asking her as to whether or not in keeping quiet in these matters that she was attempting to shield McElroy that is the question I am asking first.

THE COURT: You also said she had said this on discovery.

40 MR. SHAW: I will bring that up in a moment, I will get her answer to this question first.

THE COURT: I think having said that you should read to her her discovery that you refer to.

MR. SHAW: Very well I will do that. Question 1383 and the answer.
"1383. Q. So you were telling these lies for the purpose of shielding McElroy, is that what you meant by that?"

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A. Well, it looks that way."

THE COURT: I think you will have to go back further than that.

MR. SHAW: All right, I do not know just how far I will have to go back.

THE COURT: You will have to go back so it will be intelligible to the Jury.

MR. SHAW: It involves a particular document and perhaps I can put that in. That is the only basis upon which I can relate it at all.

Q. Mrs. Begley, I show you this document, what is that, is that your signature? A. Yes. 10

Q. That is a letter written by you to McElroy is it not? A. Yes.

Q. Dated Calgary, January 13th, 1931? A. Yes.

Q. MR. SHAW: I am going to ask to have this letter put in.

(Document in question was then marked Exhibit "24" and was read to the Jury by Mr. Shaw.)

Q. Now in connection with that communication in your Examination for Discovery I asked you at question 1383: "1383. Q. So you were telling these lies for the purpose of shielding McElroy, is that what you ment by that. A. Well, it looks that way." You still agree with that? A. Yes. It was not just meant in those ways but I could not just explain how it was. 20

Q. Now, Mrs. Begley, had you developed any affection at any time for Mr. McElroy? A. I did not.

Q. At no time? A. No.

Q. During your visit to the East did you develop any affection for him at all? A. I did not.

Q. At no time? A. No.

Q. During your visit to the East did you develop any affection for him at all? A. I did not.

Q. Nor before? A. No. 30

Q. And nor in any other time when you were absent from Calgary? A. No.

Q. Or in Calgary? A. I always liked Mr. McElroy as a friend but that is all.

Q. There was no question of any love affair developing or anything of that kind between you and Mr. McElroy? A. We often joked in letters about things. I do not think either one of us took it serious.

Q. You did write a considerable number of letters to Mr. McElroy? A. We corresponded all the time.

Q. You mean by that all the time from when? A. From the Spring. 40

Q. From the Spring of what? Did you say Spring? A. Any time I was away and several notes from Calgary here.

Q. You say that during this particular time there was no love developing between you and Mr. McElroy whatsoever? A. Not that you could call love.

Q. Which? A. I would not call it love.

Q. You would not call it love? A. No.

Q. Well perhaps you would be good enough to tell us what you would call it. A. Well I liked him as a friend. We had been good friends for over thirty years and his wife was one of my most intimate friends always and the four of us had always gone around together a great deal.

Q. You are quite positive there was no suggestion of anything other than just mere friendship? A. That is all there was between us.

Q. I think you told me, perhaps you did not, his wife died I think in 1919, didn't she? A. Well I have forgotten what date.

10 Q. It was about that time? A. Yes.

Q. And he has been a widower ever since? A. Yes, as far as I know.

Q. Now I want to ask you, Mrs. Begley, I think perhaps, my Lord, in fairness to all parties concerned, perhaps all these letters should go in. I do not think it is quite the proper thing to put one or two in or anything of that kind. I think they should all go in.

THE COURT: If you are going to put them in they will all have to be read to the Jury.

MR. SHAW: Yes, I will try to read them as rapidly as I can, sir.

20 MR. NOLAN: My only point in rising is that there are many many of them and while, I do not for a moment suggest I can object to any of them going in, because they are all written by Mrs. Begley unless it be on the ground that they have nothing to do with the matters in this lawsuit and it seems to me unfortunate that all of our time should be taken up in putting in this mass of correspondence unless there is something in these letters referring to these matters that brought about this litigation. If there is, of course, these letters are highly relevant and perhaps your Lordship and the Jury should hear them. But for the rest what difference does it make, all this correspondence. I know on discovery it took

30 a couple of days to go through them.

MR. SHAW: Oh no I do not think it will take quite that long. I do want to indicate . . .

THE COURT: Do you want to put in the irrelevant letters as well as the relevant ones?

MR. SHAW: The purpose of putting them in, my Lord, is to show the actual relationship between these two parties and consequently to do that I think it is only fair that all should be put in whether they might appear to have any particular relationship to this lawsuit or not. You see anything that involves her relationship with him will also involve her course

40 of conduct in connection with this particular matter.

THE COURT: I do not think I quite follow you.

MR. SHAW: Well the relationship between Mrs. Begley and McElroy is a matter of first importance in determining the reasons for her conduct in, as we suggest, adopting and ratifying the transaction of which complaint is now made. This correspondence will I think assist the Court and Jury materially in determining that particular question.

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THE COURT: I do not think I will stop you from putting them in if you want to put them in, if you think they should go in. I do not see yet what they have to do with it but if you wish to put them in all right.

MR. SHAW: Very well, sir.

Q. Now perhaps, Mrs. Begley, for the purpose of simplifying matters I think perhaps the quickest way would be for you to indicate whether or not these letters are letters written by you to McElroy? Just by glancing at the signature you will be able to tell. I think they are in order.

THE COURT: Have you submitted these on Examination for Discovery?

MR. SHAW: I have.

THE COURT: She will have admitted them. You will know what letters are admitted as being hers?

MR. SHAW: I think they are all admitted as being hers.

THE COURT: Why not go on and read them?

MR. NOLAN: As far as proof is concerned they are clearly letters written by Mrs. Begley but my only anxiety is not to have this record encumbered with this material unless my learned friend can show your Lordship that it has something to do with the point at issue?

THE COURT: The difficulty that a Court meets in deciding on the relevancy of a thing is this, of course, as you know that at this stage it would look perhaps that it was not relevant at all but at some other stage it may appear it would be quite relevant. So the Court would naturally hesitate about rejecting any letters of one of the parties on the ground of irrelevancy. I think I will let them all in.

MR. SHAW: As a matter of fact I think I can probably read them quickly. I have them typewritten, my learned friend can check up on that just to see I read them correctly. There are not so very many after all. Only some forty odd.

THE COURT: Well the sooner we get at them the better. The sooner we will get through.

MR. SHAW: I tender these group of letters.

THE COURT: You go on and read them and we will mark them as you read them, mark each letter.

(Letter dated Spokane, January 30th, 1929, is now marked Exhibit 25.)

Q. The Zetta referred to in that letter is your sister, I suppose?

A. No, it is Mrs. Ayers.

Q. The Jennie referred to is your daughter.

(Letter Spokane, February 8th, 1929, is now marked Exhibit 26.)

(Letter dated Spokane, February 26th, 1929, is now marked Exhibit 27.)

Q. In that letter the reference, "Don't wait to ask me if you get what you think is a good price or offer," was an offer for your land? A. Yes.

MR. NOLAN: Before my friend reads further, I quite appreciate your

Lordship's remarks when you say the question of relevancy of this matter is something which you can only determine after you have heard the correspondence read, I am wondering if at this stage there might not be some short way out of this difficulty and save our time. It seems to me a great deal of this correspondence, as it may seem to you now, has nothing to do with this case and is not relevant to the point at issue. If that be so and if you were sitting alone you would dismiss it from your mind. But here we have six men sitting in the box and I would not like all this to go in and then your Lordship have to say to them, "Now do not think anything about these letters, they are not relevant to this case." "Dismiss them from your mind," because they might not be able to do that, it seems to me there are two things might be done. In the first place you might hear this correspondence read and determine its relevancy, that is one way out of the difficulty, the other way out of the difficulty is your Lordship might take the time if you would be so good as to read it yourself and determine upon its relevancy and then Mr. Shaw would put in those letters to the Jury which are determined as to their relevancy and as your Lordship sees now if they go in and they are not relevant the damage is done. I am trying to think of some way we can get out of the difficulty of reading all this stuff which my friend will agree with me for the most part at least, is private, personal correspondence.

THE COURT: Gentlemen of the Jury, I think I will ask you to retire for a moment or two.

(Jury retired at 10:57.)

MR. NOLAN: On the Examination for Discovery I listened to my friend's cross-examination on this correspondence and I am bound to say that I do not know of an instance where there is anything in this correspondence which touches on this all important question, Did the Plaintiff agree to lend this money to Mr. McElroy? It is quite true it shows that Mrs. Begley was in constant correspondence with Mr. McElroy about a thousand and one things. You have seen already, my Lord, in the matter of two or three letters there are dozens of things touched upon. I am wondering if there is not some way out for us all rather than keep this Jury sitting here so long because this will take hours in spite of my friend's best efforts and I do not think we are going to get anywhere. I do not want to be objectionable. I do not want to prevent my friend from the proper proof of his case but I would like to get on with this lawsuit and I would like those things to go in which have something to do with the point at issue.

THE COURT: But, Mr. Nolan, Mr. Shaw's suggestion is that all the correspondence is relevant because it shows the friendly relationship of the two parties. Of course, I think that is in your favor and not in the other side's favor. It seems to me it cannot help but be in your favor because your contention is that the Bank connived at getting their account paid improperly through McElroy improperly taking that money. The greater the friendship the stronger your case is.

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MR. NOLAN: Because the stronger influence brought to bear.

THE COURT: He wants to put it in. I do not think I can stop him. I would not want to take the responsibility. It is one of those things that the line is pretty narrow as to what is relevant and what is not.

MR. NOLAN: Quite true and for the most part . . .

THE COURT: And I think I will let him read it.

MR. NOLAN: To the Jury?

THE COURT: To the Jury.

MR. NOLAN: And in the event of it not being found to be relevant by your Lordship after having heard them read. 10

THE COURT: I will tell the Jury to forget it. I do not suppose they will. I will just have to tell them as it turns out now in my opinion it is not of any importance. However they won't eliminate it.

MR. NOLAN: That is all that can reasonably be said?

THE COURT: Of course, on the other hand Mr. Shaw has to take the responsibility for my telling the Jury that that correspondence is against the Bank.

MR. SHAW: I am afraid, my Lord, there is not any short way out of it. I would like to find a short way. I think as a matter of fact in very slightly over an hour I can read them all. 20

THE COURT: All right, read them. Bring in the Jury.

(The Jury returned at 11:02 A.M.)

(Letter dated Spokane, March 1st, 1929, is now marked Exhibit "28".)

(Letter dated Spokane, March 4th, 1929, is now marked Exhibit "29".)

(Letter dated March 11th, 1929, is now marked Exhibit "30".)

(Letter dated Spokane, March 15th, 1929, is now marked Exhibit "31".)

(Letter dated the 17th is now marked Exhibit "32".)

(Letter dated Spokane, March 25, 1929, is now marked Exhibit "33".)

(Letter dated Spokane, March 30th, 1929, is now marked Exhibit "34".)

(Letter dated Spokane, April 2nd, 1929, is now marked Exhibit "35".) 30

(Undated letter is now marked Exhibit "36".)

(Letter dated Spokane, April 12th, is now marked Exhibit "37".)

THE COURT: Do you think that letter is relevant?

MR. SHAW: It is only part of the whole course that shows the relationship between the parties.

THE COURT: All right.

MR. SHAW: I read it for the purpose of showing the subsequent situation.

THE COURT: All right.

(Letter dated Spokane, April 27th, 1929, is now marked Exhibit "38".) 40

(Letter dated Spokane, May 18th, 1929, is now marked Exhibit "39".)

Q. Mrs. Begley, in connection with that particular letter you say you had a letter from Mrs. MacDonald and she said she would not tell you about things at the Lake as Mr. McElroy has no doubt told you. What would things at the Lake be? McElroy's love affairs? A. No it was some meetings they were having, what they were going to do at the Lake.

(Letter dated the 5th of June is now marked Exhibit "40".)
 (Letter dated Brandon, June 27th, 1929, is now marked Exhibit "41".)
 (Letter dated Port Dover, July 14th, 1929, is now marked Exhibit "42".)
 (Letter dated Delhi, July 15th, is now marked Exhibit "43".)
 (Letter dated Delhi, August 9th, is now marked Exhibit "44".)
 (Letter dated Hamilton, September 12th, 1929, is now marked Exhibit "45".)
 (Letter dated Hamilton, October 11th, 1929, is now marked Exhibit "46".)

10 MR. SHAW: There is a portion with that letter, I am going to read it, it does not seem to fit into any part of it but I will read it.

(Letter dated Hamilton, October 18th, 1929, is now marked Exhibit "47".)
 (Letter dated Hamilton, October 21st, 1929, is now marked Exhibit "48".)
 (Letter dated Hamilton, October 30th, 1929, is now marked Exhibit "49".)
 (Letter dated Hamilton, November 4th, 1929, is now marked Exhibit "50".)

(Letter dated Hamilton, November 17th, 1929, is now marked Exhibit "51".)

20 (Letter dated Hamilton, November 18th, 1929, is now marked Exhibit "52".)

(Letter dated Hamilton, November 27th, 1929, is now marked Exhibit "53".)

(Letter dated Delhi, December 4th, 1929, is now marked Exhibit "54".)
 (Letter dated Calgary, February 2nd, 1930, is now marked Exhibit "55".)
 (Letter dated March 31st, 1930, is now marked Exhibit "56".)

THE COURT: What is the address on this letter?

MR. SHAW: There is no address but there is an envelope attached to it which shows it is post marked Spokane, July, 1930.

(Document in question is now marked Exhibit "57".)

30 (Letter, Spokane, July 31st, is now marked Exhibit "58".)

(Letter dated Spokane, August 8th, is now marked Exhibit "59".)

MR. SHAW: There was one letter that was put in the 13th of January.

THE COURT: You read that before.

MR. SHAW: Yes, I will not bother reading it then.

THE COURT: I do not think you need read it.

MR. SHAW: The next is a letter dated Calgary but the stamp of the post office on the letter is 8:30 P.M. August 2nd, 1931.

(Document in question is now marked Exhibit "60".)

(Letter dated Spokane, July 24th, 1932, is marked Exhibit "61".)

40 Q. Mrs. Begley, in connection with that letter you state that if you look at the envelope you will see where my thoughts were running. What do you mean by that? A. I cannot say. I do not remember anything about it.

Q. Perhaps if you look at the letter and envelope it will help? A. I do not know what I meant, I cannot say.

Q. What does it appear to you to be? The word appeared to be

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"Mrs." at first didn't it, that is what the reference is to in the letter is it not? A. I do not remember the letter at all.

Q. You do not remember the letter, there is no doubt about this being your letter? A. No, it is my letter.

Q. The envelope appears to have been addressed Mrs. J. W. McElroy and the "s" on Mrs. was stricken out? A. Yes.

Q. Now that, Mrs. Begley, would be what you referred to in this letter when you say . . . A. I suppose so. That was a proposal I sent to him for Leap Year in answer to the one he wrote me. I just repeated his words back to him.

Q. Now the reference in that letter when you say, "If you will look at the envelope you will see where my thoughts were running," that is a reference to you addressing the envelope apparently Mrs. J. W. McElroy and then correcting it? A. I suppose so.

Q. Yes. Now you were not in love with Mr. McElroy at this time? A. I was not.

Q. And then when you say in the last part of this letter "Mr. McElroy's note will soon be due which he puts off on an ignorant woman who was in love," that would be a reference to yourself? A. Well because he had written and said something about this . . .

Q. As a matter of fact you were not in love? A. I was not.

Q. But you wrote him to the effect you were in love? A. No, I did not.

Q. Well I read your language from this letter again, "Mr. McElroy's note will soon be due which he put off on an ignorant woman who was in love." A. Well if you read his letter you would understand but I have not got his to show so you do not understand me.

Q. I mean you were not in love? A. No I was not in love.

Q. Then what did you mean by saying, putting it in there that you were in love, as I understand that letter that is what it means? A. As I told you his letter would explain that.

Q. What did his letter say, did his letter say you were in love? A. That somebody had told him so.

Q. What you wrote to him was clearly not correct, that is you were not in love with him? A. No I was not in love.

(Letter dated Spokane, August 2nd, 1932, is now marked Exhibit "62".)

(Letter dated Spokane, August 16th, 1932 is now marked Exhibit "63".)

(Letter dated Calgary, September 16th, is now marked Exhibit "64".)

(Letter postmarked 29th September, 1932, is now marked Exhibit "65".)

MR. SHAW: There is no date on this March 17th.

(Document in question is now marked Exhibit "66".)

THE COURT: The court will adjourn until this afternoon at 2 P.M.
TUESDAY, 24th OCTOBER, P.M. SESSION.

Q. MR. SHAW: Mrs. Begley, as I recall your evidence you were not in the Imperial Bank after your going down East on the 26th of June, 1930, to discuss with Mr. Weaver, Mr. Chambers or Mr. Mackie about

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this particular matter. Pardon me, I am wrong in the date. What was the date of your conversation with Mr. Chambers? That was in June, 1930, was it not?

THE COURT: She has sworn to more than one conversation with Chambers, as I recall it.

MR. SHAW: I am speaking with regard to the one about the \$8,500, that was in the early part of June, 1930, wasn't it? A. Yes, I think it was.

10 Q. And the note, McElroy's note was given to you on the 1st of August, 1931, wasn't it? A. His note from whom? He gave it to me.

Q. The note was given to you by Mr. McElroy, that is he made out the note to you didn't he? A. He made out one, yes.

Q. On the 1st of August, 1931? A. Yes.

Q. From that time forward, that is from the 1st of August, 1931, you did not have any conversation with any of the officers of the Bank about this taking, as you claim, of your money by McElroy, perhaps I can refresh your memory. In your Examination for Discovery, page 156, starting at question 1452. "Q. Did you after that date at any time

20 THE COURT: What date do you refer to?

MR. SHAW: I have to get the date, sir, that would be the date I mentioned, the 1st of August, 1931.

1452. Q. Did you after that date at any time suggest to or discuss with any of the Defendant Bank officers, the matter of this wrongful taking by McElroy? A. No, I just showed that note to the Manager, that was all, and he told me to go to my solicitor.

1453. Q. You are speaking of the Bank of Montreal? A. Yes.

1454. Q. I am speaking about the Imperial Bank? A. I never was in there after.

30 1455. Q. You never discussed with Chambers or Weaver or Mackie? A. After I got these notes from Mr. McElroy I was never in.

1456. Q. It would be obviously clear in your mind that you never suggested the wrongful taking by McElroy? A. No.

1457. Q. And I assume from the evidence we already have had that you have never discussed it with any of the officers of the Bank previously either? A. Before that?

1458. Q. Yes. A. About the \$8,500?

1459. Q. I mean about the wrongful taking by McElroy without your authority? A. No.

40 Q. That would be a correct statement I take it, Mrs. Begley? A. Yes.

Q. And I suppose, Mrs. Begley, that it would be fair to say your first complaint to the Bank would be through your solicitor, Mr. Taylor, that would be correct, would it not? A. My complaint to the Bank, about the Bank, yes.

Q. Or to the Bank?

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THE COURT: You are speaking about the legal effect of it now, I haven't any doubt the witness is thinking about the personal side of it.

MR. SHAW: I am merely asking that particular question, just read the question, Mr. Taylor?

By the Court Reporter (reading):

"Q. And I suppose, Mrs. Begley, that it would be fair to say your first complaint to the Bank would be through your Solicitor Mr. Taylor, that would be correct would it not?" A. Yes.

MR. SHAW: And that I believe must have been about October, 1932?

—continued A. Yes.

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RE-EXAMINATION of the same witness by MR. NOLAN:

Q. Mrs. Begley, there are just one or two questions arising out of the questions that my learned friend has already asked you. You have been shown a number of letters that were written by you, Mrs. Begley, to Mr. McElroy? A. Yes.

Q. And you said to my learned friend Mr. Shaw on one or two occasions that they were in reply to letters from Mr. McElroy to you? A. Yes.

Q. Where are these letters of Mr. McElroy's to which your letters are replying? A. I tore them up and got rid of them as soon as I read them, I got rid of them in some way. 20

Q. I think you also said, Mrs. Begley, to Mr. Shaw, something to this effect, that the Bank had nothing to do with the selection of Mr. Moyer. Did you at any time discuss with any Bank official the possibility of your, or the probability of engaging Mr. Moyer? A. Not that I can remember of.

Q. I am speaking now of early on. You have been over a lot of ground and a lot of time but throw your mind back to the stage where your husband had died and you were the executrix under his will and the necessity arose of appointing a lawyer to do the Estate's legal work, you understand me don't you? A. Yes. 30

Q. Did you discuss that with any of the Bank people? Mr. Weaver was the Manager, or Mr. Chambers, the Accountant? A. All I can remember ever saying to any of them was that Mr. Begley had very little dealings with lawyers at all but what he did it was usually Mr. Shouldice.

Q. Yes. Well did you tell them you were going to Mr. Moyer's. Did you tell the Bank that? A. I do not remember telling them.

Q. Did they mention Mr. Moyer's name to you? A. Well I cannot remember it, Mr. Nolan.

Q. You know the time I am talking about, just before you had any lawyer at all? A. Yes. 40

Q. It was running through your mind as to who you should retain? A. I know my sister and Mr. McElroy and I were in there and I am sure we said something about us going down to Mr. Moyer's.

Q. To whom did you say that? A. Well the Manager was in there.

Q. Do you remember what he said about Mr. Moyer? A. He spoke in his favor.

Q. You must have discussed it? A. Yes, I remember he spoke in his favor.

Q. Of Mr. Moyer? A. Yes, of Mr. Moyer. He said he was a good fellow.

Q. You also said to my learned friend that the note was taken by you to the Bank of Montreal sometime before the end of October, 1930. Do you remember this morning there was a discussion between Mr. Shaw and yourself about that? A. Yes.

Q. Now I think you said yesterday that you ceased to bank with the Imperial Bank in September, 1930? A. Yes.

Q. You had a deposit box in the Imperial Bank? A. Yes.

Q. When did you give that up? A. Well I thought it was the last of the year.

Q. Well what makes you think it was the last of the year you gave up the deposit box? A. Because that was paid up for until then.

Q. Have you a memory of that or have you not? A. Yes.

Q. What is your recollection about it, tell me. You say that your deposit box was paid to the end of that year, 1930, at the Imperial Bank?

Q. When did you take your personal stuff out of your own safety deposit box in the Imperial Bank? A. Well I took it out, went straight up and put it in the Bank of Montreal.

Q. When did you do that? A. It was the 31st of December I think.

Q. Of that year, 1930? A. Yes.

Q. Now this note we are talking about, this promissory note of Mr. McElroy's you have already said was not in that box, Mrs. Begley, you did not have it? A. I did not have it.

Q. The note was not with your own personal papers? A. No.

Q. Then it was after that time of which you now speak, in December, 1930, when you got that note from the Imperial Bank wasn't it? A. Yes.

Q. Well are you sure about that? A. I am pretty sure it was.

Q. That it was after you cleaned out your safety deposit box? A. Yes, I think it was.

Q. Do you remember how long after? A. Well it must have been a few months.

Q. And when the time came to take it away from the Imperial Bank did you take that note alone or was there any other note or document? A. There was two notes.

Q. What was the other note? A. The note Mr. Morasch owed me \$400.

Q. Was it at the time you took the Morasch note out of the Imperial Bank you took the McElroy note? A. Yes.

Q. Are you clear about that? A. Yes, I am.

Q. And you said also to my learned friend that when you were in

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the Hospital Mr. McElroy came to you and told you that he had paid the money to the Bank? A. Yes.

Q. He said that didn't he? A. Yes.

Q. Did he say anything else at that time in that conversation? Let me try and orientate your mind again. You are in the Hospital, Mrs. Begley. You have that in your mind? A. Yes.

Q. You know when that was. You told us it was in June. When you were there McElroy came to see you? A. Yes.

Q. You say it was at that time he told you that he had paid the money to the Bank? A. Yes. 10

Q. That is right is it not? A. Yes.

Q. Do you remember the occasion? A. Yes.

Q. All right. Is that all that was said on that occasion or did Mr. McElroy tell you anything else?

THE COURT: What did he say? A. Well I asked him why he took it.

Q. How did you know he took it? A. That he had my money and he said Mr. Weaver told him to take it, he said that I would be back and I was a widow and I would want to marry him and he told him to take my money and pay it back.

Q. MR. NOLAN: That was the only conversation Mr. McElroy had with you that day in the Hospital? A. Yes. 20

Q. And that was the occasion he told you he had taken your money to pay the Bank? A. Yes.

Q. Is that all that was said or have you any memory of anything else? A. Well I think that was just about all because I was so sick that he went right out. I think he could see that I was getting a fever and he left the Hospital.

Q. How did it happen that you came to go to Mr. Mayhood for legal advice? Get your mind working on this again. This is late in the day. You had had Mr. Moyer for a long time and you told us yesterday that you went to Mr. Mayhood? A. Well I went in the Imperial Bank. I came up from Mr. Moyer's office when I decided to get another solicitor. 30

Q. Who did you see in the Imperial Bank? A. I saw Mr. Weaver.

Q. Yes and what did he say to you? A. He said I will call Mr. Mayhood right down and you just wait here and I will call him down.

THE COURT: Call whom? A. Call Mr. Mayhood.

MR. NOLAN: He said, "You just wait here and I will call Mr. Mayhood down?" A. Yes.

Q. And he did? A. Yes, he came down and we shook hands and spoke and he said, "Come up to my office and we will talk over it." 40

Q. That is all.

JOHN WRAY MOYER, having been duly sworn as a witness on behalf of the Plaintiff, examined by MR. NOLAN, testified as follows:

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Q. Mr. Moyer, you are a barrister and solicitor practising and carrying on your profession in the City of Calgary? A. I am.

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Q. You have been practising here for . . . A. Fifteen years.

Q. Mr. Moyer, you know J. W. McElroy? A. I do.

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Q. And you were his solicitor, were you not? A. Yes.

Q. When did you first act for him? A. Oh, it would be eight or ten years ago.

10 Q. And are you or are you not still his solicitor? A. No, since 1932 was the last time I think I acted for him.

Q. But very prior to 1932, for a matter of eight or ten years, you were his solicitor? A. That is right.

Q. You did become, we have been told, the solicitor in the administration of the R. W. Begley estate, Mr. Moyer? A. That is right.

Q. When did you first meet the Plaintiff in this action—Mrs. Begley? A. I think it was in the latter part of December, 1928, or early in the month of January, 1929.

20 Q. And who was it who introduced you, or rather introduced Mrs. Begley to you? A. J. W. McElroy.

Q. In addition to being solicitor for Mr. McElroy were you or were you not in various enterprises and transactions of another kind with Mr. McElroy, business deals? A. With McElroy?

Q. Yes? A. Yes.

Q. You had been? A. Yes.

Q. And so far as the estate business was concerned, Mr. Moyer, you continued to act as solicitor until the estate was finally and completely administered? A. Yes, I did.

30 Q. And did you become, or did you not become the personal solicitor for Mrs. Begley? A. For Mrs. Begley?

Q. Yes? A. Yes.

Q. Well, when did that happen? A. When the estate was wound up . . .

Q. A moment, do you know when that was? A. I acted for her in June, 1930, in re-drawing her will, which I think was the first piece of work that was done subsequently to the winding-up of the estate.

Q. The estate, we know, was wound up earlier than that? A. Yes.

Q. There is evidence here to show that the order discharging Mr. McElroy was obtained on June 27th, 1929, you know about that? A.

40 Yes, I do.

Q. You got that order? A. That is true.

Q. At that time certain moneys were paid in to her own savings account, we learned, from the estate account? A. That is right.

Q. You know about that, do you? A. Yes, I do.

Q. How much went in? A. Slightly over thirteen thousand dollars.

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Q. Yes, that is what everyone has told us. Then did some question arise, or did it not, about the investment of this thirteen thousand dollars? A. Yes, it did.

Q. How did it come about, and what happened? A. On the 21st of June, 1929, Mrs. Begley and McElroy came into my office, having just left Mr. Webb's office. Mr. Webb was an assistant in my office.

Q. He was employed by you? A. Yes.

Q. To do work in the office? A. Yes, he was a solicitor employed by me.

Q. Yes? A. They had been in Webb's office in connection with the winding up of the estate and then came into my office. 10

Q. Let me interrupt you, if you do not mind. His office and yours were where? A. Adjoining.

Q. Yes, adjoining. A. And a discussion took place about the completion of the work in the estate and that was followed by a discussion of the investment of her money. Mrs. Begley said she wanted to get her money working and earning interest and she wanted to get it earning seven or eight per cent. and if so she could live off the income. McElroy made some remark about the investment in seven or eight per cent. securities. I do not know just what it was. It was not important. We 20
figured out that such investments would give her an income probably sufficient to take care of her without applying the principal. Mrs. Begley said she wanted McElroy to handle the investment of her money, and Mr. McElroy made some remark about wanting me to help. It was finally decided that McElroy should have authority to invest her money, but he was to get my approval to any investment he made. I remember Mrs. Begley expressed concern about the safety of the investments that would be made. She said she did not know a thing about business, the only thing she knew to be safe was a Government bond, but that did not produce enough interest. 30

Q. MR. ROSS: Was any officer of the Bank present when this was going on? A. No, Mr. Ross. About the only other thing that was said, that I remember, was a remark by Mrs. Begley when she said that she trusted us, referring to Mr. McElroy and myself, to do the right thing, and she was not going to worry about it at all.

Q. MR. NOLAN: Yes, and that is all? A. That is all I can recall. They were then to go to the Bank and have the money actually transferred out of the estate account into her personal account. I did not personally see that done, but I had my assistant check it and knew it was done. 40

Q. It was done, we all know that? A. Yes.

Q. Yes, is there anything else, Mr. Moyer. Tell us in your own words. It is Friday, the 21st, you are talking about, is it not? A. Oh, I think that is the substance of what took place on the 21st, Mr. Nolan.

Q. All right, Mr. Moyer. What is the next step? A. They came in again on Monday, the 24th of June.

Q. By "they" you mean who? A. Mrs. Begley and McElroy.

Q. Yes? A. And the execution of the documents winding up the estate was completed and they were again in my office and the Power of Attorney, that is the Bank's Power of Attorney was there, and before that was executed by Mrs. Begley I pointed out that it probably would take a long time, or might take a long time, to find these investments that had been authorized on the previous occasion, and which we had in mind to be made by McElroy, subject to my approval, and I wanted to know what was going to be done with these moneys pending the finding of those selected investments. Mrs. Begley said she wanted the money put in Government bonds in the meantime. Having that in mind, McElroy said he did not know anything about buying bonds and Mrs. Begley said, "Mr. Moyer will help you," and I replied that it was not necessary to bother me about it at all. All that was necessary was to have it handled through the Bank, that they had a special department for buying bonds and it could be all done there. It was not necessary to see me at all. Before leaving she said she wanted some money kept in the account. She was going away, I think, shortly afterwards, and there was an understanding that some moneys were to be kept in the Bank account.

Q. You were the witness to the Power of Attorney, Mr. Moyer, and your signature is there? A. Yes, that is my signature.

Q. You recognize that documents which has been marked in this case Exhibit No. "4"? A. That is the document.

Q. That was signed in your office on Monday, the 24th? A. Yes, that is my handwriting.

Q. You filled in the blank spaces? A. I did.

Q. Did you read this document Exhibit "4" over to Mrs. Begley?
A. No.

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

Q. Why didn't you? A. Well, I cannot say, Mr. Nolan. She understood that the Power of Attorney was being given on the Bank account and it was in keeping with the instructions she had given to vest authority in McElroy to operate the account for the purpose of investments she had sanctioned or agreed to.

Q. All right then, are you saying to me that finally instructions were given that for the time being at least the investment was to be in Government bonds? A. Yes.

Q. Until such time as selected securities could be obtained, to which your approval must be given? A. That is right, and subject to the retention of some reasonable amount in the account.

Q. For current expenses? A. That is right.

Q. That is Monday, the 24th, Mr. Moyer? A. The 24th.

Q. Is that all that day? A. There was some further work done by the execution of the transfers of the property and assignments of agree-

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ments into her name. That is all about the Power of Attorney or the investment of money.

Q. The other was pertaining to the estate, was it? A. Yes, entirely.

Q. And, perhaps, I might lead you and say it was preparatory to the obtaining of Mr. McElroy's discharge as administrator? A. That is right.

Q. That is what the other work was? A. Yes.

Q. We know he was discharged on Thursday, the 27th? A. Yes.

Q. What is the next step after Monday, the 24th? A. On the 25th, 10
the following day, Mrs. Begley came back to the office alone, and on that occasion I gave her a letter acknowledging the documents I had in my possession, stating that I would hold them in my possession, in my safe, for her. That letter was given to her on that following day.

Q. That would be Tuesday, the 25th, would it not? A. Yes, that is right.

Q. You did not give her the documents? A. No, just a letter. I held the documents.

Q. What is that document I show you? A. That is the letter I gave to Mrs. Begley on that day. 20

Q. That is your signature? A. Yes.

MR. NOLAN: Perhaps that could be marked, my Lord, as an Exhibit. (Document in question is now marked Exhibit "67".)

Q. The gist of it, Mr. Moyer, without taking time, is you acknowledge you are holding certain estate documents for Mrs. Begley? A. That is right.

Q. You gave her a letter acknowledging that you did hold them?
A. Yes.

Q. What did she do with the letter? A. Took it away.

Q. That was on Tuesday, the 25th? A. Yes. 30

Q. Was there, or was there not, on that day, Tuesday, any variation of the instructions which had been given the previous day, Monday, as to the investment of her money? A. No, none whatever.

Q. Of that you are perfectly certain? A. Absolutely.

Q. You were the solicitor . . .

THE COURT: Do you intend to use this letter?

MR. NOLAN: No, my Lord.

THE COURT: Why are you putting it in? Do you intend to mention any of these documents to the Jury?

MR. NOLAN: It need not go in. I can tell you why we want it in . . . 40

THE COURT: It does not matter.

Q. MR. NOLAN: And on Tuesday, the 25th, so far as you know, Mrs. Begley went away from your place, from your office, to the Bank? A. I do not know where she went on Tuesday.

Q. Now, can you say or can you not as to whether the Imperial

Bank knew you were acting for Mrs. Begley? A. They know positively in January, 1929.

Q. How did they know? A. I went with Mrs. Begley to the Bank and saw Mr. Weaver, the manager, towards the latter part of January, I think, and arranged for a loan to Mrs. Begley personally of the nine hundred dollars. She wanted some money, some eight hundred dollars, to pay succession duties, and I do not know why another one hundred dollars was added, but the loan for nine hundred dollars was made through Mr. Weaver on that date, and a note was given pending the pro-
10 bate of the will.

Q. And that was all repaid? A. All repaid, yes.

Q. You say then that Mr. Weaver knew that you were acting then in that matter? A. Yes, he asked us what we wanted it for. It was to pay succession duties in the estate.

Q. Now, Mr. Moyer, it has been given in evidence in this Court that on the 29th day of June, 1929, there was a cheque drawn by Mr. McElroy on Mrs. Begley's account in favor of himself in the sum of eighty-five hundred dollars, on, as I say, Saturday, the 29th of June. Was that done with your approval, or was it not? A. I had no knowl-
20 edge of it whatever.

Q. When did you first learn of it? A. September, 1931.

Q. Who told you? A. Mrs. Begley.

Q. You said to me a few moments ago that apart altogether from the investment in Government bonds and subsequent and further investments were to be in securities selected and approved by you? A. That is right.

Q. And would you or would you not have approved of a loan to J. W. McElroy for either forty-five hundred dollars or eighty-five hundred dollars on the 29th of June, 1929?

30 MR. SHAW: Surely that is not admissible.

MR. NOLAN: Now, my Lord, I have laid the foundation for that question, I submit.

THE COURT: I think it is admissible.

MR. SHAW: The question is a purely hypothetical question.

THE COURT: Well, it may not be of any value, but that is a matter for . . . that has not anything to do with the admissibility.

Q. MR. NOLAN: Well, Mr. Moyer, what do you say? A. I certainly would not have approved of it.

Q. All right. Now, Mrs. Begley remained your client for some
40 time after this June transaction in 1929, didn't she? A. I do not know, Mr. Nolan. The documents were kept there for her, as that letter indicated, but I had nothing to do for her until the following June, when I went to the hospital.

Q. Yes? A. There was no work whatever done.

Q. No. Well, then, perhaps I can lead you again, some suggestion arose as to the collection from Mr. McElroy of moneys owing by him to

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her and you were again active on her behalf? A. Subsequently, yes, quite right.

Q. How long did you continue to act for this Plaintiff, Mrs. Begley? A. Well, I started to do some work then again in April or May, 1931, in other matters.

Q. Yes, and how long did you continue actively practising on her behalf, until when? A. From that time in May until some time in September, 1932.

Q. Yes, and what happened in September, 1932, that you did not continue to act? A. She changed solicitors. 10

Q. Was there or was there not any discussion between you and Mrs. Begley during the time you acted for her as to her rights of action against the Imperial Bank? A. None whatever.

Q. Certainly not with you? A. Oh, no, I mean that. I made no suggestion whatever.

Q. Up until the time she left you? A. Quite right.

Q. And during those days of 1932 you were still the solicitor for Mr. McElroy, were you not? A. I think it would be fair to say yes I was.

Q. And you were solicitor for Mrs. Begley up until the latter part of that year of 1932. What month did she leave, September? A. I think around the end of September. 20

Q. Is it fair to say that there was some conflict between those two clients of yours at that time, before Mrs. Begley left you? A. Certainly during August, 1931.

Q. But you continued to act for both of them? A. I do not think I can say anything else. What did happen was this, when Mrs. Begley told me about what had happened I got McElroy in the office and I told him that I was certainly going to take Mrs. Begley's side of this thing and act for her, but I did not actually dismiss him as a client. 30

Q. No? A. He was just informed to that extent.

Q. Was that or was not that a mistake, Mr. Moyer? A. It was a mistake, but I had a motive in doing what I did. It was simply this, that I thought that she was in a terrible mess over it, that to get this money out of McElroy was going to be a hard task, and that I, perhaps, could use my influence in getting it out of him where nobody else could, if he ever had anything to get it from. But, professionally, it was a mistake.

Q. When it comes to September, 1932, she does leave you, and why does she leave you, Mr. Moyer? A. She came into my office one day and she was apparently dissatisfied with progress, and I frankly told her that I did not know whether I was doing all that could be done, that I was certainly trying to do it, but perhaps I was not and that it would be quite all right with me if she would take the matter to another solicitor. 40

Q. Which she did? A. Yes, she did.

Q. Now, there have been marked as Exhibits in this case, Mr. Moyer, five cheques, and they are Exhibits "7" to "11" inclusive in the

case, July 22nd, a cheque drawn by J. W. McElroy, attorney for Mrs. M. V. Begley, in favor of Strong & Dowler for \$1,000.00. Did you give your approval to that cheque being issued? A. Certainly not.

Q. And then a cheque on the 21st of August, 1929.

MR. ROSS: This evidence is all being received subject to our objection, I presume. We raised the objection early yesterday in regard to this matter as to her authority . . .

THE COURT: I think I will admit them.

MR. SHAW: My learned friend is pointing out yesterday we objected
10 to this. The same objection is taken.

THE COURT: Yes.

Q. MR. NOLAN: On October 5th, 1929, a cheque, Strong & Dowler, \$500.00, did you approve of that? A. I did not.

Q. November 13th, cheque Strong & Dowler, for \$735.00, did you approve of that? A. I did not.

Q. On the 13th of November a cheque to the Canadian Acceptance Corporation for \$265.00, did you approve of that? A. I did not.

Q. Did you have any knowledge whatsoever of those amounts as mentioned in those cheques being withdrawn from her account? A. I
20 did not until recently.

Q. There is another point that has come up, Mr. Moyer. It has been mentioned by my learned friend a general power of attorney, nothing to do with the Bank power of attorney, but a general power, was there one? A. Yes, there was one.

Q. What is the date of it, Mr. Moyer? A. The 28th of January, 1929.

MR. NOLAN: We will just have that marked. My learned friend would like it marked. A. It is in duplicate.

Q. I will just take one of them.

30 (Document in question is now marked Exhibit "68".)

Q. And, Mr. Moyer, that is what we call in general legal parlance a general power of attorney? A. Yes.

Q. That was given in January 28th, 1929? A. Yes.

Q. By Mrs. Begley to Mr. McElroy? A. Yes, that is true.

Q. For what purpose? A. At the time that was executed the estate was just about started.

Q. THE COURT: What? A. About started to be probated, the will, rather. There was practically no debts in the estate. Mrs. Begley was the sole beneficiary and it was contemplated at that time . . .

40 MR. SHAW: Surely there must be some limit. The witness is not only talking about conversations but about contemplations. Surely there must be some limit.

THE COURT: Yes, I do not think that is admissible.

Q. MR. NOLAN: Was it used, Mr. Moyer? A. No.

Q. This power of attorney? A. No.

Q. Where has it been all this time? A. Been in my safe.

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Q. Did you deliver it to anybody, I mean did you deliver it to Mr. McElroy? A. No, not to McElroy until after it was revoked, as solicitor for Mrs. Begley.

Q. But it was never used? A. Never taken out of the safe.

Q. And the purpose for which that was given was what? A. To be used in case the assets of the estate were transferred to Mrs. Begley under these circumstances, that upon a transfer of the assets being made someone had to attend to the farm, the house property in Calgary, and I think some collections, and in case that occasion arose the power of attorney was to be used.

Q. This power of attorney was made in duplicate? A. Yes. 10

Q. Did you retain those copies? A. I did.

Q. Do you know when it was revoked? A. Not the exact date, Mr. Nolan.

Q. Well, I will leave it at that, just answer my learned friend.

CROSS-EXAMINATION of the same witness by MR. SHAW:

Q. Mr. Moyer, you saw Mrs. Begley, I believe, and Mr. McElroy, in September, 1932, when they were seeking an adjustment of their affairs? A. I saw them around the 1st or 3rd of September.

Q. Both of them? A. Yes. 20

Q. You saw them both together? A. In my office, yes.

Q. And Mrs. Begley at that time was wanting to get security for her indebtedness or payment? A. Yes.

Q. And the discussion revolved around the matter of a note and security therefor? A. That is right.

Q. A renewal note, and security therefor? A. That is true.

Q. And I believe, Mr. Moyer, you figured out the amount owing by Mr. McElroy to Mrs. Begley? A. I did.

Q. It came to a total of how much, do you recall? A. Something better than ten thousand dollars. 30

Q. Something better than ten thousand dollars, and a note was actually made out, drawn up by you and signed by Mr. McElroy, for that amount? A. Yes.

Q. Where is that note?

MR. NOLAN: That is it, is it not?

MR. SHAW: At the time I am speaking of, Mr. Moyer, Mrs. Begley was present, wasn't she? A. Yes.

Q. I produce to you this document, is that the note in question? A. Yes, it is.

THE COURT: Exhibit what? Is it marked in the case? 40

MR. SHAW: No, it is not yet marked, but I am asking to have it marked now.

(Document in question is now marked Exhibit "69".)

Q. The date of this note would represent, Mr. Moyer, the date that these people were in your office? A. I do not think so. I think it was

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a couple of days later. The interest was calculated to that date, being the first of the month.

Q. And these people came in to you? A. Yes.

Q. And I suppose that they instructed you that what was to be done was to take a renewal note of the indebtedness for a further period of two years and then some security was to be secured? A. Those were the final instructions, yes.

Q. Those were the instructions you received from Mrs. Begley and Mr. McElroy together? A. Yes.

10 Q. And I believe, Mr. Moyer, that an arrangement was made by which an assignment was to be taken of what was known as the Halverson agreement? A. That is right.

Q. And both parties were to come back in the course of that day, after you had prepared the document, to execute them? A. They were to come back, I cannot say whether they were to come back the same day.

Q. There was a short delay, in order to give you a chance to prepare the documents? A. That is true, yes.

Q. You prepared them? A. I did.

20 Q. And you were not present, I believe, when Mr. McElroy executed them? Were you? A. No, I was away.

Q. This gentleman, Mr. Webb, was it? Or somebody else who was present when he signed them? A. Mr. E. A. Dunbar.

Q. He has an office adjoining you? A. He is associated with me now.

Q. But at that time he was not, was he? Or was he? A. Yes, he was.

Q. So that apparently you were not in when McElroy came in and signed the necessary assignments? A. He signed the document I drew.

30 Q. I wonder if you have those documents, Mr. Moyer? A. I have not the assignment. I have the original agreement, the Halverson agreement, which I neglected to turn over to . . .

Q. Will you produce the Halverson agreement? A. Yes.

MR. NOLAN: Mr. Shaw, we have the assignment here.

Q. MR. SHAW: You now produce, Mr. Moyer, the Halverson agreement? A. Yes, sir, between McElroy and Halverson.

MR. SHAW: I want to have it marked as an Exhibit.

(Document in question is now marked Exhibit "70".)

Q. I now produce to you this document, which I believe is the assignment to which you refer? A. Yes.

40 MR. SHAW: Perhaps I could have that marked as an Exhibit.

(Document in question is now marked Exhibit "71".)

Q. Both these documents were prepared by you? A. Yes.

Q. And when Mr. McElroy and Mrs. Begley were in your office they gave you instructions to prepare these necessary documents including the note and they were to come at a later date to execute them? A. That is right.

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Q. I mean the situation is that you made no agreement for them, they simply came in with the arrangements made between themselves and you were simply carrying out their instructions in preparing the documents? A. No, that is not right. The whole matter was discussed before the documents were drawn.

Q. They were discussed in your office, were they? A. Yes, and the arrangements arrived at there.

Q. And the arrangements were arrived at. The note was executed after this discussion and after consultation with you? A. Yes.

Q. And then you also prepared the agreement as a result of this 10
consultation with both parties? A. That is right.

Q. And that was perfectly satisfactory at that time to Mrs. Begley?
A. Yes.

Q. Tell me, Mr. Moyer, what advice did you give Mrs. Begley, if any, with respect to this note, and also with respect to the document?

A. In 1931 . . .

Q. I am speaking about this particular time? A. Oh, this?

Q. Yes? A. In connection with the renewal note for two years, I did not advise her to sign it or to refuse to sign it. I pointed . . .

Q. You mean the McElroy renewal note? A. He was giving a re- 20
newal note to accompany the assignment.

Q. You say you did not advise her? A. I am wrong there. I did not advise Mrs. Begley whether to accept it, but what I did do on that occasion was this, when the subject of the renewal come up for two years as suggested by McElroy, I pointed out and tried to be as clear as I could that Mrs. Begley, that she was tying her hands for two years, that during that two years she would look only to what she might get out of the crop payable under that Halverson agreement. In the meantime McElroy might get a crop on his own, but might dispose of some of his assets. He might get money from some other source and she would 30
be powerless to receive the money from those collateral sources.

Q. But notwithstanding that she instructed you to proceed with the transaction? A. Yes, she consented to it.

Q. I mean there is no question, Mr. Moyer, she did consent, is there? A. None at all.

Q. Not the slightest question at all? A. Not on that occasion.

Q. How did you arrive, Mr. Moyer, at the computation of this note, \$10,224.00? A. There were the other notes before me. I cannot remember the date, but I went back to the original date and . . .

Q. You mean the \$8500.00 note? A. The \$8500.00 note. 40

Q. That would be produced, of course, by McElroy? A. I do not know, Mr. Shaw, from which source it came.

Q. But both notes were before you, the \$8500.00 note and the renewal note, dated either July or from the 1st of August, 1931? A. Yes.

Q. They were both before you? A. Yes.

Q. So you computed the principal and added the interest and this

note which you now produce as Exhibit "69" represents the principal and accrued interest? A. To September 1st, 1932.

Q. To September 1st, 1932. These people were very friendly at this time, of course? A. Yes, I think they were. There was no evidence they were not.

Q. You saw no evidence of trouble between them? A. Except her concern about getting her money.

Q. Now, you told my learned friend that Mrs. Begley was concerned about getting seven or eight per cent. interest on her money? A. I said she was concerned about the safety of the investment. She wanted to get an earning power of seven or eight per cent. I wanted to put it that way because that is the truth.

Q. What is that? A. That is the truth. She was not concerned about the interest, she was concerned about the investment being safe, and being safely made.

Q. She wanted a safe investment that would give her seven or eight per cent.? A. That is right.

Q. Of course, you know that Government bonds would not pay that rate of interest? A. Yes, and she knew it too.

20 Q. Did she appear to know all about Government bonds? A. No.

Q. In any event, she knew government bonds would not pay that rate of interest? A. Yes.

Q. And she discussed with you the matter of wanting to get her money working? A. That is right.

Q. Now, you have suggested, Mr. Moyer, that the arrangement was that McElroy was to do the investing, but it was subject to your approval? A. Yes.

Q. You agreed to that, did you? A. Yes.

30 Q. Now, what steps did you take to see that her instructions in that regard were carried out? A. The only actual document that was drawn would be the Bank power of attorney, but I did not mention to either of them the fact that there was a general power of attorney in existence, but I am sure in my own mind I had the idea that that could be used. Perhaps I was too lazy to draw another one, but I never even communicated that idea to them.

Q. That is a general power of attorney? A. I am sure I had in mind it would be available for that purpose.

Q. My point is you had received this intimation from Mrs. Begley? A. Yes.

40 Q. That she wanted your approval to her investments? A. Yes.

Q. What steps did you take, having accepted that duty, to see to it that her wishes were carried out? A. Well, I put McElroy in the position to have the ability to operate her Bank account. That is the only document which was drawn. The rest was merely a matter of trust that what she told us to do would be done, both by McElroy and myself.

Q. You took no letter of instruction from her? A. No, I did not.

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Q. You gave no instructions to the Bank in connection with the power of attorney. You did not have the power of attorney? A. No.

Q. She took the power of attorney to the Bank herself? A. I do not know about that.

Q. In any event, she took it out of your office? A. They both took it out.

Q. Oh, I see, they both together took it out? A. Yes.

Q. So far as you were concerned, you simply relied upon McElroy, is that the situation? A. Yes, I thought he would do what he was told to do. 10

Q. And it is likewise true that you did not mention anything to the Bank about that? A. No, I did not.

Q. That is, you did not indicate to the Bank, or any of its officers, that there was any restriction upon that power of attorney? A. No, I did not.

Q. You have stated, Mr. Moyer, that the power of attorney which has been put in here, the original power of attorney, dated in January, 1929, was never used? A. That is right.

Q. Now, Mr. Moyer . . . A. I mean taken out of the office, never delivered. 20

Q. It was never taken out or delivered, but it was operated under, wasn't it? A. In one instance.

Q. What instance was that? A. In the loan made to me.

Q. You are speaking now about the Bank power of attorney, are you not? A. No. That is evidence of his authority to do what he did.

Q. Let me get this power of attorney, first of all, that we are speaking about, the one executed in duplicate, in January, 1929? A. The general power of attorney?

Q. Yes? A. Yes, I see.

Q. That particular power of attorney was used, wasn't it? A. I do not think so. 30

Q. Well, now, McElroy was the administrator of the Begley estate, wasn't he? A. Yes.

Q. There were no debts? A. No, except the hospital, and so on.

Q. Just the final expenses, but those were readily paid, and they were paid by floating a note at the Bank? A. No.

Q. Oh, they were not paid out of that? There was just one beneficiary, of course, in this estate, Mrs. Begley herself? A. Mrs. Begley, yes.

Q. Now, the administrator did sell this woman's real estate, didn't he? A. No. 40

Q. He did not? Did he sell the estate real estate? A. Yes.

Q. Under what authority did he do that? A. Under his appointment by the Court.

Q. So that you were of the opinion that the appointment as admin-

istrator gave him authority for the purpose of disposing of that land?

A. Beg pardon?

Q. You were of the opinion, I say, that the authority which he had from the Court as administrator would authorize him to sell that particular land? A. The lands of the estate?

Q. Yes? A. He could realize on the assets and convert them into money.

Q. She being the sole beneficiary and the debts being paid? A. I do not know whether there were debts or not. He could realize on the sale of the assets.

Q. In any event, that is your opinion? A. I am not sure that I understand your question, Mr. Shaw.

Q. When was the sale finally completed, do you know? A. What sale?

Q. The sale of the chattels? A. There was a farm sale held out at the farm of the chattel property on the farm.

Q. When was that, before Mrs. Begley went to Spokane, do you know? A. I am not sure.

Q. You are not sure? A. Then the farm was sold and the house property was sold. But the documents would show the date, I cannot just recall.

Q. Your suggestion is that the power of attorney was neither necessary nor used for any of these transactions? A. No, I do not think it was.

Q. The debts, I suppose, were promptly paid, were they, Mr. Moyer? A. Yes.

Q. Now, after the debts were paid, can you tell me under what authority Mr. McElroy operated after that date, do you say the letters of administration? A. Yes, he operated under the authority of his appointment until the estate was wound up.

Q. And not under any power of attorney whatsoever? A. I am sure of that.

Q. You think the letters of administration gave him the necessary authority for that purpose? A. Yes, I do.

Q. Now, Mr. Moyer, I think you told my learned friend that while you did not read this power of attorney over to Mrs. Begley, nor explain it to her, she thoroughly understood it, its purport and its intent, and the object for which it was to be used. I am speaking now of the power of attorney dated the 24th of June, 1929? A. I cannot say that, Mr. Shaw. I did not explain it. I presume she did.

Q. You told my learned friend she understood the power of attorney? A. She understood that it was a power of attorney to operate her account.

Q. All right. Now, when was the first intimation you had, Mr. Moyer, that there was any complaint with respect to McElroy's transactions with Mrs. Begley? A. In September, 1931.

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Plaintiff's
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No. 7
John Wray
Moyer,
Cross-
Examination,
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—continued

Q. You had had no complaint from her or anybody else before that time? A. No, I had not.

Q. You remember the time she was in the hospital? A. Yes, I do.

Q. Were you over to see her? A. I was.

Q. Did she complain to you at that time? A. No.

Q. Never said a word to you about it? A. The only thing she said was that McElroy owed her some money.

Q. But she made no complaint to you about McElroy improperly withdrawing any of her moneys from the Bank? A. No, she did not.

Q. She made no mention about the forty-five hundred or eighty- 10
five hundred dollars at that time? A. No.

Q. Did you enquire from her at that time, Mr. Moyer, as to how much money McElroy owed her? A. Yes.

Q. And what was your language to her? A. She said McElroy owed her some money and I said, "How much?"

Q. Yes, and what did she say? A. She said, "Quite a bit."

Q. And that was the only conversation? A. Yes, she did not seem to want to talk about it.

Q. You just paid her a formal visit, did you? A. No, I went to change her will. 20

Q. Oh, I see, you went to change her will. Did the will make any provision with respect to the indebtedness of McElroy? A. The changed will?

Q. Yes? A. There was not any provision in there with respect to it, unless it would be that McElroy was stricken out as the executor.

Q. But with respect to the indebtedness? A. No.

Q. Mr. Moyer, for whom did you hold this power of attorney in duplicate? A. Well, I held it in case the occasion arose when it would be used for the purpose it was drawn for, if it ever arose.

Q. And the occasion was what? A. Well, as I said, the thought 30
was that she would be away. In the meantime the assets of the estate would be transferred to her and become her property.

Q. Yes? A. And someone had to look after the farm. Spring was coming on. The house property in Calgary, and I think some collections that never happened.

Q. This authority then would be the authority which became effective on the transfer of the administration assets into her name? A. If she was not here.

Q. Yes, and at the time that the new power of attorney dated the 24th of January, was executed, you had forgotten about the general 40
power, had you? A. The new power, January?

Q. No, the new power, that was deposited with the Bank, June 24th? A. Oh, June 24th?

Q. Yes, had you overlooked it? A. Overlook the general power?

Q. Yes? A. I do not think so, in my own mind. I think I con-

cluded it could be used, but I never communicated to the others that thought. As I say . . .

Q. You are not suggesting, Mr. Moyer, that your loan from McElroy was authorized, or do you? A. I certainly do.

Q. It was authorized? A. It came within the terms of his trusteeship.

Q. I see.

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RE-EXAMINATION of the same witness by MR. NOLAN:

Q. Mr. Moyer, there are just one or two things. My friend has
10 asked you about the advice you gave Mrs. Begley at the time the note
for two years, which is Exhibit "69", the ten thousand dollar note, was
executed, and you say that you told her it would tie her up for a period
of about two years? A. Yes.

Q. That is what you told her? A. Yes.

Q. At that time, this Halverson agreement that has been marked as
Exhibit "70", was also executed? A. No, that was executed subsequent
to that.

Q. Was also drawn, I should say. Well, let me put it this way, the
Halverson agreement was not actually drawn up the day the note was
20 signed? A. No.

Q. Because it took some time to draw it because the legal descrip-
tion of the property was . . . A. Yes.

Q. Did you advise Mrs. Begley about that Halverson agreement.
What did you say to her about it? A. I advised her she was taking it
as collateral security and not as an absolute assignment.

Q. THE COURT: Did you think she would understand what collat-
eral security is? A. I do not know, sir.

Q. MR. NOLAN: Then do I understand, Mr. Moyer, that the giving
of the note and the taking of the agreement by way of collateral security
30 was one transaction. It was all one deal, was it not? A. Yes, it was
supposed to be. If it could have been done that morning I presume we
would have signed it there and then.

Q. But it took a little time to type out this agreement? A. Yes.

Q. That was why it was subsequent in point of time? A. Yes.

Q. You have also said to my friend, Mr. Shaw, that Mrs. Begley
was satisfied, and you qualified it by saying on that occasion? A. Yes.

Q. What did you mean by qualifying it by saying she was satisfied
on that occasion? A. Shortly after, just a matter of a day or two, she
called me and revoked her position and wanted, told me to call it off.

40 Q. Yes, and what did you do about that? A. I was leaving town
for a few days.

Q. Yes? A. And I, upon my return, I either got in touch with
McElroy, or he came in, and told him she had revoked it. He then told

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me he had been in in the meantime and signed it. I told him that did not make any difference, it was called off anyway, and he consented to it.

Q. THE COURT: Consented to what? A. To the revocation.

Q. MR. NOLAN: I observe, looking at it, Mr. Moyer, it is a three-party agreement. It is a three-party agreement, John Wesley McElroy, Mary Begley, and Halverson? A. Yes.

Q. Three parties, and the seals are provided for the three signatures? A. Yes.

Q. Did Mrs. Begley or Mr. Halverson ever sign that agreement?

A. They did not.

Q. Exhibit No. "71". Now, you also said to my learned friend, Mr. Moyer, that on the occasion when you saw Mrs. Begley in the hospital you were doing something to her will, and that Mr. McElroy was taken out as executor? A. Yes.

Q. How did that come to pass, do you know? A. Well, she had told me that he owed her some money and I got no further in the way of information of what it represented.

Q. No? A. But I did tell her in addition to other changes that she was making that if McElroy owed her some money that he should not act as her executor. She was in the hospital about to undergo an operation. I did not know what the result would be.

Q. That was your idea? A. Just my idea, yes.

Q. There is one other point, and it may be that I should have cleared it up in direct examination, my friend can stop me if he thinks it does not come properly in here. It is merely a point which is of help to the Court and Jury in fixing the point of time. There was a Morasch note discussed in this Court to-day, Mr. Moyer, and it was said by Mrs. Begley that when she got the Morasch note for you she took the other note that was with it from the Imperial Bank. Do you happen to know when you got that Morasch note, just to help us in point of time? A. April 15th, 1931.

Q. How do you fix it so definitely? A. Well, that is quite clear to me, for this reason . . .

Q. It is only, Mr. Moyer, to fix when you got the Morasch note, that is all I am asking you. A. It would either be the 14th or the 15th, I am quite sure it was the 15th, the day when it was brought to me.

Q. Of April? A. April, 1931, because I immediately . . .

THE COURT: Never mind about that.

MR. NOLAN: That is all I want you to say. Thank you, Mr. Moyer. My Lord, that is all the evidence we have to offer.

MR. ROSS: My Lord, I would ask you if you would excuse the Jury while we discuss a point of law?

THE COURT: Yes. Gentlemen of the Jury, I would ask you to retire again, if you please.

(The Jury retired at 3:35 p.m.)

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MR. ROSS: My Lord, I wish to move for a non-suit, and in doing so I just wish to review very briefly some of the facts under which I think we are entitled to it. I am going to assume for the sake of the argument that McElroy did not agree to loan, or that the Plaintiff did not agree to loan the money to McElroy in the first place, and that we will assume too for the sake of argument that the Bank were, perhaps, negligent, because we have not gone into the matter, and should have been put on their enquiry when the cheque was presented payable to McElroy himself, that the Bank were put upon enquiry. But notwithstanding these things, if the Bank were to blame up to this stage, the plaintiff is now estopped by conduct and the act. I will put it this way, the act of McElroy in borrowing this money and turning it over to the Bank has been ratified by the plaintiff by her subsequent acts. In the first place, in June, 1930, she knew that McElroy had used some of her money, there are certain undisputed facts. I want to deal with those now. In June, 1930, she knew McElroy had used some of her money. Her curiosity was aroused with regard to this matter about eighty-five hundred dollars in her cheque book when she went in to see Mr. Chambers. She learned on that date in June, 1930, that McElroy had used some of her money. In July, 1930, she knew that this money was used by McElroy in paying off the Bank. You remember, she knew that from her conversations with McElroy and Moyer, that McElroy had used this money in paying off the Bank. She had all these facts clearly in mind in July, 1930. Now, this created no disturbance in her mind. She left the next day, or within a day or two, with McElroy on a trip to Spokane, knowing he had her money, and she was not protesting in any way with regard to it. Before the end of October, 1930, she went to the Imperial Bank, got the eighty-five hundred dollar note and took it to the Bank of Montreal. That was as far back as 1930, before the end of October. So that she had that note in her possession and took the note away with her, the \$8500.00 note, and took it to the Bank of Montreal. On the 31st of July, 1931, she got the note and took it to her room after demanding, you remember that she asked McElroy for a renewal of this note. She got this note and took it to her room and kept it there till the next day. She had this \$8500.00 note all this time, and then she got a renewal. She accepted a renewal for this \$8500.00 note, repayable in one year, that being the first of September, 1932. Now, here she is, treating with McElroy, taking this renewal note payable one year after date, on the 31st of July, 1931, and then in September, 1931, she instructs, well, I should say from September, 1931, yes, September, 1931, she instructed Mr. Moyer to get payment or security, and she had Mr. Moyer pressing for payment from McElroy, not looking to the Bank but looking to McElroy alone for this note. During all this time she had never made any complaint to the Bank that the Bank had wrongly or that McElroy had wrongly used her money in this way and turned it over to the Bank. Now, her actions there, here she had full knowledge of all the facts with regard

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to that transaction and with full knowledge she accepts this note.

THE COURT: Aren't you overlooking one thing, that rather important knowledge that she did not have at that time, she did not know the Bank itself had participated in getting that money transferred to it in payment of McElroy's debts to it?

MR. ROSS: That the Bank had participated in it?

THE COURT: She did not know that the cheque had been drawn by the manager of the Bank, and that the manager of the Bank himself had deposited it to McElroy's account and, therefore, made the money available to pay McElroy's debt. That is one thing she did not know. A 10 rather important thing she did not know.

MR. ROSS: She knew the Bank had the money, and she knew that in August, 1931.

THE COURT: She did not know how they came to have it.

MR. ROSS: She knew they had got it from McElroy in 1931. Is that not sufficient? She knew the Bank had the money, and that they had got this money from McElroy and that it was money that McElroy had got from her.

THE COURT: Yes, but it is the Bank she is suing. I did not look at the pleadings. Perhaps she is suing McElroy too. It is the Bank she 20 is now suing.

MR. ROSS: I have not in mind the fact, you say, that she did not know about. I did not get in mind the question of fact you say she did not know about.

THE COURT: She did not know that the manager of the Bank had himself written out the cheque that transferred her money to McElroy, and that the Banker himself, the manager of the Bank himself, had made the deposit slip and deposited that cheque and made it available so that the Bank could use it, could use her money. Those are important things from her point of view that she did not know. 30

MR. ROSS: Surely those are not material facts to be known. What difference does it make who wrote out the cheque, whether the Bank wrote it out or whether McElroy wrote it out, or who wrote it out? The fact the Bank wrote it out is not a material fact going . . .

THE COURT: Do you mean to say it is of no importance in this case whether the Bank was itself a party to getting its debts paid by transferring money from this woman to its debtor and then paying its debts from that money?

MR. ROSS: She knew that the Bank was paid out of this very money.

THE COURT: Beg pardon? 40

MR. ROSS: She knew that the Bank was paid out of this very money.

THE COURT: She did not know that the Bank had anything to do with getting itself paid out of that money.

MR. ROSS: I do not see how that can be material as to whether she knew that or not. I cannot see how it can be material at all. The material thing is that she knew where this money came from, that it was money

that McElroy had deposited, had checked from her account into his own and then turned over by McElroy to the Bank. She knew all these facts.

THE COURT: Just a minute, Mr. Ross. Let us put it in a disagreeable way, but one in which everybody would understand it. Let us assume that McElroy could have been convicted for stealing that money?

MR. ROSS: Yes.

THE COURT: The persons who got the benefit of it was the Bank. Now, if the Bank assisted, actively assisted McElroy in stealing the money and they got it, would not that be a very important thing for her to know
10 if she was going to start an action against the Bank to recover the money?

MR. ROSS: Not unless the Bank did it in bad faith. There is no suggestion of bad faith on the part of the Bank in the evidence.

THE COURT: I do not know what you would call it. But if a Bank knows that a debtor of theirs is stealing money to pay them it is not very good faith for them to take it, is it?

MR. ROSS: I am assuming that the Bank, for the sake of this argument, that the Bank were put upon the alert when they saw this money coming. Let us assume that they did take it wrongfully, I am saying that the subsequent conduct ratified this act. Does your Lordship suggest that
20 conduct of that kind cannot subsequently be ratified?

THE COURT: No, I do not suggest that, but how do you say she is bound by something of which she had no knowledge until her own solicitor pointed it out to her after examining the document?

MR. ROSS: Yes, she saw this note and she knew of it in 1930 and she has acted, after knowing of it, after having had the note in her possession and knowing of all the facts, I cannot see where there is any material fact omitted that she should have known of that she did not know of, anything that would be material in this argument.

THE COURT: I do not think I follow your ground at all. The important thing, from her point of view, insofar as her action against the
30 Bank was concerned, would be the knowledge that the Bank had actively assisted in getting that money over to their own account, and got the money.

MR. ROSS: Supposing they had, the act has been subsequently ratified by her conduct.

THE COURT: Yes, but not by her conduct after she had that knowledge.

MR. ROSS: By her conduct after she knew that the money came from that account, that the money came from her account. She had knowledge
40 of all that. I think that all the facts of the case disclose that she had knowledge that the money came from her account. She knew that back in 1930. The evidence is pretty clear too that on her own admissions she knew that in 1931. It was discussed with her by the two Bankers. She knew the fact. Your Lordship spoke of Moyer telling her about the money being taken from the account. That was in 1930, in June, during Moyer's visit to the hospital.

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MR. SHAW: No, McElroy.

MR. ROSS: During McElroy's visit to the hospital in 1930. At that time the matter was discussed with her and she knew of it then. You will recall that in the evidence. I think the evidence is very clear on that. She knew that it was her money, that it was discussed with her by McElroy at that time, that was June, 1930. She knew in June, 1930, that McElroy was a wrong-doer in issuing this cheque, and she took notes afterwards and entered into this contract . . .

THE COURT: She is not suing McElroy, she is suing the Bank.

MR. ROSS: She is suing the Bank, yes, but she knew in June, 1930, 10
that the Bank had this money which McElroy had taken from her account wrongly, and she has ratified it by accepting a note from McElroy for the amount payable one year after date, and by her other acts. She ratified McElroy's tort in taking the money from the Bank and now it is transferred to the basis of a contract because she has accepted a contract and it takes it out of the realm of tort altogether, and puts it into the realm of contract. She has entered into a contract with McElroy with respect to this matter and ratified it in that way. Ratification relates back and does away with the wrong because it relates back to the date of the act and there cannot be any wrong because she has ratified it. She ratified it, 20
if there is a wrong, and, therefore, there cannot be any wrong in him using the money, and therefore, there cannot be anything wrong in him transferring the money to the Bank because she has ratified the original wrong-doing, and ratified it by taking this contract and in looking for security and her other acts. So that the matter has been ratified. I can give you authority to the effect that an unlawful act can be ratified.

THE COURT: You do not need to do that. I quite agree it can be ratified. Oh, yes.

MR. ROSS: Then, if McElroy . . . You see, there were two acts, 30
there were two acts in the first place, there was McElroy's wrongful act in checking against her account and depositing this into the Imperial Bank. Then the second act, it is an entirely separate transaction, is the issuing by McElroy . . .

THE COURT: That is not quite what he did, but that does not matter. Let us assume that is what he did.

MR. ROSS: And the second transaction is one in which McElroy uses the money to pay off the Imperial Bank. The wrongful act is, one, in McElroy issuing the cheque against her account. That is a wrongful act. That wrongful act has been ratified by her making this new contract and the making of this new contract relates back to the date of the wrongful 40
act, and takes it out of the category of wrongful acts by ratifying it and no one can raise any objection on the ground of it being a wrongful taking by McElroy of her money. I think that is clearly correct, as far as the law is concerned.

THE COURT: If I agreed with your construction of the fact, of course,

that would be quite sound law, but I do not agree with your construction of the fact.

MR. ROSS: May I ask your Lordship what fact is not sound and is not correct?

THE COURT: You have overlooked the important thing, that she did not know until after Mr. Taylor made the investigation on her behalf that the Bank itself was instrumental in having that money transferred from her account into that of McElroy, and getting it eventually into the account where the Bank could take it to pay their debt and they did take it to pay their debts. Those are important things that she did not discover until after Mr. Taylor made the investigation on her behalf.

MR. ROSS: She discovered the wrongful tort. She discovered the wrong on McElroy's part in issuing the cheques. I think she discovered all the material elements.

THE COURT: If there is no defence, I think she is still at liberty to trace that money to the Bank and get her money. That would be my view. So that you will have to decide whether you will give evidence or not.

MR. SHAW: Perhaps your Lordship will adjourn at this time so that we could probably facilitate things to-morrow by having an opportunity to determine that question.

(The Jury returned at 4:00 P.M.)

THE COURT: Gentlemen of the Jury, Court will now adjourn until to-morrow morning at ten o'clock.

DEFENCE.

WEDNESDAY, 25th OCTOBER, A.D. 1933, A.M. SESSION.

MR. SHAW: If your Lordship pleases, and Gentlemen of the Jury, we have now come to the stage of this case in which the Defendant Bank will endeavor to present to you its side of this particular controversy.

30 As you will apprehend, the controversy rages largely around the \$8,500.00 cheque, but in addition there are before you some five other cheques, making an aggregate total of some three thousand dollars, one cheque of \$500.00 having since been paid, that is, since the date of presentation to the Bank. Let me say at once with regard to these five other cheques it is our purpose to lead evidence to show you that they came to the Bank in the ordinary way, any cheque would come through the Clearing House, were duly presented for payment and were duly paid, the Bank having no knowledge whatever of the transactions for which the cheques were given. You remember the cheques, one to Moyer, one to the Canadian

40 Acceptance Corporation and the others to Strong & Dowler. With regard to the other cheque, the other matter of \$8,500.00, the evidence will be led to show that the Bank in this transaction has acted throughout with the utmost good faith. The manager will be called before you for the purpose of showing such information as he had with regard to the

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particular transaction. The accountant, whose name has been mentioned here, Mr. Chambers, will also be called, and tell you exactly how the transaction took place and how, whatever he did, was simply carrying out the instructions of Mr. McElroy at this particular time in his writing of the cheque, in his writing of the note he was acting merely as doing a service, which all Banks do, and which you gentlemen know from experience is a very ordinary thing for a Bank to be called upon to do for customers.

More than that, evidence will be adduced before you to show that following Mrs. Begley's return from the Coast she was informed about these particular cheques. The cheques were brought out and she examined them and she gave such an indication that the Bank was wholly disarmed as to any possible lack of authority there may have been in Mr. McElroy to issue the cheque at the outset. Now, that, in short, Gentlemen, indicates the line of evidence which we propose to lead and present to you for your consideration in this matter. Perhaps I should also say to you, Gentlemen, in connection with the same matter that the Bank's position by reason of Mrs. Begley's disarming action, by reason of her failure to notify the Bank about the situation has been prejudiced in the interim by reason of the depreciation in the securities and the properties which Mr. McElroy has in his possession or had in his possession.

Defendant's
Evidence.
No. 10
Allan Henry
Weaver,
Examination
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ALLAN HENRY WEAVER, having been duly sworn, examined by MR. SHAW, testified as follows:

Q. Mr. Weaver, you are presently the Manager of the Imperial Bank of Canada, for one of its Toronto Branches? A. Yes.

Q. And I believe that you were Manager of the Calgary Branch for a period of some eight years? A. Yes sir.

Q. Leaving this Branch to go to Toronto in December, 1932? A. Right.

Q. Now do you know Mrs. Begley, the Plaintiff, in this action? A. I do, yes.

Q. When did you meet her, Mr. Weaver? A. I think it was in January, 1929.

Q. Yes, and what circumstances brings that date to your mind? A. That Mrs. Begley came in with Mr. McElroy and a lady relative, I believe, inquiring as to where she should go or to find out where they would seek a solicitor for the Estate.

Q. Yes, and you had some discussion with them? A. I do not think there was much discussion. I suggested that they go upstairs to our own solicitor.

Q. You just simply recommended the Bank's solicitors to them? A. I did.

Q. Did they go out? A. Yes, they went out and Mr. McElroy came back with Mrs. Begley and asked if Mr. Moyer was not a perfectly respon-

sible Solicitor, or words to that effect and I said, "Yes, as far as I knew he was," and they left.

Q. And that is all the conversation you had with them or any of them at that particular time? A. As far as my recollection goes, yes.

Q. They went out of the Bank. They did not go up to the firm of Short, Ross & Company? A. No, they did not have time. They just went out of the door and came right back.

Q. You do know, of course, that they did not go to the Bank's Solicitor's, Messrs. Short, Ross & Company, as you had suggested? A. No, they did not.

Q. Now how long have you known Mr. McElroy, Mr. Weaver? A. Oh I would say since early in 1924.

Q. Was he a customer of your Bank when you became its Manager some eight years ago? A. Yes.

Q. Now can you give us shortly, a resume of Mr. McElroy's financial condition at about this time and trace it down in your own words, Mr. Weaver, down to the . . . I am talking about 1929 when this conversation took place. Can you tell me something about Mr. McElroy's financial condition in relation to the Bank from that time forward? A. Yes. On the 31st of December, 1928, McElroy owed the Bank in round figures

Q. I think probably if you turned slightly this way, so that the Gentlemen of the Jury will hear? A. In round figures, \$18,700, Eighteen thousand, six hundred, or seven hundred, that loan was secured by a first mortgage of 987 acres of land, which mortgage we took in 1923 to secure a debt of, it was then \$24,000. There was also a second mortgage on what was always known as the Kinneburgh farm, which I believe was about 444 acres.

Q. Yes. A. He had been negotiating at that time with Herron and Herron, so he told me, considered seriously buying the Kinneburgh farm and some other lots for an amount of Thirty thousand dollars for a brother. The deal hung fire for a long time and McElroy decided to borrow by way of mortgage to reduce the Bank loan and he borrowed \$13,500 from the Manufacturers' Life.

Q. Is that on the security of his 987 acres? A. On the security only of the 987 acres of land.

Q. Just a moment, where is this 987 acres situated, Mr. Weaver? A. In around Lake Chestermere.

Q. Where is the land covered by the Kinneburgh mortgage situated? A. In the same place. I understand from conversation with McElroy that he bought the Kinneburgh land and because it was, had a large part of the lake shore and he wanted to protect his other properties and that is why he bought it in the first place.

Q. You were telling us about the \$13,500 mortgage? A. The proceeds of that mortgage came through about \$13,400 on the last day of

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December, 1928, which reduced his direct Bank loan to Five thousand two hundred and some odd dollars.

Q. Yes? A. The loan was increased by my having paid cheques that he drew on his account, which overdraw it to \$7,200 by the 25th of March. On the 26th of March he evidently sold some grain and there was \$3,800 I think deposited to his credit on the 26th of March which reduced his loan to something around \$3,400.00, \$3,300 or \$3,400.

Q. By reference to these statements I suppose you can give us the exact figures, you have a memorandum you have taken? A. I have a memorandum.

Q. Perhaps you can give it to us from that just to refresh your own memory? A. The loan, to be exact, was \$18,690 when he got the Manufacturers' proceeds from the Manufacturers' Mortgage loan and that was \$13,404.

Q. And that was on the 31st of December, 1928? A. Right. That reduced the loan to \$5,286.00 and then it increased between the end of December and the 25th of March, that is I allowed it to be increased to \$7,296.00.

Q. And that was done by way of honoring his cheques as they came in? A. Honoring his cheques for which he had no funds. On the 26th of March he deposited \$3,873.00 which was from the sale of some grain which reduced his loan then to \$3,423.00.

Q. Yes. Now were those advances made without any additional security? A. They were, yes. You must understand, of course, that when we received the mortgage money, that his mortgage on the Nine hundred and seventy odd acres of land was discharged and we did not take a second mortgage. The loan down to that figure we did not consider it necessary to take a second mortgage.

Q. You considered you were secured? A. We considered he was responsible for the amount he owed us, yes.

Q. Yes, all right. A. Then we paid cheques covering the cost of putting in his crop and it gradually went up until by the 29th of June the liability had increased from \$3,423 to \$8,518, that is \$5,100. That was to put in the crop which was 897 acres of wheat and 280 acres of barley and 240 acres of oats.

Q. He was a farmer in a substantial way out in the Chestermere District? A. He had been for some years, yes. Perhaps I had better tell you in addition to this, there was another debt, which was an indirect debt to the Bank of \$14,800 and some odd dollars on the Kinneburgh land.

Q. What do you mean by calling it an indirect debt, Mr. Weaver? A. It was not a direct debt to the Bank. It was direct to the Karn-Morris Piano & Organ Company and was collateral.

THE COURT: Was what? A. Was collateral to the debt of the Karn-Morris Piano & Organ Company. That was carried at Head Office. I did not know the amount of that, at last I got a statement from Head Office.

Q. MR. SHAW: The reason you had anything to do with that at all

is because Mr. Phipps, the General Manager of the Bank, was merely a trustee for the people who held the mortgage? A. And the Bank, yes.

Q. I see. A. I know I mentioned it before—it would not matter if that were all, I mention it more because at that time, up until he obtained a mortgage on that Kinneburgh section, which was later on, which was another mortgage, up until that time we always had security, security on that Kinneburgh land to his advances from the Bank at Calgary, his direct advances if you wish to call it that.

Q. In other words you had security on all his property? A. Yes.

10 Q. Now tell us the story about the Karn-Morris Mortgage, what was the story of that? A. The story is that some years prior to the time I took over the Branch here, McElroy bought, I think it was 444 acres of land that I think must at one time have belonged to Kinneburgh who was in business here. Kinneburgh had given this as security to the Karn-Morris Piano & Organ Company and in turn they had given it over to someone in the Bank as trustee for the Bank and some other creditor. The land was sold, I do not know when, to McElroy and at the end of December, 1928, as I say the amount owing on it was close to \$15,000. In order to reduce the amount owing to the Bank he borrowed by way of
20 mortgage another \$8,500 on that land from the Manufacturers' Life.

Q. When was that? A. I do not know when he arranged for the loan but it was about the 12th of July that the proceeds of the mortgage were paid into the Bank.

Q. The 12th of July, 1929. A. 1929.

Q. Reducing the amount due on the mortgage to what? A. The total amount on that mortgage?

Q. Yes. A. Was close to Fifteen thousand dollars.

Q. So that would reduce it to a matter of approximately how much?

A. \$7,500.00.

30 Q. \$6,500.00? A. \$6,500.00?

Q. Now as I understand the Bank had a first mortgage on his 987 acres and in order to allow the Manufacturers' Life to put on their \$13,500 the Bank discharged this mortgage and got the proceeds of that particular loan from the Manufacturers' Life, that is the first thing?

A. Yes.

Q. And that indebtedness in respect of that property was reduced you say to that amount? A. \$5,200 and some odd dollars.

Q. And then what security did the Bank have from that time forward? A. Nothing but a second mortgage on the Kinneburgh farm.

40 Q. Yes, a second mortgage on the Kinneburgh farm? A. And after the loan was obtained on the Kinneburgh farm a third mortgage which was unregistered.

Q. Do you remember approximately the date of the third mortgage, the unregistered third mortgage? A. Yes, the 25th of March, 1929.

Q. What was the amount of the unregistered third mortgage? A. \$6,604.00.

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MR. NOLAN: If I may interject, the mortgage might be produced to show the amount.

MR. SHAW: We will come to that in a moment. I just want to get a rough idea of the transaction. You say that third mortgage was it executed? A. Yes.

Q. And held unregistered? A. That is it.

THE COURT: Are you producing the mortgage?

Q. MR. SHAW: Tell me about that mortgage, Mr. Weaver? A. At the time that the mortgage was taken McElroy expected to pay off the Bank from moneys which he would receive from Herron and afterwards moneys which he told me he had arranged to borrow from Mrs. Begley. 10

MR. NOLAN: That is highly objectionable. I am going to ask that it be stricken from the record. I am not going to permit, without objection, Mr. Weaver to say what Mr. McElroy told him. I do not know whether I should say this before the Jury and perhaps they should leave in order that I might state my objection about these matters.

MR. SHAW: Probably we had better have the Jury excluded.

THE COURT: Gentlemen of the Jury, will you retire for a few moments. 20

(The Jury retired.)

MR. NOLAN: My objection consists in this, there is alleged to have been made an agreement between Mrs. Begley and Mr. McElroy whereby she agreed to lend him this money. There are two people parties to that agreement, Mrs. Begley and Mr. McElroy. Mrs. Begley came into your Lordship's Court. She was in this box for a day and a half. She was one of the parties to the agreement and was cross-examined. I have listened with care to my friend's opening. I see no indication in it that the other party to that agreement, McElroy, will come into your Lordship's Court. 30

MR. SHAW: Cannot you bring him?

MR. NOLAN: That being so, my friend taking the responsibility of not calling him, I am going to object to this witness or any other witness saying to this Court and Jury what Mr. McElroy told them about his agreement with Mrs. Begley. Mr. McElroy can give that evidence if he likes but Mr. Weaver surely cannot say here and now, "That is what Mr. McElroy told me that Mrs. Begley said to him in June, 1929."

MR. SHAW: I think, my Lord, this evidence has covered such a wide range, my learned friend suggests that the Bank connived with McElroy, surely I am entitled under those circumstances to put in the evidence of the Manager of the Bank with respect to an arrangement or conversation or whatever it was he had with McElroy. 40

THE COURT: Well I would not think so when the direct evidence is there if you wish to produce it. I do not think you can put in hearsay evidence when the direct evidence is available.

MR. ROSS: My Lord, the Plaintiff suggests that the Bank is not act-

ing in good faith, that is that Mr. Weaver is not acting in good faith. Surely we can show on what faith he did act, on what he was relying and the conversations he had with McElroy. What he was relying on.

THE COURT: If you laid a foundation for it, of course, you could, but you have not done it so far.

MR. ROSS: Surely we are entitled to offer evidence of what he relied on or what prompted the Bank to do as it did.

THE COURT: Not at this stage.

MR. SHAW: Perhaps your Lordship would indicate at what stage we
10 could.

THE COURT: It would depend on whether or not McElroy is called.

MR. SHAW: We are under no obligation to call McElroy. He is the agent of these people.

THE COURT: You take the position you are going to adduce evidence of what McElroy said to this witness?

MR. SHAW: Yes.

THE COURT: You are going to give that out of the mouth of this witness?

MR. SHAW: Quite right.

THE COURT: By way of hearsay, I hold obviously it cannot be done.
20

MR. SHAW: My suggestion is this, my Lord, in a charge of this character, of connivance, my learned friends have based their action upon connivance and that being so we have the right to go just as far as they do in connection with a matter of that kind. For example, conversations between co-conners, if I may call it such, are admissible in such a case and I suggest that the allegation being that Mr. Weaver or the Bank Officials are co-conners, then surely this is admissible.

THE COURT: I do not think so, I do not think so.

MR. SHAW: You see the situation is, my Lord, suppose Mr. McElroy
30 and Mr. Weaver had the conversation the evidence of Mr. McElroy on that matter is not a particle more direct than the evidence of Mr. Weaver so neither of them should, according to your Lordship's ruling, would be admissible at all.

THE COURT: What is that?

MR. SHAW: In these conversations between Mr. Weaver and Mr. McElroy, suppose there were conversations between them, my learned friend says and your Lordship suggests that the conversation could be given from McElroy's point of view if McElroy were called to give evidence, he could tell about that conversation but Mr. Weaver cannot tell
40 and here he is representing the Defendant Bank. The situation is surely impossible. It cannot be that. I suggest the only basis upon which the evidence is admissible is because of the allegation of connivance and if there is an allegation of that kind then conversations between what I may call, for the purpose of this argument, co-conners, is admissible. More than that, I suggest for the purpose of establishing good faith that he

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can give such information and such evidence as will establish that particular thing.

MR. ROSS: Then, my Lord, there is another ground upon which I submit it is admissible and it is this, McElroy had a power of attorney from her. He was authorized to loan her money under that Power of Attorney and here he is making a loan and we are entitled to, he is representing her in these different transactions, surely the principal is responsible for the acts of the Agent and any conversation that Mr. Weaver may have had with the Agent would be binding on the principal. That is the general rule of evidence and would be admissible on that theory. 10

THE COURT: That is quite true but if the principal is available could evidence be given by the agent?

MR. ROSS: If the principal is what?

THE COURT: Available as a witness. You say that McElroy was her agent under the Power of Attorney and that McElroy in this conversation with the witness you propose to adduce the evidence from now?

MR. ROSS: Yes.

THE COURT: Can you adduce that evidence without saying that the person who spoke the words cannot be brought before the Court? Can you give indirectly evidence that is available directly? 20

MR. ROSS: Yes. They could call their own agent if they want to to give this evidence or to contradict any evidence that we give but the remarks of the agent are binding on the principal. A conversation, conversations of the Agent are binding on the principal. We can give evidence of that Agent, I submit. Statements made by the Agent with regard to a proposed transaction or with regard to an actual transaction.

MR. NOLAN: My Lord, the Bank pleads an agreement between the two. They are attempting now, we have led evidence to bring this Court to the conclusion that there was no agreement as alleged on Mrs. Begley's part. Now they attempt to say that there was an agreement between these two people because of what Mr. Weaver said Mr. McElroy told him, what Mrs. Begley said to Mr. McElroy and so far as connivance is concerned, if this were a criminal case there might be some question of the Bank being allowed to give evidence to remove the questions of mens rea but this is only a civil action and one question is, that there was no inquiry made. Now I think it would be most unjust to this Plaintiff to allow Mr. Weaver to do what these gentlemen on my right took the responsibility of preventing Mr. McElroy from doing. As your Lordship pointed out, is he available? So far as we know he is. He was certainly available at the time he handed the lady's correspondence to the Bank. Now if they want to get from him what was done they can bring him here and put him in the box, my Lord, and let us listen to what he has to say but do not bring Mr. McElroy into this Court through the mouth of Mr. Weaver to tell the Court what took place between him, Mr. McElroy, and somebody else at some other time. Surely, my Lord, that is wrong. 40

MR. SHAW: My learned friend is under a misapprehension. I am

not seeking to establish the agreement at this moment at all. I am seeking to establish, as I suggested to the Jury, the good faith of the Bank.

MR. NOLAN: Does my learned friend go so far as to admit there was never an agreement between these two people to lend because that will clear the air if he will.

MR. SHAW: I will not say there never was an agreement but I was not trying to establish it.

THE COURT: In my view the evidence is not admissible.

MR. ROSS: My Lord, might I make another observation.

10 THE COURT: I think we will consider it settled.

MR. NOLAN: If my friend on reflection will admit that there was no agreement then perhaps this evidence can go in but I do not know as he is prepared to do that.

MR. SHAW: No, I do not see why we should barter for our rights.

MR. NOLAN: Quite right, and I will not ask my friend to barter but I will ask him to call the evidence which I am entitled, as a right, to cross-examine.

MR. SHAW: You have no right to direct us to call him.

20 MR. NOLAN: No, no right to direct but a right, however, I will not say any more.

MR. SHAW: You have a perfect right to call any evidence you like and I am not suggesting my learned friend has not that right.

MR. SHAW: We are not offering the evidence to establish the agreement but what I want to say is, that the Bank's good faith, the Bank believed there was an agreement and the reason for believing there was such an agreement we are entitled to show that.

THE COURT: No I do not think so, that is you are not entitled to show it in this way, that is by giving indirect evidence.

30 MR. SHAW: I would like to make it very clear, for the purposes of the record, my Lord, that at this particular time it is not the agreement which we are seeking to establish at all, by this evidence which we propose to adduce.

THE COURT: Mr. Shaw, I do not think that a trial Judge can be expected to read into the minds of Counsel what their motives are. All I have to decide is, is this question presented at the time admissible and I hold it is not, and I think the question and the answer should be struck out of the record and it will be so ordered.

MR. ROSS: Does that mean, my Lord, that we cannot lead any evidence to show . . .

40 THE COURT: Now I am not giving Counsel advice. I am away past that stage in my experience on this Bench, bring the Jury back.

(The Jury here returned.)

THE COURT: Gentlemen of the Jury, I have just held, after listening to argument, that the last question and answer of this witness, the question should not have been asked and the answer should not have been given and, therefore, you will dismiss that from your mind.

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MR. SHAW: Now, Mr. Weaver, I do not know that we had finished the financial, the matter of the financial statement, I think you told us that in March, some day in March, a third mortgage had been taken for the Bank's indebtedness, is that correct? A. That is correct.

Q. What day would that be? A. The 25th of March.

Q. And the year would be 1929? A. 1929.

Q. And I want you to tell me about that mortgage at this time, you said it was executed and it was held not registered? I mean, just tell me about the mortgage? A. It was held by me and apparently was given up or destroyed on the 29th of June or around that date when the loan was paid off, I do not know what happened to it, since I have come back here. I have not been able to locate it. 10

Q. Now will you tell us, Mr. Weaver, what knowledge you have of this particular transaction of the 29th of June in connection with the cheques and the notes, have you any personal knowledge of that matter yourself? A. No.

THE COURT: What cheque and note are you referring to?

MR. SHAW: I have not the exhibit, my Lord.

Q. MR. SHAW: I present to you, cheque Exhibit "6" and note Exhibit "13", now will you tell the Court and Jury when this document first came to your possession? A. The first time I saw the cheque was in January, 1930. 20

Q. January, 1930? A. Yes.

Q. And what was the occasion for you seeing it at that particular time? A. During the inspection that year, the Inspector got out a large number of the cheques.

Q. You are talking about the Bank Inspector? A. Yes, and this was one of them.

Q. The Bank Inspector, I suppose, comes around ordinarily how many times a year? A. Once a year, at least, once a year. 30

Q. So he came on his annual inspection and took out this cheque, I suppose, with a lot of other cheques? A. That is right.

Q. And that is the first occasion on which you saw the cheque? A. That is right.

Q. Now what about the note? A. I don't remember ever having seen the note.

Q. You don't remember ever having seen the note at all? A. No.

Q. Did you know anything about, tell me first of all, what was the financial position of Mr. McElroy's so far as the Bank was concerned on the 29th of June, 1929? A. Well it was not any different from what it had been for several years, that is his financial standing was not. 40

Q. Well how much did he owe the Bank on the 29th of June, 1929? A. \$8,518.

Q. And what was the result of the payment of this particular amount represented by this cheque? A. Mr. McElroy's advances to the Bank were paid off.

Q. Now I observe by a reference to this cheque that it appears to be, it is not endorsed by McElroy, you have observed it, have you? A. Yes.

Q. What is the practice in connection with that, the Bank's practice? A. Well ordinarily . . .

MR. NOLAN: I do not know that that is a proper question, my Lord.

THE COURT: No.

MR. SHAW: Perhaps I should ask one question first.

Q. MR. SHAW: This cheque according to the records of the Bank
10 went where? A. To the credit of J. W. McElroy.

Q. And for such purpose is it necessary to get the endorsement of McElroy, do you know?

MR. NOLAN: Now that is something this witness is not competent to say.

THE COURT: No I do not think so, I do not think so Mr. Shaw, I do not think you can ask him that question.

MR. SHAW: I would like to ask him this question.

Q. MR. SHAW: What is the Bank's practice in connection with a cheque under similar circumstances to this with respect to the necessity
20 of securing the endorsement of Mr. McElroy?

THE COURT: Why not get the facts anyway first before you ask for his opinion, are you producing him as an expert on Banking?

MR. SHAW: Well he will be on Banking practices, my Lord.

THE COURT: Well you had better get the facts first.

MR. SHAW: He has already suggested . . .

THE COURT: Before you produce him as an expert.

MR. SHAW: He has already suggested to us, my Lord, that the cheque is not endorsed by J. W. McElroy.

THE COURT: Well that is obvious.

30 MR. SHAW: Yes, that is obvious.

Q. MR. SHAW: There is an endorsement, by reference to the cheque Mr. Weaver, which I would like you to look at, you observe the endorsement? A. Yes.

Q. Is that endorsement under these circumstances?

THE COURT: Just a minute, show the cheque to the Jury, so that they will know what you are asking.

MR. SHAW: Very well, my Lord.

(Cheques shown to Jury.)

Q. MR. SHAW: First of all the cheque is not endorsed by J. W. Mc-
40 Elroy in person, is it? A. No.

Q. It is endorsed . . .

THE COURT: Just a minute, wait until the Jury have a look at the cheque. Now the cheque will go back to the witness, let him have the cheque in front of him when you ask him the question.

(Cheque handed to witness.)

Q. MR. SHAW: Now Mr. Weaver, I direct your attention also to

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Exhibit 12, already on record, do you know, the deposit slip now did, you have examined the Bank records in connection with this particular transaction, have you not? A. Yes.

Q. Can you tell me where the proceeds of that particular cheque went? A. The credit of J. W. McElroy.

Q. You know that from the records? A. I do, yes.

Q. Well I mean do you know it only from the deposit slips? A. No, I know it from the records, I have seen it in the ledger.

Q. Now you will observe there is no personal endorsement of Mr. J. W. McElroy on that cheque? A. Yes.

10

Q. Now I asked you as to whether or not, and do not answer this question until his Lordship rules, the established Banking practice is to require the endorsement of J. W. McElroy under those circumstances?

THE COURT: Before you ask him that question, I think you had better ask him what happened the cheque.

MR. SHAW: He has already suggested, my Lord, that the cheque was deposited to the credit of J. W. McElroy.

THE COURT: Yes, but I think you had better ask him by what right it got there.

MR. SHAW: Very well.

20

Q. MR. SHAW: Will you tell me the ordinary route by which that cheque . . .

THE COURT: No I do not think you can ask him that, I think you must ask him what happened.

Q. MR. SHAW: Tell us what happened Mr. Weaver. A. I am only assuming what happened, I was not there.

Q. Let us take the Bank sheets, so that we get this matter quite clear, what are these documents Mr. Weaver? A. They are sheets from the ledger.

Q. Yes, what about them, the ledger of what? A. The account of J. W. McElroy in the current account ledger.

Q. That is the current account ledger of J. W. McElroy in your Bank? A. J. W. McElroy's account.

Q. And does it cover the period we are now discussing? A. Yes.

MR. SHAW: I want to tender these my Lord, we can put the documents altogether perhaps as one exhibit.

(Current Account Ledger Sheets marked as Exhibit "72".)

Q. MR. SHAW: Now I want you to examine the ledger sheet of Mr. J. W. McElroy, to find the pertinent date there, so you will be in a position to tell us the story in connection with this, what happened this cheque? A. This cheque was deposited to the credit of J. W. McElroy in his current account on the 29th of June 1929 according to these records.

40

Q. Now I observe that you, on the back of the cheque you have not the personal endorsement of J. W. McElroy? A. No, it is not here.

Q. What endorsement is there, perhaps if you will just read it? A. I cannot read it.

Q. For which I do not blame you very much? A. The endorsement is not distinct enough but it is, so far as I can see "Deposited to the credit of J. W. McElroy, Imperial Bank of Canada, Calgary, G. Taton, per H. P. Cann."

Q. Yes, that is the endorsement you make out? A. Yes.

Q. Now that endorsement apparently is not a personal endorsement of J. W. McElroy? A. It is not, no.

Q. Well now tell us about, tell us about how that comes, why should we not have the personal endorsement of McElroy on the cheque?

10 MR. NOLAN: Only if the witness knows, my Lord.

THE COURT: Yes, I think that is the case Mr. Shaw, if the witness knows what happened, let him say.

MR. SHAW: Do you know what happened in connection with this particular cheque? A. I know that it was deposited.

Q. No, I mean of your own personal knowledge, do you know? A. No.

Q. You were not there and had no part in it? A. None whatever.

20 Q. Well now you have already told us that you have been Manager of the Calgary Branch for eight years, how long have you been in the Banking service of the Imperial Bank of Canada? A. 30 years.

Q. Now can you tell me whether or not it is the ordinary Banking practice under those circumstances where a cheque is being deposited to the credit of an individual to have the endorsement of the, in such a form as the one now before you?

THE COURT: Now just a minute, there is not any evidence before us up to now that, to justify your Statement of Facts to the witness in my view. Just read Mr. Shaw's question, you are just assuming this cheque was being deposited?

30 MR. SHAW: He said, my Lord, the cheque was deposited to the credit of J. W. McElroy, he has already stated that.

THE COURT: Yes, that is what has happened but you are assuming that somebody had authority to do it I take it, you are assuming that to start with, you are asking the witness to assume that.

MR. SHAW: No, what I am saying is this my Lord, here comes a cheque into the Bank payable to the account of an individual. He does not endorse it personally, now I say I want, the question I want to know is whether or not it is acknowledged Banking practice under those circumstances to deposit those moneys to the account of that individual without his endorsement?

40 MR. NOLAN: My Lord, there are two answers to my friend's inquiry; the first is that they do not keep any established Banking practice and the second is that the witness, Mr. Weaver, saw this cheque with these marks on the back, in January 1930 for the first time, how can he know what happened to this cheque.

MR. SHAW: I am not asking him what he knows about this particular

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cheque, I am asking him to explain the Banking practice under similar circumstances to this matter.

MR. NOLAN: My Lord, and Banking practice as between Banks, I submit, has nothing to do with this matter, as to the right of Mrs. Begley in respect of this cheque drawn by Mr. McElroy on her account and not endorsed by him at all. That is not a matter of Banking practice between Banks.

THE COURT: No, I do not think you can ask him that Mr. Shaw.

MR. SHAW: Very well, sir.

THE COURT: I think you will have to confine yourself to what actually 10
took place at the present stage. I cannot say that at sometime you cannot recall him and ask him many questions about Banking practice if you wish to do so.

MR. SHAW: Very well, my Lord.

Q. MR. SHAW: I gather from what you say, Mr. Weaver, that you have no personal knowledge of this particular transaction at the time it went through, or series of transactions? I am speaking now with reference to the \$8,500 cheque and the \$8,500 note? A. Yes, I will go further and say that the first I knew of it was when it was reported at the end of the month that the loan had been paid. 20

Q. That is it was reported to you? A. Yes.

Q. At the end of the month of June? A. At the end of the month of June.

Q. That is that McElroy's loan had been paid? A. Yes, it came up in the statement.

Q. And you did not see the cheque? A. I did not.

Q. And you didn't see the note? A. I didn't.

Q. Now you have told us about your, the financial affairs of your Bank with Mr. McElroy, can you tell me whether or not from the beginning of 1929 and along up until this particular time you had been pressing Mr. McElroy for payment of this account, of his indebtedness 30
to the Bank rather? A. I had been pressing him, that is I had been impressing on him that we wanted the loan paid from the first time I saw him, not more particularly in 1929 than in 1928 or 27 or 26.

Q. Was there any fear in your mind at any time?

MR. NOLAN: Now that is an objectionable form, my Lord.

MR. SHAW: All right, I will withdraw it. Of course, I suppose, a Bank's business is to get its loans paid.

THE COURT: I think everybody will agree to that.

MR. SHAW: I think so, my Lord, I do not think that is objectionable. 40

Q. MR. SHAW: You have stated to us that you did not see this cheque until it was produced by the Inspector of the Bank in January, 1930, I think you said? A. Yes.

Q. Now there are several other cheques which are in controversy here, I draw your attention to this cheque, Exhibit "7", which is a cheque made in favor of J. W. Moyer, or John W. Moyer, for \$500.00 dated

August 21st, 1929, have you ever seen that cheque before? A. Well not to my knowledge, no.

Q. You have no personal knowledge of it? A. No.

Q. Did you have any personal knowledge or did you have any personal knowledge at that time of the transaction involved or as represented by that cheque? A. No.

Q. Would that cheque come through your Bank in the ordinary course? A. The ordinary course of business, yes.

10 THE COURT: I think the witness can tell from the endorsement, the marks on the cheque, what course it took.

MR. SHAW: Yes.

Q. MR. SHAW: Perhaps you can tell us what course it took? A. This cheque, so far as I can see, was cashed by Mr. Moyer.

Q. You mean that Mr. Moyer came in and got the cash for it? A. Came in and got the cash for it.

Q. How can you tell that? A. Well there are no endorsements of any Bank on the back and the denomination of the bills which are given to him are on the back.

Q. That is he got ten \$50 bills? A. Yes.

20 Q. What would Mr. Moyer do with this cheque in order to get the money? A. Present it to the ledgerkeeper and had it marked and then present it to the teller and obtain payment.

Q. Was it presented to the ledgerkeeper? A. I do not know.

Q. Well is there any way of telling from this cheque? A. No, well there may be, if it is marked "accepted" it probably was, but you cannot tell whether it was done before or afterwards. I would say, no, that he presented it to the teller and obtained payment without taking it to the ledgerkeeper.

Q. Just secured payment in cash? A. Yes.

30 Q. You would have no personal knowledge of that? A. None whatever.

Q. Now I present to you Exhibit "8", a cheque dated July 22nd, 1929, made in favor of Strong & Dowler in the sum of \$1,000, is it? A. Yes.

Q. Now can you tell us the story in connection with that cheque? A. No sir, it was apparently deposited to the credit of Strong & Dowler Limited in the Bank of Montreal and came through to us, through the Clearing House.

40 Q. When was it deposited in the Bank of Montreal? Can you tell that? A. 22nd of July, 1929.

Q. And that would come through in the ordinary way from the Clearing House to you? A. That is right.

Q. What do you mean by the Clearing House, perhaps the Gentlemen of the Jury are not familiar with that? A. The Clearing House is the centre which the Bank send all their notes on other Banks and cheques on other Banks, to clear with one another each day.

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Q. And you know it went through that Clearing House why, because that is the ordinary practice? A. Because it is the ordinary practice and we get them in no other way.

Q. Now do you know, Mr. Weaver, anything about the transaction represented by this particular cheque? A. No.

Q. Do you know the handwriting on the cheque "Strong & Dowler Limited"? A. No.

Q. You do not know anything about it? A. No, I do not recognize it.

Q. Now I present to you Exhibit 11, that is the cheque dated when? 10
A. November 13th.

Q. 1929? A. Yes.

Q. Made in favor of whom? A. Strong & Dowler.

Q. And tell us the story, what is the amount? A. \$735.00.

Q. Now tell us the story of that cheque? A. It appears to be deposited in the Bank of Montreal on the 13th of November, 1929, and it would come through the Clearing House in the same way as the previous cheque did.

Q. And apparently it is a form, the form used is a form of the Bank of Montreal, with that Bank stricken out and the Imperial Bank put in 20
in writing? A. Yes.

Q. Have you ever seen this cheque before? A. Not to my knowledge.

Q. Do you know anything about the transaction represented by this cheque? A. No.

Q. Know nothing about it whatever? A. No.

Q. Now I present to you Exhibit "9", will you tell the Jury what this cheque is? A. Another cheque in favor of Strong & Dowler for \$500.00 dated the 25th of October, deposited in the Bank of Montreal apparently on the same date and cleared to us through the Clearing House. 30

Q. That would come in the ordinary course of business to you? A. Just the same.

Q. Just the same as the other cheques? A. Yes.

Q. Do you know anything about the transaction represented by this cheque? A. No.

Q. Have you ever seen the cheque before? A. No, not to my knowledge.

Q. I present to you Exhibit 10, will you kindly tell us what that is? A. It is a cheque for \$265.00 in favor of the Canadian Acceptance Corporation, dated the 13th of November and signed by J. W. McElroy, as Attorney for Mrs. Begley. 40

Q. On what form is that cheque? A. On what is known as a counter cheque.

Q. Is that the kind of counter cheque that your Bank supplies? A. It is the kind of counter cheque that the Bank of Montreal supplies.

Q. What about the color? A. That was apparently to my knowledge one of the Bank of Montreal forms.

Q. It is not one of the Imperial Bank forms? A. No.

Q. And what was the story of that cheque? A. The same as the story of the other cheque, this was deposited in the Bank of Montreal and cleared through the Clearing House on the 15th of the month.

Q. Would that come to you in the ordinary course of business? A. Yes.

Q. Do you know anything about the transaction represented by that 10 cheque? A. No.

Q. Did you ever see the cheque before? A. No, not that I know of.

Q. By the way you said you had not seen these cheques before, I suppose what you mean is until the action was started? A. I do not remember ever even having gone through them since the action started, I have heard you discuss them and talking about them but I have not actually looked at them to my recollection.

Q. Mr. McElroy had an account in your Bank of his own, didn't he, you have already told us that? A. Yes.

Q. And were the cheques of, how were the cheques drawn on his 20 Bank account, his personal Bank account? A. By signing J. W. McElroy.

Q. Now is the signature on these cheques of the drawer different from the cheques that would be drawn on J. W. McElroy's personal account? A. These cheques are all drawn on the account of Mrs. Begley.

Q. Speak up? A. All the cheques are drawn on the account of Mrs. Begley by J. W. McElroy as her attorney.

Q. It is suggested, Mr. Weaver, that perhaps these cheques were before you when you were examined for discovery in Ontario, is that right do you recall? A. Well they may have been, I have no special recollection of them, I mean having gone through and made a list of them, the examination 30 will show that.

Q. Well do you recall whether or not they were? A. Not in particular I do not, I do not remember them, I remember some of them, I remember some cheques, I should say.

Q. Now, Mr. Weaver, you told us that the effect of depositing this cheque, the \$8,500 cheque to the credit of Mr. McElroy was to pay off his indebtedness to the Bank, that is correct is it? A. That is correct.

Q. Well now was the account closed out? A. The account . . .

THE COURT: McElroy's account.

Q. MR. SHAW: Yes. A. The exhibit will show that, the ledger 40 leaves.

Q. Just look at them, Mr. Weaver, and tell us? A. Yes, the account was closed out, there was just sufficient money deposited, that is \$18.78 in addition to the \$8,500 to cover the overdraft and pay up the balance of the demand note.

Q. Well are there any items after that date in that account? A. Yes.

MR. NOLAN: Before the question is answered, might I ask what this

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has to do with this action? Here we are come to the point when Mr. McElroy's debt has been discharged. Now the witness is going to be asked some questions about the Bank's dealings with him subsequently to that time, what relevancy can that have to the matter of the inquiry?

THE COURT: I do not know at the moment but I hesitated to rule that it was not admissible because it may have something to do with it.

THE WITNESS: The account was continued and from then on there were entries.

THE COURT: What do you mean by continued on?

Q. There were some entries, I am trying to find out, my Lord, the next entry which went through the account, I think about the 15th of July. 10

Q. MR. SHAW: What I wanted to get at . . . A. The account was carried on after that.

Q. Yes, were there advances made to McElroy after the date of the deposit of this cheque? A. Yes.

Q. What I would like to ascertain from you, Mr. Weaver, is whether or not on the payment of this, the deposit of this cheque, the Bank's relations with McElroy terminated? A. No.

Q. That is they were continued after that? A. They were con- 20
tinued the same as before.

Q. And that, as I understand you, the continuation was done by way of advances to him? A. That is correct.

Q. Mr. Weaver, you have suggested that the cheque, the \$8,500 cheque first came to your attention in January, 1929, and at the time of the Bank inspection, you observed the form of it at that particular time, did you? A. Yes, that it was 30.

Q. Yes, 1930? A. Yes.

Q. Now what did you do following that? A. When I found it was signed under Power of Attorney I inspected the Power of Attorney which was on file in the office and had it filed away again, that is all I did. 30

Q. You just investigated to find out whether or not there was a Power of Attorney? A. Yes, and the Power of Attorney, so far as I knew was in proper form.

Q. Had you known anything about this transaction previously, I am talking now about the cheque, the \$8,500 cheque and the note? A. Will you please be a little more clear?

Q. Here you see, Mr. Weaver, a cheque signed by, under Power of Attorney, now what did you do in connection with that, that put you on your inquiry did it? A. I only inquired at the time if there was a Power of Attorney and if that Power of Attorney was in order and properly recorded and that is all I did, I did not consider there was anything further necessary. 40

Q. Did you know of anything at all in connection with the matter previously? A. Did I?

Q. Or the transaction involved? A. Yes, I did.

Q. Now don't answer this question, from whom did you get your knowledge, was it . . .

THE COURT: Just a minute, you don't need to amplify that.

Q. All right? A. From the Accountant.

Q. Just a moment please . . .

THE COURT: He says from the Accountant.

WITNESS: Mr. Chambers, the Accountant.

Q. MR. SHAW: And you have no knowledge of the transaction previously to that at all? Or no information in connection with it, I am not trying to tie you down to particular cheques and the notes but the transaction? A. Yes.

Q. Well now will you tell me from where you got your information? I assume that is admissible, my Lord.

WITNESS: You wish to know where I got the information?

Q. MR. SHAW: No I do not want you to tell me, you got the information, Mr. Weaver, with respect to the Power of Attorney and the cheque I assume from what you say, from Mr. Chambers? A. Well from someone in the office, I asked them to let me inspect them.

Q. Did you know of your own personal knowledge anything about the transaction represented by that cheque and that note? A. Yes.

Q. Now I ask you just this one question, from whom did you get that information? A. I got the information from Mr. Chambers.

Q. Do you know any reason why this attorney was making a cheque payable to himself? A. Only that he was obtaining a loan.

THE COURT: Just a minute.

MR. SHAW: Now don't tell the conversation, did you have any information from anybody with respect to that particular transaction other than from Chambers? A. No.

Q. You had no conversation with anybody in connection with this matter other than that Mr. Chambers, I mean at any time? A. No, I have no recollection of discussing it with anyone, the loan was paid off.

Q. I just want to get the source of your information only, the parties, if any, from whom you got information with respect to not only the cheque and the note but the transaction represented by it? A. Well I do not remember getting any information from anyone else except Mr. Chambers in connection with the transaction.

MR. NOLAN: I just rise to say that the matter should be left there and that Mr. Shaw should not cross-examine his own witness.

MR. SHAW: I do not intend to leave it there. I intend to exhaust the gentleman's information. Here he sees a cheque made payable by an attorney to himself, now I want to know if all he knows about it is the conversation he had with Chambers.

Q. MR. SHAW: What is your answer to that question? A. My answer is that all the information I had about the transaction itself is that . . .

Q. MR. SHAW: I am not restricting it to the transaction. About

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the whole matter involved in the particular transaction. A. I can only go on and say that I have been informed . . .

Q. Had you any other source of information other than Chambers?

A. That this money . . .

Q. No, the Court will not allow that conversation, but what I want to know is, did you have any other source of information other than Chambers with respect to this matter? A. I may be very stupid in this question but I do not understand exactly what you wish to get from me.

I can only explain that Mr. Chambers told me about the transaction at the time it went through and when this cheque was taken out in 1930 I took the transaction up by myself and found that cheque had been signed under a Power of Attorney and I saw nothing to take exception to in it. Whoever the cheque was payable to, so far as I was concerned, I thought it was all right. The Power of Attorney was there and expressed as such the cheque would be signed in that way and I did nothing further with respect to it. 10

Q. Did you ever have any conversation with anyone else with respect to this particular matter? A. No.

MR. NOLAN: And that should end it, my Lord, I suggest.

Q. MR. SHAW: Now you are restricting, are you, Mr. Weaver only to the note and the cheque and nothing else? A. That is it. 20

Q. Well I do not want you to restrict it to that, I want you to tell me whether you had any conversation about the particular transaction represented by the note and the cheque with anybody and if so with whom?

THE COURT: He is not asking you as to any conversation but he is asking you, he is not asking you to state any conversations that you had but he is just asking you the question as to whether or not you had any conversations with anybody with respect to this transaction other than Chambers? A. Not to my recollection. 30

Q. Did you know anything about this transaction before it was actually consummated? A. Yes.

Q. Now from whom did you get your information? A. From Mr. McElroy.

THE COURT: It took a long time.

WITNESS: Yes, but I thought . . .

Q. When was that, Mr. Weaver? A. It would be around the end of April.

Q. And now you are talking about your conversation with McElroy around April of what year? A. 1929. 40

Q. And have you any means of fixing the date? A. Yes, I have by the records, having written to Head Office.

Q. Don't tell us what you wrote to Head Office, but you did write to Head Office and that fixes the date so far as you are concerned substantially? A. Yes.

Q. And you say that was about the end of April, 1929?

THE COURT: Is that your memory of it?

WITNESS: Yes, my Lord.

Q. MR. SHAW: Now don't answer this question until his Lordship rules, I want you to tell me what conversation you had at the time mentioned with Mr. McElroy.

THE COURT: Well now Mr. Shaw you knew . . .

MR. SHAW: I want it ruled.

THE COURT: But I think you know perfectly well that that question cannot be answered and that you have no right to ask it because of the
10 ruling which I gave before.

MR. SHAW: I think my Lord, that is quite true, you ruled with respect to the particular questions but I think I am entitled to have your ruling just definitely on the particular question after having laid this foundation, that is the only reason I asked it.

THE COURT: Well it cannot be asked.

MR. SHAW: I understand your Lordship's ruling is that the question cannot be answered?

THE COURT: Yes, the ruling is that it cannot be asked.

MR. SHAW: And therefore, it cannot be answered. I may wish to
20 recall this witness again for a moment or two, my Lord, after I call the next witness.

THE COURT: Unless there is some particular reason I think we should exhaust your examination now, unless there is some particular reason for recalling him.

MR. SHAW: Well it may just be . . .

THE COURT: You need not discuss those reasons at the moment but I am just pointing out you will have to satisfy me at the time you want to recall him that he should be recalled.

MR. SHAW: Well that may be so.

Q. MR. SHAW: There are some questions, I did not finish with Mr.
30 Weaver, however, you have had a lot of business with Mr. McElroy? A. Yes.

Q. And how have you found him as a customer, as a Bank customer?

A. We have always found him reliable and satisfactory with the possible exception that the loans were not paid back when we expected them to be.

Q. That I suppose is not an uncommon fault in these latter days?

A. Not uncommon.

Q. Did you ever have any occasion to doubt his veracity, Mr. Weaver? A. None at all.

THE COURT: Oh just a minute, I do not think you can undertake to
40 give this evidence. Remember Mr. Shaw this is your witness.

MR. SHAW: Quite right, my Lord, I think that is all, Mr. Weaver.

MR. NOLAN: That is all, Mr. Shaw.

MR. SHAW: Yes, that is all.

MR. NOLAN: You are not going to recall this witness.

MR. SHAW: Probably not.

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MR. NOLAN: Well let us know because I desire not to cross-examine until the Examination-in-Chief is concluded.

MR. SHAW: Well, my Lord, I have a perfect right to recall him if I want to, without reference to my learned friend.

THE COURT: I think circumstances might arise, I can quite well conceive that circumstances might well arise where it would be just and fair that you should have the right to recall him but ordinarily you know yourself that you should exhaust all the information which you want from the witness on his first examination.

MR. SHAW: I may say, my Lord, that I do not anticipate that I will recall him. 10

MR. NOLAN: All right.

CROSS-EXAMINATION by MR. NOLAN:

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Q. Mr. Weaver, I understand you met Mrs. Begley in or about the month of January, 1929? A. Yes.

Q. At which time a discussion took place as to who should be employed for the R. W. Begley Estate? A. Yes.

Q. And they went to Mr. Moyer? A. Yes.

Q. And you knew they went to Mr. Moyer? A. I knew afterwards, I knew they were going to Mr. Moyer at the time and they went there afterwards. 20

Q. Because there was some little financial transaction which took place as early as January about borrowing a little money for the Estate to carry on? A. I do not remember that.

Q. You don't remember seeing Mr. Moyer in connection with the estate work? A. Not particularly, no.

Q. Well let's be frank, you knew Mr. Moyer was acting? A. Yes.

Q. That is all right then, now there have been sums of money mentioned in this Court by you, Mr. Weaver, extending into thousands of dollars, do I understand you to say that there was the sum of \$13,000 borrowed by Mr. McElroy from the Manufacturers' Life in December, 1928? A. \$13,500. 30

Q. \$13,496? A. Four hundred and something.

Q. And that amount of money went into the Imperial Bank? A. Correct.

Q. Because he owed a very large sum of money then didn't he? A. He borrowed it to apply on his Bank debts.

Q. Now how much did he owe the Bank in December, 1929? A. December 31st, \$18,690.

Q. And that is the debt of Mr. J. W. McElroy to the Imperial Bank direct and indirect? A. No. 40

Q. No? A. That is direct to the Imperial Bank.

Q. That is what you call his direct liability? A. Yes.

Q. Now what does that mean as opposed to an indirect liability, what is the difference? A. In this case the difference is that he also owed

nearly \$15,000 on a mortgage on land which he purchased from the Bank.

Q. From the Bank, then he owed the Bank? A. Well the land did not belong to the Bank.

Q. No? A. The land, I do not know the details of it.

Q. That is the Kinneburgh transaction? A. That is the Kinneburgh transaction.

Q. Mr. Kinneburgh is a man who dealt in pianos in Calgary in the early days? A. I believe so.

10 Q. And Mr. McElroy bought his land from him? A. No, I am, I think that the true position is that Kinneburgh dealt with the Karn-Morris & Piano Company and owed them money and he gave them as security this land and possibly this land was put up as security for advances to the Karn-Morris.

Q. So Mr. Kinneburgh then, owed the Imperial Bank through the Karn-Morris Company? A. That is not true, he didn't owe it directly but he owed is indirectly.

Q. Then Mr. McElroy stepped into the shoes of Mr. Kinneburgh and owes the Bank through the Karn-Morris? A. That is so.

Q. How much money did he owe in that way indirectly? A. \$14,800.

20 Q. About \$14,800? A. Yes.

Q. In addition to the direct liability of \$18,690? A. That is correct.

Q. Now you knew Mr. McElroy when you first came to Calgary as Manager of the Imperial Bank, you met him? A. Shortly after I arrived.

Q. And since that time, which would have been about 1924? A. 1925, early in 1925.

Q. Early in 1925, you, as Manager of this Bank had been trying to get Mr. J. W. McElroy to pay the money back that he owed to that Bank? A. Yes.

30 Q. All of that time, during that period? A. Yes, certainly.

Q. Because he owed the Bank? A. He owed the Bank the money.

Q. All right and he owed them on a direct liability throughout those eight years, direct liability? A. Not until 1929.

Q. Well I mean from 1925 to 1929 there was always a direct liability of McElroy's to the Bank? A. That is correct.

Q. Which fluctuated, of course? A. A little bit, yes.

Q. A little but it was practically what figure over those years, what did it run around? A. Fourteen to Eighteen thousand dollars.

40 Q. Am I fair in saying this to you that it was between Fourteen and Eighteen thousand dollars throughout that period of time? A. Until the end of December, 1928.

Q. Until the end of December, 1928, and the direct liability was reduced to \$5,286? A. It was reduced to \$5,286 on the last day of December, 1928, yes.

Q. Then let us be quite fair about this thing, there was another deposit made but before there was a deposit there was another increase in

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that direct liability to \$7,296 as at the 25th of March, 1929? A. On March 25th, yes.

Q. On March 26th, 1929, there was a deposit made? A. That is correct.

Q. And that deposit was in the sum of approximately? A. \$3,873.

Q. Which left a direct liability then of \$3,423? A. That is right.

Q. But that sum again was increased until we find at the end of June his indebtedness was \$8,518? A. That is correct.

Q. All right and it was not until the 29th day of June, 1929, that his direct liability to this Bank was paid in full? That is the first time in eight years that you know of? A. No, it would be there eight years, you say eight years that I know, I cannot tell you the time, I know it was the first time it had been paid since I took over the Branch in 1924. 10

Q. Yes, that is right, I should not have said eight years, you were here eight years? A. That is right.

Q. But between 1924 and the end of June, 1929? A. That is the first time the advance had been cleaned off.

Q. In spite of your efforts? A. Yes.

Q. The trouble, Mr. Weaver, was that each year you were promised money and something always happened to the crop, that is a fair way of putting it? A. I think it is, that it is, the crop did not come up as expected each year, we got what was there and there was never enough so far as I know to clean off the debt. 20

Q. Are you suggesting you never had a crop in the Chestermere Lake District between 1924 and 1929? A. No, I am not suggesting any such thing.

Q. It was just that you were not able to get the money from Mr. McElroy? A. It was just that it was not paid.

Q. Now when this money represented by this cheque which is Exhibit "6" in this case, the \$8,500 cheque, was credited to the account of J. W. McElroy and it was on the 29th of June? A. Yes. 30

Q. Where did the money come from that went into Mr. McElroy's account? A. He borrowed it.

Q. No, no.

THE COURT: No.

MR. SHAW: You must take his answer surely,

Q. THE COURT: No.

Q. THE COURT: Whose money was it that went into his account?

A. Mr. McElroy's.

Q. Where did he get it? A. He borrowed it from Mrs. Begley. 40

MR. SHAW: My learned friend must take the answer he gets.

Q. MR. NOLAN: I am saying this to you, Mr. Weaver, the money which went into Mr. McElroy's account that day came out of the account of Mrs. Mary Victoria Begley, that is right is it not? A. It may have come from the Bank of England but the fact is that so far as we are concerned it was his money. It was his money, he had borrowed it elsewhere.

THE COURT: That is not what you were asked, you know what you were asked, you are an intelligent man? A. Yes, my Lord.

Q. You were asked where that money came from that paid off your Bank? A. Well, my Lord, it came from Mr. McElroy so far as we are concerned, if Mr. . . .

Q. The evidence before us now is that it came from a cheque drawn by Mr. McElroy on Mrs. Begley's account? A. That is correct, my Lord.

Q. Is that so? A. Yes.

THE COURT: Well why don't you say so frankly.

10 Q. MR. NOLAN: Now there has been a good deal said about the endorsement on that cheque, is that an endorsement by Mr. McElroy? A. No.

Q. Or is it an endorsement of anybody purporting to act for Mr. McElroy? A. No.

Q. It is a rubber stamp put on by the Imperial Bank? A. That is correct.

Q. Now as early as the end of June, 1929, you knew that McElroy's account was paid in full to the Bank? A. On the 2nd of July to be exact.

Q. Monday was a holiday? A. Sunday was the 30th.

20 Q. And the 30th was a Sunday, so you knew it on Tuesday morning, the 2nd of July? A. I would say that would be the date.

Q. Now there have been a number of cheques drawn to your attention, Exhibits "7" to "11" in this case, I observe the cheque Exhibit "9", Mr. Weaver, is made payable to Strong & Dowler or order? A. Or bearer.

Q. Or bearer, I beg your pardon? A. Yes.

Q. Strong & Dowler, how is that endorsed? A. It purports to be for deposit to the credit of Strong & Dowler Limited in the Bank of Montreal.

30 Q. Strong & Dowler Limited? A. Yes.

Q. That is not the way it is made out is it? A. No.

Q. Will you look at the cheque of the 22nd of July, Exhibit "8", that is made payable to? A. I might point out that this cheque is to Strong & Dowler or bearer and this is Strong & Dowler Limited or order.

Q. Yes, I wanted you to point that out to me, Strong & Dowler or order? A. Yes.

Q. That is July 22nd? A. Yes.

Q. Now will you look at the one of the 13th of November? A. To the order of Strong & Dowler?

40 Q. Or? A. Or order.

Q. And how is that endorsed? A. Deposit, you cannot see it very well but it is evidently intended, "Deposit to the credit of Strong & Dowler Limited."

Q. Yes, well now one of these cheques is to Strong & Dowler or bearer? A. Yes.

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Q. And that is endorsed, "Strong & Dowler Limited," is that a proper endorsement? A. Yes.

Q. Yes, why? A. It is payable to bearer.

Q. All right, then turn to this one of the 13th of November, I see that it is, "Pay to Strong & Dowler, \$735, or order," and endorsed, "Strong & Dowler Limited"? A. Yes.

Q. Is that a correct endorsement? A. No.

Q. No, it is not? A. No, it is not.

Q. Because, will you tell me why? A. Because it is not payable to the party that it is drawn by. It is payable to Strong & Dowler and it is endorsed "Strong & Dowler Limited." 10

Q. And if the cheque is payable to "Strong & Dowler or order" it should be endorsed "Strong & Dowler" and then followed by the proper endorsement, "Strong & Dowler Limited"? A. Well, if it is payable to Strong & Dowler it should be endorsed by Strong & Dowler and nothing further is necessary.

Q. And if it is not endorsed "Strong & Dowler" and it should have been, we are correct about that? A. Yes.

Q. Should it ever have been debited to this account? A. It should not have been paid until properly endorsed. 20

Q. But it was paid because I see, if I hold it up to the light, it has "paid" on it, can you explain that? A. No, I cannot explain it, I had nothing to do with it.

Q. You had nothing to do with it? A. No.

Q. And this is one which interests me too, Mr. Weaver, it is the Canadian Acceptance Corporation cheque, what were they, do you know, did you ever hear of them? A. Oh yes.

Q. What are they? What line of business? A. The Canadian Acceptance Corporation?

Q. Yes? A. They financed the purchase of automobiles. 30

Q. Yes, I think they do, the purchase of automobiles is financed by them, now this cheque is to the Canadian Acceptance Corporation or order? A. Yes.

Q. And it is endorsed "Canadian Acceptance Corporation Limited," is it not? A. Yes.

Q. Is that right? A. That is correct.

Q. But is that a proper endorsement? A. No, it is not a proper, it is not correct, no.

Q. Because once again when made payable to "order" it should be endorsed as it is made out? A. As it is made out. 40

Q. All right, Mr. Weaver, in 1929 we have been told that Mrs. Begley went to Spokane sometime in the month of January of that year, January, 1929? A. Yes.

Q. You knew she was going down there? A. No I don't think I did.

Q. Well you knew she was there? A. I knew she was in the States somewhere, yes.

Q. About that time? A. Yes.

Q. You perhaps knew too when she was expected back? A. Yes, yes, I was told when she was expected back.

Q. You knew also that she was not here in the months of April and May, 1929? A. No, I don't think so, I cannot say that I did know she was not here.

10 Q. You do not know whether she was here or not? A. Whether she was here or not.

Q. All you know is that you did not see her, that is all, I mean you did not see her? A. No I did not see her in that particular time.

Q. There is just this, my Lord, if it transpired that my learned friend has the right to examine Mr. Weaver, I, of course, have the right to cross-examine?

THE COURT: Oh yes.

MR. NOLAN: And there may be, I am going to ask the Court to grant me this indulgence, that if some other evidence of some other witness is interjected, I would like the opportunity of cross-examining Mr. Weaver
20 on that interjected evidence, I think your Lordship follows me?

THE COURT: Yes. These things, of course, are matters where the Court is required to exercise its discretion in the interest of justice but the rule is you must exhaust your examination while you have the witness in the box. The others are the exception, you will have to establish the exception in each case.

MR. NOLAN: Yes, my Lord.

THE COURT: Any re-examination?

MR. SHAW: Yes, there are one or two questions which are probably not strictly admissible at this time but I am asking permission of the
30 Court and do not answer this question until . . .

RE-EXAMINATION by MR. SHAW:

Q. You spoke about seeing a Power of Attorney, or examining the Power of Attorney in January, 1930, did you not? A. Yes.

Q. Had you been informed or were you ever informed by anybody as to any restriction upon that power of attorney?

THE COURT: Just a moment, I think he can answer that, yes.

Q. MR. SHAW: My only question is that it is new matter.

THE COURT: I think I will admit it.

40 Q. MR. SHAW: What do you say in answer? A. No.

Q. Now you have told my learned friend about the state of the account of Mr. McElroy extending over a period of time, can you tell me whether or not during that period of time advances were made by the Bank from time to time in addition to the outstanding indebtedness?

A. Yes.

Q. Have you any objection to that?

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MR. NOLAN: No.

Q. MR. SHAW: Now I believe, my learned friend might object to this, I do not know, it is probably new matter, I understand that the Bank takes statements from their borrowing customers from time to time? A. That is correct.

Q. Have you any objection, was any statement taken from McElroy?
A. Yes.

Q. Who took the statement? A. I took the statement from him after I came here, yes.

Q. Now I want to, is this a statement taken by you? A. Yes. 10

Q. What is the date of it, Mr. Weaver? A. The 20th of January, 1927.

Q. Is that the last statement taken by you? A. So far as I remember it is, about that date.

MR. SHAW: I will tender in evidence this particular statement.

MR. NOLAN: Well, my Lord, as to what purpose, as showing the true condition of affairs?

THE COURT: Just a minute, let me see it.

MR. SHAW: I might say, my Lord, one of the questions in issue in this action is the question of the financial status of Mr. McElroy made specifically so by my learned friend's Statement of Claim. 20

THE COURT: Well both sides seem to have exhausted that pretty fully before the Jury. I do not see what purpose this will serve.

MR. SHAW: Well, my Lord, it serves as a basis, a statement long before this action was contemplated showing the status of Mr. McElroy at this particular time, as taken by the Bank officer, Mr. Weaver.

THE COURT: Of course, you should have put it in in your Examination in chief?

MR. SHAW: Of course, quite right, and I am asking permission, I quite realize that, my Lord. 30

MR. NOLAN: My Lord, I have no objection because of the time my learned friend is tendering it of course. My only objection is that if it is intended to establish Mr. McElroy's worth at that time, this witness cannot say through that document containing information given to him by Mr. McElroy what Mr. McElroy was worth then. The only person who can explain that statement is the man who gave him the information contained in it because after all, all that Mr. Weaver did was to take a statement from Mr. McElroy and the date, of course, is significant, the date on the statement I mean is significant.

THE COURT: This is a statement in 1927? 40

MR. NOLAN: Quite right but that furnishes, I propose to give some additional evidence to show any variation . . .

THE COURT: We will mark it for identification and I will decide later whether it should go in or not.

MR. SHAW: Very well, my Lord.

(The Financial Statement of Mr. McElroy marked as Exhibit "A" for identification.)

MR. SHAW: What I want to say to my learned friend, perhaps all this should be asked in direct examination.

MR. NOLAN: I have no objection on that ground.

Q. MR. SHAW: Can you tell me, Mr. Weaver, whether or not the assets of Mr., from your own knowledge I mean, the assets of Mr. McElroy increased or decreased up to the period of June, 1930?

MR. NOLAN: Well I rise to say again, my Lord, that that might be all right if Mr. Shaw will lay a foundation for it by showing that this witness knows but unless he can do that it is of no assistance to the Court or Jury.

MR. SHAW: All right. Did you have occasion, Mr. Weaver, to check up in any way the figures given in this statement which you have referred to? A. We check them insofar as it is possible, as we do in all large statements.

Q. And do you check them from time to time? A. Yes, each time we take a statement it is checked.

Q. Well take this particular statement, did you check it from that time forward, the assets of Mr. McElroy? A. No, no, that is the last statement apparently that was taken.

Q. Then what means would you have of knowing as to what the condition of his assets were from that time forward? A. Simply by being in touch with him all the time.

Q. Did you ever inspect any of these lands yourself? A. Oh yes.

Q. And the various assets mentioned? A. Yes.

Q. Would it be fair to say, tell me whether or not it would be fair to say that you kept in close touch with his financial situation? A. I did, yes.

Q. I suppose you were advancing from this time forward, moneys from time to time? A. We were, yes, that is correct.

Q. And your investigations would be made for the purpose . . .

MR. NOLAN: Excuse me, I do not mind my friend putting it in now as the Examination in chief, but I would like him to confine himself to putting the questions in the manner in which they should have been put in in Examination in chief.

THE COURT: He thinks you are leading your witness.

MR. NOLAN: And perhaps that with some justification.

Q. MR. SHAW: Whether that is so or not you do say, however, you did make investigations, personal investigations from time to time? A. I did, yes.

Q. And can you tell me from your personal investigation as to whether or not there had been any change in the financial position of Mr. McElroy up to say the 1st of January, 1930? A. No. He merely changed his indebtedness over from a floating indebtedness largely to a mortgage indebtedness.

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Q. The same assets continued, did they? A. Approximately, yes.

MR. SHAW: I think, my Lord, the statement is surely admissible under those circumstances now.

THE COURT: You are still objecting to this statement going in, Mr. Nolan?

MR. NOLAN: Yes, we object to it, my Lord.

THE COURT: I will think it over, do you want to ask him anything else on it?

MR. SHAW: No, my Lord.

MR. NOLAN: Nothing further.

THE COURT: That is all.

MR. SHAW: I will call Miss Kerr. Miss Kerr is not here and I would suggest we adjourn now.

THE COURT: Very well, the Court will now adjourn until 2 o'clock this afternoon.

(Court here adjourned and was resumed at 2 P.M.)

(P.M. SESSION)

MR. NOLAN: My Lord, there is a matter I wanted to mention and I am not clear whether it should be mentioned to your Lordship without the Jury present or not but I took the liberty of asking the Sheriff to ask them to remain outside until we had spoken to it and then your Lordship will tell me whether it should be before the Jury or not. It is in the matter of this evidence that Mr. Weaver was going to give this morning in respect of his conversation with Mr. McElroy and your Lordship will remember after it was attempted to be given you felt at first that it was objectionable and we too objected to the adducing of that evidence. Now, my Lord, this plea of connivance that is in our Statement of Claim has, to some extent, been supported by the evidence we have adduced and it may be—I cannot say—but it may be that the evidence is admissible, through Mr. Weaver as to what was said between him and Mr. McElroy in respect of it and so Mr. Weaver still being here, he is still in the Court House and available to give the evidence, we wish to formally withdraw our objection to Mr. Weaver's stating what Mr. McElroy told him on that occasion and giving my friend my consent and permission for what it is worth to go on with that question. Your Lordship I think understands our difficulty. It is a hard point. It has troubled your Lordship as it is now troubling us and to put it very plainly we do not want to take a chance.

THE COURT: It is a pretty narrow point, of course, what do you say, Mr. Shaw?

MR. SHAW: My Lord, I do not know that there is anything for me to say.

THE COURT: I think you had better put him back in and get the evidence you want.

MR. SHAW: If I have to recall him for this purpose then I would not want to be restricted as to the questions I was going to ask?

THE COURT: Oh no.

MR. NOLAN: Does your Lordship feel that this conversation should have taken place in the absence of the Jury?

THE COURT: Oh I think it is better to have the conversation take place in the absence of the Jury. I will just tell the Jury I have decided that the evidence can be given. I can say after discussing with Counsel I have decided that the evidence should be given. That will be a satisfactory statement on your part?

MR. SHAW: I am not a consenting party, of course.

10 THE COURT: You are quite right in not binding yourself. You should keep your freedom?

MR. SHAW: Yes.

THE COURT: Yes, it is undoubtedly the rule if he is brought back you can ask him anything you like. Send for the Jury.

(The Jury then entered the Court Room.)

THE COURT: Gentlemen of the Jury, after hearing Counsel before you came in I have decided to admit the evidence of conversations between Mr. McElroy and the Manager of the Bank, who has just given evidence before you when we rose. All right, Mr. Shaw.

20 MR. SHAW: Call Mr. Weaver.

ALLAN HENRY WEAVER, recalled, examined by MR. SHAW, testified as follows:

Q. Mr. Weaver, you are still under oath? A. Yes.

Q. You told us this morning that about the end of April you had had a conversation with Mr. McElroy? A. Yes.

Q. Will you detail to the Court and the Jury that conversation, this is the end of April, 1929, that is right? A. That is right.

30 Q. Will you detail to the Court and Jury that conversation? A. The conversation was with regard to the payment of his loan and at that time Mr. McElroy told me that if the deal with Herron . . .

THE COURT: What is that? A. That if the deal with Mr. Herron did not materialize that he could borrow the money from Mrs. Begley.

Q. MR. SHAW: And that was the sum and substance of the conversation? A. That was the sum and substance of the conversation in regard to the loan.

Q. Now did you have any later conversation with him in respect to the same matter? A. Yes, about the 7th of June.

40 Q. What was the nature of that conversation, Mr. Weaver? A. I asked him again in regard to paying the loan and he told me Mrs. Begley had not yet got back from—I understood it, the States—that he would make arrangements with her when she came back.

Q. It is suggested here, Mr. Weaver, that you told Mr. McElroy to take the money from her account in order to pay McElroy's Bank indebtedness, did you have any such conversation with McElroy? A. I did not.

Q. At any time? A. At no time did I ever mention that he should

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get anyone's money. It did not even suggest itself to my mind.

Q. I think that is all, Mr. Weaver.

CROSS-EXAMINATION BY MR. NOLAN:

Q. Mr. Weaver, there is just one question, it has already been said in evidence in this case that the Bank made no inquiry from Mrs. Begley about this matter? Did you, Mr. Weaver, make any inquiries of Mr. Moyer? A. Of Mr. Moyer?

Q. Yes. A. No.

Q. I think that is all I will ask Mr. Weaver.

Q. MR. SHAW: Mr. Weaver, just a moment please, did you have any 10 knowledge that Mr. Moyer in any way had to be consulted in connection with the business of Mrs. Begley? A. No.

THE COURT: That is all.

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WILFRED GRAHAM CHAMBERS, having been duly sworn, examined by MR. SHAW, testified as follows:

Q. Mr. Chambers, you have been in the employ of the Imperial Bank of Canada for what period of time? A. 21 years.

Q. I believe you are now the Manager at Sudbury? A. Yes.

Q. How long have you been there? A. Nearly two years.

Q. At what time did you leave Calgary? A. I left Calgary on 20 September 23rd, 1930.

Q. Prior to your leaving Calgary you were employed as the Accountant in the Imperial Bank in this City? A. Yes.

Q. How long, Mr. Chambers, were you the Accountant here? A. From the middle of February, 1928, to September, 1930.

Q. And as you say you have been actively engaged in the Bank's service for some 21 years? A. Yes, less four years during which I was Overseas.

Q. Do you know Mrs. Begley? A. Yes.

Q. The Plaintiff in this action? A. Yes.

Q. Do you know one James Wesley McElroy? A. Yes.

Q. I produce to you this document Exhibit "4" and ask you what is that? A. That is a power of attorney from Mary Victoria Begley to James Wesley McElroy.

Q. Dated? A. Dated the 24th of June, 1929.

Q. Can you tell me who received that, Mr. Chambers? A. I received it. The description on the back is written in my handwriting.

Q. So you know from that you received the document yourself? A. I received this document.

Q. Can you recall from whom you received it? A. No I cannot. 40

Q. You do not know from whom you received it? A. No.

Q. It was not prepared in the Bank was it? A. I don't think so.

Q. This is not your handwriting is it? A. Not my handwriting no.

Q. Do you know about what time it was received at the Bank, Mr. Chambers? A. I should say on the date I put on there, June 24th, 1929.

Q. You endorsed on the back the 24th of June, 1929? A. Yes.

Q. That is your handwriting? A. Yes.

Q. So that clearly the document came into your hands on that date? A. Yes.

Q. What did you do with the Power of Attorney then? A. I made a note in the Savings Ledger that we held the Power of Attorney. I would then enter it in the Power of Attorney register and file the document
10 away with the other Powers of Attorney.

Q. Prior to the 29th of June had you any reason to anticipate the withdrawal of any of the funds from Mrs. Begley's Savings Account and the same to be applied in satisfaction of McElroy's indebtedness to the Bank? A. Yes.

Q. Where did you get your information from? A. From the correspondence between the Branch Manager and Head Office.

Q. Have you any duty in connection with that correspondence? A. I have to read every letter that goes out of the office the day that it goes out.

Q. So you knew sometime I take it before, or tell me whether you
20 knew before the 29th of June that some transaction of the kind contemplated was going to take place? A. Yes, I knew it on, I believe the date is May 14th.

Q. In May sometime? A. Yes.

Q. Now I would like you to tell me, Mr. Chambers, in your own words exactly what took place on the 29th of June, perhaps I had better show you the note Exhibit 13? I show you these various documents, Exhibits 6, 12 and 13. Just keep them before you. Now will you, Mr. Chambers, detail your recollection of this whole transaction?

30 THE COURT: What do you refer to by the whole transaction, what are these other cheques referred to besides No. 13?

MR. SHAW: There is just one cheque, one deposit slip and the note, Exhibits 12, 13 and 6.

THE COURT: I think the Jury ought to know what these are before we go on.

Q. MR. SHAW: I mentioned them by Exhibit numbers, tell me what they are. You have before your Exhibit No. 6? A. No. 6 is a cheque for \$8,500.

Q. Yes. A. No. 12 is the deposit slip for \$8,518.78, deposit slip to
40 the account of J. W. McElroy.

Q. Yes. A. Exhibit 13 is a note payable, signed by J. W. McElroy payable to Victoria Begley for \$8,500.00.

Q. Now you had something to do in connection with the transaction in respect to these three documents? A. Yes.

Q. Now will you narrate in your own language, Mr. Chambers, the exact transaction as you recall it? A. On June 29th, which was Satur-

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day, just at the closing of the Bank, Mr. McElroy came in.

Q. That would be 12 o'clock I suppose? A. Yes.

Q. The Bank closes on Saturdays at 12? A. Yes. He came to me and said . . .

MR. SHAW: You have no objection to these conversations, just a moment please.

MR. NOLAN: All right, Mr. Shaw.

Q. MR. SHAW: Well now, Mr. Chambers? A. He said, "I wish to pay off my liability to the Bank, will you please figure up how much it is I owe you." I then figured up his liability which amounted to \$8,518.78. 10
He then said I am going to borrow sufficient money from Mrs. Begley's account to pay this liability. Will you kindly make me out a note payable to Mrs. Begley. I said, "How long, when will the note be payable?" and he said, "On demand."

THE COURT: What is that? A. The note would be payable on demand. I asked him at what rate of interest was to be added to the note and he said, "Seven per cent." I made out this note and handed it to him and he signed it. He then said, "Will you please make me out a cheque" which I did, a cheque payable to J. W. McElroy for \$8,500 which he signed "Victoria Begley per J. W. McElroy, Attorney." 20

Q. Is the handwriting of the note and the cheque yours excepting the signature? A. Yes.

Q. How did you come to be writing out notes and cheques for Mr. McElroy? A. Ninety per cent. of the notes made out in the Bank are made out by members of the staff.

THE COURT: I did not catch what he said. A. It is the general practice, sir, for a member of the staff to write out notes and the customer merely signs it.

Q. MR. SHAW: That is it is very ordinary practice for the Bank. It is just an accommodation for the people concerned? A. The usual practice, yes. 30

Q. Then you say he signed the note and then he signed the cheque? A. Yes.

Q. Then what happened? A. He then said, "I will have to put this cheque to my credit." I said, "I will make out a deposit slip," and I made out this deposit slip for, put on the \$8,500 and I said, "This will not be sufficient to clean up your liability in full and he gave me a further cheque for \$18.78 which I added to the \$8,500 deposit, made out the deposit for his account.

Q. What did you do? All these documents were turned over to you, 40 that is you had the cheque? A. I gave them all to Mr. McElroy to sign and when they were all made out and signed by him he handed them back to me.

Q. Yes, what did you do with them? A. I took the cheque and the note, the cheque and the deposit slip and gave them to the paying teller. I put them in the paying teller's slide.

Q. That would be, your office is at the inner entrance to the Bank?
A. Yes.

Q. So you simply walked down behind the counter I suppose? A. Behind the counter and put them into the paying teller's slide. The note I put in my basket.

Q. Before you go on, what would be . . . was there anything unusual in that, in you taking it to the teller? A. Nothing at all. But this deposit slip is the last deposit slip that the teller entered into his book on that day and I believe that the Bank had been closed for sometime before these transactions were completed.

Q. That is people who come in before 12 o'clock, even if their business takes them after 12 . . . A. Yes, it would be considerable after 12 before I would complete it.

Q. You say you took it down to the paying teller and what happened then? A. And the paying teller endorsed on the back of this cheque . . .

Q. Well did you see him endorse it? A. No.

Q. You do not know anything about that? A. No, I merely say so from the endorsement as I see it here.

Q. Why should he endorse it or make any endorsement of the cheque? A. It is general practice to endorse a cheque that is being deposited to the customer's account when it is not endorsed, when it has not been endorsed by the customer.

Q. Was there anything unusual in the endorsement being as it is there? A. Nothing at all.

Q. That is where it is going to the customer's account? A. Going to the customer's account.

Q. Only? A. Only.

Q. Then what was your next connection with this transaction? A. These particular items, I would see this one again, the cheque again on the first following business day which I believe was July 2nd.

Q. You mean the cheque? A. Yes.

Q. How would you come to see the cheque on the following business day? A. It would be my duty to call the cheques into the Savings Ledgers, and verify that they had been charged to the correct account.

Q. It is your duty on the day following to verify that the cheques are charged to the proper account in the proper Savings account in this case? A. Correct.

Q. And that you did? A. That I did.

Q. Now did you have anything further to do after this verification that you speak about on the following business day? A. With either of these two items?

Q. Yes. A. No.

Q. That is with either the deposit slip or the cheque? A. Yes. No.

Q. What about the other document, the note in question? A. The note in question was entered as a collection for Mrs. Begley and was placed in safe keeping in her name.

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Q. How did you come to do that? A. I would not do it personally, I would hand it to the man who is running the collection.

Q. Yes, but how would you know that was where it was to go? A. As a collection?

Q. No. . . . A. Your question is how would I know it should be a collection.

Q. Yes, what was done with the note, how did you know what to do with the note? A. It was handed to me by Mr. McElroy to be held for Mrs. Begley.

Q. Oh yes, I see, that is the way you came to give instructions to have it put where it was? A. Yes. 10

Q. That is Mr. McElroy had given your instructions . . . A. Gave me instructions to hold this note for Mrs. Begley.

Q. Now what was your next knowledge in connection with this particular cheque, Mr. Chambers? A. When Mrs. Begley came about six months later I saw Mrs. Begley for the first time for some months, she had been away.

Q. Yes. A. The first time I saw her I went over to her to tell her that I had held this note, to either get her to take it or confirm leaving it in our safe-keeping. 20

Q. Yes. A. And the date of that was December 24th, 1929.

Q. How do you fix the date, Mr. Chambers? A. From the pass books that I have seen or one pass book.

Q. Yes. From the pass book that you have seen. Just in this connection I would like you to look at this Bank Pass Book which is marked as Exhibit "2" and tell me if you have seen that pass book before and if so, where? A. Yes, this is Mrs. Begley's own pass book covering her account that started in 1918.

Q. Yes, well now is that the pass book that you have just referred to? A. No. 30

Q. I see. I would ask you to look at this and tell me what is that? A. This is the book to which I referred, which with one other memory of mine confirms the date as December 24th.

THE COURT: That is Exhibit number?

MR. SHAW: This is not an exhibit yet, my Lord.

Q. This pass book which is marked as Exhibit "2" and the pass book which you now produce, are they both covering the same account?

A. Yes. This covers a certain period of that.

Q. Oh yes, I see. I am going to have this pass book put in.

MR. NOLAN: There is just this point arises, what custody does the new book come from, is it to be connected up with us in some way? 40

Q. MR. SHAW: What custody was this pass book in when you first saw it? A. In the custody of Mrs. Begley.

Q. This is the pass book which you have in mind of the day you first saw her is it? A. Yes.

Q. THE COURT: Where does it come from now?

MR. SHAW: I do not know, there seems to be some confusion about it. I cannot say, my Lord, I do not know.

THE COURT: It must have been produced by either one side or the other.

MR. SHAW: Well it apparently seems to be a sort of duplicate pass book for this account.

THE COURT: It is not an original pass book?

MR. SHAW: No, I believe that, well perhaps I should not say. But apparently one was lost and I understand this was a duplicate which was made up. I do not know. All I am presenting it here for is to fix the date in Mr. Chambers' mind but if there is any objection to it I am not going to bother putting it in.

THE COURT: It ought to be possible to know whose production it is, whether it is from your side or the other.

MR. SHAW: Well there may be some confusion about that.

MR. NOLAN: There is no confusion, my Lord, it is not ours.

MR. SHAW: The witness has sworn that this is the pass book which Mrs. Begley had.

MR. NOLAN: We have not got it.

MR. SHAW: That is all I am concerned about now.

THE COURT: What I thought the Jury might want to know is where does it come from now, where did you get it, Mr. Shaw.

MR. SHAW: Well I think it came to us from the Bank. That is the extent of my knowledge at the moment. I will find out about that. By reference to this particular item I want you to look at this merely for the purpose of indicating the date on which Mrs. Begley came into your Bank on the first occasion that you saw her? A. December 24th, 1929.

Q. How can you tell that from the Bank pass book? A. No balance has been extended in this Pass Book from June 21st, 1929, which is the first entry until December 24th, 1929.

Q. Well now you saw Mrs. Begley on this occasion you speak about? A. Yes.

Q. Now will you tell me, Mr. Chambers, what your conversation was with her? A. Mrs. Begley did not come to see me but I saw her down at the Savings Department of the Bank. Realizing I had this note to hand to her I went down to her. She had been away. I had not seen her for some months, I opened my conversation with how she had enjoyed herself and had a good time. Mrs. Begley did not appear to pay very much attention to my conversation. She kept looking from her pass book to me and back to her pass book, without saying anything. I said to her, "Is there anything in your pass book that you do not understand, Mrs. Begley?" She said, "What is this \$8,500 cheque?" I said, "I have a note covering that cheque, Mrs. Begley, if you will wait a minute I will go and get it for you." I went away and got it and showed it to her. She repeated the same actions as before. She kept looking at the note and looking at me without saying anything but appeared to be perplexed.

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I said to her, "Surely, Mrs. Begley, there is nothing wrong with this cheque. That is a debit to your account." She said, "Well to tell you the truth . . ." I said, "Surely, Mrs. Begley, this cheque charged to your account has not been without your authority?" She said, "To tell you the truth when I left in the Summer my head was in such a whirl that I did not know what arrangements we made but I did not expect McElroy would borrow so much as \$8,500."

Q. I see, and what was the next occasion, you have told us this was on the 24th of December, 1929. Now when was the next occasion on which you saw Mrs. Begley? A. I saw Mrs. Begley before January 2nd on or before January 2nd, 1930. On that date she came to me direct and told me that Mr. McElroy had requested her to make, for her to make him a further loan of \$1,400. She told me that she had not made up her mind as to whether she would give it to him or not and I said, "Well, Mrs. Begley, the best thing you can do is to go to our solicitors upstairs and if you make up your mind to make this new loan that you take this opportunity of insisting and getting mortgage security from Mr. McElroy to cover both the old and new loans." 10

Q. Yes. A. She said that she did not particularly want to go to any lawyer and take security from Mr. McElroy because if they became married it would not make any difference which of them had the money. 20

Q. Now did you have occasion to see Mrs. Begley, is that all the conversation that took place at that time? A. At that time she left me without making up her mind whether she would make the loan or ask security or anything, she just stated she did not want to.

Q. You had no discussion further with her about that loan? A. None at all.

Q. Did you see her later, Mr. Chambers, in connection with these matters? A. I saw her again within a month, around a month later when she asked me to show her all the cheques which had been charged to her account which were signed by Mr. McElroy under his Power of Attorney. 30

Q. Yes. A. I did not get those cheques out myself but I gave them to the ledger-keeper to go and bring them to us.

Q. You gave them . . . A. I gave a list of the cheques to the ledger-keeper to go and fetch them out of the safe.

Q. How could you give a list of the cheques to your ledger-keeper. How did you make it up? A. From the pass book or from the current account. I knew the date of the power of attorney and the cheques were not numerous that had been signed by him.

Q. How many cheques were brought up altogether do you remember? A. Around in the neighborhood of six. 40

Q. Well it is the total number? A. The total number of cheques signed by him.

Q. Did Mrs. Begley wait for those cheques? A. Yes.

Q. Can you tell me whether or not it would be, whether the cheques had been so recently issued, whether it would be an easy matter to get

them? A. None of them would be more than six months and they would all be in the safe, in the vault.

Q. If they are older than that they are transferred some place else and they are more difficult to get I suppose? A. Had they been a year or more old they would have been hard to get.

Q. In any event did Mrs. Begley wait while these cheques were being secured? A. Yes.

Q. What was done with them? A. I showed them all to her. If she asked any question about them I would answer it.

10 Q. Did you know anything about these cheques other than the \$8,500 cheque? A. Nothing at all. They all appeared to be perfectly good cheques against her account.

Q. I present to you a cheque dated August 21st, Exhibit "7", when did that go through your Bank? A. On August 22nd, 1929.

Q. And can you tell me when or how it was paid? A. It was paid in cash by one of our tellers.

Q. Do you know the transaction which that represents? A. No.

Q. Did you have any knowledge of it? A. No knowledge at all.

20 Q. I present to you Exhibit "8" a cheque dated the 22nd of July for \$1,000 in favor of Strong & Dowler. Have you any knowledge of the transaction or had you any knowledge of that transaction? A. None whatever.

Q. Represented by the cheque? A. None at all.

Q. I present to you Exhibit "9" a cheque for \$500 in favor of Strong & Dowler. Did you at any time know what transaction that cheque represented? A. No.

Q. You had nothing to do with it whatever? A. I knew nothing of it.

30 Q. I present to you Exhibit "10" a cheque in favor of Canadian Acceptance Corporation. Do you know anything of that particular transaction? A. Nothing at all.

Q. You have no knowledge of it whatever? A. No knowledge.

Q. I present to you Exhibit No. 11, a cheque in favor of Strong & Dowler, in the sum of \$735. Have you any knowledge of that transaction? A. No knowledge at all.

Q. Well now these cheques that I presented to you Exhibits "7" to "11" inclusive would go through your Bank and be paid in the ordinary course of business? A. Yes.

40 Q. Now in making out the cheque for \$8,500 and the note for \$8,500 that we have already referred to, what would you be relying on as the basis for making out those two documents? And putting the transaction through? A. The fact that McElroy had a Power of Attorney to act for Mrs. Begley. Also the fact that I expected McElroy would be doing just that transaction.

Q. Then you have told us that the transaction was done at his sug-

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gestion to you, that is instructions were given by him to you? A. Yes, McElroy instructed me to make out each document.

Q. Can you tell me, Mr. Chambers, as a matter of usual Bank practice whether those five chaques that I presented to you, Exhibits 7 to 11 inclusive, are so signed as to properly charge the account of Mrs. Begley? A. Yes, in my opinion they are.

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CROSS-EXAMINATION BY MR. NOLAN:

Q. Mr. Chambers, you have said that the 24th of December has been made clear to you by an entry in a book, is that because her balance was made up on that date? A. It was the day that the book, I think the day that the book was written up was December, either December 24th or between December 24th and January 2nd. 10

Q. I take it that her balance was made up from time to time, Mr. Chambers? A. Her balance would be extended every day in the ledger.

Q. I mean in her own pass book? A. No, her balance would only be extended on such days as she brought in her book to be written up.

Q. But on any day that she brought in her book to be written up on her request to the proper Bank Official that balance would be written up? A. Would be extended, yes.

Q. When you say extended, you mean that the balance is carried out into the right-hand column, is that what you mean? A. Correct, yes. 20

Q. A matter of subtraction and addition. And the answers put in the right-hand column? A. Yes.

Q. That is what we call extending the balance? A. Yes.

Q. You are not saying to me that Mrs. Begley did not extend her balance on more than one occasion are you? A. In the particular book I refer to the balance is extended only twice.

Q. The particular book you refer to does not cover a very long period of time does it? A. It covers six or eight months.

Q. Perhaps you can clear up the situation, Mr. Chambers, as to why there are two books, do you know? A. I know yes, from what I have been told. 30

Q. You do not know yourself how it came about there were two books, you had nothing to do with issuing them? A. Issuing the second book?

Q. Yes. A. No.

Q. In this book Exhibit "1", this is her pass book as we understand it, perhaps you will be just good enough to look at that and tell me when her balance was made up, there is one made up in June 1st, 1929? A. June 21st, 1929, yes. 40

Q. Yes, June 21st, 1929, there was a balance made up and then there is a balance on January 2nd, 1930? A. Yes.

Q. I am giving you the right year am I not? A. Yes, correct.

Q. There was a balance about the 17th of January 1930? A. Yes.

Q. Is that correct? A. Yes, that is right.

Q. Yes, the 17th and there is one March 1st? A. March 1st, yes.

Q. There is one May 10th? A. Yes.

Q. One May 14th? A. Yes.

Q. One May the 24th? A. Yes.

Q. One May 30th, one July 2nd, July 11th, July 19th and July 23rd?
A. Yes.

Q. And I observe the 9th of July, August 18th and so on, what I want to get at is this, why do you say because she had her balance extended that she had, that you had the conversation with her when we see
10 from this book produced from our custody of the Plaintiff, that her balance was extended from time to time, and time and time again. A. That is not the book that Mrs. Begley was looking at on December 24th.

Q. That is not the book? A. No.

Q. You say that she had another bank book covering this account?
A. Yes.

Q. Well may I put it to you, is it usual for the Bank to issue two books? A. Yes, in case . . .

Q. On the one Bank account? A. In the case of one book being mislaid or lost a duplicate would be issued.

20 Q. A duplicate would be issued? A. Yes. Not necessarily a duplicate, if the account had been in operation for a number of years we would not write it up for ten years back, we would write it from some date from which she would be satisfied to accept it.

Q. I wonder if Mr. J. W. McElroy had the other book of which you speak?

MR. SHAW: That is you are referring to this book, the one that I have?

MR. NOLAN: Yes.

30 MR. SHAW: I told your Lordship I would find out in the meantime about this particular book. This book came, was recovered by the Bank from McElroy.

MR. NOLAN: That is what we wanted to know.

Q. Now Mr. Chambers perhaps that helps us to clear up this little puzzling question, perhaps it was Mr. McElroy who had the other book and not Mrs. Begley at all? A. It was Mrs. Begley to whom I spoke.

Q. It was Mrs. Begley to whom you spoke? A. Yes.

40 Q. Then is it possible that Mr. McElroy had a book for his own use and Mrs. Begley had another book for her use? A. I believe Mr. McElroy had the red book that you showed to me and that Mrs. Begley had the yellow book written up for her.

Q. All of which is highly consistent with you now producing to me the yellow book and I producing to you the red book is it not? A. No, I know the circumstances under which the yellow book left Mrs. Begley's possession.

Q. Well you say Mrs. Begley had the yellow book and you say that

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Mr. McElroy had the red book don't you? A. Yes. On the date that we speak of.

Q. Now we come into Court and both sides in this litigation produce their production, the documents they have, and Mrs. Begley produces the red book and Mr. McElroy produces the yellow book? A. Correct.

Q. All right. Now there is this little point occurs to me, your Bank had been rather anxious about Mr. McElroy's grain dealings, Mr. Chambers, you knew that? A. Anxious about his grain dealings? No.

Q. His dealings in grain, his gamblings in wheat, let me put it crudely? A. No.

Q. You must have known Mr. Chambers because you say you saw all the correspondence that went out of the Bank. Did you see anything about that? A. I knew that Mr. McElroy owed us a certain amount of money.

Q. Quite true, but did you know, and I want to be fair with you, did you know whether or not your Bank was anxious about his gambling in wheat? A. I never noticed any correspondence mentioning that.

Q. Did you see the correspondence that came in as well as the correspondence that went out? A. I should, yes.

Q. That is part of your job? A. Yes.

Q. You do not remember any letter adverting to the Bank's anxiety about his speculations in wheat do you? A. No.

Q. You see he was buying May wheat and there is a letter in, you may not have seen it, it might have been before your time but this Strong & Dowler firm, of which we have heard mention here to-day what were they, do you know? A. They were brokers.

Q. What kind of brokers? A. I believe grain and oil were they not?

Q. Grain and oil brokers? A. Yes.

Q. Now when you had your conversation with Mrs. Begley in the Bank and when you say she was looking worried, Mr. Chambers, about her pass book, she was? A. She looked at her pass book and looked at me and acted in a way that would indicate there was something there which she did not understand.

Q. Was she bewildered, did she show any evidence of bewilderment? A. She merely showed evidence of not understanding something.

Q. And then you said to her that you had this note for \$8,500? A. Yes.

Q. You suggested to her, you said to her that was money she had loaned to McElroy? A. Yes.

Q. And she said to you, "What money?" A. Yes. "What money?"

Q. I am not trying to hurry this thing at all, Mr. Chambers, you know what I am trying to get at don't you? A. Yes.

Q. Exactly, and I want you to help me. When you said to her that this was money that had been loaned to McElroy she said to you, "What Money?" A. Yes.

Q. And when you went on and spoke to her about it she appeared

to be flustered didn't she? A. When I brought her the note, she looked at the note, yes, she was flustered.

Q. That is your own word I am giving to you again? A. Yes.

Q. She appeared to be flustered? A. Yes.

Q. All right. Now, Mr. Chambers, before this transaction of the 29th of June of which those documents, Exhibits "6", "11" and "12", are now before you took place you did not discuss this matter with Mrs. Begley? A. No.

Q. You saw her? A. I saw her.

10 Q. Because you and I are agreed that you assisted her to get money for her purpose to go East? A. On the 25th of June, yes.

Q. On Tuesday the 25th of June, then she was back in your Bank the following December you say? A. Yes.

Q. You had a conversation with her and you had other subsequent conversations with her the following Spring of which you have made some reference here? A. Yes.

Q. I am talking about the Spring of 1930? A. Yes.

20 Q. And at no time in any of those conversations did you ever tell Mrs. Begley that the money that McElroy had taken from her had been used to pay the Imperial Bank of Canada? A. No, I took it for granted that she knew what the money had been used for.

Q. You did not tell her? A. I did not tell her.

Q. That is all, thank you.

MR. SHAW: That is all, thank you, Mr. Chambers.

GRACE MURIEL KERR, having been duly sworn, as a witness on behalf of the Defendant, examined by MR. SHAW, testified as follows:

Q. Miss Kerr, your full name is? A. Grace Muriel Kerr.

Q. And I believe you are living in Edmonton at the present time are you, Miss Kerr? A. Yes.

30 Q. You are employed in the Imperial Bank Branch up in Edmonton? A. Yes.

Q. I believe for a while you were employed in the Imperial Bank in Calgary were you not? A. Yes.

Q. Can you tell me during what years you were employed here, Miss Kerr? A. From 1928 until 1931, that is three years.

Q. Do you know Mrs. Begley? A. To see her I do.

Q. I believe you were employed as the Savings Ledger-keeper? A. Yes.

40 Q. And in that capacity, that would be the capacity in which you would know her? A. Yes.

Q. Now do you remember Mrs. Begley coming to you along the end of the year 1929? A. Yes.

Q. What was the conversation at that time, Miss Kerr? A. She just wished her pass book written up?

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Q. She wished her pass book written up? A. Yes.

Q. And can you tell me whether or not by reference to it is this the particular pass book that you are speaking about?

THE COURT: Referring now to Exhibit . . .

MR. SHAW: It is not an exhibit, my Lord. A. Yes.

Q. That is the pass book? A. Yes, it is.

Q. That she brought to you. Did you know there was another pass book outstanding in respect of this same account, Miss Kerr? A. She said she had lost it.

Q. She told you that she had lost her pass book and so was this one made up as a substitute? A. Yes. 10

Q. You are sure that was sometime in December was it of 1929? A. Yes.

Q. How can you be sure about that, Miss Kerr? A. Because the balance was extended on December 24th.

Q. Now was that the first occasion you saw her? A. Yes.

Q. I mean at that time. Was there any conversation or discussion with her other than getting her pass book written up? A. No.

Q. When did you next see her? A. About January 2nd.

Q. About January 2nd. What was the occasion of seeing her then? A. She again wished her pass book written up. 20

Q. You can tell that by the extension? A. Yes.

Q. That is your handwriting is it? A. Yes.

Q. Well then when did you, is there any other occasion in your mind when you saw Mrs. Begley particularly, Miss Kerr? A. Except when she came in and asked for some cheques.

Q. When was that? A. To see some cheques.

Q. Well . . . A. Well I am under the impression it was the end of January or the first part of February.

Q. Who did she ask for the cheques? A. Mr. Chambers. 30

Q. Were you there at the time? A. I was not there when she asked him.

Q. What did you do in connection with the matter? A. Mr. Chambers came down and asked me to get the cheques out for her.

Q. What cheques did you get out, Miss Kerr? A. Those that Mr. McElroy issued as her attorney.

Q. The cheques that Mr. McElroy had issued as her attorney. How many were there altogether? A. I should say about six.

Q. You got them all out? A. Yes.

Q. What was done with them? A. Mr. Chambers showed them to Mrs. Begley. 40

Q. Would that be at your Savings Bank counter? A. Yes.

Q. Yes, and what happened then, did they have a discussion about that do you know? A. No I do not remember hearing anything.

Q. You would not be interested in their discussion between the two I suppose? A. No.

Q. What happened to the cheques afterwards? A. They were given to me and I put them back.

Q. Put them back where? A. From where I got them downstairs in the vault.

Q. You remember that distinctly? A. Yes, I do.

Q. That particular occasion on which all the cheques were taken out? A. Yes.

Q. The cheques signed by Mr. McElroy as attorney for Mrs. Begley? A. Yes.

10 THE COURT: You do not want to put this book in?

MR. SHAW: I do not want to clutter up the record with it.

MR. NOLAN: Thank you, that it all.

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HAROLD PERCIVAL CANN, having been duly sworn as a witness on behalf of the Defendant, examined by MR. SHAW, testified as follows:

Q. Mr. Cann, I believe you were the teller in the Imperial Bank of Canada at the Calgary Branch on the 29th of June, 1929? A. Yes.

20 Q. I present to you a document Exhibit "6" being a cheque made by Victoria Begley, per J. W. McElroy, Attorney, payable to J. W. McElroy for the sum of \$8,500 and I would ask you to look at the endorsement on the cheque, that is the cheque for \$8,500 as you observe. Can you tell me your recollection in connection with that? A. The only recollection I have is the endorsement on the back, J. W. McElroy, per J. Tainton, per myself.

Q. How did it come you endorsed it? A. At that time I was relieving the paying teller in the Bank and it was handed to me and the cheque was not endorsed and to make the entry to show what happened to it according to the deposit slip I endorsed it that way.

Q. That is you had before you the deposit slip as well, did you? A. Yes.

30 Q. You saw the cheque was payable or was to be deposited to the credit of J. W. McElroy? A. Yes.

Q. The cheque was payable to him and you made the endorsement on the cheque? A. Yes.

Q. Is it a matter of ordinary practice in the Bank? A. It is a matter of ordinary Banking practice to have a record.

Q. Do you remember about what time it was handed to you? A. No I do not remember.

Q. Which? A. I do not remember.

Q. I mean what time of the day? A. No.

40 Q. You have no recollection of it? A. No recollection.

Q. What would you do with it after you got it in your cage? A. As far as I can remember in this case I would just put it back in the back of the cage door, in the wire.

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- Q. What for? A. For the person whoever gave it to me to endorse.
Q. How long would it stay there? A. Maybe five or ten minutes,
it all depends.
Q. And in the ordinary course it would be marked up in some way
or other would it not? A. Yes.
Q. You have a blotter or something? A. No I just endorsed it.
Q. You just endorsed it? A. To make a record as to what happened.

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CROSS-EXAMINATION of the same witness by MR. NOLAN:

- Q. Mr. Cann, Mr. McElroy's name is not on the back of that cheque,
signed by him, is it? A. No sir. 10
Q. Mr. Tainton's name is not on the back of that cheque signed by
him either? A. No.
Q. Any names that were put on you put on? A. Yes.
Q. All right, that is all I will ask you.

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Harold
Percival Cann,
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RE-EXAMINATION of the same witness by MR. SHAW:

- Q. How does it come, who put the name Tainton on? A. I did.
Q. How did you come to put that on? A. Because at the time the
entry went through the teller's blotter Mr. Tainton was the paying teller
at that time.
Q. So you just signed for him? A. I just signed for him. 20
Q. All right, thank you.

MR. SHAW: There is one witness, my Lord, that for some reason or
another is not available just at the moment and I thought probably I
might read some sections of the Examination for Discovery in the mean-
time, very few, and then perhaps if your Lordship would adjourn for
about 15 minutes, I am sure the witness will be here.

THE COURT: Do you think the witness can be discovered?

MR. SHAW: Yes, it can be discovered, all right, sir. Perhaps, my
Lord, if you would adjourn it now, say, for 15 minutes and we could be
sure to get the witness here. He will be a very short witness. 30

THE COURT: You will let me know when the witness comes around?

MR. SHAW: Yes, very well.

(Court adjourned.)

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Edward
Breardon
Nowers,
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EDWARD BREARDON NOWERS, having been duly sworn as a
witness on behalf of the Defendant, examined by MR. SHAW, testified as
follows:

Q. Mr. Nowers, you are a resident of the City of Calgary for a great
many years? A. Yes.

Q. And you have had a great deal of experience I take it in the
matter of valuing lands, city and farm lands as well? A. Yes, my experi- 40
ence goes back over 27 or 28 years.

Q. And do you know, Mr. Nowers, what we are calling in this action the McElroy lands? A. In a general way, yes.

Q. They are located where? A. East of the City of Calgary 12 or 13 miles, near Chestermere Lake.

Q. And there is an acreage in there of approximately how much, just roughly do you know? A. About 900 acres I think.

Q. And then do you know anything about some property called the Kinneburgh property? A. Yes.

10 Q. What would the acreage of that be? A. Section 23 I think, 445 acres, that land I know better than the rest. I valued that some years ago.

Q. That is a great many years ago? A. 1918, yes.

Q. What character of lands are these, generally speaking, Mr. Nowers? A. Mixed farming land.

Q. Tell me first of all in determining the valuation of farm lands, Mr. Nowers, what basis do you act upon? A. The only thing that gives any real property value is the use to which the land can be profitably put. In other words the revenue or prospective revenue from the land.

Q. What purposes can these lands be profitably be put to? A. At the present time?

20 Q. Yes. A. That is very difficult to say, Mr. Shaw.

Q. Ordinarily they are suitable only for one purpose? A. In more normal times they are very suitable for mixed farming, wheat growing and mixed farming. They are better in my opinion for mixed farming than anything.

Q. You have told me or have you told me that in determining the valuation you determined the use to which the lands are to be put? A. Yes.

30 Q. In other words it is the productive value of the land that is the determining factor in ascertaining the valuation? A. That is the basic principle underlying the valuation of lands. The market value, of course, must be taken into consideration. Sometimes price and value may be quite far apart. In boom times land may sell for very much more than their value. On the other hand in times of great depression they may sell below their true value.

40 Q. Having in mind that the productive value of the land is the true value and the substantial basis upon which to determine property values will you tell me, Mr. Nowers, or give me an idea as to how you value the McElroy lands on the dates I propose to give you, January 1st, 1930, July 9th, 1930, August 1st, 1931, and October 1st, 1932, that is on four different dates. That is the comparative value whether there has been any shrinkage or depreciation in those lands. A. Between those dates?

Q. Yes, in between those dates? A. I would say between the first two dates the value would not alter very greatly.

THE COURT: What were those dates? A. The 1st of January, 1930, and the 9th of July, 1930.

Q. MR. SHAW: Yes, now between the 9th of July, 1930, and August

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1st, 1931, what would you say? A. I would say there would be a big drop.

Q. A very substantial depreciation? A. Yes. The tendency I would say was downward from the 1st of January because wheat, which is the most important item in determining the value of most farm lands in the Province, had already dropped very considerably. I have the figure that they dropped.

Q. Will you give me your opinion as between August 4th, 1931, and October 1st, 1932. A. Between August 1st?

Q. Yes, 1931? A. In 1931 there was a further shrinkage, Mr. Shaw.

Q. Now you have been good enough to prepare for our attention a statement showing the depreciation of farm products, or the appreciation as the case may be on the dates I have mentioned haven't you? A. I have, yes. 10

Q. I think you have itemized them as to cattle and as to crops of various kinds comparing the values at one time with another on those particular dates I have mentioned? A. I have, yes.

Q. Can you give me any idea by reference to the figures you have before you as to whether or not there was any appreciation or depreciation of the McElroy lands between January 1st, 1930, and July 9th, 1930? A. There is some depreciation but as I said it would not be very 20 substantial.

Q. Well now taking between July 9th, 1930, and August 1st, 1931, what would you say as to whether or not there had been a depreciation? A. A very large depreciation?

Q. A very large depreciation? A. Yes.

Q. Can you give me that in terms of percentage? A. I would say that the land depreciated in that time forty to fifty per cent.

Q. What is that? A. I would say the land had depreciated in that time forty to perhaps fifty per cent.

Q. You are basing that upon, substantially upon the depreciation in the price of farm products? A. Yes. 30

Q. For which you suggest this land is suitable? A. Yes, and on the market value.

Q. It has no other purpose to serve has it, this land? A. No, some of it may have a little speculative value around the Chestermere Lake part of Section 23. But apart from that it has no other value.

Q. I should like to direct your attention to the dates August 1st, 1931, and October 1st, 1932. You have indicated in the document you have before you the prices on those dates, not only of grain crops but also of cattle and other farm products? A. Yes. 40

Q. Now having that in mind what would you say that the price on those particular products had depreciated or appreciated within that time? A. They had depreciated considerably.

Q. What percentage would you suggest from your figures? A. Wheat was not down very much, it was down from 53 cents to 49¼ cents. Steers were down from \$5.00 to \$3.50, heifers \$4.00 to \$3.50, cows \$3.00 to

\$2.50, calves \$5.00 to \$4.50, lambs \$6.00 to \$4.25, hogs from \$7.00 to \$4.25, in that period.

10 Q. So can you give me an idea in terms of percentage as to what depreciation there would be on the McElroy lands between August 1st, 1931, and October 1st, 1932? A. It would be difficult to say in terms of percentages because there was a regular downward tendency noticeable from perhaps July, 1930, practically from January 1st, 1930, the tendency was downward because wheat was steadily dropping. Wheat on the 1st of January was \$1.40 and on the 9th of July, 1930, was 96½¢, on August 1st it had dropped to 53 cents. October 1st it dropped to 49¼ cents. These are Fort William prices, you would have to take off 18 cents to get at the net Calgary prices.

Q. Can you give me any idea as to whether or not there has been a depreciation in the price of farm products from the last date you mentioned, October 1st, 1932, up to the present time? A. Yes.

Q. Another very substantial depreciation? A. Yes, except, Mr. Shaw, wheat.

Q. Wheat? A. Wheat is higher.

20 Q. Wheat is somewhat higher? A. Yes, No. 1 Northern is 65½ cents to-day that is net 47½ cents.

Q. Can you tell me whether or not between October 1st, 1932, and the present time there would be an appreciation or depreciation in the value of the McElroy land having in mind the figures that you have for the prices of farm products on those respective dates? A. I would say there was a further depreciation in spite of the fact wheat is up to some extent because livestock is down to a point where at certain parts of the Province it does not pay freight to get it to the market because, for instance at the present time cows are selling for \$1.50 a hundred. Steers the very best of the tops \$3.00, that is 3 cents a pound and most of them 30 two and a half cents. They are down to a point where there is no profit at all.

Q. You have been good enough to prepare this statement for us, Mr. Nowers? A. Yes.

MR. SHAW: I would like to tender this statement in evidence, my Lord.

MR. NOLAN: There is no objection.

(Document in question is now marked Exhibit "73".)

CROSS-EXAMINATION of the same witness by MR. NOLAN:

40 Q. Mr. Nowers, I take it from what you have been telling my learned friend that we are in the midst of a depression? A. I hope we are getting towards the end of it myself.

Q. That is what I wanted to ask you. You are not an incurable pessimist, Mr. Nowers? A. No I am not.

Q. Can you see any light in the sky? A. I would like to see more.

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Q. Well the main commodity in the country is wheat, Mr. Nowers?
A. Yes.

Q. Wheat is higher than it was? A. A little. It is still on a basis that is not profitable to the grower.

Q. But it is much better than it was? A. It is slightly better, yes, it is not substantially better.

Q. You are not without hope that the values that were established for the McElroy lands back in the year 1929 will again be reached? A. I expect it will, I hope so.

Q. Why do you tell my learned friend about shrinkage or the drop 10 that took place between the 1st of January and the 9th of July? A. Well wheat was down.

Q. I know but why pick on the 9th of July? A. That was a date that was given to me.

MR. SHAW: I picked it.

Q. MR. NOLAN: Mr. Shaw picked that date for you? A. Yes, Mr. Shaw picked that date for me.

Q. No economic crisis took place on the 9th of July? A. No, none that I know.

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RE-EXAMINATION of the same witness by MR. SHAW:

20

Q. Just one question, the hope that you expressed to my learned friend about the rise in prices of lands is just merely a hope? A. That is all, there is no evidence of it just now. As a matter of fact a first class farm sold recently, a section of land in a good farming district, and \$7,000 worth of improvements for \$6.00 an acre and that was on terms. The land was clear title, taxes paid up, it was sold by a man who was quite able to hold on to it. That is just an idea of some of the prices that have prevailed recently.

Q. THE COURT: He did not seem to have been an optimist? A. No I think not. He owned a good deal of land and was selling all of it for 30 what he could get for it. I think he was a pessimist myself.

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No. 15
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G. M. Clowes,
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ALEXANDER GEORGE M. CLOWES, having been duly sworn, as a witness on behalf of the Defendant, examined by MR. SHAW, testified as follows:

Q. Mr. Clowes, you are the Deputy Sheriff? A. Yes, Mr. Shaw.

Q. You have custody of the records in the office of the Sheriff? A. Yes.

Q. Of this Judicial District? A. Yes.

Q. Can you tell me whether or not there are any executions in your hands, unsatisfied executions in your hands against one J. W. McElroy? 40
A. Yes, according to our records we have an execution issued on the 21st of November, 1932, received by the Sheriff's office at 3:30 on the 21st

of November, 1932, for the sum of \$1,938.62 with taxed costs, with costs in the amount of \$128.70. That execution is unsatisfied.

Q. That is all.

CROSS-EXAMINATION of the same witness by MR. NOLAN:

Q. Is that the only one you have, Mr. Clowes? A. That is the only one.

Q. Were there any before that one of November that have been satisfied? A. I cannot tell you that at the moment, I haven't those records but I could obtain that information for you.

10 Q. That is the one that is there now? A. That is the one that is there.

Q. November, 1932? A. Yes, that is the only one. That is the only one registered against him at this time.

Q. All right, thank you.

MR. SHAW: There are just two or three very short parts of the Examination for Discovery of Mrs. Begley that I desire to put in, my Lord. I shall read them and give you the numbers. Gentlemen of the Jury, you were told the day before yesterday about Examinations for Discovery of Mr. Mackie and certain portions were read therefrom. I now propose, as
20 is my right to read to you certain sections from, and very short sections, of the evidence given on oath by Mrs. Begley.

Examination for Discovery of Mary Victoria Begley, taken before V. R. Jones, Esq., Clerk of the Supreme Court, Calgary, at the Court House, Calgary, on the 20th day of March, A.D. 1933.

H. G. NOLAN, ESQ., *{of Messrs. Bennett, Hannah & Sanford, appeared for the Plaintiff.*

J. T. SHAW, ESQ., K.C. AND L. F. MAYHOOD, ESQ., *{of Messrs. Short, Ross, Shaw & Mayhood, appeared for the Defendant.*

W. L. WALKER, ESQ., *{Official Court Reporter.*

30 MARY VICTORIA BEGLELY, who having been duly sworn, examined by MR. SHAW, testified as follows:

1021. Q. So that when you called Moyer over to the hospital, in any event, you knew that moneys had been taken from your account and used by McElroy to pay his debt to the Bank? A. Yes.

1274. Q. Of course, you had left the Imperial Bank about the first of September, 1930? A. Yes. .

1275. Q. So that you had no more relations with them in connection with this or any other matter? A. No.

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1276. Q. Never discussed the matter with Weaver or with Mr. Chambers? A. No, I never saw them afterwards.
1287. Q. Yes, this was taken . . . this note Exhibit "P" was taken to the Bank of Montreal before the end of October, 1930? A. Yes.
1288. Q. That is what you told me? A. That is when I noticed first that it was \$8,500.00.
1289. Q. This is the note that Mr. Chambers showed you in the Bank? A. Yes.
1328. Q. Now, upon your return from the Coast in the year 1931 what did you do, Mrs. Begley, about this indebtedness, did you do anything? A. I went to Mr. Moyer. 10
1329. Q. Yes? A. He told me to bring the note down to him.
1330. Q. So that you did? A. Yes, I never had the note afterwards. He kept it.
1331. Q. Your solicitor, Mr. Moyer, had it? A. Yes.
1451. Q. In any event at the time you returned from Victoria or shortly thereafter you knew all about this wrongful taking of Eight thousand five hundred dollars from your account by Mr. McElroy? A. Yes.
1452. Q. Did you after that date at any time suggest to or discuss with any of the Defendant Bank officers, the matter of this wrongful taking by McElroy? A. No, I just showed that note to the Manager, that was all, and he told me to go to my solicitor. 20
1453. Q. You are speaking of the Bank of Montreal? A. Yes.
1454. Q. I am speaking about the Imperial Bank? A. I never was in there after.
1455. Q. You never discussed with Chambers or Weaver or Mackie? A. After I got these notes from Mr. McElroy I was never in.
1456. Q. It would be obviously clear in your mind that you never suggested the wrongful taking by McElroy? A. No. 30
1457. Q. And I assume from the evidence we already have had that you have never discussed it with any of the officers of the Bank previously either? A. Before that?
1458. Q. Yes. A. About the \$8,500?
1459. Q. I mean about the wrongful taking by McElroy without your authority? A. No.

Those are all I propose to put in, my Lord, that concludes the case for the Defendant Bank.

MR. NOLAN: In view of the fact it is quite obvious we cannot finish to-night perhaps this would be a convenient moment to adjourn. 40

THE COURT: Do you intend to put in any rebuttal evidence?

MR. NOLAN: I think not, my Lord, but perhaps you would leave that for me to consider, any evidence I would put in would take only a moment or two, I doubt very much if we have anything to put in.

THE COURT: I think we will adjourn then now if it is agreeable to both counsel?

MR. SHAW: Yes.

THE COURT: Gentlemen of the Jury, the evidence, I take it is almost all in. It may be that it is all given and to-morrow morning if no further evidence is given then Counsel will address you and it will be my duty to charge you with respect to the questions of law as they relate to the facts as disclosed by the evidence and I would remind you that it is your duty not to endeavor to make up your minds and come to a decision now or until you have heard all the evidence and until you have heard the arguments of both Counsel and what it will be my duty to say to you. It may not be so easy to prevent yourselves from arriving at a conclusion but it will be your duty to endeavor not to make up your minds on a verdict until after the conclusion of the trial. I need not remind you again not to allow anybody to talk to you. The Court will now adjourn.
(THURSDAY, 26th OCTOBER, 1933, A.M. SESSION)

MR. NOLAN: My Lord, the right was reserved to me to decide whether or not we would call evidence by way of rebuttal. We do not intend to call any further evidence.

THE COURT: I think we decided last night that the argument with respect to the law would take place this morning. Is that agreeable?

MR. NOLAN: Quite agreeable, yes, my Lord.

THE COURT: I will hear you, Mr. Ross, first.

(Argument by Mr. Ross.)

(Argument by Mr. Mayhood.)

(Argument by Mr. Nolan.)

(Court was adjourned.)

MR. NOLAN: May it please your Lordship as a result of our consultation, my Lord, we have arrived at an agreement which with your permission we would like to read into the record and my friend and I are agreed that I should read it.

“The parties to this action by their respective Counsel, consent and agree the Jury in this case may now be discharged and the whole case be left to the Trial Judge as if and to the same effect only as if this trial had proceeded before the Trial Judge alone. The costs of the Jury shall follow the event.

“The Counsel for the respective parties undertaking that no objection shall subsequently be urged on the ground of lack of jurisdiction in the Trial Judge with this consent to so discharge the Jury and proceed as above stated.”

(The Jury were called in at 12:17 A.M.)

THE COURT: Gentlemen of the Jury, it has been decided that the case will be concluded by myself alone without your assistance, for which I presume you will be pleased to be relieved of the responsibility. For certain reasons, the most important of which is, the case is one which involves many rather intricate principles of law, it has been decided that I shall decide the case myself, you will, therefore, be relieved of the re-

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sponsibility in this case and will be discharged from attendance in this case.

THE COURT: Now I presume that the evidence being all in, the best thing to do will be to just argue this case now as you would if the Jury had not been on it covering both the law and the fact or do you wish to leave it as you had concluded your arguments on those questions of law?

MR. SHAW: Well as far as we are concerned, my Lord, we would be quite willing to leave that now. I think the situation has been presented, I am quite willing as my learned friend suggests that perhaps we could let your Lordship have a memorandum of the authorities and so on. 10

MR. NOLAN: Do I understand, my Lord, there will be no argument on the facts?

MR. SHAW: I do not know what His Lordship wishes.

THE COURT: It seems to me that I would like to hear what both of you have to say on the facts, you have not discussed the facts up to now seriously excepting as you have referred to them on the questions of law.

MR. SHAW: Perhaps we could fix a time that would be suitable to your Lordship. Any time will be satisfactory I think.

THE COURT: Will it be convenient if we adjourn now until 2 o'clock and then we can go on with the argument? 20

MR. NOLAN: Yes, my Lord.

MR. SHAW: Yes, my Lord.

THE COURT: It may be that I would prefer to give judgment without reserving it if you would be prepared to. If there is any further reference to the law, that you wish to make and make it as simply as you can I think I may decide it after the argument is over and not leave it reserved.

(At this stage the Court adjourned until 2 P.M.)

(P.M. SESSION)

(Counsel presented argument to the Court on the questions of fact.) 30

No. 17.

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In this case there does not seem to be very serious conflict in the evidence and, therefore, I do not think that it is necessary for me to review that evidence or make any elaboration on the evidence. It is not contended by Counsel for the Defence that Mrs. Begley either lent or agreed to lend McElroy any money and the evidence seems to me to be conclusive that she did not.

10 It, therefore, results in the fact that he took this money from her by means of the improper use of his power of attorney. I am speaking now of the \$8,500.00, the first transaction.

I could not help but think when the evidence was given that any ordinary person with any knowledge of business worth while and any understanding of what the duties of a trustee are,—and officials of Banks have not only experience but training in those things, and they would be in a better position than the ordinary person—that the ordinary person if told to write out a cheque that was to be signed under a power of attorney to borrow money from a person such as this one was, not a business woman but a woman that obviously knew little or nothing about
20 business, and when that cheque was being made payable to himself, they would be on their guard at once that there was something wrong. At least, they would be suspicious. But, if on top of that the cheque was not only made payable to the man who held the Power of Attorney but it was to be used for paying his debts owed to the person who was writing out the cheque then the person writing out the cheque would have an additional reason to be suspicious that there was something wrong and ought to make inquiry. No person knew better than the officials of the Bank how hard up McElroy was. They knew it because they were pressing him hard to pay the debts to them that he was unable to pay. They knew that
30 he had said to them that if he could not, or words to the effect, if he could not borrow the money to pay them from anybody else he would borrow if from Mrs. Begley.

MR. NOLAN: I think, my Lord, he said if the Herron deal fell through he would then borrow it from Mrs. Begley.

THE COURT: Yes, if the Herron deal fell through he would borrow it from her. The Bank were fully aware that he had been the administrator of Mrs. Begley's estate after the death of her husband and they knew that she had gone to Mr. Moyer as her solicitor. And the Bank, it seems to me, in that transaction, the first transaction for the \$8,500, it
40 was so unusual, and the Bank knowing all the circumstances undoubtedly should have been and were, in my view, put on their inquiry and they should have made inquiry.

It was suggested that they were put off their guard by the fact that the Accountant thought Mrs. Begley was not home. He did not inquire

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to find out whether she was home or not. It seems to me that he did not want to make inquiry because he did not make it. One thing that strikes me is that the Accountant should have asked the Manager before he deposited that cheque of McElroy's and took the money to pay the Bank. I think the Bank has to assume the responsibility, undoubtedly has to assume the responsibility for its officials. If inquiry had been made and Mrs. Begley had been asked I have not any doubt she would have said that she had not authorized the lending of any money and if she could not have been found they knew that Mr. Moyer had been, not very long before, acting for her and they could very easily have found him. Any- way they did not make any inquiry. They did not try to find out. I think they have to take the responsibility for not having done so. In my opinion she is entitled to recover from the Bank \$8,500 with interest at the legal rate from the time the Bank came into possession of her money. 10

It was strongly urged by Counsel for the Defence that in view of the circumstances disclosed by the evidence it should be held that she was estopped from now recovering the money or, in the alternative, should be held to have ratified the transaction. I do not think so.

As to the other amounts I would like to see those cheques. In the case of some of these cheques the endorsement does not seem to be cor- 20
rect and the signature of McElroy himself is not a very definite one as to which account was to be charged. But I do not think it is necessary for me to decide whether or not these cheques are good on their face. I am of the opinion that if the Bank had done its duty in the first place that those cheques would not have been given and I prefer to give my judgment for the amount of those cheques on that ground. So that she will have judgment for the amount of those cheques less the one that was paid, is that included in this group of cheques?

MR. NOLAN: No, the \$2,500 excludes the \$500 cheque.

THE COURT: She will have judgment for that amount with interest 30
from the date that the money was taken from her account and costs will follow the event and will include discovery. Rule 27 will not apply.

MR. NOLAN: In regard to the costs it was arranged that the costs of the Jury would follow the event too. That may be included in your Lordship's direction.

THE COURT: The costs will, in accordance with the agreement between the parties also follow the event.

MR. NOLAN: Perhaps your Lordship would make a ruling or give a direction in respect to the costs of the Examination for Discovery of Mr. Weaver and Mr. Chambers in Toronto. They were examined as employees 40
of the Bank there and I am not clear that that is included in the expression Examinations for Discovery. We are clearly entitled to it and it should be awarded my Lord.

THE COURT: Well I do not know, what have you to say Mr. Shaw?

MR. SHAW: We object, of course, my Lord.

THE COURT: Everybody always objects to paying costs.

MR. SHAW: I knew I was on popular ground.

THE COURT: What I meant was this, it is not all Examination for Discovery that can be properly included in discovery. Examinations for Discovery of the parties always can and sometimes there are exceptions with respect to discovery of other people. What I want to know is is there any objection on that ground?

MR. SHAW: Yes, the Examination for Discovery in this particular case was the Examination of Mr. Mackie on behalf of the Bank. But my learned friend is asking for costs in respect of examination of two officers of the Bank down in Toronto. If my learned friend wants to make those inquiries down there and wants to go so far afield I do not think we should be called upon to pay for that.

MR. NOLAN: The reason we went to Toronto was because Mr. Chambers and Mr. Weaver had been moved there. They were the persons who seemed to be most conversant with the matter. We are not asking for travelling expenses but a fee for the examination of these two gentlemen as being necessary preparation undertaken by us preparatory to the trial of the action.

THE COURT: If they had been here would you have been entitled to those costs?

MR. NOLAN: We would have been entitled of course, to examine them here and I was of the impression that they are included in the costs of the Examination for Discovery although they are not parties to the action. They are employees. Perhaps I could put it in another way that will obviate the necessity of deciding that. The examination of Mrs. Begley took a matter of four days. It was a very prolonged examination and a very thorough one. In addition to that the preparation for this trial has been very labourious. I think perhaps you can understand from what has been given in evidence it has been a matter of many days' hard work getting ready. The fee under the tariff for the preparation of the trial of this action is the magnificent sum of \$56.00. That is what you get in the preparation of a case of this kind involving this or any higher amount of money. If your Lordship would be good enough to fix a fee for the preparation, that fee could include the examination for discovery of these two gentlemen and that fee might not be mentioned specifically. If your Lordship would fix a fee for the preparation of this action in excess of the fee that is mentioned in the tariff that would meet the situation.

THE COURT: Oh, I think you are entitled in a case of this kind, a very difficult case, as far as preparation is concerned both with respect to facts and law, you are entitled to a larger fee than what is fixed in the schedule. Counsel, of course, for the defence naturally do not feel like acknowledging anything in the way of fees but sometimes they do agree as to what is reasonable and what I would suggest is that you see if you can agree on what is a reasonable fee and I will be here for half an hour and if you can agree I will fix it.

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MR. SHAW: May I make application at this time too for a stay pending appeal in this matter?

THE COURT: Oh yes.

MR. SHAW: I suppose while the matter of costs is an important one the Imperial Bank is probably still able to pay the costs that might be involved.

THE COURT: Yes, I presume the Plaintiff will take a chance on that.

MR. SHAW: As your Lordship will know that there are a great many exhibits, some 60 or 70, and it is going to take quite a long time to get the appeal books ready, I was wondering if your Lordship would grant a stay of 60 days. It might not take that long or perhaps if you would say 30 days with the right to apply for a further stay of thirty days in case we cannot get through in that time? 10

MR. NOLAN: I have no objection to that.

THE COURT: Perhaps we had better fix it 60 days.

MR. NOLAN: It is a long time in the lifetime of this Plaintiff, 60 days, I would like thirty days with further leave to apply.

MR. SHAW: If it were put the other way, my learned friend, Mr. Ross says, the usual practice is to stay for thirty days and in the event of appeal being entered in that time a further delay until the appeal is disposed of. 20

MR. NOLAN: That is the usual form, there is no doubt about that, my Lord.

THE COURT: Yes, well that will be the order that a stay of thirty days is granted with the usual practice about any further stay. I presume there is nothing else in issue that has not been decided.

MR. SHAW: I think, my Lord, your Lordship withheld your judgment as to whether a certain document, a statement of assets of McElroy, whether you were going to permit it to go into evidence. It was marked, as your Lordship will remember merely for identification purposes. I think perhaps we have all forgotten about it. 30

THE COURT: Have you any particular objection to that going in?

MR. NOLAN: No, my Lord, we took the position when it was produced that it was not admissible as evidence relative to this case because it was only through Mr. Weaver that they were attempting to adduce it. They might have got in in another way if they had got Mr. McElroy here to swear to its contents. Further than that it is dated January, 1927.

THE COURT: I do not think it is evidence as to his worth. The trouble is it might be misleading. If I thought it was clearly representative of what he is worth I think I would let it in.

MR. SHAW: It is, at least, evidence for what it is worth. It may not be evidence of what he is worth but it is evidence for what it is worth. 40

THE COURT: I think I should be satisfied it is worth something before admitting it. I think I will let it in. It is not without some hesitation that I do it but I think I will admit it, I do not think it is of much value once it is in.

(Document in question was then marked Exhibit "74".)
THE COURT: Everything is concluded and the Court will now adjourn.

"J. R. BOYLE."

*In the
Supreme Court
of Alberta*

No. 17
Reasons for
Judgment of
Boyle, J.,
October 26,
1933.

—continued

No. 18.

Judgment Roll, Trial Division.

Thursday, the 26th day of October, A.D. 1933.

This action coming on for trial in this Court before the Honourable Mr. Justice Boyle sitting with a Jury on the 23rd, 24th, 25th and 26th days of October, A.D. 1933, and the Jury having by consent of counsel for both parties been discharged before determining any issues of fact between the parties hereto, and His Lordship upon hearing the evidence adduced on behalf of both parties, and upon hearing counsel as well for the Defendant as for the Plaintiff, having delivered his judgment in favor of the Plaintiff and against the Defendant to the effect hereinafter stated.

No. 18
Judgment
Roll, Trial
Division,
October 26,
1933.

IT IS ORDERED AND ADJUDGED that the Plaintiff recover from the Defendant the sum of \$8,500.00 together with interest thereon at 5% per annum from the 29th day of June, A.D. 1929, amounting for principal and interest to the sum of \$10,338.56.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff recover from the Defendant the further sum of \$2,500.00 together with interest thereon at 5% per annum computed as follows:

On the sum of \$1,000.00 from the 23rd day of July, A.D. 1929, being	\$ 213.00
On the sum of \$500.00 from the 26th day of October, A.D. 1929, being	100.00
On the sum of \$635.00 from the 13th day of November, A.D. 1929, being	146.50
And on the sum of \$265.00 from the 16th day of November, A.D. 1929, being	52.20
	\$511.70

making for principal and interest \$3,011.70, and a grand total of \$13,350.26.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff recover from the Defendant her costs to be taxed by the Clerk of the Court including costs of examinations for discovery of Plaintiff and Norman S. Mackie, and of and incidental to the Jury, with special fee for preparation for trial of \$350.00, Rule 27 not to apply.

"V. R. JONES"

Clerk of the Court.

In the
Supreme Court
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No. 18
Judgment
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Division,
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1933.

—continued

The above costs have been taxed and allowed by me at \$———— as
appears from my certificate dated the _____ day of _____,
A.D. 1933.

“V. R. JONES”
Clerk of the Court.

Approved as to form:

“SHORT, ROSS, SHAW & MAYHOOD”
Solicitors for the Defendant.

ENTERED this 4th day of November, 1933.

“V. R. JONES” “S.” 10
Clerk of the Court.
No. 34,701.

(Seal)

No. 19
Notice of
Appeal,
October 23,
1933.

No. 19.
Notice of Appeal.

TAKE NOTICE that the Defendant intends to and does appeal to the Appellate Division of the Supreme Court of Alberta from the whole of the verdict and reasons for judgment delivered at the trial of this Action on the 26th day of October, A.D. 1933, by the Honourable Mr. Justice Boyle and from the formal judgment entered pursuant thereto on the 4th day of November, 1933, in favor of the Plaintiff upon the following 20 amongst other grounds:

1. That the said judgment is against the law and the evidence and the weight of evidence.
2. That the learned Trial Judge erred in finding in fact or holding the law each of the following, namely:—

Re \$8,500.00 Item

- (a) That Mrs. Begley did not lend any money to Mr. McElroy;
- (b) That Mrs. Begley did not agree to lend any money to Mr. McElroy;
- (c) That Mr. McElroy took the \$8,500.00 from Mrs. Begley by 30 means of an improper use of his Power of Attorney;
- (d) That the facts in evidence were facts to raise suspicion in the mind of the accountant, of the Bank, Mr. Chambers;
- (e) That Mr. Chambers was under a duty to enquire further beyond the information which he then had;
- (f) That the Bank was under duty to enquire further beyond the information which it then had;
- (g) That Mr. Chambers did not enquire whether Mrs. Begley was home or not;
- (h) That Mr. Chambers did not want to make enquiry because 40 he did not make it;

(i) That Mr. Chambers should have asked the Manager of the Defendant Bank before he deposited that cheque of McElroy's and took the money to pay the Bank;

(j) That Mrs. Begley would have said she had not authorized the lending of any money;

(k) That the Bank officer could have asked Mr. Moyer if Mrs. Begley could not have been found;

(l) That the Bank Officials did not make any enquiry;

(m) That the Bank Officials did not try to find out;

10 (n) That the Bank has to take the responsibility for not having made further enquiry;

(o) That the Plaintiff is not estopped from recovering the money;

(p) That Mrs. Begley should not be held to have ratified the transaction;

Re \$2,500.00 Item

(q) That in the case of some of these cheques the endorsement does not seem to be correct;

20 (r) That the signature of Mr. McElroy himself is not a very definite one as to which account was to be charged;

(s) That it is not necessary to decide whether or not those cheques are good on their face;

(t) That if the Bank had done its duty in the first place those cheques would not have been given;

(u) That the Bank is liable to Mrs. Begley both with respect to the \$8,500.00 item and the \$2,500 item;

3. The learned Trial Judge should have found in fact or held in law each of the following, namely:—

30 (a) That Mrs. Begley did lend money to Mr. McElroy;

(b) That Mrs. Begley did agree to lend money to Mr. McElroy;

(c) That McElroy received the \$8,500.00 from Mrs. Begley's account lawfully;

(d) That the facts given in evidence were not facts to raise suspicion in the mind of Mr. Chambers or the Bank;

(e) That there was not a duty upon Mr. Chambers to enquire beyond the information which he then had;

(f) That the Bank was not under a duty to enquire beyond the information which it then had;

40 (g) That Mr. Chambers had and the Bank had in fact been informed already by way of correspondence, the interview with Mrs. Begley and the representations of McElroy and the Power of Attorney;

(h) That Mr. Chambers did not make further enquiry on the 29th of June, 1929, because of the information he then had and that he did make subsequent enquiries as soon as the opportunity occurred;

(i) That if Mrs. Begley had been asked on the 29th of June, 1929, she would have answered as she did on the occasion of her return from Ontario to the effect that a loan to McElroy had been authorized by her;

(j) That the Bank had no instructions or reason or duty to refer any of Mrs. Begley's business to Mr. Moyer;

(k) That the Attorney, McElroy, purported to and did deal with the Bank under the Power of Attorney with respect to each and every of the cheques mentioned in this action and that the Bank is entitled to rely upon the Power of Attorney and covenants contained therein made between the Plaintiff and the Bank; 10

(l) That the Plaintiff did adopt the loan to McElroy evidenced by the transaction of 29th of June, 1929;

(m) That the Plaintiff did ratify the loan to McElroy evidenced by the transaction of the 29th of June, 1929;

(n) That the Plaintiff did waive the wrong, if any wrong had been done, with respect to the \$8,500 item;

(o) That if any wrong had been done with respect to the \$8,500.00 then the Plaintiff did not notify the Bank thereof or assert her rights with respect thereto because of the personal and also business relationships which she desired to maintain and/or develop between herself and McElroy; 20

(p) That the Plaintiff by her words and conduct represented to the Bank either that the \$8,500.00 transaction had been authorized previously by her or was being accepted, adopted and ratified by her and the Bank relied thereon;

(q) That the position of the Bank has been substantially altered and prejudiced by reason of such representations made and continued by Mrs. Begley up till October, 1932, and Mrs. Begley ought to be and is estopped from asserting the claims made in this action; 30

(r) That if the Plaintiff did not previously agree to the \$8,500.00 loan or did not intend to adopt or ratify the transaction evidenced by the \$8,500.00 cheque and note then the Plaintiff was under a duty to disclose to the Defendant that she disclaimed the said transaction and that she was not going to adopt or ratify the same or acquiesce thereto; and the Plaintiff deliberately kept silent with respect to the said matters and thereby represented to the Defendant that the Plaintiff had agreed to lend the said amount to McElroy and had adopted and ratified the said transaction and the Defendant relied thereon; and the Defendant's position was materially prejudiced thereby; and the Plaintiff ought to be and is estopped from asserting the claims made by her in this action; 40

(s) That the cheques which together make up the \$2,500.00

came to the Bank in the ordinary course of business and were paid by the Bank in good faith and in reliance upon the Power of Attorney in the Bank's possession;

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(t) That the said cheques were the cheques of the Plaintiff signed by her authorized attorney, McElroy;

(u) That the Bank acted in good faith and in reliance upon the Power of Attorney with respect to all the transactions, mentioned in this action;

—continued

10 (v) That on the pleadings in this action it was not proper to base any claim or make any finding on the endorsements which appear on any of the cheques;

(w) That the Bank did discharge every duty cast upon it with respect to the \$8,500.00 item, and if it did not do so, nevertheless, the transactions represented by the cheques which made up the \$2,500.00 item were not the reasonable, natural, probable or prospective consequence of the Bank's default and any damage suffered by the Plaintiff with respect to these cheques was too remote to hold the Bank answerable therefor. And in any event there is nothing in the pleadings to support a finding of negligence or breach of duty by the Defendant to the Plaintiff or to support any other finding made by the Trial Judge with respect to the cheques making up the \$2,500.00 item;

(x) That the Bank was not liable to the Plaintiff;

4. (a) That it was error to admit any evidence of conversations between Mrs. Begley and Mr. McElroy and/or Mr. Moyer which conversations were not held in the presence of the Defendant or of anyone acting on behalf of the Defendant except insofar as therein any admission against the Plaintiff's interest in this action may have been made;

30 (b) That the learned Trial Judge misdirected himself to the effect that he was entitled to take into consideration any of the said conversations save to the extent of the exception above mentioned;

(c) That no statement alleged to have been made by McElroy to Mrs. Begley after the end of the year 1929 is admissible in evidence against or binding on the Defendant;

40 AND FURTHER TAKE NOTICE that at the first sittings of the Appellate Division of the Supreme Court of Alberta to be held at the City of Calgary which commence after the expiration of six weeks after this Notice or at such other time as may be fixed in accordance with the Rules of Court the Defendant will move the Court for an order setting aside the said judgment and directing that judgment be entered herein for the Defendant, and on and in support of the said Motion will be read the pleadings in this action, the evidence taken at the trial, the said verdict and

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reasons for judgment and the said formal judgment and such other materials as the court may accept.

DATED at the City of Calgary in the Province of Alberta this 23rd day of November, A.D. 1933, and given on behalf of the Defendant by its Solicitors,

“SHORT, ROSS, SHAW & MAYHOOD,”

To the Clerk of the Court herein:

To MESSRS. TAYLOR AND TAYLOR,
Solicitors for the Plaintiff

And to the Plaintiff.

10

No. 20.

Agreement as to Contents of Appeal Book, Appellate Division.

No. 20
Agreement as
to contents of
Appeal Book
—Appellate
Division,
November 27,
1933.

It is agreed that the contents of the Appeal Book on the Appeal to the Appellate Division of the Supreme Court of Alberta from the Judgment of the Honourable Mr. Justice Boyle herein shall be as follows:—

1. The Pleadings;
2. The Evidence taken at the trial including those portions of the Examination for Discovery that were placed in evidence at the trial;
3. The Exhibits used at the trial;
4. The Judgment of the Trial Judge;
5. The Formal Judgment;
6. Notice of Appeal;
7. This Agreement;
8. The Clerk's Certificate.

20

It is agreed that notwithstanding the copies of the exhibits are in the Appeal Book the original exhibits may be used on the hearing of this Appeal.

DATED at the City of Calgary in the Province of Alberta this 27th day of November, 1933.

30

“TAYLOR & TAYLOR,”

Solicitors of the Plaintiff (*Respondent*),

“SHORT, ROSS, ROSS & MAYHOOD,”

Solicitors for the Defendant (*Appellant*).

No. 21.
Clerk's Certificate.

*In the
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No. 21
Clerk's
Certificate,
November —,
1933.

I, the undersigned Clerk of the Supreme Court of Alberta, in and for the Judicial District of Calgary, hereby certify to the Registrar of the said Court that the foregoing document is a true copy of the Statement of Claim and Defence, and the pleadings in this cause, the Evidence as furnished me by the Court Stenographer, the Judgment and the reasons given therefor, and Notice of Appeal to the Court filed with us; that this action was commenced in this Court on the 30th day of December,
10 A.D. 1932;

That this Appeal Book has been approved by the Solicitors; that the Appellant filed the said Notice on the 23rd day of November, A.D. 1933.

DATED the day of November, A.D. 1933.

Clerk of the Supreme Court,
J.D.C.

No. 22.

**Reasons for Judgment of the Appellate Division of the Supreme Court
of Alberta.**

No. 22
Reasons for
Judgment of
the Appellate
Division of
the Supreme
Court of
Alberta,
March 24,
1934.
Harvey, C.J.A.
(Clarke,
Mitchell and
Lunney, JJ.A.,
Concurring).

HARVEY, C. J.:

20 This is an appeal by the defendant bank from a judgment of Boyle, J. in favor of the plaintiff for \$13,356.26 with costs.

There was a jury until the close of the evidence when counsel for both parties agreed that the jury should be dispensed with and the verdict and judgment were both rendered by the trial Judge.

30 The plaintiff is a widow whose husband died in December, 1928, leaving her beneficiary under and executrix of his will. Instead of taking out probate she gave a power of attorney to one J. W. McElroy, for many years previously a friend of the plaintiff and her husband. They all lived in the country not very far from the city of Calgary, McElroy being a farmer on rather large scale whose wife had died several years before. He was granted administration of the estate with the will annexed and on June 27, 1929, having completed the administration of the estate he was discharged. The plaintiff had had a savings account with the defendant for some considerable time and on June 21, 1929, there was deposited in it the sum of \$13,081.35, the proceeds of her husband's estate.

The plaintiff who had been in Spokane for some months returned in June, 1929, and after about a week in Calgary left on June 26 for eastern

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(Clarke,
Mitchell and
Lunney, J.J.A.,
Concurring).

—continued

Canada. In the meantime she had signed a power of attorney on the defendant's printed form appointing McElroy her attorney inter alia "to enter into, manage and carry out for me and in my name any and every financial transaction with the Imperial Bank of Canada . . . and for me and in my name to draw and sign cheques, including those creating an overdraft, on the said Bank or any other Bank or banker and receive the moneys thereon . . ."

McElroy also had had for some years an account in the same branch which for the most part showed a debit balance, frequently of several thousand dollars, being at the end of June over \$8,000. The bank had 10
been for some time pressing him for payment and a short time before this he was having some business dealing with one Herron and told the defendant's manager, Mr. Weaver, that if he did not get the money to pay his indebtedness from the Herron deal "he could borrow it from Mrs. Begley," i.e., the plaintiff. Later when the matter was mentioned McElroy told the manager that Mrs. Begley had not yet got back from the States and "that he would make arrangements with her when she came back." During the week that the plaintiff was in Calgary in the latter part of June, though she was in the bank once or more, nothing was said 20
by or to her about a loan to McElroy but on June 29, three days after she had gone to eastern Canada, McElroy came into the bank and said to Mr. Chambers, the accountant who was aware of what had transpired previously between him and the manager, that he wished to pay off his liability and asked Mr. Chambers to make up the amount. Mr. Chambers' account of what took place is as follows:

"I then figured up his liability which amounted to \$8,518.78. He then said I am going to borrow sufficient money from Mrs. Begley's account to pay this liability. Will you kindly make me out a note payable to Mrs. Begley. I said, 'How long when will the note be payable?' and he said 'On demand.' 30

"The Court: What is that? A. The note would be payable on demand. I asked him at what rate of interest was to be added to the note and he said 'Seven per cent.' I made out this note and handed it to him and he signed it. He then said 'Will you please make me out a cheque' which I did, a cheque payable to J. W. McElroy for \$8500 which he signed 'Victoria Begley per J. W. McElroy, Attorney.'"

"Q. Is the handwriting of the note and the cheques yours excepting the signature? A. Yes.

"Q. How did you come to be writing out notes and cheques for 40
Mr. McElroy? A. Ninety per cent. of the notes made out in the Bank are made out by members of the Staff.

"The Court: I did not catch what he said? A. It is the general practice, sir, for a member of the Staff to write out notes and the customer merely signs it.

"Q. Mr. Shaw: That is it is very ordinary practice for the

Bank. It is just an accommodation for the people concerned? A. The usual practice, yes.

“Q. Then you say he signed the note and then he signed the cheque? A. Yes.

“Q. Then what happened? A. He then said ‘I will have to put this cheque to my credit.’ I said ‘I will make out a deposit slip’ and I made out this deposit slip for, put on the \$8500 and I said ‘This will not be sufficient to clean up your liability in full’ and he gave me a further cheque for \$18.78 which I added to the \$8500 deposit, made out the deposit for his account.

10

“Q. What did you do? All these documents were turned over to you, that is you had the cheque? A. I gave them all to Mr. McElroy to sign and when they were all made out and signed by him he handed them back to me.”

The effect of this deposit to Mr. McElroy’s credit was to satisfy his total liability on the bank’s books.

20

The plaintiff swears that she had not given McElroy authority to borrow or use her money, though she says that he did ask her if she would make him a loan on which he would pay 7 per cent., which is the rate he told Chambers to put in the note, which request she treated with silence. McElroy was not called as a witness but even though he did think that silence gave consent which might relieve him from any intentional dishonesty and though Chambers, who knew of McElroy’s stated intention of borrowing the money from the plaintiff, also no doubt knew that the relations between them were of a much more intimately friendly and confidential character than those in the case of a simple agent and principal, yet in my opinion the defendant being fully aware that the money to pay McElroy’s debt was coming from the plaintiff’s account which could be dealt with by him only under his power of attorney, it could not retain the money, if the plaintiff repudiated McElroy’s act, when she learned of it, since in fact he had, as the Trial Judge finds, no authority to use it for his own benefit.

30

The defendant however maintains that the plaintiff by her subsequent conduct ratified her attorney’s act and is now estopped from maintaining any claim even though she might have had a good one when she first learned of the transaction.

This aspect of the case the learned Trial Judge deals with very shortly in the following terms:

40

“It was strongly urged by Counsel for the Defence that in view of the circumstances disclosed by the evidence it should be held that she was estopped from now recovering the money or, in the alternative, should be held to have ratified the transaction. I do not think so.”

In my view this feature of the case calls for very careful consideration.

The plaintiff knew nothing of the transaction until after her return

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Harvey, C.J.A.
(Clarke,
Mitchell and
Lunney, J.J.A.,
Concurring).

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Concurring).

from the east at the end of the year 1929, and the first inkling she had of it was when in examining her pass book in the bank she saw that her credit balance was much less than she had thought and that a cheque for \$8500 had been charged against her account. Just when this was is not clear but it seems probable that it was about the end of the year. The plaintiff went into the hospital for an operation on June 6, 1930, and she fixes two days prior to that as the date but it is clear that she was in the bank on many occasions before that and had her bank book entered up and the balance extended. She also says that her impression is that she understood the amount to be \$4500. This also is perhaps a case of lapse of memory but as to neither does there appear to be much significance except in one aspect as will appear later. 10

—continued

Her account of the event in her examination in chief is that when she was looking at her pass book Mr. Chambers asked her: "What is wrong, you look so worried," and she answered: "I have not got the money on my bank book I thought I had." "Well," he said, "didn't you know that Mr. McElroy—we are holding a note?" "I understood him to say for \$4500." She says he then went and got the note and showed it to her. She admits that she had seen the item \$8500 in the pass book but took it as representing a credit instead of a debit. On cross-examination she affirmed what she had said on her examination for discovery. 20

"Q. What was your conversation with Mr. Chambers? A. He saw me looking over the Bank book and looking kind of worried, and he asked me 'Was there anything wrong' and I said 'I thought I had lots more money.' I said 'I have just noticed where there is \$8500, I have taken the debits for credits.'

"Q. That is a correct statement of your conversation with him? A. Yes.

"Q. That you had taken the debits for the credits? And so Mr. Chambers spoke to you and told you about the McElroy note did he? 30

A. Yes.

"Q. And you understood Mr. Chambers to say that McElroy had used \$4500 of your money? A. Yes, that is what I thought he said.

"Q. You are clearly mistaken about that aren't you? A. Yes.

"Q. You must be mistaken. A. Yes.

"Q. There would be no reason in the world why Mr. Chambers would say \$4500? A. I just misunderstood him."

Mr. Chambers' account of the event is quite in accord with that of the plaintiff but he fixes the date as December 24 and as prior to a loan of \$1400 made by the plaintiff to McElroy for which a cheque was charged up on January 2 and he adds some details which are of considerable importance and as the truth of his evidence in this respect is not questioned either by cross-examination or by other evidence, it would appear that on the authority of *Brown v. Dunn* (1893) 6 R. 67 which was applied by the Supreme Court of Canada in *Peters v. Perras* (1909) 42 S.C.R. 40

244, on appeal from this Division, 1 Alta. L.R. 201, that evidence should be accepted as proof of the facts stated. Chambers account of this interview with the plaintiff is as follows:

10 “Mrs. Begley did not come to see me but I saw her down at the Savings Department of the Bank. Realizing I had this note to hand to her I went down to her. She had been away. I had not seen her for some months. I opened my conversation with how she had enjoyed herself and had a good time. Mrs. Begley did not appear to pay very much attention to my conversation. She kept looking from her pass book to me and back to her pass book, without saying anything. I said to her ‘Is there anything in your pass book that you do not understand Mrs. Begley?’ She said ‘What is this \$8500 cheque?’ I said ‘I have a note covering that cheque Mrs. Begley, if you will wait a minute I will go and get it for you.’ I went away and got it and showed it to her. She repeated the same action as before. She kept looking at the note and looking at me without saying anything but appeared to be perplexed. I said to her ‘Surely Mrs. Begley there is nothing wrong with this cheque. That is a debit to your account.’ She said ‘Well to tell you the truth . . .’ I said ‘Surely Mrs. Begley this cheque charged to your account has not been without your authority?’ She said ‘To tell you the truth when I left in the summer my head was in such a whirl that I did not know what arrangements we made but I did not expect McElroy would borrow so much as \$8500.’ ”

20

He is then asked about the next occasion on which he saw her. I quote from the evidence:

30 “A. I saw Mrs. Begley before January 2nd on or before January 2nd, 1930. On that date she came to me direct and told me that Mr. McElroy had requested her to make, for her to make him a further loan of \$1400. She told me that she had not made up her mind as to whether she would give it to him or not and I said ‘Well Mrs. Begley, the best thing you can do is to go to our solicitors upstairs and if you make up your mind to make this new loan that you take this opportunity of insisting and getting mortgage security from Mr. McElroy to cover both the old and new loans.’ ”

“Q. Yes. A. She said that she did not particularly want to go to any lawyer and take security from Mr. McElroy because if they became married it would not make any difference which of them had the money.

40 “Q. Now did you have occasion to see Mrs. Begley, is that all the conversation that took place at that time? A. At that time she left me without making up her mind whether she would make the loan or ask for security or anything, she just stated she did not want to.

“Q. You had no discussion further with her about that loan?
A. None at all.

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(Clarke,
Mitchell and
Lunney, J.J.A.,
Concurring).

—continued

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Division of
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March 24,
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Harvey, C.J.A.
(Clarke,
Mitchell and
Lunney, J.J.A.,
Concurring).

—continued

“Q. Did you see her later Mr. Chambers in connection with these matters? A. I saw her again within a month, around a month later when she asked me to show her all the cheques which had been charged to her account which were signed by Mr. McElroy under his power of attorney.”

The last-mentioned cheques other than the one for \$8500 were charged to her account between July 23 and November 16, and Chambers says they were all still in the vault from which he knows that they were all within six months. He adds that if they had been a year or more old they would have been hard to get.

After the cheque for the loan of \$1400 to McElroy on January 2, 1930, the plaintiff's credit balance was \$1253.60. On March 1 there was a deposit of \$270.20, on May 14 one of \$530 and July 8 one of \$429 which is marked McElroy and was apparently for a partial repayment of the \$1400 loan. By October 2 the balance was reduced to \$2.48 and the plaintiff says she transferred her account to the Bank of Montreal. She also later took the \$8500 note from the defendant Bank to the Bank of Montreal and put it in her safety deposit box there.

After her return from Ontario at the end of 1929 the plaintiff remained in Calgary until early in July when she went to Spokane being driven there by McElroy who remained a few days and then returned to Calgary. She returned to Calgary before the end of August and remained in Calgary until August 1, 1931, when she went to Victoria for a month, after which she was in Calgary until June, 1932, when she again went to Spokane where she remained for a couple of months, and then returned to Calgary in the latter part of August. She says that while she was in the hospital in Calgary in June, 1930, just prior to her visit with McElroy to Spokane, he told her that he had paid the \$8500 taken from her account to the defendant. I quote a few questions and answers in cross-examination:

“Q. But McElroy did tell you that the money had, that he had paid the money to the Imperial Bank? A. He told me that when I was in the Hospital.

“Q. I think it was at this particular time that McElroy told you that you did not need to worry about the amount, that he was going to pay it that Fall? A. Yes.

“Q. You were quite satisfied with that were you, I mean you thought he would pay it? A. I do not know as I was just satisfied. Well I thought he would.

“Q. I asked you two questions. But you did think he would pay it that Fall? A. Yes.

“Q. You knew that that particular year he had some 1600 acres in wheat? A. Yes.

“Q. And of course, the prospects at that particular time were favorable. I mean the crop prospects were favorable? A. Yes.

“Q. This conversation that you had with McElroy I believe,

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Mrs. Begley was some four or five days before you left for Spokane, of course, you told me you had one in the Hospital but you had another one four or five days before you left for Spokane. A. I have forgotten.

“Q. In any event you knew at that time that McElroy had taken your money or some of your money? A. Yes.

“Q. There is no manner of question about that at all is there? A. No.

10 “Q. And that was the occasion on which you went with him to Spokane, or, at least, he drove you down to Spokane? A. Yes.

“Q. His car I suppose? A. Yes.
Later in re-examination we find:

“Q. Is that all that was said on that occasion or did Mr. McElroy tell you anything else?

“Q. THE COURT: What did he say? A. Well I asked him why he took it.

20 “Q. How did you know he took it? A. That he had my money and he said Mr. Weaver told him to take it, he said that I would be back and I was a widow and I would want to marry him and he told him to take my money and pay it back.

“Q. MR. NOLAN: That was the only conversation Mr. McElroy had with you that day in the Hospital? A. Yes.

“Q. And that was the occasion he told you he had taken your money to pay the bank? A. Yes.”

30 There is no evidence that Mr. Weaver did any such thing and in his evidence he specifically denies that he did and this was apparently said by McElroy to excuse himself to the plaintiff. It is of importance however as showing that as early as June, 1930, the plaintiff was advised that the defendant was a party to if not indeed the instigator of the fraud, if such it was, that her attorney had perpetrated on her. Yet neither before nor after did she make the slightest sign of disapproval of anything it had done but on the contrary she looked entirely to McElroy. The plaintiff's evidence makes that very clear. Referring to the date of August 1, 1931, the following evidence is given by her, in part confirming her evidence on discovery:

“Q. Did you after that date at any time suggest to or discuss with any of the defendant Bank officers, the matter of this wrongful taking by McElroy? A. No, I just showed that note to the Manager, that was all, and he told me to go to my solicitor.

40 “Q. You are speaking of the Bank of Montreal? A. Yes.

“Q. I am speaking about the Imperial Bank? A. I never was in there after.

“Q. You never discussed with Chambers or Weaver or Mackie? A. After I got these notes from McElroy I was never in.

“Q. It would be obviously clear in your mind that you never suggested the wrongful taking by McElroy? A. No.

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“Q. And I assume from the evidence we already have had that you have never discussed it with any of the officers of the Bank previously either? A. Before that?

“Q. Yes. A. About the \$8500?

“Q. I mean about the wrongful taking by McElroy without your authority? A. No.

“Q. That would be a correct statement I take it Mrs. Begley? A. Yes.

“Q. And I suppose Mrs. Begley that it would be fair to say your first complaint to the Bank would be through your solicitor Mr. Taylor, that would be correct would it not? A. My complaint to the Bank, about the Bank, yes. 10

“Q. Or to the Bank?

“THE COURT: You are speaking about the legal effect of it now, I haven't any doubt the witness is thinking about the personal side of it.

“MR. SHAW: I am merely asking that particular question, just read the question Mr. Taylor.

“By The Court Reporter (reading):

“Q. And I suppose Mrs. Begley that it would be fair to say your first complaint to the Bank would be through your solicitor Mr. Taylor, that would be correct would it not? A. Yes. 20

“MR. SHAW: And that I believe must have been about October 1932? A. Yes.

A little further on:

“Q. Now as a result of the information which you got you knew that McElroy had taken some of your money and used it to pay his debt to the Bank didn't you? A. Yes.

“Q. You knew that before you took this trip to Spokane with Mr. McElroy? A. Yes.

“Q. Now you knew, of course, at that time that that was a very wrong thing for Mr. McElroy to do didn't you? A. For to take the money? 30

“Q. Yes. A. Yes.

“Q. You knew at that time, of course, it was a very wrong thing for the Bank to have used the money in that particular way didn't you? A. I did not know that they should not, I did not know about that.

“Q. You did not know about that? A. No.

“Q. Didn't you think it was improper for them at that time to have taken the money without any instructions from you to McElroy and used it for paying his indebtedness to the Bank? A. Well I do not remember just what I did think about it. 40

“Q. You would have thought there was something wrong about it anyway, put it that way? A. Yes.

“Q. Didn't you? A. Yes.

“Q. In any event regardless of what you thought about it you were satisfied from the conditions generally that McElroy would pay it back? A. I thought he would.

“Q. And that he would pay it back that Fall? A. He said so.

“Q. Well you must have been satisfied weren't you that he would do it? A. I thought he would all right.

“Q. And so you were prepared to wait until the crop season was over? A. Yes.”

10 While in Spokane she and McElroy had what she called a row over this business which, however, was made up before he left.

No payments were made by McElroy out of his 1930 crops but later at a time when she and McElroy were in her solicitor's office, which the latter fixes as April 15, 1931, when he asked her to obtain from the bank a certain note of one Morasch she says McElroy then said: “Well you might just as well get my note that is in there for I am going to pay you off next month.” It was apparently at this time that she got both notes from the Imperial Bank neither of which was in her safety deposit box which she had cleared on December 31, 1930. The note was not paid and was evidently taken to the Bank of Montreal where it remained until the
20 last day of July, 1931, when it was taken out and given up to McElroy on August 1 when he gave a renewal. The evidence regarding the renewal is of some importance. The plaintiff is shown a note signed by McElroy dated August 1, 1931, for \$9419.11 with interest at 6 per cent. payable at the Royal Bank of Canada and:

“Q. In whose handwriting is that note Mrs. Begley, do you observe? A. Mr. McElroy's.

“Q. That is Mr. McElroy's handwriting? A. Yes.

“Q. Now do you remember the occasion on which you got that note? A. That is what I got, before I left for Victoria.

30 “Q. And the date mentioned is the date that it was actually delivered to you? A. Yes, 1931.

“Q. Now I believe Mrs. Begley that you went the day before to the Bank of Montreal and got out the \$8500 note did you not? A. Well I guess I did.

“Q. You got it out at the same time you got your ticket for Victoria? A. Yes.

“Q. And then Mr. McElroy, according to arrangement came up and saw you on August 1st? A. Yes, he was to be there at ten o'clock and he came about twenty minutes to 12.

40 “Q. And then you figured up, you and he figured up the amount that was due on that note, that is the \$8500 note? A. Well he did, I was busy getting ready because the Bank closed at 12 o'clock.

“Q. In any event he figured it up on paper that was provided in you apartment? A. Yes.

“THE COURT: I did not hear what she said.

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“MR. NOLAN: Speak out because His Lordship and the Gentlemen of the Jury do not hear you.

“Q. THE COURT: What did you say about renewing the note. How did you come to meet Mr. McElroy? A. Mr. McElroy was to be in at ten o'clock Saturday morning to have the note fixed up and he did not come until just about a quarter to 12 and we had to rush then to get down to get it into the Bank. I did not take time to look at it until I was putting it in the deposit box and I noticed then it was Nine thousand dollars and something . . .

“Q. MR. SHAW: Yes, now you had told McElroy before this 10 that you wanted to get this note renewed hadn't you, it was your suggestion that you should get a renewal of this note? A. Yes.

“Q. And so he came up and the amount was figured out in your apartment, he gave you this new note which is now Exhibit 23 to you and you gave him back the \$8500 note is that not right? A. Yes.

“Q. And then he drove you down to the Bank so that you could put in the Bank the \$9400 note which you had, which he had just given you? A. Yes.

“Q. I notice that the original note for \$8500 was with interest at seven per cent. I believe there was an arrangement by which that 20 was to be reduced to six per cent? A. Yes, he asked me, he said you are only getting six per cent from others why do I have to pay you seven? I said 'You pay me up in September and you can have it for six too.'

“Q. The understanding was that he was to pay, although the note was taken for a year, he was to pay as much as he could or all of it if possible within, or all of it out of that year's crop? A. Yes.

“Q. Or from any other source I suppose? A. Yes.”

The plaintiff's solicitor named Moyer, who had acted in connection with the estate, when she left for Ontario in June, 1929, held for her a 30 general power of attorney in favour of McElroy and she says her instructions were that he, Moyer, should approve of any investments to be made by McElroy. He was called as a witness on her behalf and he says that in June, 1930, while she was in the hospital, he attended her to make some alterations in her will and she then told him that McElroy owed her money. He asked her how much and she said: “Quite a bit.” In consequence of this he advised her to appoint someone other than McElroy who had been named by her as her executor. He also says that the first intimation he had that there was any complaint with respect to McElroy's transactions with the plaintiff was in September, 1931, but 40 he gives no particulars. It was in his office in April, 1931, that McElroy told her to get his note which he proposed to pay in a month.

Apparently the plaintiff received nothing from the proceeds of the 1931 crop and about September 1, 1932, she and McElroy came to Moyer's office to arrange for a further renewal with security. It was definitely agreed, Moyer says, that a renewal note would be taken for two years,

though he pointed out to her that that was tying her up for that time, and as collateral an assignment of his agreement for sale of his lands which had been made on January 2, 1932. The note and assignment were drawn and executed by McElroy but a few days later she notified Moyer that she was not going to carry out the arrangement. As already appears it was shortly after this that the defendant received from her present solicitors the first intimation of any claim against it.

It is strenuously contended that it must be held by her conduct the plaintiff adopted and ratified McElroy's unauthorized withdrawal of her
10 money, as as stated in 1 Halsbury, 2nd ed., p. 238, par. 407:

"An effective ratification places all parties in exactly the same position as they would have occupied in the case of a precedent agency by formal constitution."

But it is said that there was no communication to the defendant of all the promises to pay and the giving and accepting of renewals of this note and the other dealings between the plaintiff and McElroy. The question of ratification, however, has nothing to do with estoppel. If, when the plaintiff learned of McElroy's act she had said to him "You had no
20 authority to do what you did do but I will ratify it and treat it as if you had," it would, I think, be of no importance that that was not communi-
cated to anyone else.

In 1 Halsbury, 2nd ed., p. 231, par. 400, it is stated that:

"The first essential to an agency by ratification is that the agent shall not be acting for himself, but shall intend to bind a named or ascertainable principal."

Now McElroy's transaction in the defendant bank with Chambers in June, 1929, consisted of two parts. The first was in drawing the money from the plaintiff's account purporting to act as her agent under the power of attorney and the second was in handing the money or in this
30 case the cheque over to the bank, in which he was acting for himself alone. This part of the transaction did not require and was not capable of ratification. Once the first part has been ratified the effect is as if there had been authority before it had been done, in which case no one but himself had anything to say about what he did with the cheque or the proceeds.

In *Greenwood v. Martins Bank* [1933] A.C. 51, at 57, 101 L.J.K.B. 623, it is said:

"Adoption as understood in English law requires valuable consideration."

40 It may be said that the fact that McElroy had taken her money gave her a right to call on him to pay it back and her conduct is as consistent with her considering it as having been improperly taken as with her treating it as a loan and being equivocal it cannot amount to ratification. As something improperly taken she did not have the right to insist on any contract rate of interest but by contracting for a definite rate of interest she furnished the evidence of and the consideration for an adop-

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tion. See *Scott v. Bank of New Brunswick* (1894) 23 S.C.R. 277. But whatever may be said of the sufficiency of the evidence to establish a ratification or adoption in my opinion it establishes an estoppel of the most complete kind. This principle is explained and applied in the Greenwood case above mentioned and both ratification and estoppel are dealt with in *McKay v. Tudhope Anderson Co. Ltd.* [1918] 3 W.W.R. 994, 14 Alta. L.R. 131, a judgment of this Division.

It is pointed out in both cases that as stated in the Greenwood case at p. 57:

“Mere silence cannot amount to a representation, but, when 10
there is a duty to disclose, deliberate silence may become significant
and amount to a representation.”

In *Ewing v. Dominion Bank* (1904) 35 S.C.R. 133, the Supreme Court of Canada held that the failure to notify the bank immediately that the note in question in that case was a forgery worked an estoppel and prevented the alleged makers from subsequently maintaining that they were not the real makers. The Privy Council refused leave to appeal from that judgment.

While in the present case there would appear to have been a duty 20
on the plaintiff to notify the defendant of McElroy's absence of authority
if she intended to rely on it as against the bank yet there is much more
than her mere silence extending as it did for a period of more than two
years after she became aware of all the material facts. When Chambers
asked her about McElroy's authority not merely did she not deny it but
on the contrary she said what would give the impression that he had the
authority but that she had not expected that he would use it to the extent
to which he did. Then the loan she made to McElroy of \$1400 on January
2, 1930, of which the bank was aware was a circumstance on which it
might rely as to the validity of the earlier transaction and much greater 30
weight could be attached to it if it was after Chambers had shown her
that McElroy had taken the larger amount from her account, as from
Chambers' evidence it seems almost certain it was, for if with a knowl-
edge that he had while she way away taken \$8500 she was willing to
advance him another \$1400, the bank would seem to be justified in con-
sidering that she was not intending to take any exception to his taking
the larger amount. Her answer, too, when Chambers suggested her taking
security seemed to amount to a representation that she was taking no
exception to what McElroy had done.

For all these reasons then I think that the plaintiff was too late in 40
making any claim against the defendant, for, whatever rights she had
when she first became aware of the facts she had lost by her subsequent
conduct.

As estoppel this depends of course upon the further question of
whether the defendant relying on her representation has suffered any
prejudice.

There seems no doubt on this score. McElroy had two large crops in 1930 and 1931 which are not now available. The plaintiff admits that his lands had depreciated in value and as already stated he has since sold them. There is moreover an unsatisfied judgment in the sheriff's hands indicating that a judgment against him now is of little value.

The plaintiff's claim for which she recovered judgment includes the sum of \$2,500 the amount of four cheques issued by McElroy as plaintiff's attorney but not for her use though charged to her account. There is no suggestion that McElroy had the slightest authority to issue these
 10 cheques nor is there any evidence of his explanation of them or arrangement for their payment. There were five in all, one for \$500 being to her solicitor, Moyer, who repaid it after the plaintiff learned of it. The other four included in the claim all came to the defendant through the clearing house having been deposited in the Bank of Montreal; and there is no evidence that the defendant had any knowledge or suspicion that they were for McElroy's own interests. They are not signed as the \$8500 cheque was, in the plaintiff's name by her attorney but are signed by McElroy with the added words, "Attorney for M. V. Begley." I had
 20 some doubt whether this was a signature authorized by the words of the power of attorney, "for me and in my name," but this doubt is set at rest by the terms of sec. 52 of the Bills of Exchange Act, R.S.C., 1927, ch. 16, which provides that on such a signature the person signing it would not be personally liable, from which it seems that it is to be deemed to be the cheque of the principal named.

It is contended also that the cheques were not properly endorsed, they being in favour of a limited company, the letters "Ltd." not being part of the name of the payee but being part of the endorsement. Even if this objection could have any application to the defendant's act in charging up the cheques it is in any event completely met by the terms
 30 of sec. 64 of the Bills of Exchange Act. I can see no ground on which the defendant could have justified a failure to charge these cheques to the plaintiff's account when they came in as they did in the regular course of business.

The learned Trial Judge gives his reason for judgment in favour of the plaintiff in respect of these cheques as follows:

"I am of the opinion that if the Bank had done its duty in the first place that those cheques would not have been given and I prefer to give my judgment for the amount of those cheques on that ground."

40 This seems to imply that a party who is implicated in one breach of trust by an agent is responsible for any subsequent ones of which he is ignorant. In the absence of authority, and none is presented, I cannot think that this is a good ground in law.

In any event the doctrine of estoppel would be as effective an answer

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to this branch of the claim as to the other for as the references to the evidence show the plaintiff was fully aware of these cheques and inspected them within a few months after they had been paid.

In my opinion for the reasons stated the plaintiff fails to establish a good ground of action in respect to both branches of her claim and I would therefore allow the appeal with costs and dismiss the action with costs including costs of discovery.

“HORACE HARVEY,” C.J.

I concur:

“A. H. CLARKE,” J.A.

“C. R. MITCHELL,” J.A.

“H. W. LUNNEY,” J.A.

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McGILLIVRAY, J.A. (DISSENTING):

I have had the privilege of reading the judgment of my Lord the Chief Justice. With great deference, I must say that I am unable to come to the conclusion at which he, and my brothers, have arrived.

I shall not repeat his statement of the facts except insofar as it may be necessary to do so in order to make clear my reasons for holding that in the main the appellant bank should not succeed in this appeal.

It appears from the plaintiff's bank book, Ex. 2, and it is not in dispute, that on June 21, 1929, the plaintiff had on deposit with the bank, the sum of \$13,608.71. Now, there can be no doubt that the burden rested upon the plaintiff from the beginning to the end of the trial of making out a case against the bank but, once it was established that on that date she was a creditor of the bank in that sum of money and that the bank has refused to pay over on demand as proven, then the burden of adducing evidence shifted to the bank to show that this money in fact had been paid out to her or to her order or by her authority, or in the alternative, that she had with knowledge of the improper use of her funds so conducted herself as to be precluded from now saying that she is still a creditor of the bank. In undertaking this burden the bank first points to the power of attorney of June 24, 1929, given by her to McElroy empowering him amongst other things for her and in her name to draw and sign cheques, and to the cheque of June 29, 1929, in the sum of \$8500 drawn in favour of McElroy and signed by McElroy as her attorney. Now it appears from the evidence, and the Trial Judge has found, that this cheque was not made with her knowledge or consent. It also appears that what McElroy told the accountant for the bank, who put through the transaction, was that he was going to borrow “from Mrs. Begley's account.” It also appears that the cheque was drawn by McElroy for

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the express purpose of satisfying his debt to the bank and this to the certain knowledge of the banker who immediately accepted the cheque and used it to pay off McElroy's debt to his institution. In these circumstances I think that it is putting it mildly to say that the bank was put upon inquiry as to McElroy's right to so act and in the absence of inquiry it cannot stand upon this power of attorney authorizing McElroy to act for her and on her behalf when he was on the face of things acting not only against her interest but in the interest of the bank and of himself: *Creighton v. Halifax Banking Co.* (1890) 18 S.C.R. 140; *Underwood v. Bank of Liverpool* [1924] 1 K.B. 775, 93 L.J.K.B. 690; *Midland Bank v. Reckitt* [1933] A.C. 1, 102 L.J.K.B. 297.

Another defence put forward by the bank was that the plaintiff agreed to loan McElroy this sum of \$8500 and that the cheque of June 29 was made in pursuance of this agreement. At trial the one person, viz., McElroy, who might have answered the plaintiff's denial of any such an agreement, was not called, the bank being apparently content to rest this defence upon the evidence of the accountant who swears that he saw the plaintiff on December 24, 1929, and having told her that McElroy had withdrawn this money, she said "I did not expect McElroy would borrow so much as \$8500."

The learned Trial Judge could not have attached any importance to this evidence as he finds, rightly I think, that the evidence is conclusive that the plaintiff neither lent nor agreed to lend McElroy any money.

But the bank makes the further answer that even if the plaintiff's money was improperly converted to the use of McElroy under circumstances that put the bank upon inquiry, and even though she might have required the bank to pay this sum of \$8500 over to her, had she demanded it upon acquiring knowledge of the improper use of the power of attorney granted by her to McElroy, that she cannot now recover this money because with knowledge of his wrongdoing she subsequently ratified the act of her attorney which places her in the same position as if she had in fact authorized the making of this cheque at the time it was made. As to this it is perhaps enough to say that ratification is a question of fact and an experienced Trial Judge after hearing the evidence has held that she did not ratify the act of her attorney. There is no evidence that she ever told either the bank or McElroy that she had agreed to or proposed to adopt this misappropriation of her funds as though it were her own act or one authorized by her. Moreover I see nothing in her conduct that serves to discredit her evidence to the effect that she did nothing of the sort. Counsel for the bank has made much of the plaintiff having loaned McElroy the sum of \$1400 on or about January 1, 1930, at a time when according to the accountant of the bank she knew that McElroy had withdrawn the sum of \$8500 from her account. As to this the plaintiff says that she did not know when the \$1400 loan was made that McElroy had taken any of her money. I think it quite clear that the learned Trial Judge believed the plaintiff's story throughout. I know

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of no reason why he should not do so even though her counsel did not cross-examine his opponent's witnesses on all points of their evidence. I may go further and say that it seems to me even if this plaintiff found that a trusted friend, her attorney, had converted her money to his use, she might well refrain from either prosecuting him or suing him and even remain on friendly terms with him and lend him money with which to carry on, without being deemed to have adopted his act of taking her money as her own act.

With respect to the renewal of the promissory note, it is to be remembered that when McElroy signed the \$8500 cheque he made a demand note in her favour without her authority, which he handed over to the bank to hold for her, which note the bank received and held without her authority and without notifying her either by wire or letter that they held such note for her. What then was the plaintiff's position when she discovered that her money was gone and she had a note in lieu thereof—she had not then the slightest thought that she had a claim against the bank; her friend and attorney had taken her money and he could not pay it back; she had no alternative but to give him time. It is therefore not strange that at his solicitation she renewed the note which had been forced upon her. It is to be noticed that she allowed him to give her a time note in lieu of a demand note and that she allowed him to reduce the rate of interest. I think that this is neither consideration for nor evidence of adoption and that the bank has failed to prove ratification. 10 20

Counsel for the bank further contends however that even if the bank has not made out a case of ratification, the bank is none the less entitled to succeed because the plaintiff has by her silence, when it was her duty to speak to the bank about McElroy's lack of authority, put herself in the position that she is estopped from denying ratification. He relies on the case of *Greenwood v. Martins Bank* [1933] A.C. 51, 101 L.J.K.B. 623, in which case it is stated: 30

“Mere silence cannot amount to a representation, but, when there is a duty to disclose, deliberate silence may become significant and amount to a representation.”

I am of the opinion that the bank cannot successfully invoke the doctrine of estoppel for two reasons, first, because the bank was not an innocent party in connection with the \$8500 cheque transaction, and, secondly, because the bank has not established that it has been prejudiced as a result of the plaintiff's silence.

Now if the bank was not an innocent party it cannot set up estoppel because estoppel is a rule of evidence which may be taken advantage of to prevent injustice being done but it may not be used to advance the position of a wrongdoer so that he may be unjustly enriched at the expense of the person proposed to be estopped. Equally the bank must show, ere it can succeed on its plea of estoppel, that it has been prejudiced 40

by relying upon the plaintiff's silence as a confirmation or adoption of the act of her attorney.

As a premise to what I have to say on these two points, I quote as follows:

In *Cababe on Estoppel*, p. 119, it is stated:

10 "An estoppel, as has already been stated more than once, is a strictly defensive weapon. Its object is to safeguard a transaction between parties, and insure its bona fide execution, and to prevent injustice that would otherwise be done. It cannot be used for the purpose of giving a person an advantage which he would in no case have obtained, nor as a means of indemnifying him against a loss which he would in any case have suffered. Its use is as a shield, and not as a sword."

In *Spencer Bower on Estoppel by Representation*, p. 178, it is stated.

"If the representation is proved by the representor to have been the result of fraudulent misrepresentation, whether in language or by conduct, on the part of the representee, a good affirmative answer is established to any estoppel which might otherwise have arisen."

20 With great reluctance I have come to the conclusion that the bank is not an innocent party in this transaction and that, as the plaintiff alleges in her statement of claim, McElroy acted with the connivance of the bank through its local officers. I do not suggest that any of the officials of the bank concerned would be a party to the commission of a theft in the ordinary sense but, after giving the matter much anxious thought, I have come to the conclusion that in their anxiety to get McElroy's debt paid they became parties to that which I may describe for lack of better language as a pious fraud. In my opinion they knew that McElroy had no right to take this woman's money but believing that McElroy and the plaintiff would probably be married and that in any event, owing to her friendly relations with McElroy the woman would make no fuss about 30 the \$8500 cheque, they took a chance of putting the transaction through so that a bad debt of the bank might be transferred to her. Having stated this conclusion it is well I think that I should advert to the evidence upon which my finding is founded.

The plaintiff-appellant had a small savings account with the defendant bank from at least April, 1918. Between that time and her husband's death in 1928, according to her pass book, Ex. 2, the largest amount which she ever had on deposit was \$137.45. During these 10 years she apparently made two deposits and wrote one cheque. It thus appears 40 that while she had been a customer of the bank for some time, her banking experience was, to the knowledge of the bank, not an extensive one. In fact one cannot read the record without being impressed with the view that the plaintiff was a woman entirely lacking in both business ability and experience and one who might be easily imposed upon in connection with money matters, as she in fact was.

The correspondence in the case serves to show that the plaintiff con-

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sidered her attorney McElroy, if not a possible husband, at least a dear friend. McElroy was a customer of the bank at least from the year 1925. He appears to have been a shrewd borrower but very poor at repaying the moneys which he borrowed. An examination of the correspondence between the head office and the local bank leaves no doubt that the head office was somewhat concerned over McElroy's inability or unwillingness to pay his debts to the bank. In fact the defendant's admissions on discovery include a statement, by the officer put forward to make admissions on behalf of the bank, that the head office would like to have seen McElroy's account paid. The local manager in giving evidence appears to have sought to leave the impression that he was not unduly anxious about pressing him for years to get the bank loan repaid. His evidence on the point is in part as follows: 10

“Q. Now you knew Mr. McElroy when you first came to Calgary as Manager of the Imperial Bank, you met him? A. Shortly after I arrived.

“Q. And since that time, which would have been about 1924? A. 1925, early in 1925.

“Q. Early in 1925, you, as Manager of this Bank had been trying to get Mr. J. W. McElroy to pay the money back that he owed to that bank? A. Yes. 20

“Q. All of that time, during that period? A. Yes, certainly.”

The bank then must have been aware on June 29, 1929, when they put through this transaction, that they were dealing with the moneys of an inexperienced woman, without any business ability. As pointed out she had been a customer of the bank for years which would lead one to suppose they would want to protect her if they were bona fide in the matter, yet they knew full well that the McElroy debt, which by this transaction she would take off their hands, was a doubtful if not a bad debt. I think that it is not reasonable to suppose that they would allow McElroy to take this money for the payment of his debt to the bank without communicating with the plaintiff, unless they had some ulterior motive to serve. The excuse of the local officers is that they thought he had arranged to borrow the money from the plaintiff. 30

It is quite clear that the plaintiff was never asked by any bank official if she intended to or had agreed to lend any money to McElroy although they had every opportunity to put this question to her. To my mind it does not appear from the evidence that there was the slightest justification for the bank officers believing that she had in fact agreed to lend McElroy money and men in their positions do not believe without reason or inquiry. The evidence of the bank manager in direct examination was to the effect that in April, 1929, McElroy told him that he expected to pay off the bank with moneys which he would receive from one Herron, and failing that, from moneys which he had “arranged to borrow from Mrs. Begley.” This answer was struck out by the learned Trial Judge on objection by counsel for the plaintiff and so there was no cross-examin- 40

ation upon this statement but it is immaterial as counsel for the plaintiff withdrew his objection and the manager was allowed to outline his conversation with McElroy and we then find him stating that McElroy said "that if the deal with Mr. Herron did not materialize that he could borrow the money from Mrs. Begley." Which version one may accept of the April conversation between the manager and McElroy is probably unimportant because in any event the manager was told on June 7 that McElroy's proposed arrangement if any, to borrow money from Mrs. Begley, was not completed. His evidence as to this conversation is:

10 "I asked him again in regard to paying the loan and he told me Mrs. Begley had not yet got back from,—I understood it, the States—that he would make arrangements with her when she came back."

There is no suggestion that he was given any further information about the plaintiff lending McElroy money; there was therefore no justification for the manager assuming that this arrangement had been made on June 29 when the bank was paid.

The transaction of June 29 was put through as I have stated by the local accountant on behalf of the bank. He held the position of accountant in Calgary from February, 1928, to September, 1930, and as such he 20 appears to have been familiar with all of the affairs of the bank and to have acted as the alter ego of the manager. His connection with the bank extends over a period of 21 years and he now occupies the position of manager with the bank. I think that there can be no doubt that this experienced banker knew full well on June 29 that McElroy had no right whatever to take the plaintiff's money to pay his debt to the bank and that the bank had no authority whatsoever to charge her private account with the cheque in question to pay McElroy's debt to the bank merely because there was a power of attorney on file in the bank authorizing McElroy to use her moneys for her use and benefit. In fact the account- 30 ant does not attempt to justify his conduct in being a party to getting the bank paid in this fashion by reference to the power of attorney alone, but says he thought there was likely to be such a transfer of funds because of correspondence between the head office and the branch on or about May 14 previous. I have looked in vain amongst the exhibits for any letter of that date or any date that would justify any such inference. Certainly the most that the local manager could honestly have written to his head office was that McElroy had hope of borrowing from the plaintiff.

Turning to the evidence of what took place in the bank on June 29, I quote from the accountant's evidence as follows:

40 "Q. Now will you narrate in your own language Mr. Chambers, the exact transaction as you recall it? A. On June 29th, which was Saturday, just at the closing of the bank, Mr. McElroy came in.

"Q. That would be 12 o'clock I suppose? A. Yes.

"Q. The bank closed on Saturdays at 12? A. Yes. He came to me and said . . .

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“MR. SHAW: You have no objection to these conversations, just a moment please.

“MR. NOLAN: All right Mr. Shaw.

“Q. MR. SHAW: Well now Mr. Chambers. A. He said: ‘I wish to pay off my liability to the bank, will you please figure up how much it is I owe you.’ I then figured up his liability which amounted to \$8,515.78. He then said, ‘I am going to borrow sufficient money from Mrs. Begley’s account to pay this liability. Will you kindly make me out a note payable to Mrs. Begley.’ I said: ‘How long, when will the note be payable?’ and he said ‘On demand.’

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“THE COURT: What is that A. The note would be payable on demand. I asked him at what rate of interest was to be added to the note and he said: ‘Seven per cent.’ I made out this note and handed it to him and he signed it. He then said: ‘Will you please make me out a cheque’ which I did, a cheque payable to J. W. McElroy for \$8500 which he signed ‘Victoria Begley per J. W. McElroy, Attorney.’

“Q. Is the handwriting of the note and the cheque yours excepting the signature? A. Yes.”

It is to be noted that the accountant was not told nor did he inquire as to whether or not the plaintiff agreed to this borrowing from her account and the consequent taking away of the greater part of her late husband’s savings to pay the bank’s claim against McElroy. It is also worthy of notice that this accountant had talked with the plaintiff on June 25, four days previously, on which occasion there was not the slightest suggestion of her loaning money to McElroy. At that time he arranged for her to get money to go east to Hamilton, and had \$500 transferred to the Imperial Bank at Hamilton for her use while there, so there was not the slightest difficulty in his communicating with her on June 29 through the bank at Hamilton, if indeed he did not know her private address, before becoming a party to the taking away of the most of her fortune. In addition to this is it rather a singular thing that in the making out of the documents we find that the accountant dated the cheque June 29 and the note July 1. Furthermore it is a peculiar thing that in the plaintiff’s pass book, Ex. 2, there is charged against her account this sum of \$8500 as of date of June 27. The figure nine of the cheque is quite clear and plain and the figure seven in the pass book is equally clear and plain. Perhaps no significance attaches to these facts but a suspicious person might be led to believe that the withdrawal of the moneys from the plaintiff’s account pursuant to the McElroy cheque was intended to be quite dissociated in point of time from the payment of the bank’s indebtedness. It is said that the difference in the date in the pass book and the date on the cheque is a matter of error and this may be so but just why the note which was given at the same time as the cheque should be dated on an entirely different date does not appear. Standing alone this might not be considered of any significance; associ-

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ated with the other matters to which I have alluded and to which I shall allude, it is perhaps unimportant. Then again it appears from the evidence that the McElroy note in favor of the plaintiff was noted in the collection register of the bank as though held for collection on the plaintiff's behalf. This was entirely without her knowledge or authority; the bank had never held any document for her before and had never made any collection for her before; why then should the bankers undertake to hold this note without authority; they seemed singularly willing to carry out what are said to have been McElroy's instructions, so long as their debt was paid, without the slightest concern about the woman whose money was going to pay their debt and without the slightest attempt to communicate with her which could have been done by wire in a matter of hours. Something more, the bank held a third mortgage from McElroy. The bank officials knew that after years of endeavor they had been unable to collect from him yet not only did they not seek to get any security for this alleged loan from the plaintiff but they did not even assign over to her the security which they themselves had had. This is the more remarkable since the accountant tells us that in January, 1930, he advised her to take security. Then again according to his evidence he did not see her from the time he arranged for her money to go to Hamilton on June 25, 1929, until the following December and that immediately he saw her in the bank he went over to her to tell her about the note "to either get her to take it or confirm leaving it in our safe keeping." It is significant that he should wait six months for confirmation since banks are quite accustomed to sending both letters and telegrams. The accountant further says that on this occasion he told her about the withdrawal of the \$8500 cheque by McElroy because she appeared not to understand her pass book. The plaintiff says that she had no conversation with him concerning her account until June, 1930. The accountant also says he discussed with her the \$1400 loan to McElroy on or about January 2, 1930. The plaintiff says this conversation did not take place at all. As I before had occasion to point out I think the learned trial Judge unquestionably believed the plaintiff but, even accepting the accountant's story as true, it is more than passing strange that whenever he did talk to her he did not tell her that the money that came out of her account went to pay McElroy's indebtedness to the bank. It may be said that this was a pure matter of an accountant's error but the bank manager was told of the transaction by the accountant and he took no steps to either protect his customer, the plaintiff, or to notify her of what had occurred. Both the bank manager and the accountant admit that they at no time told her that her money went to pay their debt; the only information which the plaintiff had was from McElroy in June, 1930, on which occasion he told her that the bank manager had told him to take the money. This the bank manager of course denies and McElroy was not called as a witness.

In this connection, since the bank set up as a defence that the plaintiff

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had loaned the \$8500 to McElroy and since McElroy was clearly instructing the bank at the time of trial as evidenced by their production from him of all the private letters which the plaintiff had sent to him, it is a remarkable thing if the transaction was an entirely honest one on the part of the bank that McElroy was not called to give evidence as to the loan from the plaintiff, if any, and as to what took place on the occasion of his getting this money. McElroy might have had something to fear from giving evidence, however he could have been compelled to give evidence, but the bank should have had nothing to fear from his evidence since if the story of its officers were true it would be entirely corroborative of that which they had to say. The local manager swears that McElroy was a reliable and satisfactory customer except as to the prompt payment of his loans and that he did not even have occasion to doubt his veracity. If this be so, it is, I repeat, remarkable that McElroy, who was clearly attempting to assist the bank to win in the lawsuit, was not called as a witness. 10

No one of the foregoing facts taken alone would perhaps serve to show that there was either an express or tacit agreement between McElroy and the bank with respect to the wrongful payment of the bank's debt out of the plaintiff's moneys, but the cumulative effect of all of this to my mind forces one over the line of suspicion and leads irresistibly to the conclusion that by tacit agreement at least the bank was a party to McElroy's wrongdoing. 20

In the case of *Paradis v. Reg.* [1934 2 D.L.R. 88], Rinfret, J., speaking for the Supreme Court in a conspiracy case, said:

“Conspiracy like all other crimes, may be established by inference from the conduct of the parties. No doubt the agreement between them is the gist of the offence, but only in very rare cases will it be possible to prove it by direct evidence. Ordinarily the evidence must proceed by steps. The actual agreement must be gathered from ‘several isolated doings’ (Kenny, *Outlines of Criminal Law*, 13th ed., p. 294) having possibly little or no value taken by themselves, but the bearing of which one upon the other must be interpreted; and their cumulative effect, properly estimated in the light of all surrounding circumstances, may raise a presumption of concerted purpose entitling the jury to find the existence of the unlawful agreement.” 30

It is said however that the learned trial Judge did not find a lack of bona fides on the part of the bank. Even if this were so, it would be quite competent for this Court to so find so long as his error in not so finding was susceptible of demonstration by argument. See *Annable v. Coventry* (1912) 46 S.C.R. 573, at 588, 2 W.W.R. 816. The learned trial Judge, it is true, did not in the end put a label upon the bank's part in this transaction, no doubt, I think, with the idea of saving the feelings of some of the witnesses who were before him. As to this I most humbly adopt the 40

language of Lord Halsbury in *Arnison v. Smith* (1889) 41 Ch. D. 348, at 368, 61 L.T. 63, when he says:

“I am unwilling to use language which causes unnecessary pain, but I cannot help thinking that confusion has been introduced into the law by the reluctance to give conduct its proper name.”

I do think, however, that the views which the learned Judge did express are only reconcilable with a conclusion on his part that the bank was a party to McElroy’s wrongdoing. I shall first quote his observations in the course of the application of counsel for the bank for a non-
 10 suit, at the conclusion of the plaintiff’s case:

“THE COURT: Aren’t you overlooking one thing, that rather important knowledge that she did not have at that time, she did not know the Bank itself had participated in getting that money transferred to it in payment of McElroy’s debts to it?

* * *

“THE COURT: Do you mean to say it is of no importance in this case whether the Bank was itself a party to getting its debts paid by transferring money from this woman to its debtor and then paying its debts from that money?

* * *

20 “THE COURT: Just a minute, Mr. Ross. Let us put it in a disagreeable way, but one in which everybody would understand it. Let us assume that McElroy could have been convicted for stealing that money?

“MR. ROSS: Yes.

“THE COURT: The persons who got the benefit of it was the Bank. Now, if the Bank assisted, actively assisted McElroy in stealing the money and they got it, would not that be a very important thing for her to know if she was going to start an action against the Bank to recover the money?

30 “MR. ROSS: Not unless the Bank did it in bad faith. There is no suggestion of bad faith on the part of the Bank in the evidence.

“THE COURT: I do not know what you would call it. But if a Bank knows that a debtor of theirs is stealing money to pay them it is not very good faith for them to take it, is it?

* * *

“THE COURT: I do not think I follow your ground at all. The important thing, from her point of view, insofar as her action against the Bank was concerned, would be the knowledge that the Bank had actively assisted in getting that money over to their account, and got the money.

* * *

40 “THE COURT: You have overlooked the important thing, that she did not know until after Mr. Taylor made the investigation on

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her behalf that the Bank itself was instrumental in having that money transferred from her account into that of McElroy, and getting it eventually into the account where the Bank could take it to pay their debt and they did take it to pay their debts. Those are important things that she did not discover until after Mr. Taylor made the investigation on her behalf.

“MR. ROSS: She discovered the wrongful tort. She discovered the wrong on McElroy’s part in issuing the cheques. I think she discovered all the material elements.

“THE COURT: If there is no defence, I think she is still at liberty to trace that money to the Bank and get her money. That would be my view. So that you will have to decide whether you will give evidence or not.” 10

I think that it also sufficiently appears that the learned Judge was unshaken in the views he expressed in the course of the application for the non-suit when giving his judgment at the close of the trial. The learned Judge then said:

“I could not help but think when the evidence was given that any ordinary person with any knowledge of business worth while and any understanding of what the duties of a trustee are—and officials of Banks have not only experience but training in those things, and they would be in a better position than the ordinary person—that the ordinary person if told to write out a cheque that was to be signed under a power of attorney to borrow money from a person such as this one was, not a business woman but a woman that obviously knew little or nothing about business, and when that cheque was being made payable to himself, they would be on their guard at once that there was something wrong. At least, they would be suspicious. But, if on top of that the cheque was not only made payable to the man who held the Power of Attorney but it was to be used for paying his debts owed to the person who was writing out the cheque, then the person writing out the cheque would have an additional reason to be suspicious that there was something wrong and ought to make inquiry. 20 30

* * *

“And the Bank, it seems to me, in that transaction, the first transaction for the \$8500 it was so unusual, and the Bank knowing all the circumstances undoubtedly should have been and were, in my view, put on their inquiry and they should have made inquiry.

“It was suggested that they were put off their guard by the fact that the Accountant thought Mrs. Begley was not home. He did not inquire to find out whether she was home or not. It seems to me that he did not want to make inquiry because he did not make it.” 40

Even if I am wrong in the conclusion at which I have arrived as to the wrongful participation of the bank in the \$8500 cheque transaction I, none the less, think that the bank cannot succeed in this appeal. In order to succeed I think that the bank must rely upon estoppel and the party relying upon estoppel must carry the burden of proving the essential facts upon which the estoppel is based: *McKinnon v. Ewing* [1923] 1 W.W.R. 1268, 19 Alta. L.R. 443.

Now in a case of this kind the person setting up the estoppel must establish, first, that the plaintiff's silence took place under circumstances which cast upon her the duty of speaking, so that the failure to do so amounted to a representation; secondly, that the bank in some way altered its position in reliance upon her misleading conduct; and, thirdly, that they have been in some way prejudiced by acting in reliance upon her conduct. See *Cababe on Estoppel*, p. 120. If one were to assume the first proposition in the bank's favor I still think that it must fail in that it has not affirmatively proven that as a result of the plaintiff's silence it is not in as good a position as it ever was to collect its money from McElroy.

It is said that they discharged the security that they held. As to this the only thing that is clear is that they got no security for the plaintiff. It is not at all clear that they have not now the security which they had before. In speaking of this matter the bank manager gave the following answer to the following question:

"Q. And I want you to tell me about that mortgage at this time, you said it was executed and it was held not registered? I mean, just tell me about the mortgage. A. It was held by me and apparently was given up or destroyed on the 29th of June or around that date when the loan was paid off, I do not know what happened to it since I have come back here, I have not been able to locate it."

Even assuming however that this security was given up it is to be remembered that it was given up if at all when the loan was paid off and so it was given up without any reliance upon the plaintiff's acquiescence in the wrongful act of her attorney.

There is evidence of a small execution in the sheriff's hands against McElroy which came into his hands on November 21, 1932, but no evidence that the sheriff has attempted to collect under it. There is evidence that owing to the general depression the products of the farm do not bring the prices that they formerly did and in consequence farm lands have depreciated in value, but there is no evidence and the burden is upon the bank to prove its case, that McElroy is not a much wealthier man than he ever was before. There is no evidence that the bank could have collected had the plaintiff not remained silent. They were many years in trying to collect from this man without succeeding, which is

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perhaps the position of the present execution creditor, but it does not at all follow that his financial position is changed so that the bank will now suffer a loss which they would not otherwise have suffered or that they are now in a position that they cannot collect that which they could have collected at an earlier date. The bank manager was examined by counsel for the bank as to McElroy's assets not depreciating in value between the time of his giving a statement to the bank in 1927 and January 1, 1930, but counsel carefully refrained from examination to establish that McElroy's assets became less valuable at any time between that date and the date of trial. If McElroy has sold his lands it would be interesting to know what has become of the proceeds and whether or not they are available to the bank. In short if the basis for alleging prejudice is that McElroy became less able to pay the bank during the period of the plaintiff's silence then it is for the bank to prove this as a fact. This they have failed to do and so in my view the bank cannot succeed on the ground of estoppel. If McElroy's financial position has changed for the worse as suggested, it is strange that he was not called so as to establish this fact out of his own mouth. 10

I have dealt with this case throughout on the basis on which it has been dealt with by the trial Judge, the learned counsel who were before this Court, and the other members of this Court, namely, that McElroy wrongfully withdrew the plaintiff's funds from the bank and then paid his debt to the bank with her money. 20

On this basis I do not think for the reasons given that in the circumstances of this case the bank can succeed. In reality I think that the true position is that the plaintiff became a creditor of the bank so that on June 21, 1929, the bank was indebted to her in the sum of \$13,608.71 and all that has transpired since is that without justification they have made an improper entry in her account by charging her with the sum of \$8500, the amount of the McElroy cheque and that they are now in the position of a debtor who is resisting payment of the amount due to his creditor by pointing to an improper entry in his own books as a reason for continuing to refuse to pay the amount of his debt. There was no withdrawal of money whatsoever. At the time that the plaintiff's bank account was debited with \$8500 McElroy's bank account was credited with this sum and his debts to the bank were charged against his account. That is the whole transaction. I cannot see how this case can be said to be on a parallel with the cases in which funds were actually withdrawn from the bank and paid to outsiders. The bank has admittedly refused to make payment over to the plaintiff of the amount of money to which she would be entitled if they had not made this improper entry. I therefore think that the learned trial Judge's judgment against the bank in the sum of \$8,500 with interest should be affirmed. 30 40

With respect to the remaining four small cheques I cannot accept the submission of counsel for the plaintiff that they were improperly

signed and I can think of no good reason why the bank should not have paid them upon presentation. I would therefore vary the total amount of the judgment in the Court below so as to reduce the same by the amount of these four cheques and by the amount of interest allowed in respect thereof. Subject to this variation, I would affirm the judgment and dismiss the appeal with costs.

It is satisfactory to be able to conclude this judgment by saying that I have received great assistance from the very able arguments presented by counsel engaged in the case.

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No. 23.

Formal Judgment of the Appellate Division.

At the Court House in the City of Calgary, Saturday, the 24th day of March, A.D. 1934.

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No. 23
Formal
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the Appellate
Division,
March 31,
1934.

PRESENT:

THE HONOURABLE HORACE HARVEY, CHIEF JUSTICE OF ALBERTA,

THE HONOURABLE MR. JUSTICE CLARKE,

THE HONOURABLE MR. JUSTICE MITCHELL,

THE HONOURABLE MR. JUSTICE LUNNEY,

20 THE HONOURABLE MR. JUSTICE MCGILLIVRAY.

BETWEEN:

IMPERIAL BANK OF CANADA,

Appellant,

—AND—

MARY VICTORIA BEGLEY,

Respondent.

30 The appeal of the above named Appellant from the judgment of the Honourable Mr. Justice Boyle pronounced in the above cause on the 26th day of October in the year of our Lord 1933 having come on to be heard before this Court on the 29th and 30th day of the month of January in the year of our Lord 1934 in the presence of Counsel as well for the Appellant as for the Respondent, whereupon and upon hearing what was alleged as counsel aforesaid this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

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IT IS ADJUDGED that the said appeal be and the same is allowed; and that the said judgment of the Honourable Mr. Justice Boyle be and the same is reversed and set aside.

IT IS FURTHER ADJUDGED that the action be dismissed;

IT IS FURTHER ADJUDGED that the said Appellant recover from the Respondent the costs of this appeal and the costs of the action including the costs of discovery.

(SEAL)

(SEAL)

“V. R. JONES,”
Registrar at Calgary.

10

Entered this 31st day of March, 1934.”

“V. R. JONES,”
Registrar at Calgary.

No. 24.

Notice of Appeal to the Supreme Court of Canada.

*In the
Supreme Court
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No. 24
Notice of
Appeal to
the Supreme
Court of
Canada.
May 18, 1934.

TAKE NOTICE that Mary Victoria Begley, the above named Plaintiff (Respondent) intends to appeal and does hereby appeal to the Supreme Court of Canada, from the decision or judgment pronounced in this cause by this Honourable Court on the 24th day of March, A.D. 1934, and entered on the 31st day of March, A.D. 1934, whereby the appeal of the Defendant (Appellant) herein against the Judgment of the Honourable Mr. Justice Boyle pronounced on the 26th day of October, A.D. 1933, was allowed. 20

DATED at the City of Calgary, in the Province of Alberta, this 18th day of May, A.D. 1934.

TAYLOR & TAYLOR,
Per “W. P. Taylor,”
Solicitors for the Plaintiff
(Respondent)

To: The Registrar of the Appellate
Division, Supreme Court of
Alberta.

To: Messrs. Short, Ross, Shaw &
Mayhood, Solicitors for the De-
fendant (Appellant). 30

No. 25.**Order Allowing Security for Costs.**

BEFORE THE HONOURABLE
MR. JUSTICE LUNNEY
OF THE APPELLATE DIVISION
IN CHAMBERS.

Court House, Calgary, Alberta,
Saturday, the 19th day of May,
A.D. 1934.

*In the
Supreme Court
of Canada*

—
No. 25
Order
Allowing
Security
for Costs,
May 19, 1934.

UPON the application of the above named Plaintiff (Respondent), upon reading the Notice of Appeal to the Supreme Court of Canada dated the 18th day of May, A.D. 1934, and acceptance of service thereof,
10 and the Certificate of the Registrar of this Court dated the 18th day of May A.D. 1934, and upon hearing what was alleged by Counsel for the Plaintiff (Respondent).

IT IS ORDERED that the deposit by the Plaintiff (Respondent) with the Registrar of this Court of the sum of Five Hundred Dollars as security that the Plaintiff (Respondent) shall effectually prosecute her appeal from the judgment of the Supreme Court of Alberta, Appellate Division, pronounced the 24th day of March, A.D. 1934, and entered on the 31st day of March, A.D. 1934, and will pay such costs and damages as may be awarded against her by the Supreme Court of Canada, be and
20 the same is hereby allowed as good and sufficient security.

AND IT IS DECLARED that the applicant has perfected her appeal herein to the Supreme Court of Canada and has complied with the requirements of Section 70 of the Supreme Court Act to the satisfaction of this Court.

“H. W. LUNNEY,” J.A.A.

No. 26.**Agreement as to Contents of Appeal Case.**

No. 26
Agreement as
to Contents
of Appeal
Case.
May 23, 1934.

It is agreed that the Contents of the Appeal Case on the Appeal herein to this Honourable Court from the Judgment of the Appellate
30 Division of the Supreme Court of Alberta shall be as follows:

1. The Pleadings.
2. The evidence adduced at the Trial including those portions of Examinations for Discovery which were placed in evidence.
3. The Exhibits admitted in evidence at the Trial.
4. Reasons for Judgment of the Trial Judge.
5. The Formal Judgment of the Trial Division.
6. The Notice of Appeal to the Appellate Division.
7. Reasons for Judgment of the Appellate Division, namely:
 - (a) Reasons for Judgment of the Honourable The Chief Jus-

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tice of Alberta concurred in by The Honourable Mr. Justice Clarke, The Honourable Mr. Justice Mitchell and The Honourable Mr. Justice Lunney.

(b) Reasons for Judgment of the Honourable Mr. Justice McGillivray.

8. Formal Judgment of the Appellate Division.
9. Order perfecting this Appeal.
10. Notice of Appeal to this Court.
11. This agreement.
12. Solicitor's Certificate.
13. Certificate of the Registrar of the Appellate Division.

10

Indexed at required by Rules.

DATED at Calgary, Alberta, this 23rd day of May, A.D. 1934.

“TAYLOR & TAYLOR,”

Solicitors for the Appellant.

“SHORT, ROSS, SHAW & MAYHOOD,”

Solicitors for the Respondent.

No. 27.

Registrar's Certificate as to Security and as to the Record.

No. 27
Registrar's
Certificate as
to Security and
as to the
Record.
August 2, 1934.

I, the undersigned Registrar of the Appellate Division of the Supreme Court of Alberta, DO HEREBY CERTIFY that the foregoing printed document from page 1 to page 320 inclusive, is the Case stated by the parties pursuant to Section 68 of The Supreme Court Act and the Rules of the Supreme Court of Canada, in a certain case pending in the said Supreme Court of Alberta, between Mary Victoria Begley (Plaintiff) Appellant, and Imperial Bank of Canada (Defendant) Respondent. 20

AND I DO FURTHER CERTIFY that the said Mary Victoria Begley has given proper security to the satisfaction of the Honourable Mr. Justice Lunney as required by Section 70 of the Supreme Court Act, being cash to the amount of \$500.00, and a copy of the Order of the Honourable Mr. Justice Lunney allowing the same may be found at page 319 of the annexed Case. 30

AND I DO FURTHER CERTIFY that I have applied to the Judges of the Court for their opinions or reasons for judgment in this case, and the only reasons delivered to me were those of the Honourable Chief Justice Harvey and the Honourable Mr. Justice McGillivray, together with

the reasons of the Honourable Mr. Justice Boyle on the trial of this action.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the Supreme Court of Alberta, this 2nd day of August, A.D. 1934.

(SEAL)

“V. R. JONES,”

Registrar of the Appellate Division of the Supreme Court of Alberta at Calgary.

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No. 28.

Solicitor's Certificate.

I, Henry Gratton Nolan, of the City of Calgary, in the Province of Alberta, a solicitor of the Supreme Court of Alberta, do hereby certify that I have personally compared the annexed print of the case in Appeal to the Supreme Court of Canada with the originals, and that the same is a true and correct reproduction of such originals.

DATED at Calgary, Alberta, this 2nd day of August, A.D. 1934.

“H. G. NOLAN,”

A Solicitor for the Appellant.

No. 28
Solicitor's
Certificate,
August 2,
1934.

20

No. 29.

Reasons for Judgment of the Supreme Court of Canada.

THE CHIEF JUSTICE: (Crocket, Hughes & Maclean JJ, concurring.) This appeal involves a controversy concerning the rights of the appellant against the respondent Bank in respect of certain monies of the appellant paid to the Bank by one McElroy, who at the time held a power of attorney from the appellant, in liquidation of his debt to the Bank.

The payment was made on the 29th of June, 1929. The appellant had been a depositor and had had a savings account with the Bank since
30 1918. At the time of the transaction we have to consider, she was a widow, her husband having died in the previous December. She had been told by her husband, just before his last illness, that in matters of business, she should seek the assistance of McElroy. They both recognized that she would require assistance, because she was ill, suffering, as she afterwards learned, from an “inward goitre”. Accordingly, in January, McElroy was appointed administrator of the husband's estate, and one Moyer, McElroy's solicitor, acted as solicitor in the business of administration.

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Hughes and
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Concurring).

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On the 21st of June, 1929, the appellant, McElroy and Moyer were in the Bank, saw the manager and on that occasion, the sum of \$13,000, which had been realized from the estate, was transferred from the administrator's account to the personal savings account of the appellant.

McElroy was a customer of the Bank and for some years his indebtedness to the Bank had been heavy; it appears that from 1924 to 1929 his "direct liability" fluctuated from fourteen to eighteen thousand dollars, while he was under an "indirect liability" for something like fifteen thousand dollars, arising out of a mortgage held by the Bank as collateral security.

10

Weaver, the local manager of the Bank of Calgary, who was called as a witness at the trial, states that, since early in 1925, he, as manager of the branch, had been trying to get McElroy to discharge his liability. In December, 1928, his indirect liability was \$14,800 and his direct liability \$18,690.

Some of the letters which passed between Weaver and the Western head office at Winnipeg, and the head office at Toronto, are in evidence. On the 20th of December, 1927, the Assistant General Manager at Winnipeg, writing to Weaver, says that he is concerned about McElroy's account, and comments sharply upon a remark of McElroy's, reported by Weaver, about a "purchase of May wheat", as indicating that McElroy was gambling in wheat. This, Weaver was informed, was a very serious matter and he was directed "to get at the situation at once".

20

On the 23rd of November, 1928, the Assistant General Manager at Toronto writes to the Western Superintendent at Winnipeg expressing his dissatisfaction with the information in his possession respecting McElroy's account, which showed a "direct" indebtedness at that time, apparently, of over \$15,000. He complains that a suggestion that McElroy was going "to place a mortgage" in order to repay the Bank was vague and appeared "to be drifting".

30

Towards the end of December, McElroy succeeded in raising a loan of \$13,000 odd, by mortgage upon his lands, reducing his direct liability to the Bank to \$5,289. On the 8th of January, the Assistant General Manager writes:

You do not tell us how McElroy is going to pay the \$5,289. Has he got sufficient money from the sale of grain and cattle to provide for it?

Weaver replies on the 15th of January informing the Assistant General Manager that McElroy has not sufficient grain and cattle to pay the balance owing the Bank, but that he has decided "to sell out" and is negotiating with one Herron for that purpose.

40

McElroy's direct liability was increased to \$7296 by the 25th of March, 1929. On the following day a deposit was made reducing it to \$3423. On the 29th of June it had been increased to \$8518. By monies

transferred from the appellant's account to McElroy's account, it was paid in full on that day—the first time for at least five years when McElroy was free of debt to the Bank.

In the meantime, Weaver, stimulated by the Head Office, had been pressing McElroy for the payment of his indebtedness. Weaver states that at the end of April, 1929, McElroy told him that “if the deal with Herron did not materialize, he could borrow the money from Mrs. Begley.”

10 Again, on the 7th of June, Weaver says, he asked McElroy “in regard to paying the loan”, and McElroy, he avers, told him that Mrs. Begley “had not yet got back from the States”, and that “he would make arrangements with her when she came back”.

The Bank adduced this testimony by Chambers, the assistant Manager:

Q. Prior to the 29th of June had you any reason to anticipate the withdrawal of any of the funds from Mrs. Begley's savings account and the same to be applied in satisfaction of McElroy's indebtedness to the Bank. A. Yes.

20 Q. Where did you get your information from? A. From the correspondence between the Branch Manager and Head Office.

Q. Have you any duty in connection with that correspondence. A. I have to read every letter that goes out of the office the day that it goes out.

Q. So you knew some time I take it before, or tell me whether you knew before the 29th of June that some transaction of the kind contemplated was going to take place. A. Yes, I knew it on, I believe the date is May 14th.

Q. In May some time. A. Yes.

30 The appellant, who had gone in January to stay with her sister in Spokane, returned to Calgary on the 19th of June. On the 21st, with McElroy and Moyer, she visited the Bank and had a short conversation with Weaver, and, apparently, on this occasion, \$13,000, the sum realized from the husband's estate, was transferred to her personal account. She visited the bank again on the 24th of June, and still again on the 25th, when she arranged with the assistant manager Chambers for the transfer of some money in Hamilton, Ontario, where she was about to pay a visit, intending to leave Calgary, as she did, on the following day, the 26th. It was three days after her departure that McElroy, purporting to act under a power of attorney in the bank's printed form, transferred from
40 the appellant's savings account to his own account, a sum equal to his debt to the Bank for the purpose of paying that debt which was so applied.

McElroy was not called as a witness, and the only direct evidence as to what occurred on the 29th of June, 1929, is that of the assistant manager, Chambers. In examination-in-chief he says:

Q. Now will you narrate in your own language, Mr. Chambers,

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the exact transaction as you recall it. A. On June 29th, which was Saturday, just at the closing of the Bank, Mr. McElroy came in.

Q. That would be at 12 o'clock I suppose? A. Yes.

Q. The Bank closes on Saturdays at 12? A. Yes. He came to me and said . . .

MR. SHAW: You have no objection to these conversations, just a moment please.

MR. NOLAN: All right, Mr. Shaw.

Q. MR. SHAW: Well now, Mr. Chambers? A. He said, "I wish to pay off my liability to the Bank, will you please figure up how much it is I owe you." I then figured up his liability which amounted to \$8,518.78. He then said I am going to borrow sufficient money from Mrs. Begley's account to pay this liability. Will you kindly make me out a note payable to Mrs. Begley. I said, "How long, when will the note be payable?" and he said, "On demand." 10

Q. THE COURT: What is that? A. The note would be payable on demand. I asked him at what rate of interest was to be added to the note and he said, "Seven per cent." I made out this note and handed it to him and he signed it. He then said, "Will you please make me out a cheque" which I did, a cheque payable to J. W. McElroy for \$8,500 which he signed "Victoria Begley per J. W. McElroy, Attorney" 20

Q. Is the handwriting on the note and the cheque yours excepting the signature? A. Yes.

Q. Then what happened? A. He then said, "I will have to put this cheque to my credit." I said, "I will make out a deposit slip," and I made out this deposit slip for, put on the \$8,500 and I said, "This will not be sufficient to clean up your liability in full and he gave me a further cheque for \$18.78 which I added to the \$8,500 deposit, made out the deposit for his account. 30

Q. What did you do? All these documents were turned over to you, that is you had the cheque? A. I gave them all to Mr. McElroy to sign and when they were all made out and signed by him he handed them back to me.

Q. Yes, what did you do with them? A. I took the cheque and the note, the cheque and the deposit slip and gave them to the paying teller. I put them in the paying teller's slide.

Q. That would be, your office is at the inner entrance to the Bank? A. Yes.

Q. So you simply walked down behind the counter I suppose? A. Behind the counter and put them into the paying teller's slide. The note I put in my basket. 40

Before commenting upon this proceeding, it will be convenient to turn to the meeting which took place at Moyer's office between the appellant, McElroy and Moyer on the 24th of June. On that occasion the appellant executed the power of attorney, in the printed form furnished by

the bank, upon which the bank relies in this litigation. The appellant remembers nothing about the power of attorney, and Moyer says it was not read over to her or explained to her. It was understood by all three, the appellant and Moyer agree, that the appellant's object in going to Moyer's office with McElroy, who accompanied her, was to make arrangements for the investment of the money in her savings account: which, as already mentioned, she had received from her husband's estate. She says that she then "appointed McElroy" as her agent to invest her money, and it was arranged, she says, and with this Moyer agrees, and there is no dispute about it, that McElroy was to try to get investments at a higher rate of interest than the ordinary bank rate on deposits; and that, in the meantime, her money was to be invested in government bonds. It was agreed that any other investments were to be subject to Moyer's approval. Moyer says this:

10 Q. Did you read this document Exhibit "4" over to Mrs. Begley? A. No.

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

20 Q. Why didn't you? A. Well, I cannot say, Mr. Nolan. She understood that the Power of Attorney was being given on the Bank account and it was in keeping with the instructions she had given to vest authority in McElroy to operate the account for the purpose of investments she had sanctioned or agreed to.

Q. All right then, are you saying to me that finally instructions were given that for the time being at least the investment was to be in Government bonds? A. Yes.

Q. Until such time as selected securities could be obtained, to which your approval must be given? A. That is right, and subject to the retention of some reasonable amount in the account.

Q. For current expenses? A. That is right.

30 The appellant declares most explicitly that at no time did she agree to lend her money to McElroy. But the evidence goes further, and, as it is important, it will be better, perhaps, to quote a passage from it verbatim. The incident mentioned in the passage was on the occasion to which we have referred, on the 24th of June; when, as Moyer says, the final instructions were that "for the time being at least the investment was to be in government bonds". The appellant says:

40 . . . Mr. McElroy asked me in an undertone voice if I would not let him have some money where he would pay me seven per cent. interest, where, if I put it out in Government bonds, as I asked him he said I would only get four or four and a half or something and I ignored it, I never let on I heard him say it at all. I said I wanted my money put out in Government bonds.

Q. That was on Monday the 24th, was it, of June. Was it, Mrs. Begley. A. Yes.

Five days after this meeting, at which Moyer deposes, the appellant declared "She trusted" McElroy and himself "to do the right thing, and

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she was not going to worry about it at all”—five days after this interview at which these instructions were given, McElroy entering the Imperial Bank, declared to the assistant manager, according to the evidence of the latter, that he was going to pay off his debt to the Bank; that, in order to do so, he was going to borrow from Mrs. Begley, and the assistant manager having drawn a cheque upon the appellant’s account payable to McElroy’s order, he forthwith attached the signature “Victoria Begley per J. W. McElroy, attorney”.

In addition to the sum thus withdrawn on the 29th of June, McElroy, within the succeeding four months and a half withdrew something like \$3,000, professing to act under his power of attorney, of which \$2500 seems to have been applied for his own purposes, and without Moyer’s knowledge; the remaining \$500 was advanced to Moyer personally as a loan. 10

The majority of the Appellate Division seem to have thought that the evidence left some doubt upon the point of the fraudulent character of McElroy’s conduct. I regret to say I am unable to share, what I cannot help regarding, if I may say so with the greatest respect, as the somewhat indulgent view, which the learned judges consider to be admissible, of the effect of the evidence. It seems to have been thought that the appellant’s attitude, in ignoring, to use her own expression, McElroy’s request, might have been interpreted by McElroy as “silence” importing “consent”. 20

The evidence of Moyer and the appellant is quite unmistakable that the power of attorney was to be used for the purpose of investing the appellant’s money in accordance with her instructions. McElroy could not possibly have misconstrued these instructions in the sense suggested. If he had done so, that is to say, if he had really believed that the appellant was acceding to his request, and agreeing to give him a loan, the matter would not have been allowed to rest there; he would have had the loan effected and the business closed before the appellant left Calgary on her visit to Ontario. McElroy was a man of experience in business, and could not have failed to realize that if he delayed the matter until after the appellant’s departure, and then made use of his power of attorney in order to effect a loan to himself, without further communication of any sort with the appellant, he must expose himself to the gravest risk of misunderstanding and suspicion. No honest intelligent man of business experience would have behaved so. 30

The judges of the Appellate Division, as well as the trial judge, have concurred in the view that the Bank had no right, as against the appellant, to retain the monies paid over by McElroy on the 29th of June. They all agree that if the appellant had, on becoming aware of what had occurred, demanded repayment, the Bank could not have successfully resisted her demand. They agreed that the transaction in its character and in the circumstances attending it, was so far outside the ordinary course of business as to put the Bank upon enquiry, and that the Bank, having 40

acted without the slightest investigation, not even so much as a question addressed to McElroy, could not, if such a demand had been made, have been permitted to keep the money.

The majority of the Appellate Division hold that the appellant is now estopped by her conduct from asserting her claim, and think, with some hesitation, that she had ratified McElroy's act in withdrawing the money from her account as a loan to himself; and that this involved a ratification also of his act in employing the proceeds to pay his debt to the Bank.

10 With the greatest respect, I have been unable to satisfy myself that the Bank has established these defences; but before considering them it is worth while, I think, to make one or two observations upon the transaction of the 29th of June.

As the trial judge observes, none knew better than the officials of the Bank the financial pressure to which McElroy was subject. Apparently he had unsuccessfully essayed every expedient, save resort to the appellant, for the purpose of providing himself with funds in order to satisfy the just and urgent demand of the Bank.

20 On behalf of the Bank, it is said, and the evidence already mentioned was offered in support of it, that they had been looking forward to payment by McElroy out of the proceeds of a loan which he expected to obtain from the appellant. He seems, as we have seen, to have informed the manager in April that he could borrow from the appellant. Then, as we have also seen, on the 7th of June, again, the manager tells us, he said that on the appellant's return "he would make arrangements with her".

30 It must be assumed that the local officials of the Bank had more than an ordinary interest in these expectations communicated to them by McElroy; information regarding them had, apparently, been communicated to the Head Office. McElroy's account, as administrator of the estate of the appellant's husband, seems to have been kept in the Bank. Indeed, the evidence suggests that, during her absence in Spokane, the manager had been permitting the appellant to draw upon the monies of the estate or upon the Bank on the security of her interest in the estate.

40 It may properly be inferred that before the appellant returned to Calgary on the 19th of June, the officials of the Bank were fully cognisant of the amount of the funds which would pass into her possession from the estate. They must have realized that to give a loan of \$8,500 to a man in McElroy's circumstances without security, out of a savings account deposit of \$13,000, could be no light thing for a woman circumstanced as the appellant was. It is idle to suggest that their minds did not advert to such matters. The payment of McElroy's loan was a matter of no slight moment to them. It would require an unusual degree of credulity to accept the hypothesis that the probabilities of McElroy succeeding in obtaining such a loan, and as incidental thereto the financial situation of the appellant, were not of interest and concern to them. Such being the circumstances, it is impossible to suppose that they did not look

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forward to receiving some information from McElroy after the appellant's return, touching the result of his endeavors to obtain the assistance of the appellant in relieving him from his embarrassments.

I cannot think it could have entered their minds antecedently that McElroy would endeavor to get rid of his difficulties by making use of a general authority under a power of attorney in the Bank form without the specific consent of the appellant to a loan; but when McElroy proposed (after the appellant had returned to Calgary, and having remained there a week, going in and out of the Bank, and had gone away for a lengthy visit in Ontario, and no communication had been received by the Bank touching the success of his endeavors to arrange the loan he had been expecting to secure) that he should employ the power of attorney lodged by the appellant with the Bank in order to effect an unsecured loan to himself of \$8,500, out of the appellant's balance of \$13,000, I am unable to resist the conclusion that the suspicion of any sensible person in the situation of the Bank officials, with all the knowledge they possessed, and interested as they were, must have been aroused. Neither the manager nor the assistant manager says he believed a loan had been obtained, or that he did not regard the circumstances as suspicious. The manager, indeed, puts his point of view very clearly. In direct examination he says:

Q. Mr. Weaver, you have suggested that the cheque, the \$8,500 cheque first came to your attention in January, 1929, and at the time of the Bank inspection, you observed the form of it at that particular time, did you? A. Yes, that it was 30.

Q. Yes, 1930? A. Yes.

Q. Now what did you do following that? A. When I found it was signed under Power of Attorney, I inspected the Power of Attorney which was on file in the office and had it filed away again, that is all I did. 30

Q. You just investigated to find out whether or not there was a Power of Attorney? A. Yes, and the Power of Attorney, so far as I knew, was in proper form.

Q. Had you known anything about this transaction previously, I am talking now about the cheque, the \$8,500 cheque and the note? A. Will you please be a little more clear?

Q. Here you see, Mr. Weaver, a cheque signed by, under Power of Attorney, now what did you do in connection with that, that put you on your inquiry did it? A. I only inquired at the time if there was a Power of Attorney and if that Power of Attorney was in order and properly recorded and that is all I did, I did not consider there was anything further necessary. 40

* * *

Q. No, the Court will not allow that conversation, but what I want to know is, did you have any other source of information other than Chambers with respect to this matter? A. I may be very

stupid in this question but I do not understand exactly what you wish to get from me. I can only explain that Mr. Chambers told me about the transaction at the time it went through and when this cheque was taken out in 1930 I took the transaction up by myself and found that cheque had been signed under a Power of Attorney and I saw nothing to take exception to in it. Whoever the cheque was payable to, so far as I was concerned, I thought it was all right. The Power of Attorney was there and expressed as such the cheque would be signed in that way and I did nothing further with respect to it.

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* * *
Q. Now when this money represented by this cheque which is Exhibit "5" in this case, the \$8,500 cheque, was credited to the account of J. W. McElroy and it was on the 29th of June? A. Yes.

Q. Where did the money come from that went into Mr. McElroy's account? A. He borrowed it.

A. No, no.

THE COURT: No.

MR. SHAW: You must take his answer surely.

Q. THE COURT: No.

20

Q. THE COURT: Whose money was it that went into his account? A. Mr. McElroy's.

Q. Where did he get it? A. He borrowed it from Mrs. Begley.

MR. SHAW: My learned friend must take the answer he gets.

Q. MR. NOLAN: I am saying this to you, Mr. Weaver, the money which went into Mr. McElroy's account that day came out of the account of Mrs. Mary Victoria Begley, that is right is it not? A. It may have come from the Bank of England but the fact is that so far as we are concerned it was his money. It was his money, he had borrowed it elsewhere.

30

THE COURT: That is not what you were asked, you know what you were asked, you are an intelligent man? A. Yes, my Lord.

Q. You were asked where that money came from that paid off your Bank? A. Well, my Lord, it came from Mr. McElroy so far as we are concerned, if Mr. . . .

Q. The evidence before us now is that it came from a cheque drawn by Mr. McElroy on Mrs. Begley's account? A. That is correct, my Lord.

Q. Is that so? A. Yes.

THE COURT: Well why don't you say so frankly?

40

That is the manager's account of his attitude; but I find it difficult to ascribe to him or the assistant manager the degree of simplicity necessarily involved in the supposition that either of them believed McElroy's plan of obtaining a specific loan from the appellant had succeeded, or that the extraordinary method adopted by McElroy in getting possession of funds to pay the Bank was not the result of something that required or called for explanation.

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The legal result is plain. The relation of principal and agent does not necessarily involve the existence of a fiduciary bond between them, but it is beyond controversy that, superadded to the legal relation between the appellant and McElroy, there was another relation in virtue of which McElroy owed a fiduciary obligation to the appellant in respect of the funds entrusted to him (*Burdick v. Garrick*, 5 Ch. App. 233; *Gray v. Bateman*, 21 W.R. 137; *Makepeace v. Rogers*, 4 DeG. J. and Sm. 649; *John v. Dodwell*, 1918, A.C. 563, at p. 569; *Reckitt v. Barnett*, 1928 2 K.B. at p. 276).

In the circumstances of the present case, the burden of the fiduciary obligation to which McElroy was subject was transmitted to the bank. If McElroy had withdrawn the sum of \$8,500 in cash, and paid it to the Bank in discharge of his debt, the Bank, in the absence of knowledge or suspicion that, in doing so, McElroy was violating a fiduciary obligation to the appellant, would have been protected. But the existence of the suspicion which, for the reasons I have given, must be imputed to the local officials of the bank, is a complete answer to any defence by the Bank resting upon the hypothesis that they were bona fide transferees. The cheque in McElroy's hands was held by him under this fiduciary burden and the bank cannot in the circumstances retain the proceeds of it (*John v. Dodwell*, supra). 10 20

I am assuming for the moment that under the power of attorney, McElroy had authority to bind the appellant in his application of the moneys in her account in such a way that she could not question his notes as against persons dealing with him bona fide; and in particular that a payment of his debt, bona fide received by the Bank, would not be open to such question. I shall discuss the power of attorney later. Whatever the scope of his powers under that instrument, those powers were conferred upon him for a specified purpose—the investment of the appellant's money. Any moneys in his hands drawn from her account would be subject to the trust for investment; and in the circumstances of this case, the slightest knowledge or suspicion on the part of the bankers that McElroy was not, in paying his debt to the Bank, acting loyally in the performance of his fiduciary duty to his principal would be sufficient, in the absence of enquiry, to make the bank accountable to the principal. (*Foxwell v. Manchester*, 44 L. T. N. S. 406; *Coleman v. Union Bank*, 1897, 2 Ch. 243; *A. G. v. De Winton*, 1906 2. Ch. 106; *John v. Dodwell*, 1918 A.C. 563; *B. A. Elevator Co. v. Bank B.N.A.* 1919 A.C. 658). 30

I turn now to the substantive defences. And first, as to estoppel. The estoppel set up is almost entirely grounded upon acquiescence. Acquiescence strictly imports a standing by in silence while, and with knowledge that a violation of one's right is in progress by somebody who is ignorant of the right. There is nothing of that sort here. The violation of the appellant's rights was a completed act before she became aware of it, and the sole question is whether she has lost her remedy. The remedy of one who has been deprived of his property by the fraud of 40

another who had possession or control of it under a fiduciary obligation to him, is, as a rule, twofold. He has a personal remedy, and he has a proprietary remedy; that is to say, he is entitled, under certain conditions, to follow, and require restitution of, his property. It is this latter remedy which the appellant prays, and, as I have said, her right to it, if it had been claimed without delay, is not denied.

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10 Apart from one alleged conversation between the appellant and Chambers, the assistant manager of the Bank, the basis of the bank's contention under this head is the fact that the appellant, after learning that McElroy had used the money drawn from her account to pay the Bank, did not, for two years, inform the Bank of McElroy's fraud.

Silence is effective as creating an estoppel only where this is a duty to speak. Was there any duty to speak arising out of what McElroy told the appellant in June, 1930? Her account of it is that McElroy, having informed her he had taken her money to pay the bank, she asked him why he had done so, and his answer was that

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Weaver told him to take it, he said I would be back and I was a widow, and I would want to marry him and he told him to take my money and pay it back.

20 I shall have something to say about this evidence later. I mention it here because the majority of the Court of Appeal attach some weight to it in this connection.

If the appellant believed McElroy, then the whole basis of the defence of estoppel is by silence disappears. because, if Weaver had instigated McElroy's fraud, there could be no duty upon the appellant to give him information about what he already, *ex hypothesi*, knew too well.

Furthermore, it is quite plain that the bank did not act upon any supposed representation arising out of the appellant's conduct. Neither the manager nor assistant manager suggests that the Bank was influenced
30 by the appellant's silence.

I have already quoted passages from the evidence of Weaver in which he leaves us in no doubt as to the position of the Bank. He had the power of attorney and the cheque, and since he considered the cheque was within the authority given, he concerned himself about nothing else. If the appellant had made a claim she would have been confronted with the power of attorney.

40 But the weakness of the Bank's case, in so far as it rests upon estoppel by acquiescence, lies deeper. The remedy the appellant seeks to enforce is, as I have said, the proprietary remedy. In a proceeding in a court of equity, the appellant having, as the Alberta courts have unanimously held, established her equitable title to the monies, cannot be denied her remedy on the ground of acquiescence unless with a full knowledge of her rights and with independent advice, she has confirmed the impeachable transaction (*De Busshe v. Ault*, 47 L. J. Ch. 381, at 389; *Moxon v. Paine*, 43 L.J.Ch. at p. 243).

It is quite plain, I think, from the whole of the evidence that she

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had no knowledge of her rights and she expressly says she did not know that the bank had done anything wrong. She knew, no doubt, that she had executed a power of attorney, and knowledge of the effect of that cannot be imputed to her in the absence of advice upon it. Moyer, to whom she took McElroy's promissory note in 1931 with the hope of getting some settlement from him, never suggested to her that she might have some remedy against the bank. Indeed, it seems probable that Moyer knew nothing about the transaction with the Bank.

Chambers, the assistant manager, of the bank, from whom she first learned of McElroy's unauthorized withdrawals, explained the transaction to her as a loan to McElroy. Not a word was said to her by him about the purpose for which the money had been used. Down to the very eve of the present proceedings, she appears to have had no suspicion whatever that the bank was in any way accountable to her. Indeed, to me, it seems in the highest degree improbable that it would have occurred to a woman in her position, with her lack of experience in business, that the conduct of the bank could be affected by any inactivity on her part. She would, beyond question, assume, if she thought about it at all, that the bank had taken, and would take, all the necessary measures for its own protection. In this respect, the case bears no sort of analogy to such cases as *Ewing v. Dominion Bank* (35 S.C.R. 133) where a man of business experience is informed by a bank that his signature is attached to a commercial paper, takes no steps to disabuse his informant, who, he must know, will probably act on faith of the signature. Nor has it any sort of resemblance to *Greenwood v. Martin's Bank* (1933 A.C. 51) where the House of Lords had to consider a case in which the silence upon which the estoppel was founded was, to quote the words of Lord Tomlin (at p. 58),

deliberate and intended to produce the effect which it in fact produced, viz., the leaving of the respondents in ignorance of the true facts so that no action might be taken by them against the appellant's wife."

* * *

"The course of conduct relied upon". Lord Tomlin says (at p. 59), "as founding the estoppel was adopted in order to leave the respondents in the condition of ignorance in which the appellant knew they were. It was the duty of the appellant to remove that condition however caused. It is the existence of this duty, coupled with the appellant's deliberate intention to maintain the respondents in their condition of ignorance, that gives its significance to the appellant's silence.

At p. 57, Lord Tomlin states the essential factors of an estoppel where it is alleged that a failure to disclose facts has deprived one of the parties of his opportunity to take proceedings against a third person. The first two of these factors are:

1. A representation or conduct amounting to a representation

intended to induce a course of conduct on the part of the person to whom the representation is made.

2. An act or omission resulting from the representation, whether actual or by conduct, by the person to which the representation is made.

It seems little less than fantastic to ascribe to the appellant an intention to induce by her silence the course of conduct which was followed by the bank; and equally so to suggest that from her point of view, her silence was calculated to induce that course, or any other course of conduct by the bank; and once again, equally so, to say that anything the bank did was the result of an interpretation of the appellant's conduct by them as amounting to a representation of any description whatever.

Then as to ratification. It is important here to recall that there was a fiduciary bond between McElroy and the appellant as well as the legal relation of principal and agent. It is also most important to observe that the transaction was, by McElroy and the bank, given a form in which it consisted of two separable and separate acts; first, a loan by the appellant to McElroy through McElroy, her attorney; and then a payment by McElroy personally to the bank in liquidation of his debt.

I have quoted the evidence of the bank manager in which he makes it clear that the bank's interpretation of the transaction was that the payment by McElroy to the bank was not an act done in his representative capacity, but a personal payment made on his own behalf out of his own monies. The cheque was made payable to McElroy and notwithstanding the fact that the sole purpose of drawing the cheque was to put McElroy in funds to pay the bank, the fair interpretation of what occurred is that both McElroy and the bank treated the transaction throughout as possessing the character I have indicated.

It is not entirely without relevancy to notice that in their communications with the appellant, the bank's officials admittedly presented the transaction to her as a loan to McElroy, making no reference to the application of the proceeds of the loan; implying clearly that the only phase of the transaction in which she was concerned was the first phase.

That could not, of course, in the least degree, militate against the right of the appellant to treat the monies in McElroy's hands as funds held by him in trust for her, or against her right to enforce the trust against the bank, in the circumstances in which the fund was in fact transferred. Nevertheless, McElroy was not professing to act as her agent in paying the Bank, and the bank was not receiving the money from anybody acting as the appellant's agent. This is a most important consideration because it follows that, as McElroy did not profess to represent the appellant in paying the bank, his act in doing so was not one which the appellant could validly make her own by ratification.

In this view, the issue of ratification is not of much importance because we are only concerned on this appeal, as I have already said, with the appellant's proprietary remedy against the Bank. Nevertheless, it is

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desirable, I think, to call attention to the difficulty of holding that ratification has been established, even as between the appellant and McElroy. The acts relied upon as constituting ratification consist principally of three:

- (1) Delay in taking proceedings to call McElroy to account after she became aware in June, 1930, of McElroy's withdrawals;
- (2) Steps taken by her through Moyer to procure some kind of settlement from McElroy;
- (3) An agreement in the autumn of 1931 to renew the note signed by McElroy on the 29th of June, and to accept security from McElroy in the form of an assignment of his rights under that agreement. 10

Ratification must consist of words or conduct recognizing clearly the authorized act as the act of the ratifying principal. Now, I should have much difficulty in holding that the appellant really intended to recognize McElroy's withdrawal of her money from the bank as her act, or as an act rightfully done by him. Of course, a person may be bound, whatever his actual state of mind may be, by acts unequivocally evincing a recognition as his own of an unauthorized act: but I am far from satisfied, when the circumstances and the relations of the parties are all considered, 20 that (apart from the point of knowledge of the nature of the transaction which I am about to discuss) what the appellant did falls within this category. When she was first informed of McElroy's withdrawals, it is quite evident that the information came to her as a blow. She was quite ill at the time and shortly afterwards underwent an operation for goitre. It was during her stay in the hospital, and while still ill and suffering, that she told Moyer McElroy owed her money, and that she heard from McElroy that her money had been used to pay his debt to the bank. For something like a year after this, the note signed by McElroy remained in possession of the bank. Then having for the first time had it in her 30 hand, she handed it to Moyer. Moyer says that later she consented to accept a "renewal" of this note accompanied by a transfer of some agreement as security; but she herself says she never so agreed; and Moyer's evidence is not at all clear as to what actually took place. He says, it is true, that she assented to the proposed arrangement; but he says, also, that a day or two afterwards she revoked her assent. His instructions, I gather, were revoked before McElroy had actually executed anything. McElroy appears at all times to have been holding out promises of restitution. I repeat, it is not established to my entire satisfaction that, when all the circumstances are considered (including the relations of the parties), there was an unequivocal recognition of McElroy's 40 misappropriation as her own act.

However that may be, the bank has not, in my judgment, established that the appellant was in possession of that knowledge of the nature of the transaction and of the material incidents of it, the existence of which would be an essential condition of a binding ratification. There is noth-

ing to indicate that she knew the actual form of the transaction. There is nothing to indicate that she was acquainted with the facts which, as I have explained, convince me that, by reason of the conduct of its local officials, to use the phrase of Mr. Justice McGillivray, the bank cannot be treated as an "innocent party". She actually knew nothing of this conduct; and, although the loan was treated by the parties as separate from the transfer to the bank, I do not think you can disregard that conduct, as immaterial, within the meaning of the rule which makes full knowledge an essential condition.

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10 I am, of course, not overlooking the communication which she says McElroy made to her in the hospital touching Weaver's part in securing the repayment of the loan to McElroy. I think that may be put aside because the learned trial judge evidently did not think the appellant had treated the communication seriously; otherwise, he could hardly have used the language he did in discussing and rejecting the application to dismiss the action at the conclusion of the plaintiff's case. The learned trial judge, in his view of this passage in the evidence, would be much influenced by the manner in which the story was told. My impression is that nobody at the trial was disposed to treat the communication very
20 seriously. The manager, as might have been expected, contradicted McElroy's statement emphatically.

The bank relies upon an interview between the assistant manager Chambers and the appellant which, according to the evidence of the appellant, took place in June, 1930. Chambers says that at this interview he noticed the appellant expressed her surprise at the amount of McElroy's withdrawals saying she had not expected him to borrow so much. He also says that the appellant told him that she was confused and could not remember the arrangement she made with McElroy on her departure for Ontario. This evidence was obviously offered for the purpose of
30 supporting a suggestion that the appellant had assented to the use of the money by McElroy. The learned trial judge, as I have already mentioned, held that she gave no such assent, adding that counsel for the defendant did not contend that she had done so. I agree with Mr. Justice McGillivray that this evidence is of little assistance.

I should add that, in my judgment, the evidence is quite sufficient to support the findings of fact necessary to sustain the conclusion of the learned trial judge on the issues of estoppel and ratification.

I have one further observation to make upon ratification. Such acts as those relied upon by the bank as constituting ratification could, in my
40 judgment, afford no answer in any case to the appellant's claim against the bank to recover the money as a trust fund (*John v. Dodwell*, supra).

I came now to the power of attorney. It is in these words:

KNOW ALL MEN BY THESE PRESENTS that I, Mary Victoria Begley, of the city of Calgary, in the Province of Alberta, have made and appointed and by these presents do make and appoint James Wesley McElroy of the City of Calgary in the Province of Alberta

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or any substitute appointed by him in writing, my true and lawful attorney to enter into, manage and carry out for me and in my name any and every financial transaction with the IMPERIAL BANK OF CANADA, and particularly, but not so as to restrict the generality of the foregoing, to make all arrangements for credits, discounts and advances and the carrying of my account with the said Bank, and to carry out the said arrangements, with power to vary, modify or rescind the same and to make new arrangements, and for me and in my name to draw and sign cheques, including those creating an overdraft, on the said Bank or any other Bank or banker, and receive the moneys thereon; to state and settle accounts; to endorse all cheques in which I am interested; to make and endorse in my name promissory notes; to draw, accept and endorse drafts and bills of exchange; to waive presentment, protest and notice of dishonor of negotiable instruments; to sign and endorse warehouse receipts; to endorse bills of lading; to pledge securities and negotiable instruments; to assign mortgages, policies of insurance, choses in action and book accounts and all moneys payable in respect thereof; to transfer shares in any company or corporation; to mortgage lands and securities upon lands or chattels; to give and agree to give security upon goods, wares, merchandise and other products and things upon which a Bank may lawfully take security; and otherwise to pay or secure the payment to the Imperial Bank of Canada of any and all sums of moneys for which I may be from time to time liable to the said Bank, whether directly or indirectly, with full power from time to time to make any agreement with reference to all or any of the said securities; to substitute other securities in the place of any securities relinquished by the Bank; to confirm all or any securities held by the Bank, and to release to the Bank any right of redeeming the same or any of them, or any other right with reference thereto; and generally for me to do and transact any business in my name with the said IMPERIAL BANK OF CANADA which I could transact in person, and in my name to bind me on any and all deeds, conveyances, assurances, covenants, contracts, assignments, transfers, agreements and guarantees in the same manner as I could do in person; I hereby ratifying whatever my said attorney shall do.

And I further covenant and agree with the said Bank, in consideration of the said Bank accepting the acts done under this power, that I will ratify and confirm all acts, deeds, conveyances, assurances, contracts, covenants, assignments, transfers, agreements, guarantees and other matters and things which my said attorney may make, do, sign, execute or enter into with the said Bank, and will repay all moneys my said attorney or any substitute may borrow or receive from the said Bank whilst acting or assuming to act under this power, and that without regard to whether the transaction in question is or is not within the scope of the authority given herein.

This power of attorney may be exercised in the names of my heirs, devisees, executors or administrators, and shall continue in force as well after as before my death, and shall be revocable only after written notice of revocation signed by me or my executors or administrators has been served upon the Manager of the said Bank at Calgary, Alberta, and has been acknowledged by him in writing.

10 And I do Declare that my said attorney shall have the power from time to time to appoint any substitute or substitutes for any or all of the purposes aforesaid, and every such substitution at pleasure to revoke by notice in writing served upon the Manager before mentioned.

The primary purpose of this instrument obviously is to confer upon McElroy authority to transact business with the Imperial Bank of Canada as the agent of the appellant. Some of the phrases in the instrument are very sweeping, but it has long been settled that powers of attorney are to be construed strictly: and it was laid down by the Privy Council in Bryant's case (1893 A.C. at p. 177) that

20 where authority to do an act purporting to be done under a power of attorney is challenged, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument either in express terms or by necessary implication;

and powers given in the widest terms have been held not to extend, for example, to the making of presents, or to the granting away of the principal's property without consideration.

In *Reckitt v. Barnett* (supra, at p. 268) Mr. Justice Russell (as he then was) says:

The primary object of a power of attorney is to enable the attorney to act in the management of his principal's affairs.

30 It would require, he says, in a power of attorney,

"Words unambiguous and irresistible" to justify the attribution to the instrument of "a meaning and intention" to enable the attorney "to do what he liked with the plaintiff's moneys, even to the extent of applying them in payment of his own personal debts."

Mr. Justice Russell refers to, and in part rests his judgment upon, the decision of the Court of Chancery Appeals in *in re Bowles* (31 L.T. 365) in which that court had to construe a power of attorney that enabled the attorney

40 to act on his behalf in all matters relating to his property, and to the affairs of the company, and to mortgage, charge, or otherwise incumber all or any part of his freehold and leasehold estates, stocks, shares and effects in England, and to lease the same for any term of years, and absolutely to sell all his said estates and effects.

Purporting to act under this instrument, the attorney executed a mortgage in favor the Company, of which he was the secretary and of which

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the principal was a shareholder, to secure a past debt. Lord Justice James, in delivering judgment, said,

. . . the mortgage was of no value. Whatever might be the legal effect of the power of attorney under which the mortgage was executed, it was clear that it could not authorize the donee of the power to execute a deed as a voluntary gift. But this was a voluntary mortgage in consideration of a past debt, executed under a power of attorney given by a shareholder of the company in whose favor the mortgage was made. The mortgage was clearly invalid, and the Vice-Chancellor was right in dismissing the petition. 10

In this judgment, Lord Justice Mellish concurred. The decision is a decision of the Court of Chancery Appeals; but, in addition to that, the decision and the judgment have the weight which attaches to all the pronouncements of the two eminent judges who exercised the powers of the court on that occasion.

The power of attorney with which we are concerned does not, in express terms, or by necessary implication, authorize the making of gifts; nor do I think it authorizes the attorney to make any disposition he likes to make of the appellant's money and property, to apply such money, for example, in the payment of his own debts. While the general clauses are very sweeping, there is a specific clause which deals with the subject of the payment of debts due to the Bank and the giving of security for such debts and the dealing with such securities. These provisions are very elaborate and very sweeping except as to one point; that is to say, that the liabilities to the bank which the attorney is authorized to discharge and secure, are limited to liabilities of the principal. There is, of course, the specific declaration that the generality of the general power to transact business with the bank is not to be limited by the particulars which follow, but I do not think it is a fair construction of this power of attorney to hold that these words are sufficient to sweep away the conditions and qualifications expressed in the sentences which deal with the paying and securing of liabilities to the bank. The point, I need hardly say, is by no means free from difficulty, and I have come to this conclusion after a good deal of hesitation, but I think, on the whole, it is the right view of the effect of this instrument; and, if so, obviously, the withdrawal of the money for the sole purpose of applying it in a manner not authorized by the power of attorney was an abuse of the power of which the bank had full knowledge and, consequently, as between, not only McElroy and the bank, but also as between the bank and the appellant, an act not binding on the appellant. 40

In any case, it is very clear to me that this power of attorney does not invest the attorney with authority to release himself from his fiduciary obligation to the principal in respect of property of the principal's which has come into his hands, or to release the transferee of such prop-

erty from transmitted fiduciary obligations. Any such a transaction would be entirely outside the contemplation of the instrument.

The appellant is, therefore, entitled to restitution of the sum of \$8,500. with interest from the 29th of June, 1929. I have been unable, however, to reach the conclusion that, as regards the later cheques, the bank is responsible.

The judgment of the Court of Appeals should, therefore, be set aside and the judgment of the trial judge varied by striking out the third paragraph. There should be no costs of the appeal to the Appellate Division
10 but the appellant should have the cost of the appeal to this court.

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CANNON J. (dissenting): This is an appeal from the Supreme Court of Alberta (appellate division), reversing (McGillivray J. dissenting) the judgment rendered by the trial judge in favor of plaintiff for \$11,000.00 with interest, amount of alleged unauthorized withdrawals of her funds with the connivance of the bank.

The plaintiff is a widow. Her husband having died in December, 1928, one James Wesley McElroy, their neighbor and friend, administered the estate and got his discharge as administrator on or about June 21st, 1929; he then deposited the estate's money in the savings department of the defendant bank, at Calgary, to the plaintiff's personal account
20 which had been in operation for several years past.

On June 24th, 1929, the plaintiff executed a power of attorney in the office of her solicitor and lodged it with the defendant bank. This was on one of the bank's forms and authorized McElroy, *inter alia*, "for her and in her name to draw and sign cheques, . . . and receive the moneys thereon".

On the 26th of June, 1929, after having told the defendant that she was going east and having a portion of her money transferred to Hamilton, the plaintiff left Calgary for a visit to Ontario.

Mr. McElroy had been farming on a rather large scale in the neighborhood of Calgary for some years; and he had been indebted to the defendant bank on both direct and indirect liabilities for comparatively large amounts varying from time to time.

On June 29th, 1929, the bank held a third mortgage on a considerable portion of his farm, which security was surrendered or destroyed when he paid the amount of his direct liability on that date. His account was not closed and it was carried on and further advances were made to him subsequent thereto. On that 29th day of June, 1929, a Saturday, a few minutes before closing hour, McElroy told Mr. Chambers, the accountant
40 of the bank, that he intended to pay off his debt of \$8,518.78, which amount he was going to borrow from Mrs. Begley's funds for that purpose. He signed a note for \$8500.00 in her favor. He also drew as attorney a cheque against plaintiff's account for \$8500 which he deposited,

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with \$18.78, to his own credit and thereby balanced his personal account and his direct liability. Subsequently McElroy drew other cheques as plaintiff's attorney against her account in the defendant bank, to the order of third parties, which were paid.

The plaintiff returned to Calgary about the middle of December, 1929. She had several interviews with McElroy, was in the bank and had her pass book marked up.

Subsequently thereto, on the 2nd of January, 1930, she issued a cheque to McElroy through the respondent bank for \$1,400.00 by way of loan.

Thereafter she was often in the bank and had her pass book written up and was also shown the \$8500.00 note and all the cheques that had been issued by McElroy against her account. The plaintiff said in her evidence that while she was in the hospital, in June, 1930, McElroy told her that he had paid the bank with her money. He promised to pay it back in the Fall. He had 1600 acres in crop. While in the hospital, plaintiff told her then solicitor Moyer that McElroy had her money and changed her will leaving him out as executor.

Now, what was appellant's behaviour after she knew of McElroy's use of her money to pay his debt to the bank?

On July 9th, 1930, the plaintiff was in the bank, but never spoke to Chambers, the accountant, or to the Manager, Weaver, about this transaction or of the transfer of her funds to McElroy's credit.

On the 10th of July, 1930, the plaintiff left by motor for Spokane, driving with McElroy who remained in Spokane three days. They seemed to have been on the best of terms, although they quarrelled about these matters, but made up before he left. She was told that he would pay the bank the money that Fall.

After remaining in Spokane about a month, plaintiff returned to Calgary and was in the bank at least four times before the end of October, and never gave a hint that she disapproved of what had been done; she even took possession of and withdrew the \$8,500.00 note from the custody of the defendant bank and took it to the Bank of Montreal.

On the 31st of July, 1931, she got the first note from the Bank of Montreal and secured from McElroy a new note dated the 1st August, 1931, for \$9,419.11, payable in one year, and stipulated an interest of 6%. She then went to the Bank of Montreal and put this note in her deposit box. It was understood that McElroy would pay as much as possible out of the crop that year.

On the 24th July, 1932, plaintiff writes to McElroy referring to "Mr. McElroy's note will soon be due which he put off on an ignorant woman who was in love".

From the 1st to the 3rd September, 1932, plaintiff accepted a renewal note for \$10,224.00, and arranged for security at the office of her solicitor Moyer who had been trying to secure protection for her claim against McElroy. The papers were prepared and signed by McElroy; but she

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afterwards countermanded her instructions and, having consulted with Mr. Taylor, started the present proceedings against the Bank to recover the amounts of several cheques drawn by McElroy as her attorney.

The parties and the courts below seem to concur in the view that the respondent could have been compelled to reimburse the \$8,500.00 at the moment, when, in December, 1929, or January or June, 1930, the appellant first heard of what had been done, if she had, as a matter of fact, never agreed to loan to McElroy the amount in question.

The bank was certainly, to say the least, negligent at the outset. But the defendant had pleaded that, the plaintiff not only authorized the issue by McElroy of the cheque but also, on the 2nd of January, 1930, and on the occasion of each and every renewal of the note, ratified the act of the said McElroy in issuing the cheque and the use thereof. The defendant also sets up that the plaintiff by her conduct has elected to waive the wrong, if any, in connection with the \$8,500.00 cheque and to treat the transaction from the beginning as a duly authorized loan of money by her to McElroy. The defendant alleges that by reason of the authority given by the plaintiff to McElroy, and her knowledge, acts, omissions and conduct and by reason of the financial position of McElroy and the security and opportunity that have been lost to the defendant, the plaintiff is estopped and should not be heard to allege or prove the facts set forth in the statement of claim.

The learned Chief Justice of Alberta has dealt with these aspects of the case with much care; and there is hardly anything to add to his remarks. But it would be useful to insert here some abstracts from the evidence of the appellant to show the extent of her knowledge of what had taken place and her determination to accept McElroy as her debtor and shield him as against the bank:

Q. But McElroy did tell you that the money had, that he had paid the money to the Imperial Bank? A. He told me that when I was in the Hospital.

Q. I think it was at this particular time that McElroy told you that you did not need to worry about the amount, that he was going to pay it that Fall? A. Yes.

Q. You were quite satisfied with that, were you, I mean you thought he would pay it? A. I do not know as I was just satisfied. Well I thought he would.

Q. I asked you two questions. But you did think he would pay it that Fall? A. Yes.

Q. You knew that that particular year he had some 1600 acres in wheat? A. Yes.

Q. And of course, the prospects at that particular time were favorable, I mean the crop prospects were favorable? A. Yes.

Q. This conversation that you had with McElroy I believe, Mrs. Begley, was some four or five days before you left for Spokane, of course you told me you had one in the Hospital but you had another

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one four or five days before you left for Spokane? A. I have forgotten.

Q. In any event you know at that time that McElroy had taken your money or some of your money? A. Yes.

Q. There is no manner of question about that at all is there?
A. No.

* * *

Q. Now as a result of the information which you got you knew that McElroy had taken some of your money and used it to pay his debt to the Bank, didn't you? A. Yes.

Q. You knew that before you took this trip to Spokane with 10
Mr. McElroy? A. Yes.

Q. Now you knew, of course, at that time that that was a very wrong thing for Mr. McElroy to do, didn't you? A. For to take the money?

Q. Yes? A. Yes.

Q. You knew at that time, of course, it was a very wrong thing for the Bank to have used the money in that particular way didn't you? A. I did not know that they should not, I did not know about that.

Q. You did not know about that? A. No.

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Q. Didn't you think it was improper for them at that time to have taken the money without any instructions from you to McElroy and used it for paying his indebtedness to the Bank? A. Well I do not remember just what I did think about it.

Q. You would have thought there was something wrong about it anyway, put it that way? A. Yes.

Q. Didn't you? A. Yes.

Q. In any event regardless of what you thought about it you were satisfied from the conditions generally that McElroy would pay it back? A. I thought he would.

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Q. And that he would pay it back that Fall? A. He said so.

Q. Well you must have been satisfied weren't you that he would do it? A. I thought he would all right.

Q. And so you were prepared to wait until the crop season was over? A. Yes.

* * *

Q. As a matter of fact you got a renewal note for this indebtedness on the 1st of August, 1930, didn't you? A. Yes.

Q. Have you got that note? A. Mr. Taylor has it.

Q. What is this document, Mrs. Begley? A. Well that is Mr. McElroy's note.

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Q. That is the note and what is the date of it? A. August 1st.

Q. 1931? A. Yes.

* * *

Q. THE COURT: What did you say about renewing the note,

how did you come to meet Mr. McElroy? A. Mr. McElroy was to be in at ten o'clock Saturday morning to have the note fixed up and he did not come until just about a quarter to 12 and we had to rush then to get down and get it into the Bank. I did not take time to look at it until I was putting it in the deposit box and I noticed then it was Nine thousand dollars and something.

Q. MR. SHAW: Yes, now you had told McElroy before this that you wanted to get this note renewed hadn't you, it was your suggestion that you should get a renewal of this note? A. Yes.

10 Q. And so he came up and the amount was figured out in your apartment, he gave you this new note which is now Exhibit 23 to you and you gave him back the \$8,500. note, is that not right? A. Yes.

Q. And then he drove you down to the Bank so that you could put in the Bank the \$9,400. note which you had, which he had just given to you? A. Yes.

20 Q. I notice that the original note for \$8,500. was with interest at seven per cent. I believe there was an arrangement by which that was to be reduced to six per cent.? A. Yes, he asked me, he said you are only getting six per cent. from others why do I have to pay you seven? I said, 'You pay me up in September and you can have it for six too'.

Q. The understanding was that he was to pay, although the note was taken for a year, he was to pay as much as he could or all of it if possible within, or all of it out of that year's crop? A. Yes.

Q. Or from any other source I suppose? A. Yes.

* * *

30 Q. Did you after that date (1st of August, 1931) at any time suggest to or discuss with any of the defendant Bank officers, the matter of this wrongful taking by McElroy? A. No, I just showed that note to the Manager, that was all, and he told me to go to my solicitor.

Q. You are speaking of the Bank of Montreal? A. Yes.

Q. I am speaking about the Imperial Bank A. I never was in there after.

Q. You never discussed with Chambers or Weaver or Mackie? A. After I got these notes from Mr. McElroy I was never in.

Q. It would be obviously clear in your mind that you never suggested the wrongful taking by McElroy? A. No.

40 Q. And I assume from the evidence we already have had that you have never discussed it with any of the officers of the Bank previously either? A. Before that?

Q. Yes. A. About the \$8,500.

Q. I mean about the wrongful taking by McElroy without your authority? A. No.

Q. That would be a correct statement I take it, Mrs. Begley? A. Yes.

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Q. And I suppose, Mrs. Begley, that it would be fair to say your first complaint to the bank would be through your solicitor, Mr. Taylor, that would be correct would it not? A. My complaint to the Bank, about the Bank, yes.

Q. Or to the Bank?

* * *

A. Yes.

MR. SHAW: And that I believe must have been about October, 1932? A. Yes.

It is said that "it seems little less than fantastic to ascribe to the appellant an intention to induce by her silence the course of conduct which was followed by the Bank towards her friend McElroy". With due respect, I cannot ignore her own letter of January 13th, 1931, and her admission that she was telling lies in order to shield the latter. 10

Mrs. Begley, I show you this document, what is that? is that your signature? A. Yes.

Q. That is a letter written by you to McElroy is it not? A. Yes.

Q. Dated Calgary, January 13th, 1931? A. Yes.

Q. MR. SHAW: I am going to ask to have this letter put in. (Document in question was then marked Exhibit "24" and was read to the Jury by Mr. Shaw). 20

Q. Now in connection with that communication in your Examination for Discovery I asked you at question 1383

"1383. Q. So you were telling these lies for the purpose of shielding McElroy, is that what you meant by that? A. Well, it looks that way".

You still agree with that? A. Yes, it was not just meant in those ways but I cannot just explain how it was.

In *Scott v. Bank of New Brunswick*, 23 S.C.R., p. 277, this court held:

If payment is obtained from a debtor by one who falsely represents that he is an agent of the creditor, upon whom a fraud is thereby committed, if the creditor ratifies and confirms the payment he adopts the agency of the person receiving the money and makes the payment equivalent to one to an authorized agent. 30

The payment may be ratified and the agency adopted, even though the person receiving the money has, by his false representations, committed an indictable offence.

In this case, also the doctrine of ratification is invoked, to use the words of Chief Justice Strong in the above case, at page 283,

for the purpose of fixing a party, by reason of his adoption of it, with the legal consequences of an act which, whatever may have been the circumstances which attended it and brought it about, has a *de facto* existence. 40

The payment made to the bank with appellant's money is a substantial act susceptible of ratification; and for two years after she heard what McElroy had done with the \$8,500.00 cheque she never complained or

advised the bank of her intention to deny the loan to McElroy; and, moreover, she repeatedly, by renewing the notes and exacting interest, adopted and ratified the alleged loan of her money by McElroy in order to pay the Bank. It would be difficult to conceive stronger acts of ratification than those in evidence in this case. Surely, to paraphrase the late Chief Justice Strong, if an agent, after converting to his own use moneys received from the principal's debtor, undertakes to pay to the principal money to the same amount that which he has received from the principal's debtor in assumed discharge of the debt, the principal could not afterwards, while retaining the money, compel the debtor to pay a second time. In such a case, the receipt of the money from the fraudulent agent would be such a recognition of the agency as to place the debtor in the same position as if the pretended agent had had full authority to keep the money at the time he received payment from the debtor. What difference, in principle, can there be between actual receipt of money and accepting notes bearing interest, as appellant did in this case having secured from McElroy these notes for the amount of the supposed loan, the appellant cannot keep those notes and, at the same time, ask her debtor, the respondent, to pay her a second time the amount paid to McElroy under the power of attorney, even if the latter at first did more than what he was authorized to do as her agent. These facts reveal a conduct that is only consistent with a waiver of her complaint against the Bank. In this case, to hold that appellant has not waived the alleged lack of authority of McElroy would be to allow her to take up the inconsistent position of at once "approbating and reprobating".

Lord Blackburn, in the case of *McKenzie v. The British Linen Co.* (6 App. Cas. 99) says

It is quite immaterial whether this ratification was made to the person who seeks to avail himself of it or to another.

Chief Justice Strong, in the same case of *Scott v. The Bank of New Brunswick*, said that the distinction between ratification and estoppel is well pointed out in a case of *Forsyth v. Day*. 46 Me. 196, where it is said:

The distinction between a contract intentionally assented to or ratified in fact and an estoppel to deny the validity of the contract is very wide. In the former case the party is bound because he intended to be; in the latter he is bound, notwithstanding there was no such intention, because the other party will be prejudiced and defrauded by his conduct unless the law treat him as legally bound. In one case the party is bound because the contract contains the necessary ingredients to bind him including a consideration. In the other he is not bound for these reasons but because he has permitted the other party to act to his prejudice under such circumstances that he must have known or be presumed to have known that such party was acting on the faith of his conduct and acts being what they purported to be without apprising him to the contrary.

Does justice require, as between the parties before us, that their

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rights and liabilities should be determined, so far as this particular transaction, the subject of our investigation, is concerned, on the assumption that a certain fact, or state of facts is true, whether in fact it be so or not? Can the bank exact from the appellant an admission that the loan to McElroy actually took place, or was at least confirmed and ratified? Was the appellant legally in duty bound, when she discovered the alleged fraud of McElroy, to tell the truth to the bank immediately? By reason of such breach of duty towards the bank, has the latter sustained damages? If so, has the bank, however negligent it may have been at the outset, been misled afterwards to believe that McElroy's representation 10 that the money was being loaned to him by the appellant was true? In other words, are the respondents, in the circumstances of this case, entitled to set up an estoppel?

According to the plaintiff, she became aware, in June, 1930, of the fact that McElroy paid his own debt to the bank with moneys drawn from her account under the power of attorney. There is no doubt that at that time she was, either from friendship or love, disposed to help and shield McElroy and did not want, by disclosing the true facts, to bring trouble between him and the bank. She deliberately refrained from speaking to the bank and did not and would not have the latter debit McElroy's account with the amount which might have been reinstated to her credit. 20 She made a loan of \$1400 to McElroy to the bank's knowledge. She also accepted and withdrew from the bank the promissory note which was given by McElroy as an acknowledgment of the alleged loan. Her conduct amounts, in my opinion, to a representation intended to induce the bank to believe that McElroy was truly authorized by his principal to act as he did on the 29th of June, 1929, and that his debt to the bank was definitely, well and truly paid, and that, therefore, the bank had no more reason to protect their interest against McElroy.

The bank, as a result of this conduct amounting to representation, 30 refrained from pressing McElroy and missed at least during two crop years to collect from him any claim that they might have revived against him if the payment made out of the appellant's funds had to be set aside. The act of the bank in crediting this amount to McElroy and giving up the security they held, and their omission from that date to take any action to collect their advances to him, would, if the plaintiff could now recover against the bank, evidently cause detriment to the latter.

I find here the essential factors giving rise to an estoppel as propounded by the House of Lords in the recent case of *Greenwood v. Martin's Bank*, 1933 A.C. 51 at p. 57. At page 58 Lord Tomlin says: 40

I do not think that it is any answer to say that if the respondents had not been negligent initially the detriment would not have occurred. The course of conduct relied upon as founding the estoppel was adopted in order to leave the respondents in the condition of ignorance in which the appellant knew they were. It was the duty of the appellant to remove that condition however caused. It is the

existence of this duty, coupled with the appellant's deliberate intention to maintain the respondents in their condition of ignorance, that gives its significance to the appellant's silence. What difference can it make that the condition of ignorance was primarily induced by the respondents' own negligence? In my judgment it can make none. For the purposes of the estoppel, which is a procedural matter, the cause of the ignorance is an irrelevant consideration.

The above remarks apply aptly to this case. The bank may have had more or less good reasons to believe McElroy's statement that he had procured a loan from the appellant; if the latter did not loan the money, she, by her conduct, induced the bank to believe that she had actually loaned the money, or, if she had not really done so before the 29th of June, 1929, that she had ratified the transaction.

I would therefore, both on the ground of ratification and of estoppel, find in favor of the bank.

As far as the subsequent cheques totalling \$2500 are concerned, the authority of *Bryant v. Quebec Bank*, 1893 A.C. 170, is amply sufficient to justify the payments by the respondent and we must agree with the unanimous findings of the Court of Appeals.

20 The appeal should, therefore, be dismissed with costs.

No. 30.

Judgment of the Supreme Court of Canada.

IN THE SUPREME COURT OF CANADA
ON APPEAL FROM THE SUPREME COURT OF ALBERTA,
APPELLATE DIVISION

Friday, the 21st Day of December, A.D. 1934.

PRESENT:

30 THE RIGHT HONOURABLE SIR LYMAN POORE DUFF, P.C., G.C.M.G.
THE HONOURABLE MR. JUSTICE CANNON.
THE HONOURABLE MR. JUSTICE CROCKET.
THE HONOURABLE MR. JUSTICE HUGHES.
THE HONOURABLE MR. JUSTICE MACLEAN (*ad hoc*).

BETWEEN:

MARY VICTORIA BEGLEY,
(Plaintiff) Appellant,

—AND—

IMPERIAL BANK OF CANADA,
(Defendant) Respondent.

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The appeal of the above named Appellant from the Judgment of the Supreme Court of Alberta, Appellate Division, pronounced in the above cause on the twenty-fourth day of March, in the year of Our Lord One Thousand Nine Hundred and Thirty-four, allowing the Respondent's appeal from the judgment of the Honourable Mr. Justice Boyle, of the Supreme Court of Alberta, Judicial District of Calgary (Trial Division), rendered on the Twenty-sixth day of October in the year of Our Lord One Thousand Nine Hundred and Thirty-three, having come on to be heard before this Court on the eleventh day of October in the year of Our Lord One Thousand Nine Hundred and Thirty-four, in the presence of Counsel as well for the Appellant as for the Respondent, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment: 10

THIS COURT DID ORDER AND ADJUDGE that the said appeal should be and the same was allowed as to the sum of Eight Thousand Five Hundred Dollars (\$8,500.00), with interest from the Twenty-ninth day of June in the year of Our Lord One Thousand Nine Hundred and Twenty-nine, that the said Judgment of the Supreme Court of Alberta, Appellate Division, should be and the same was reversed and set aside, and that the said Judgment of the Honourable Mr. Justice Boyle should be and the same was varied by striking out the third paragraph thereof. 20

AND THIS COURT DID ORDER AND ADJUDGE that the said Respondent should and do pay to the said Appellant the cost incurred by the said Appellant in this Court and that there should be no costs of the appeal to the Supreme Court of Alberta, Appellate Division.

“J. F. SMELLIE”,
Registrar.

*In the Privy
Council*

—
No. 31.
Order of His
Majesty in
Council,
May 4, 1935.

(L.S.)

No. 31.

Order of His Majesty in Council.

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AT THE COURT AT BUCKINGHAM PALACE

The 4th day of May, 1935.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

PRIME MINISTER
LORD PRESIDENT
VISCOUNT HAILSHAM

SECRETARY SIR JOHN SIMON
MR. CHANCELLOR OF THE DUCHY OF
LANCASTER
MR. DOUGLAS JAMIESON

“WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 12th day of April, 1935, in the words following viz.:—

In the Privy Council

—
No. 31.
Order of His Majesty in Council,
May 4, 1935.

—*continued*

10 “WHEREAS by virtue of His late Majesty King Edward the Seventh’s Order in Council of the 18th day of October, 1909, there was referred unto this Committee a humble Petition of the Imperial Bank of Canada in the matter of an Appeal from the Supreme Court of Canada between the Petitioners and Mary Victoria Begley, Respondent, setting forth (amongst other matters) that the Petitioners are desirous of obtaining special leave to appeal from the Judgment of the Supreme Court given on the 21st December, 1934: that the Supreme Court by a majority of four to one allowed the Respondent’s Appeal from the Supreme Court of Alberta (Appellate Division) and set aside the Judgment of that Court (which was in the Petitioners’ favor) with a variation: that Cannon J. dissented and said the Appeal should be dismissed: that the action was against the Petitioners to recover the sum of \$8,500. and interest as being a sum withdrawn from moneys standing to the credit of the Respondent at the Petitioners’ Bank without the Respondent’s authority by her attorney one J. W. McElroy with the connivance of the Petitioners and with a view to obtaining advantage by the Petitioners for their own benefit of funds entrusted by the Respondent to the Petitioners and alternatively that the Petitioners converted to their own use \$8,500. of the Respondent’s money on deposit with the Petitioners: that the Petitioners submit that the Judgment of the Supreme Court of Alberta (Appellate Division) was correct: And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Supreme Court of the 21st December, 1934, in so far as it sets aside the Judgment of the Court of Appeal and restores the Judgment of the Trial Judge to the extent that the Trial Judge gave judgment for the Respondent for the sum of \$8,500. with interest from the 29th June, 1929, or for further or other relief:

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40 “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 for the Respondent and the Petitioners by their Counsel submitting to pay forthwith the costs awarded to the Respondent by the Courts below the same in no event to be recoverable and to pay the Respondent’s costs of the Appeal in any event their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Supreme Court of Canada dated the 21st day of December, 1934. 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

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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 Petitioners of the usual fees for the same.”

—*continued*

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 Govern- 10
ment of the Dominion of Canada for the time being and all other persons
whom it may concern are to take notice and govern themselves accord-
ingly.

M. P. A. HANKEY.

PART II.—EXHIBITS

Exhibit 74.

(Defendant's Exhibit)

Statement of Liabilities and Assets, J. W. McElroy.

J. W. McELROY. Address, Calgary. As on 10th Jany., 1927.
Business, Farmer.

Direct Liabilities (1) On Customer's Paper discounted \$
(2) On Other Paper endorsed or guaranteed \$

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Exhibits.
Ex. 74.
Statement of
Liabilities
and Assets,
J. W. McElroy,
January 10,
1927.

10	RESOURCES	Customer's Figures	Manager's Valuation
	Machinery and Equipment:		
	Stock in Trade (after allowing for depreci- ation)	11,466	
	Good Bills Receivable (after allowing bad and doubtful debts)	3,447	
	50 Shares Security Trust Co. Ltd. Good Open Accounts (after allowing bad and doubtful debts)	500	
	Cash on hand and in Bank		
20	30 Horses	1,500	
	12 Cattle	480	
	6 Hogs	100	
	1600 bus. Wheat, 1000 bus. Oats, Seed Grain and Fodder	2,100	
	Green Feed	600	
		20,193	
	Total Liquid Assets	20,193	
	Real Estate (as per statement on back)	83,750	
		103,943	
30	Total Assets	103,943	
	Total of Fire Insurance on Stock		\$
	Total of Life Insurance		\$

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	Sales	Profits
For the year ended 192.....	\$.....	\$.....
For the year ended 192.....	\$.....	\$.....
For the year ended 192.....	\$.....	\$.....
Amount of H. O. Credit		\$.....
Date Authorized		

—continued

LIABILITIES	Customer's Figures	Manager's Valuation
Bills payable (as per back)		
Account payable (as per back)	1,151.00	10
Due to Imperial Bank of Canada	14,550.75	
Taxes	635.00	
Total Floating Liabilities	16,336.75	
Mortgages as per Statement	16,670.00	
Total Liabilities	33,006.75	
NET WORTH	70,936.25	
Total	103,943.00	

TO IMPERIAL BANK OF CANADA.

For the purpose of procuring credit from time to time, borrowing money and obtaining discounts from the IMPERIAL BANK OF CANADA.....declare the above to be an accurate and true statement of my financial condition at the above date, understanding that the bank in granting my credit relies upon the accuracy of this statement.

“J. W. McELROY.”

(If partnership, all partners to sign.)

STATEMENT OF REAL ESTATE
(Omit Cents)

Location of Property	Value	Mortgaged For	Insured For	Assessed At	Manager's Valuation
Sec. 22-24-28, W. 4th M.	28,850	13,500			
Sec. 23-24-28, W. 4th M.	26,500	12,847	2nd Mortgage 8,500		Kinneburgh mtgs. includes Int. to date.
W. ½ 15-24-28, W. 4th M.	16,000				
Mun. of Shepard	71,350				
W. ½ 1-33-26, W. 4th M. (Trochu)	6,400	1,750	Sold in 1928.		
Lots 13 and E. ½ Lot 12, Blk. 55, Plan A., Sec. 5	2,000		Rented for 12 a month.		
Lots 3 and 4, Blk. 33, Plan A-1, Sec. 16	4,000	2,073	Rented for 30 a month.		
Total	\$83,750	\$16,670	\$	\$	\$

Bills Payable, Accounts Payable and Other Liabilities to be detailed hereon. Particulars of Obligations as Endorser, Guarantor or otherwise on account of Companies, Firms or Individuals.

Name	Amount	Name	Amount
Revelstoke Lbr. Co.	51		50
A. P. Grain Co.	266		
Beaver Oil	224		
Allison	300		
Palmer, Geo.	59		50
Marshall, A.	35		
Ontario Laundry	40		
Jacques	100		
Scott, Tom	75		

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Exhibits.
Ex. 74.
Statement of
Liabilities
and Assets,
J. W. McElroy,
January 10,
1927.

—continued

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Exhibit 15.

(Plaintiff's Exhibit)

Letter, Asst. General Manager to Head Office.

Exhibits.
Ex. 15.
Letter,
Assistant
General
Manager to
Head Office,
December 20,
1927.

COPY FOR HEAD OFFICE

December 20th, 1927.

Calgary

J. W. McElroy - \$16,018.

I am in receipt of copy of your letter to the General Manager of December 15th. This is an application for an extension of credit and should have been accompanied by the usual application slips. I am very much concerned however as to whether McElroy will get much out of his wheat. Is it by any chance in stack or is it standing out in the fields in stook? Another point that is raised is that McElroy's letter says he bought some May wheat. As he has not sold his own does this not amount to a straight gamble, and have you any idea how much he bought, and at what price, and what margin he put up, and where the money came from. Apparently his remark did not impress you at all, but it may be a very serious matter, and I want you to get at the situation at once. 10

Yours truly,

Ass't. General Manager. 20

HTJ/O

Exhibit 16.

(Plaintiff's Exhibit)

Letter, Asst. General Manager to Western Superintendent.

Exhibits.
Ex. 16.
Letter,
Assistant
General
Manager to
Western
Superintend-
ent, November
23, 1928.

(A. E. Phipps

Nov. 26)

November 23, 1928.

The Western Superintendent,
Winnipeg, Man.

Dear Sir:

J. W. McElroy - \$15,373. 30

Re: Calgary Branch -

I am not satisfied with the absence of information regarding this account. You will note that although Mr. McElroy owes us a large amount of money, also large amount on the Kinneburgh mortgage, we have not any report on his crop or his payments, and the suggestion that

he is going to place a mortgage and pay us off is vague and appears to be drifting. I am afraid the first thing we know we will find out that his crop is all gone, and that he cannot, or will not, get the mortgage loan. Would you please see if you cannot get an up-to-date report from Mr. Weaver.

Yours truly,
Assistant General Manager.

HTJ/O

*In the
Supreme Court
of Alberta*
—
Exhibits.
Ex. 16.
Letter,
Assistant
General
Manager to
Western
Superintend-
ent, November
23, 1928.

Exhibit 17.

(Plaintiff's Exhibit)

Letter, Western Superintendent to General Manager.

10

Head Office,
Toronto.

IMPERIAL BANK OF CANADA
Office of the Western Superintendent.

Winnipeg, Man.,
December 4th, 1928.

The General Manager,
Toronto.

—continued
—
Exhibits.
Ex. 17.
Letter,
Western
Superintendent
to General
Manager,
December 4,
1928.

20 Dear Sir:

Calgary Branch - J. W. McElroy, \$15,464.

You will have received copy of Calgary letter of November 29th.

If Mr. McElroy can raise \$13,000 by way of mortgage loan on Section 22-24-28 W 4th 577 acres and W. 1/2 15-24-28 W 4th 320 acres against which we have a first mortgage which with the proceeds of his crop would be sufficient to repay us in full, I recommend that he be told to make the necessary application as otherwise my fear is repayment of the loan will be slow.

30 As regards the Kinneburgh mortgage to the Bank I am making no recommendation as this is purely a Head Office matter.

I will be glad to have your views regarding the placing of a mortgage to retire the direct debt at Calgary.

Yours truly,
"G. D. RITCHIE,"
Western Superintendent.

GDR/D

Stamped: A.G.M., Supt. of Behs., Gen'l Sup'r Supervisor, Legal Dept.,
Staff Dept.

Also Stamped: RECEIVED Dec. 6, 1928,
General Manager Imperial Bank.

40

*In the
Supreme Court
of Alberta*

Exhibit 18.

(Plaintiff's Exhibit)

Letter, Western Superintendent to Calgary Branch.

OFFICE OF THE ASSISTANT GENERAL MANAGER
Winnipeg

Exhibits.
Ex. 18.
Letter,
Western
Superintend-
ent to Calgary
Branch,
December 11,
1928.

COPY FOR HEAD OFFICE

December 11, 1928.

(Stamped) Received Dec. 13, 1928

Imperial Bank of Canada.
C. R. Fitch,
Calgary.

10

J. W. McElroy \$15,464.

Referring to your letter of November 29th. I have again heard from Head Office and cannot do better than quote their letter of the 8th inst., as follows:

“Our feeling is that if Mr. McElroy can raise a first mortgage of \$13,000 on his land, and from that source and his crop pay us off in full, we would like to have him do so, and it will be in order for you to advise Mr. Weaver accordingly, but at the same time please bear in mind the fact that McElroy’s advances will have to be held to a very low figure in future, as in the event of a crop failure he would not have the land to fall back on.” 20

“We would also be in favour of allowing him to place a first mortgage on the Kinneburgh farm for \$8,000 and give us a second mortgage for the balance of our claim, approximately \$6,500 on terms which would provide for payment of our mortgage in advance of the first mortgage, and we would also have no objection to his transferring the Kinneburgh farm to his son, but we would still require to hold J. W. McElroy’s covenant on our second mortgage. Would you please instruct Mr. Weaver to see if he can carry matters through on this basis.” 30

Please govern yourself accordingly.

Yours truly,

Y/EG

Western Superintendent.

Exhibit 19.

(Plaintiff's Exhibit)

Letter, A. H. Weaver to General Manager.

IMPERIAL BANK OF CANADA

Calgary, Alta.

*In the
Supreme Court
of Alberta*—
Exhibits.
Ex. 19.
Letter, A. H.
Weaver to
General
Manager,
January 3,
1929.

January 3rd, 1929.

Stamped: A.G.M., Supt. of Bchs., Gen'l Sup'r Supervisor, Legal Dept.,
Staff Dept.

Imperial Bank of Canada

10 Acknowledged Jan. 8, 1929
No. 1
Asst. General Manager.The General Manager,
Toronto, Ont.

Dear Sir:

I am in receipt of your No. 15 of December 26th,
Re J. W. McElroy, \$5,289.20 with enclosures as stated, and note your advices. In my letter of Decem-
ber 21st I stated that there was about \$600 needed to pay taxes, but I did
not know, and seemingly Mr. McElroy had forgotten, that he owed the
Municipality \$2,320, hail insurance premiums, which had to be paid be-
fore the proceeds of the mortgage would be paid over, so we paid the
taxes and hail insurance premiums, amounting to \$2,922, and received a
cheque from the mortgage company for \$13,400, which reduced the liabil-
ity to \$5,289.Mr. McElroy is still trying to negotiate a sale of the Kinneburgh
place, and if the sale does not go through he will then give me particulars
of the mortgage which he proposes to place on the property.

Yours truly,

"A. H. WEAVER,"
Manager.

30 AHW/L

Exhibit 20.

(Plaintiff's Exhibit)

Letter, Asst. General Manager to Calgary Branch.*In the
Supreme Court
of Alberta*Exhibits.
Ex. 20.Letter, Asst.
General
Manager to
Calgary
Branch,
January 8,
1929.C. R. Fitch,
Calgary.

January 8, 1929.

Letter of Jan. 3rd.

J. W. McElroy - \$5,289.

I note your advices, but what you do not tell us is how Mr. McElroy is going to pay the \$5,289. Has he got sufficient money coming from sale of grain and cattle to provide for it?

10

Yours truly,

HTJ/O

Ass't. General Manager.

Exhibit 21.

(Plaintiff's Exhibit)

Letter, A. H. Weaver to General Manager.Exhibits.
Ex. 21.
Letter, A. H.
Weaver to
General
Manager,
January 15,
1929.

Received: Jan. 19, 1929.

IMPERIAL BANK OF CANADA

Calgary, Alta.

The General Manager,
Toronto, Ont.

January 15th, 1929.

A.G.M.
Supt. of Behs.
Gen'l Sup'r
Supervisor
Legal Dept.
Staff Dept.

20

Dear Sir:

I am in receipt of your No. 18 of January 8th,

Re J. W. McElroy - \$5,388.

Mr. McElroy has not sufficient grain and cattle to pay the balance owing us, but he has made up his mind to sell out, and is at present negotiating with Mr. Herron, who has made an offer for the Kinneburgh section and some other lands.

30

Yours truly,

"A. H. WEAVER,"

Manager.

AHW/L

Exhibit 68.

(Plaintiff's Exhibit)

Power of Attorney, M. V. Begley to J. W. McElroy.*In the
Supreme Court
of Alberta*—
Exhibits.
Ex. 68.Power of
Attorney,
M. V. Begley
to J. W.
McElroy,
January 28,
1929.

KNOW ALL MEN BY THESE PRESENTS

that I, MARY VICTORIA BEGLEY, of the City of Calgary in the Province of Alberta, Widow,

for divers causes and considerations, me thereunto moving HAVE nominated, constituted and appointed, and by these presents DO NOMINATE, CONSTITUTE and APPOINT JAMES WESLEY McELROY, of the
 10 City of Calgary, in the Province of Alberta, Farmer, my true and lawful attorney, for me and in my name and on my behalf and for my sole and exclusive use and benefit to demand, recover and receive from all and every or any person or persons whomsoever all and every sum or sums of money, goods, chattels, effects and things, whatsoever which now is or are, or which shall or may hereafter appear to be due, owing payable or belonging to me, whether for rent or arrears of rent or otherwise in respect of my real estate or for the principal money and interest now or hereafter to become payable to me upon or in respect of any Mortgage or other Security, or for the interests or dividends to accrue or become
 20 payable to me for or in respect of any shares, stock or interest which I may now or hereafter hold in any Joint Stock or Incorporated Company or Companies, or for any moneys or securities for money which are now or hereafter may be due or owing or belonging to me upon any Bond, Note, Bill or Bills of Exchange, balance of Account Current, consignment contract, degree, judgment, order or execution, or upon any other account. ALSO to examine, state, settle, liquidate and adjust all or any account or accounts, depending between me and any person or persons whomsoever. And to sign, draw, make or endorse my name to any Cheque or Cheques or orders for the payment of money, Bill or Bills of Exchange, or Note
 30 or Notes of Hand, in which I may be interested or concerned, which shall be requisite. AND also in my name to draw upon any Bank or Banks, Individual or Individuals for any sum or sums of money that is or are or may be to my credit or which I may be entitled to receive, and the same to deposit in any Bank or other place, and again at pleasure to draw for from time to times as I could do. AND upon the recovery or receipt of all and every of such sum or sums of money, goods, chattels, effects or things due, owing, payable or belonging to me for me and in my name and as my act and deed to sign, execute and deliver such good and sufficient receipts, releases and acquittances, conveyances, surrenders, assignments, memorials or other good and effectual discharges as may be
 40 requisite.

ALSO in case of neglect, refusal or delay on the part of any person or persons to make and render just, true and full account, payment, delivery

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 68.
Power of
Attorney,
M. V. Begley
to J. W.
McElroy,
January 28,
1929.

and satisfaction in the premises, him, them or any of them thereunto to compel and for that purpose for me and in my name to make such claims and demands, arrests, seizures, levies, attachments, distraints, sequestrations, or to commence, institute, sue and prosecute to judgment and execution such actions, ejections and suits at law or in equity as my said attorney or attorneys shall think fit; ALSO to appear before all or any judges, magistrates, or other officers of the Court of Law or Equity, and then and there to sue, plead, answer, defend and reply in all matters and causes concerning the premises.

—continued AND ALSO to exercise and execute all Powers of Sale or Foreclosure, 10
and all other powers and authorities vested in me by any mortgage or mortgages belong to me as mortgagee.

AND ALSO in case of any difference or dispute with any person or persons concerning any of the matters aforesaid, or any other matters that may arise in connection therewith, to submit any such differences or disputes to arbitration or umpirage in such manner as my said attorney or attorneys shall see fit; AND to compound, compromise and accept part in satisfaction for the payment of the whole of any debt or sum of money payable to me or to grant an extension of time for the payment of the same, either with or without taking security and otherwise to act in respect of the same as to my said attorney or attorneys shall appear most 20
expedient.

AND ALSO for me and in my name or otherwise on my behalf to take possession of and to lease, let, set, manage and improve my real estate lands, messuages, tenements and hereditaments whatsoever and wheresoever situated, and from time to time to appoint any agent or agents, servant or servants, to assist him or them in managing the same, and to displace or remove such agents or servants, and appoint others, using therein the same power and discretion as I might do if personally present. 30
AND ALSO as and when my said attorney or attorneys shall think fit to sell and absolutely dispose of or mortgage and hypothecate said real estate, land and hereditaments, and also such shares, stocks, bonds, mortgages, and other securities for money as are hereinbefore mentioned, either together or in parcels, for such price or prices, and by public auction or private sale or contract as to my said attorney or attorneys shall seem seasonable or expedient; AND to grant, remise, release, convey, confirm, assign, transfer and make over the same respectively to the purchaser or purchasers thereof; with power to give credit for the whole or any part of the purchase money thereof. AND to permit the same to remain unpaid for whatever time and upon whatever security real and 40
personal, either comprehending the purchased property or not, as my said attorney or attorneys shall think safe and proper.

AND FURTHER, for me and in my name and as my act and deed to sign, seal, execute, deliver and acknowledge all such assurances, deeds, covenants, indentures, agreements, mortgages, releases and satisfaction of

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 68.

Power of
Attorney,
M. V. Begley
to J. W.
McElroy,
January 28,
1929.

—continued

mortgage and other instruments in writing, of whatever kind or nature, and generally to deal in and with goods, wares and merchandise, choses in actions and other property in possession or action, and to make, do and transact, all and every kind of business of what nature or kind soever as shall be required, and as my said attorney or attorneys shall see fit, for all or any of the purchases aforesaid; AND to sign and give receipts and discharges, for all or any of the sum or sums of money which shall come into his or their hands by virtue of the powers herein contained, which receipts, releases or discharges, whether given in my name or in
10 that of my said attorney or attorneys, shall exempt the person or persons paying such sum or sums of money from all responsibility of seeing to the application thereof. AND ALSO for me and in my name or otherwise, or on my behalf, to enter into any agreement or arrangements with every or any person to whom I shall be indebted touching the payment or satisfaction of his demand, or any part thereof; AND generally to act in relation to my estate and effects, real and personal, as fully and effectually, in all respects as I could do if personally present.

AND HEREBY I GRANT FULL POWER to my said attorney or attorneys to substitute and appoint one or more attorneys under him or
20 them with the same or more limited powers, and such substitute or substitutes at pleasure to remove and others to appoint and I the said MARY VICTORIA BEGLEY hereby agreeing and covenanting for my heirs, executors and administrators to allow, ratify and confirm whatsoever my said attorney or attorneys or his or their substitute or substitutes shall do or cause to be done in the premises by virtue of these Presents, including in such confirmation whatsoever shall be done between the time of my decease or of the revocation of these Presents, and the time of such decease or revocation becoming known to said attorney or attorneys, or such substitute or substitutes.

30 AS WITNESS my hand and seal this 28th day of January in the year of our Lord one thousand nine hundred and twenty-nine.

SIGNED, SEALED and DELIVERED IN THE PRESENCE OF "John W. Moyer"	}	"M. Victoria Begley" (SEAL)
---	---	--------------------------------

CANADA PROVINCE OF ALBERTA To Wit:	}	I, John Wray Moyer, of the City of Calgary, in the Province of Alberta, Barrister-at-Law, make oath and say:
--	---	--

40 1. That I was personally present and did see Mary Victoria Begley named in the within instrument, who is personally known to me to be the person named therein, duly, sign, seal and execute the same for the purposes named therein.

2. That the same was executed at the City of Calgary in the Province of Alberta, Canada, and that I am the subscribing witness thereto.

*In the
Supreme Court
of Alberta*

3. That I know the said Mary Victoria Begley and she is in my belief of the full age of twenty-one years.

Exhibits.
Ex. 68.
Power of
Attorney,
M. V. Begley
to J. W.
McElroy,
January 28,
1929.

SWORN at the City of Calgary, in the Province of Alberta, this 29th day of January, A.D. 1929.

Before me

“J. W. MOYER”

“W. K. WEBB,”

A Commissioner for Oaths in and for the Province of Alberta.

—continued

Exhibit 25.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

10

Spokane, Jan. 30th, 1929.

My dear Friend:

I forgot to tell you of a very stupid thing I did that day before leaving Calgary or not only one but many & not only myself but Zetta for I told her not to let me forget & to watch me that I wouldn't do any thing stupid & I did many & the first one was I forgot to pay Ewart for helping before the sale but you can do that for me please. But the most stupid thing of all was I expected fifty dollars from Frank for two granaries which I had no business to do without asking you if that was enough which I dont think it was as soon as I had time to think over it I said to Zetta I shouldn't have done that, but I was so upset that day I really didn't know what I was doing & he just took advantage of me the Assistant Manager saw through it all, I am sure for he kept watching "him" & then when he got me alone he wanted to know if he wasn't working for himself but the michief was done & I hope you will not be provoked with me.

We arrived safe in Spokane Tuesday night three hrs late so much snow & it is not cold but still snowing I think they said it was ten above to-day but it has been Twenty below for two days before I hope your cold is all well before this & that you are enjoying the best of health which we are all doing in Spokane at present. Jennie has the greatest appetite eating all the time & she was wandering to-day when you would be in Spokane but I told her you would let us know all the family wish to be remembered to you. From your friend, M. V. Begley.

30

Exhibit 26.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.*In the
Supreme Court
of Alberta*Exhibits.
Ex. 26.Letter,
M. V. Begley
to J. W.
McElroy,
February 8,
1929.

Dear Friend:

Just received your letter and was sure glad to get it & to find out that some one remembered us as yours was the first word we have had from Calgary since we left I guess they were all glad to see the last of us. Oh well you cant blame them & we should worry. Now about Mr. Cary I am sure sorry I made just a blunder but I honestly hardly knew what I was doing & Sister says that she only hoped that you would jail me for doing such a thing, for of course it was the two new granarys he spoke about & I deserved a good swift kick & I really dont know what to do however I think I will write to him & tell him I had no right to sell them & ask him to give up the note & if he dont do it why just let him have them & if he should be willing I will tell him to come to you for his fifty bucks but I dont think for a minute he will when he would do such a thing. We are having another real cold spell sixteen below this morning but it is that much above just now & Jennie & I are both gaining every day & Jennie has her red cheeks back once more & she started to school on Monday & likes it fine so that means that we will not go any further South this trip.

There was a lady telling my fortune yesterday & she told me I was trying to sell some property but she says it will not be sold until the first of April but it is in your hands to do as you think best they are waiting for me to go out to Ayers for dinner so I will haft to hurry & you will haft to excuse scribbling.

Yours sincerely,

M. V. BEGLEY.

Exhibit 22.

(Plaintiff's Exhibit)

Letter, Asst. General Manager to the Manager, Calgary.

February 25th, 1929.

C. R. Fitch,
The Manager,
Calgary.
Dear Sir:

Re: J. W. McElroy - \$6,604.

We have received your letter of the 16th inst., enclosing duplicate of Mortgage from the above mentioned party to Albert Edmund Phipps and

Exhibits.
Ex. 22.
Letter, Asst.
General
Manager to
the Manager,
Calgary,
February 25,
1929.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 22.

Letter, Asst.
General
Manager to
the Manager,
Calgary,
February 25,
1929.

—continued

duplicate of Mortgage from the above mentioned party to the Bank, both of which are returned herewith along with a Partial Discharge of the Bank's Mortgage in so far as it affects the Kinneburgh land, duly executed on behalf of the Bank. We are also enclosing herewith a new Mortgage from McElroy to Mr. Phipps covering this land and a new Mortgage from McElroy to the Bank covering the same property. We understand that there will be approximately \$8,400 from the proceeds of the new first Mortgage to apply against the Kinneburgh Mortgage. We presume you will have the respective Mortgages properly executed and will proceed to register same. We trust that the deal with Herron will go through and that McElroy's indebtedness to the Bank will be paid in full. 10

Yours truly,

JDC:VT

Assistant General Manager.

Exhibit 27.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, Feb. 26th, 1929.

Exhibits.
Ex. 27.
Letter,
M. V. Begley
to J. W.
McElroy,
February 26,
1929.

Dear Mr. McElroy:

No use of me trying to tell you how sorry I am for putting you to so much trouble over my Dear friends (the Cary's) however that is all 20 over & I am through with them, I leave it entirely to you to do as you please. I received a very loving letter from him which I sent to Mr. Moyer & no doubt he has showed it to you & also I sent him a copy of the one I sent back & he will be very dense if he cant see that I am through with them, for honestly that day I left I was as near crazy I didn't know what I was doing, & then Cary bothered me so much about the land & I can see it all now what he was at & it makes me so mad now to think I took any money from him for anything) he should have been made go to Mr. Moyers office after it was all over the assistant Manager of the Bank said to me do you think that man can be trusted & I see now that he 30 could see through him, when I couldn't; I just had to much on my mind that day for I really cant remember anything. I just called Zetta up to see if she could & she cant remember any (torn) than I do myself & all I remember he had (torn) thing on a paper & got me to sign it which (torn) and it makes me feel like a fool what ever will Mr. Moyer think of me for I sure was stupid, & I had no one to advise or help all I heard was quarreling & gangling with the Fry's & Tarrants & that was what got my head acking so bad along with leaving Dear old Calgary.

Now about what he charged me for his work as near as I can remember it was eighty seven dollars I think & Zetta things that was it, & I deposited the money in the Bank what he gave me all except the fifty for the Grainerie, that was later he gave me that & he had the fifty in his pocket waiting for a sucker & he found what he was looking for & the money he gave me was put in to my account, did they haft to change it to the estate if not there should be lots more than Twenty Eight dollars. It was on the 28th of Jan I left & there was 1609.76 in my book & I gave Charlie Carlyle a check for one hundred & I gave Zetta one for
 10 \$115 & I drew five hundred myself in Travellers checks should I send you my Bank book so you can see let me know if you want it or perhaps you understand it better than I do.)

As for money I will have plenty with me I hope but thank you for looking after me for I need some one at my heels, I have been getting Jennie a supply of clothes for summer & I also got a very nice new black Sport coat for myself & I also rented a Piano & have Jennie started at her music again & she is just fine the picture of health & every one tells me I am looking so much better I have been taking a tonic for my nerves ever since I came & I am sleeping so much better. Mrs Stubblefield has
 20 been pretty sick for the last two weeks so I have been quite busy helping in the Store & getting meals so I have had enough to do to keep me out of mischief.

Now I want you to go ahead & do what ever you think best dont wait to ask me if you get what you think is a good price or offer.

The ensurance people sent me the policy to sign but I didn't do it I sent it for Mr Moyer to tell me what to do as they said they were going to take 68 for roughage given & if you remember I said I thought his age was 67 but I was not sure so I sent it to get advise but I have learnt a lesson you see now I must go & get supper & let you have a rest, I hope
 30 (torn) siness is not going to keep you to busy (torn) cant come & see Sunny Spokane (torn) will be a welcome visitor by all of us.

Yours sincerely,

M. V. BEGLEY.

Exhibit 28.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, March 1st, 1929.

Dear Mr. McElroy:

I just love to bother you I can just hear you say I guess she has

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 27.

Letter,
M. V. Begley
to J. W.
McElroy,
February 26,
1929.

—continued

Exhibits.
Ex. 28.

Letter,
M. V. Begley
to J. W.
McElroy,
March 1,
1929.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 28.
Letter,
M. V. Begley
to J. W.
McElroy,
March 1,
1929.

nothing to do only bother me but I cant help it as others are bothering me & you seem to be the only one I can depend on.

I have had three letters from Bob's Sister asking me about that Trunk with Bob's clothes which I was to send her & each time I have written to Sadie asking her how Arthur sent them & how much it cost him & she never answers any & they have never been returned so she must have got all of them & I cant understand why she dont write.

--continued

It worries me for fear the trunk is lost either that or Arthur has never sent the Trunk he is very funny some times so I just thought I would write Sadie a note in this & if it wouldn't be to much trouble have you deliver it personally then I would know for sure that she got it? she has been demistrating coffee around in the stores & I believe she is at Eaton's now & then another thing I forgot to tell you about some rope that Ralph Cary had to tie the Trunks on his car I didn't see it but he came to me & said I have that piece of rope & the sale is over & I said you might as well keep it I didn't know what kind of a rope it was, but perhaps it was the one you missed out of the barn they were sure pretty cut & knew just how to work me. 10

Well we sure had a lovely visit with Mr & Mrs Spare but they will be telling you all about it. & they are both looking so much better for there holiday they were up to the house Thursday & on Friday I was with them all day we started the day out by going over to Zetta's for breakfast at ten then we spent the afternoon with friends from Huxley Alta ones we both were acquainted with, then in the evening we all went to a Supper dance at the silver grill then we all went up to Stubblefields for a short time, & they pulled out this morning at eight o'clock it made me feel blue to see them go but I might as well get used to those things, I think I forgot to tell you that Bob's brother Bill is very low they say he might last a few months & he might drop of any minute. he was not well all fall but he has been much worse ever since he heard about Bob. 30

Did you find a letter in your box for Mrs. MacDonald I lost her address & I promised to write & I thought you would re-address it please.

I have heard from two or three that you were married but seeing is believing & if you should be, you will haft to ask Mrs McElroy if she minds me writing to you once in a while Ha! Ha I think I must close & hoping you are all well.

Sincerely yours,

M. V. BEGLEY.

P.S.

When in the P. Office would you please ask them to send my mail to this address I gave it to them but it has all been returned to friends. 40

Exhibit 29.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, March 4, 1929.

Dear Mr. McElroy:

The mailman was just here & I got this letter from Jack Sandilam so I thought it best to send it to you & I am also writing one to him but I told him if he had a man for the place to go & see Mr Moyer if he didn't care to deal with you. (Is Cary at the bottom of this it sure sounds like
10 him I had a notion not to answer it but thought better of it.

The weather is just beautiful just now, Jennie has gone to school with swetter & bare headed.

Is it as nice there I hope it lasts here. I suppose you have seen the Spares we were sure glad to see them. I have been writing so often lately there dont seem to be anything to write about but we all hope that you & family are real well & that there will be nothing to prevent you from comming.

Sincerely yours,

M. V. BEGLEY.

*In the
Supreme Court
of Alberta*Exhibits.
Ex. 29.Letter,
M. V. Begley
to J. W.
McElroy,
March 4,
1929.

20

Exhibit 30.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, Mar. 11th, 1929.

Dear Friend:

Was glad to hear from you on Saturday & to hear that you are gradually getting rid of the property & I guess there will be no one more please than yourself when everything is settled up for you sure have been a busy man & I bet if I could only hear you, I could hear you say-
30 ing I am sorry she chose between to brothers, but then I know you are pretty good natured when treated right. I had a nice letter from Mrs MacDonald & she says you are having lovely weather it sure is lonely here & we have had several showers of rain, the grass will soon be getting green.

Thank you so much for taking that word to Arthur it sounds rather fishy dont you think so. they talked about you & Mr Moyer trying to get the best of the deal with me but I think as far as I can see everybody

Exhibits.
Ex. 30.Letter,
M. V. Begley
to J. W.
McElroy,
March 11,
1929.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 30.
Letter,
M. V. Begley
to J. W.
McElroy,
March 11,
1929.

else is doing the same it makes me cross to think of the Insurance people getting that sixty-eight dollars but it cant be helped. I bet Cary is running me down to all the neighbours over those Granaries, I will soon be as bad as you. Ha! Ha! there are some funny people in the world, & it dont worry me any more, I am just going with Jennie for her music lesson she has a splendid Tracher I like his method of teaching so well. I remain your friend

M. V. BEGLEY.

—continued

Exhibits.
Ex. 31.
Letter,
M. V. Begley
to J. W.
McElroy,
March 15,
1929.

Exhibit 31.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

10

Spokane, Mar. 15th, 1929.

Dear Friend:

I just received the check for the Insurance & as Mr. Moyer told me my best plan was to send it right back to you & have you put it to my credit but no doubt he has already told you, and as you have no business of your own to see to, I like to bother you and I want you to take at least enough of this money to pay your Train Car fair over to Spokane for I can never pay you I know for what you have done & fifty dollar will buy your ticket & birth & surely you can do that much, I have only had one little short note from Isobell & not a word from Sadie See how all my relations love me? When out of sight (but I have had some lovely letters from several others. 20

I am commencing to think it is quite true to keep your distance from your own relations. I heard you are having nice weather but I dont think it can be like this for it surely is swell like summer except in the evenings it is a little frosty.

Thanking you once more for all your trouble I remain your friend

M. V. BEGLEY.

Exhibit 32.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Sunday, 17th, 1929.

Dear Friend:

I guess you will think there is no sport about me, but believe me it was not my doings & if I could have gotten down Town alone, I should have sent the telegram & not let them know anything about it but this P.M. is the first I have been left alone they could see I wanted to, even
 10 Jennie kept saying go ahead and do it Mother but I know how they would laugh & keep it up on me if I lost so I gave up the idea & perhaps it is for the best but believe me when I make another move none of my relations are going to know much about my business & I do hope that you & Mr. Moyer strike it good so I can tell them about it for they all talk as if I hadn't a mind of my own but let me tell you if they would stick to what they said & told me to do at first they wouldn't keep me so upset But never mind I have not changed my mind if ever you should get a good chance or think it good go ahead & dont say a word until you get a chance to let me know by letter, are you stopping in Town or on the farm
 20 I suppose you will soon be getting busy. Sincerely yours

M. V. BEGLEY.

and thank you for your trouble

Exhibit 33.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, M. 25th, 1929.

Dear Mr. McElroy:

Well I haven't heard from any of you for a long time not since I sent the insurance & the Telegram I hope nothing is rong but I suppose
 30 I am just a little anxious

I had a long letter from Mrs Andrews to-day & Mr Andrews thinks we are in to big of a hurry to sell the farm he thinks another year things will be a much better price She said they had been talking to you have you done any thing about the last half. The rest of the family are all asleep so I am just writing a note for I sure feel worried about that Trunk I had a letter to-day from Bob's Sister & they have not got it yet,

*In the
Supreme Court
of Alberta*Exhibits.
Ex. 32.Letter,
M. V. Begley
to J. W.
McElroy,
Sunday 17,
1929.Exhibits.
Ex. 33.Letter,
M. V. Begley
to J. W.
McElroy,
March 25,
1929.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 33.

Letter,
M. V. Begley
to J. W.
McElroy,
March 25,
1929.

—continued

I dont believe it has ever been sent, I wouldn't have it lost for a good deal & there are so many things in it which the Sister could have made up for her boys this Winter I think Arthur has sure acted dirty & I suppose that is why Sadie has never written for I have not had a line from her since I came. I am sending you a piece of the letter so you can see she has never got the Trunk & she is so worried over it wouldn't Arthur have something to show that he had sent it the Cary's would have done better than that for they checked all my baggage & I got it all right I must say good night & hope to hear from your very soon.

Sincerely yours,

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M. V. BEGLEY.

Exhibit 34.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, Mar. 30th, 1929.

Dear Friend:

Your letter just came to day so thought I would answer at once. I sure do feel sorry to think you haft to go to so much trouble, it seems as though that neighbourhood cant leave you alone & in this case I know it was not you who told me to have Mr Moyer instead of Mr Shouldice while we were in the bank. I think there was something said about Mr Moyer & Mr Weaver told me he was all right but I never heard him mention Short or Ross, then if you remember we went down to Mr. Moyer's office & after meeting him I liked him very well & I didn't think I would have so very much business for any one, as I knew so little about business before my trouble but as near as I can remember we went home & I talked it over with my Sister & she thought Mr Moyer would do what was right by me & the next morning before I went back to Town your brother George & Mr Cary came in & they told me to keep away from both Mr Shouldice and Moyer & George told me who he would go to, So I took a stand right there & decided I would go back to Mr Moyer I know Bob always spoke highly of Mr Shouldice but I didn't think it made very much difference who did it & as you know the way I was feeling Just then I didn't seem to care very much what happened & if it hadn't been for you looking after the business the way you did I dont think there would have been very much left, & I dont think I know half what you have been doing.

I had a lovely letter from Mrs Spare on Wednesday & she told me that you had dropped in there one evening tired out & so worried looking after you sold the land, so you see you have some true friends out there.

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Exhibits.
Ex. 34.
Letter,
M. V. Begley
to J. W.
McElroy,
March 30,
1929.

You spoke about starting to seed, soon you must have much nicer weather than we used to have in the Spring it has been like Summer here up until Friday night we had quite a little Snow storm, but I think it has all gone again but quite a cool breeze yet, I hope that things will right them selves soon & that you will get a rest. I have never heard a word from the Fry's yet. Jennie & Sister & hubby wished to be remembered to you.

Yours friend

M. V. BEGLEY.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 34.

Letter,
M. V. Begley
to J. W.
McElroy,
March 30,
1929.

—continued

Exhibit 35.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 35.

Letter,
M. V. Begley
to J. W.
McElroy,
April 2,
1929.

10

Spokane, Apr. 2nd, 1929.

Dear Friend:

I am left all alone to-day to run the store & as I am not very busy though I would answer your always welcome letter it is hard on you to haft to write so many but then I dont think you mind when you know how glad we are to hear from you for you know I get pretty blue some times (now I dont want you to think I am worring over the business for
20 I am not, for I am sure you are doing the very best you can & as for selling the rest of the land you know more about it than I do. Mr. Andres seemed to think that land would come up well it might & it might not & you know just how I feel about it. I thought if I had it in money that I might get a chance to get it out in Bonds or first morages or something like that, then I would know exactly what I had to live on, dont you think that would be best for me But then you can tell me about that later. There was a car load left this apartment for Calgary monday morning they had been here for two weeks waiting for the roads to open up so they would be sure to get through. They had been down South all
30 Winter. Jennie & I were over to the Ayers last night for dinner & every thing was lovely Morten was out on the road & little Ray was up at his Grandmas so Norman & Zetta ran us home she was quite herself again with me & told me to come over again soon & she would help me to make a dress for Jennie as we have no sowing machine here. I gave Zetta one of the new ensemble suits about three weeks ago for coming over to help me it is quite pretty & she seemed very pleased over it; & I wanted to

*In the
Supreme Court
of Alberta*

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Exhibits.
Ex. 35.

Letter,
M. V. Begley
to J. W.
McElroy,
April 2,
1929.

get one for myself but was waiting for you to help pick it out, so as you were not coming until later I got one yesterday. If it was in Calgary I wouldn't dare to ask a man to go & help you pick out a dress but here it seems as though you can do anything & get away with it. I suppose you will be very busy now everybody seems to be on the land here, & all seemed well please because they have had so much moisture this Spring here comes the mail man, the family always wishes to be remembered & they tell me things to tell you but some times they dont stand repeating.

—continued

Yours sincerely,

M. V. BEGLEY.

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Exhibit 37.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, Apr. 12th, 1929.

Exhibits.
Ex. 37.
Letter,
M. V. Begley
to J. W.
McElroy,
April 12,
1929.

Dear Friend:

I was glad to hear from you & I do hope that Arthur has sent the trunk this time. I cant understand him & I have never had a word from them but we should worry Well since I wrote to you last I have been on the operating table four times that is the way I am spending my money, I had a boil or large pimple on my arm and one of the women in the apartment was kind & was putting poltices on for me & there was a little rust on the can & the doctor thought she must have got a little on the sore & if blood poison didn't start & in no time my whole arm pained me & turned black & the Dr said they just got me there in time but thank goodness it is doing fine & I only have one more trip to make to the Doctor & the soreness has nearly all gone it was a shame for I was sleeping so good & so many were telling me I looked ten years younger than when I came but now we have such nice weather I will soon pick up again. 20

I hear you have had quite a winter we have had two or three flurry's of snow lately but dont last long but you ought to hear the people kick they think it terrible weather. So Mr. Gunn has been looking at the place how I wish I could talk instead of writing & if I was only as fortunate as Zetta I could be talking to you for I passed the remark the other day that I wished you could step in & the whole family was here & she said I could soon bring him all I would haft to do would be write a letter to him & he would be here in a week she says you told her that you could never love any one since you met her & I said Zetta ought to be ashamed to say such a thing for you know Mr. McElroy is to much of a gentleman to say such a thing to any married woman, especially any one he had respect for, & then Morton spoke up before all of us & said Oh 30 40

well she & Norman have been living together for some time & they think I don't know what is going on but I am not blind. Norman hung his head & couldn't say a word but she got red & told him if he wanted to leave her he could as she had lots of men with money she could get; Norman told her to shut her mouth & she picked up the pudding sauce & fired it at him so you see what a lovely evening we had. Sister & her husband were disgusted but Sister says she knows you better than that. Zetta couldn't make her believe you would do any thing rong, I think myself that you had better leave married weoman alone what do you think.

*In the
Supreme Court
of Alberta*

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Exhibits.
Ex. 37.

Letter.
M. V. Begley
to J. W.
McElroy,
April 12,
1929.

—continued

That was why I was so blue the last time I wrote you but everything is all right again as far as I know & Norman told me he was going to sell his business out & was leaving Town I hope he does for I know she likes him best. I must go to bed it is eleven.

Yours sincerely,

M. V. BEGLEY.

Exhibit 38.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 38.

Letter,
M. V. Begley
to J. W.
McElroy,
April 27,
1929

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Spokane, April 27th, 1929.

Dear Friend:

Jennie is out to a neighbours so I am going to try & answer your two letters which we are always glad to get. So we are realy homeless at last & I am sure you will not be sorry as you have had some running around to do & I am sure you will be glad when everything it settled up & get rid of some your orphants.

I have signed the check & I leave the rest to you as you know more about what you are going than I do & you know already that I trust you & when I see you I will understand every thing so much better.

30 I had a letter to-day from Bob's sister & she has not got the trunk yet & she has given up looking I wonder what the idea was in not shipping the trunk I cant understand it myself & Sadie has never written me a line after all I gave them it shows the more you do for a relative the more they expect but the least said the best it is I guess.

We are having very hot weather now & everything is looking lovely it does look so good to see the Trees in blossom & the lawn green for sometime time. I was out in the Country today about Twenty five miles & the fall Wheat is looking good. I surely miss our car I had a letter

*In the
Supreme Court
of Alberta*

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Exhibits.
Ex. 38.

Letter,
M. V. Begley
to J. W.
McElroy,
April 27,
1929

—continued

from Cecil to-day & he said he had sent the rest of the money for the car & Norman was to pay it into the Bank for him. Norman & Edith are doing well dont you think four of a family & the last was a boy 3 girl they have named the boy Victor Herbert Norman must be doing well as he gave her a new Pontiac for herself Cecil said that he & Olive intend comming up for the car around the 10th of June & leaving for home about the 19th & wanted us to meet them in Calgary & go that far with them but we dont expect to be in Calgary befor the 18th or 19th as school dont close until the 15th of June & then my sister Mrs Ayers is comming from Calf to go East with us & I think I will go by C.N.R. so I can stop of two or three days with that Sister of Bob's she wants me to. 10

Aunt Kate was asking Jennie to-day where she wanted to live when we really settle down & she thought for a while & she said Calgary. She has just came in & she wants to know how her dog Nuncy is but you can tell her when you see her. We expect to have our dinner out in one of the parks to-morrow we go every Sunday some place just to be in the fresh air was it Mr. Gunn who bought our place they are nice people, although I was never at there place I have met them out several times.

Norman Ayers has sold out his Garage business & is leaving Spokane I think & I am glad for I feel sorry for Morton as he is my favorite of the two must go to bed as the rest is there already & I hope that every-thing is for the best. 20

Yours sincerely,

M. V. BEGLEY.

P.S. I will not close this as Sister said she was going to write you but she probably joking she is sure a tease.

Exhibit 39.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 39.
Letter,
M. V. Begley
to J. W.
McElroy,
May 18, 1929.

Spokane, May 18th, 1929. 30

Dear Friend:

Saturday morning & work all done up & nothing special to do this morning so thought I would drop you a few lines although there dont seem to be very much news, my sister Mrs Ayers came from Calf. a week ago & intends going through to Toronto shortly for the summer we expect to meet down there in July, now you wanted to know when we were leaving here for Calgary. I dont exactly know as Jennie has her school exams & music in June but I think it will it will be about the seventeenth we can get away. I would like to be in Calgary for the Twenty first if possible & I think we can & I dont want to stop there any longer than necessary as I would like to see Bob's brother if possible & he is still 40

very poorly & he wrote a short note & said he would like to see Jennie & I once more it sure seems hard he is the last boy in the family and his sister in Sask is worrying so over that trunk I cant see why Arthur is acting so. I think I gave them enough the folks here presuaide me to go to a Spiritulas & see what he would say & he told me I had lost a trunk of things I valued very much & he said it was taken of a dray & put into a basement he said it has never gone to the Depot at al & he also said there would be lots of lies told about it but he said I would get it after I had hot words with a friend so we will live in hopes. I guess I shouldn't

10 have left so soon But I was so sick & I couldn't think as my head was so bad but it cant be helped & when I come I will see what can be done & I think I had better take my bedding & linen away from there. that is if I have any left & I do hope I can see you soon & have a talk with you & I dont want to hurt your feelings but Sister thinks as I do that it is comming to you to take enough from the Estate to pay all your expenses as it will be much easier here than in Calgary to talk over every thing as you know I will haft to be very careful what I do back there as I have had enough said to me all ready & we will not say a word to any one if you will only do it. I am glad you had a nice time at your party

20 but dont you think you kept pretty late hours that is worse than they do here dances & everything close at Twelve here I have gone to look on a few times lately & we see some funny things, I had quite a experience myself one night but I came out all right but will be more careful the next time but we can live & learn I may tell you all about it some day it would be nothing new to you no doubt Ha Ha, but you are a man had letter from Mrs McDonald & she said I will not tell you about things at the Lake as Mr McElroy no doubt has told you & Mrs Timmins said the same so I have herd nothing had a letter from Ella Scott & they have a new baby girl must go & help get lunch wish you were here to help eat it.

Sincerely yours,

M. V. BEGLEY.

*In the
Supreme Court
of Alberta*

Exhibits.

Ex. 39.

Letter,
M. V. Begley
to J. W.
McElroy,
May 18, 1929.

—continued

Exhibit 40.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, June 5th, 1929.

*In the
Supreme Court
of Alberta*Exhibits.
Ex. 40.Letter,
M. V. Begley
to J. W.
McElroy,
June 5, 1929.

Dear Friend:

Have been looking for a letter for a few days you see you have spoiled me, I usually get your letters on Wednesday so I will not mail this until the mailman comes. Mr. & Mrs. Stubblefield are away this week and I am Chief cook & bottle washer but I expect my sister Mrs Ayers to-day to stop the rest of the week with me & help out, yesterday 10 I was alone & I was all in last night, was the day for the Travellers & the goods had to be unpacked marked & put on the shelves a new experience for me but I am getting on just fine I think.

Well the mail man just came & brought your letter which I was very glad to get as I haven't forgotten dear old Calgary. I like Spokane very much but yet I still am very fond of the Canadian Flag & I dont like the ways of the people in this place, that is the majority of them Well if nothing happens I expect to leave Spokane on the morning of the eighteenth I am sure the Stubblefields will be disappointed not seeing you although Will has not met you he veels he knows you from the terrible 20 things we have all told him about you. Ha! Ha!

Jennie was so pleased to hear about her dog & she says I will sure haft to see him or her I mean.

I sure appreciate your invitation to visit you while in Calgary & nothing I would sooner do but you know the tongues around there & I will haft to be very careful, but if you are not to busy perhaps Mr & Mrs MacDonald or Mr & Mrs Spare if they are not away would take me as it is a long time since I have been to your place & do you know it seems like a year since I left & it will only be four & a half months. Spokane 30 is looking beautiful now. so many beautiful Trees & flowers & the Parks are beautiful we have our dinner in some one of them every Sunday & holidays Zetta & I are quite cool with each other I can never forgive her the things she has said about me I am sorry but it cant be helped & then to think I have got to go right back to Calgary & have a row with the Fry's over that Trunk & I will haft to moove everything from there basement it seems as though I have always got to have something to upset me but my sholders are broad & I have made up my mind not to worry.

It was a lucky thing for me that I have one good friend that one I can never forget this will be a funny letter as I haft to jump up every few minutes to wait on a customer & now it is about time to eat so I 40 must go & hope to see you soon.

Yours friend,

M. V. BEGLEY.

Exhibit 3.

(Plaintiff's Exhibit)

Cheque \$13,006.35 J. W. McElroy, Administrator, in Favour of Victoria Begley.

Depositors are requested to fill in Number of Account.

Calgary, Alta., June 21, 1929. No. 24-K.

IMPERIAL BANK OF CANADA

17/10

Savings Department
IMPERIAL BANK OF CANADA
Head Office: Toronto

10

Pay to: Victoria Begley or Bearer. \$13006.35/100
Thirteen thousand & 06 &35/Dollars
with interest.

Safety Deposit Boxes J. W. McELROY,
Administrator Estate of R. W. Begley.

Endorsement on Back: Victoria Begley.

Exhibit 4.

(Plaintiff's Exhibit)

Power of Attorney on Bank Form, M. V. Begley to J. W. McElroy.

20

Form No. 70—Individual.

KNOW ALL MEN BY THESE PRESENTS that I, Mary Victoria Begley, of the City of Calgary, in the Province of Alberta, have made and appointed and by these presents do make and appoint James Wesley McElroy of the City of Calgary in the Province of Alberta or any substitute appointed by him in writing, my true and lawful attorney to enter into, manage and carry out for me and in my name any and every financial transaction with the IMPERIAL BANK OF CANADA, and particularly, but not so as to restrict the generality of the foregoing, to make all arrangements for credits, discounts and advances and the carrying of my account with the said Bank, and to carry out the said arrangements, with power to vary, modify or rescind the same and to make new arrangements, and for me and in my name to draw and sign cheques, including those creating an overdraft, on the said Bank or any other Bank or banker, and receive the moneys thereon; to state and settle accounts; to endorse all cheques in which I am interested; to make and endorse in my name promissory notes; to draw, accept and endorse drafts and bills of exchange; to waive presentment, protest and notice of dishonor of negotiable instruments; to sign and endorse warehouse receipts;

30

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 3.
Cheque
\$13,006.35,
J. W. McElroy,
Administrator,
in favour of
Victoria
Begley,
June 21, 1929.

—continued

Exhibits.
Ex. 4.
Power of
Attorney on
Bank Form,
M. V. Begley
to J. W.
McElroy,
June 24, 1929.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 4.

Power of
Attorney on
Bank Form,
M. V. Begley
to J. W.
McElroy,
June 24, 1929.

—continued

to endorse bills of lading; to pledge securities and negotiable instruments; to assign mortgages, policies of insurance, choses in action and book accounts and all moneys payable in respect thereof; to transfer shares in any Company or Corporation; to mortgage lands and securities upon lands or chattels; to give and agree to give security upon goods, wares, merchandise and other products and things upon which a Bank may lawfully take security; and otherwise to pay or secure the payment to the IMPÉRIAL BANK OF CANADA of any and all sums of moneys for which I may be from time to time liable to the said Bank, whether directly or indirectly, with full power from time to time to make any agreement with reference to all or any of the said securities; to substitute other securities in the place of any securities relinquished by the Bank; to confirm all or any securities held by the Bank, and to release to the Bank any right of redeeming the same or any of them, or any other right with reference thereto; and generally for me to do and transact any business in my name with the said IMPÉRIAL BANK OF CANADA which I could transact in person, and in my name to bind me on any and all deeds, conveyances, assurances, covenants, contracts, assignments, transfers, agreements and guarantees in the same manner as I could do in person; I hereby ratifying whatever my said attorney shall do.

10

20

And I further covenant and agree with the said Bank, in consideration of the said Bank accepting the acts done under this power, that I will ratify and confirm all acts, deeds, conveyances, assurances, contracts, covenants, assignments, transfers, agreements, guarantees and other matters and things which my said attorney may make, do, sign, execute or enter into with the said Bank, and will repay all moneys my said attorney or any substitute may borrow or receive from the said Bank whilst acting or assuming to act under this power, and that without regard to whether the transaction in question is or is not within the scope of the authority given herein.

30

This power of attorney may be exercised in the names of my heirs, devisees, executors or administrators, and shall continue in force as well after as before my death, and shall be revocable only after written notice of revocation signed by me or my executors or administrators has been served upon the Manager of the said Bank at Calgary, Alberta, and has been acknowledged by him in writing.

And I do Declare that my said attorney shall have the power from time to time to appoint any substitute or substitutes for any or all of the purposes aforesaid, and every such substitution at pleasure to revoke by notice in writing served upon the Manager before mentioned.

40

IN WITNESS WHEREOF I have hereunto set my hand and seal this 24th day of June, A.D. 1929.

SIGNED, SEAL AND DELIVERED
in the Presence of
"JOHN W. MOYER."

} "M. V. BEGLEY."
(SEAL)

POWER OF ATTORNEY
Individual
Dated 24th day of June, 1929.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 4.
Power of
Attorney on
Bank Form,
M. V. Begley
to J. W.
McElroy,
June 24, 1929.

From
Victoria Begley
To
J. W. McElroy

—continued

WITH
IMPERIAL BANK OF CANADA

10

Exhibit 67.

(Plaintiff's Exhibit)

Letter, J. W. Moyer to M. V. Begley.

Exhibits.
Ex. 67.
Letter, J. W.
Moyer to
M. V. Begley,
June 25, 1929.

JOHN W. MOYER
Barrister and Solicitor
Notary

Telephone M3366
John W. Moyer
Walter K. Webb

My File 2456
Your File.....

1-2-3-4 Union Bank Building,
CALGARY,
Canada

25th June, 1929.

20 Mrs. M. V. Begley,
Calgary, Alberta.

Dear Madam:

I beg to advise you that I am holding for you the following documents:

1. Original agreement for sale dated the 22nd day of April 1929 between J. W. McElroy, Administrator of the estate of R. W. Begley, as Vendor, and George A. Murphy as Purchaser in respect of W. 1/2 Section 27, Township 24, Range 29, West of the 4th Meridian.
2. Duplicate Certificate of Title to the above property in your name.
- 30 3. Assignment dated the 24th day of June 1929 of the said agreement dated the 22nd day of April 1929 in your favor.
4. Original Agreement for Sale dated the 31st day of January 1929 between J. W. McElroy, Administrator of the estate of R. W. Begley, as Vendor, and Willis D. McLennan as Purchaser in respect of the most Westerly 20 feet of Lots 22 and the most Easterly 10 feet of Lot 23 in Block "L," Plan 2112 A.C.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 67.
Letter, J. W.
Moyer to
M. V. Begley,
June 25, 1929.

—continued

5. Assignment dated the 24th day of June 1929 of said agreement dated the 31st day of January 1929 in your favor.

6. Duplicate Certificate of Title to the above property in your name.

I am keeping these documents in my safe as requested by you and they will be available to you or your attorney at any time.

Yours truly,

JOHN W. MOYER,
per J.W.M.

JWM:N.

Exhibits.
Ex. 1.
Order dis-
charging Ad-
ministrator,
June 27, 1929.

Exhibit 1.

10

(Plaintiff's Exhibit)

Order Discharging Administrator.

Entered this 27th day of June, 1929.

LAURENCE J. CLARKE,

Clerk of District Court.

IN THE DISTRICT COURT OF THE DISTRICT OF CALGARY
IN THE MATTER OF the Estate of Robert Wilson
Begley, late of the City of Calgary, in the Province
of Alberta, Farmer, Deceased.

BEFORE HIS HONOUR
JUDGE McNEILL
IN CHAMBERS

} Court House, Calgary, Alberta,
Thursday, the 27th day of June,
A.D. 1929.

20

ORDER

UPON THE APPLICATION of James Wesley McElroy, the Ad-
ministrator with Will annexed of the Estate of Robert Wilson Begley,
late of the City of Calgary, in the Province of Alberta, Farmer, Deceased;
UPON READING the Affidavit of the said James Wesley McElroy and
the exhibits thereto, IT IS ORDERED:

1. THAT the said Administrator be discharged as and from the date
hereof.

2. THAT the bond given by the Canadian Indemnity Company in this
estate be and the same is hereby discharged.

30

“EDW. P. McNEILL,”
J.D.C.

Exhibit 41.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.*In the
Supreme Court
of Alberta*—
Exhibits.
Ex. 41.Letter,
M. V. Begley
to J. W.
McElroy.
June 27, 1929.

Brandon, June 27/29.

Dear Mr. McElroy:

You see I am doing just as you said to have a letter for you for Saturday night if all is true which was told me the day I left you will sure be delighted to hear from me although it has upset me more than anything yet, it is hard for me to believe that you could believe any such things of me. I probably have been to forward with you & said things to you in my letters but it was done in a joke for I thought I had known you so long that I could make a little free with you if any one & when I chose. You to look after the business I thought I could trust you more than any one on Earth but as for marrying you I never nor cant think you would think any thing so unkind as yet marrying has been the least of my thoughts of course we never know what we might do & as I was so lonesome & nervous I think I have done & said things I shouldn't have & what I want you to do is to go to Mr and Mrs MacDonald & ask them if it was Bob's wish that you look after the business & at first you seemed quite ready to do it & in fact I thought you seemed pleased I chose you or I should never have asked you & it is very hard for me to believe any thing else of you but I would have given a great deal if I could only have seen you for five minutes as I know you always take the wrong meanings from my letters but it is worrying me so I couldn't keep from asking you if you really believed such a thing of me I would sooner die than have you thing such a thought so please write soon & tell me the very truth for I cant think after I trusted you the way I did that you could treat me so the writing on the letter looked like Zetta's writing & in it it said you see I told you I would double cross you & one day she told me those same words & then D. J. Gunn was at the Depo & helped me on the train & he told me that they had heard that Lucy Watts the niece of Bobs had been asking the advice of a lawyer in Smith Falls about breaking the Will & he advised me not to go near any of them for fear I might let out something or have them get cross at me, so if not for me do it for Jennie as I know you like her & try & get bonds & not leave to much money in the bank as Mr. Green says they would be more apt to get money but Mr Moyer will know best I have not closed my eyes since I read the letter & I did not mention it to Mrs MacDonald please do write soon & tell me what you think.

40 Try & take the right meaning & tell me that you dont believe me guilty. M.V.B.

My address will be
Delhi Ont & I am going right though on Saturday.

Exhibit 6.

(Plaintiff's Exhibit)

**Cheque \$8500.00 by Victoria Begley per W. J. McElroy, Attorney,
in Favour of J. W. McElroy.**

*In the
Supreme Court
of Alberta*

Ex. 6.
Cheque
\$8,500.00,
by Victoria
Begley per J.
W. McElroy,
Attorney, in
favour of J.
W. McElroy,
June 29, 1929.

Depositors are requested to fill in number of Account.

Calgary, Alta., June 29, 1929. No.....

IMPERIAL BANK OF CANADA

17/10

Order.

Pay to J. W. McElroyor ~~Bearer~~ \$8500.00
Eighty-five hundredxx/100 Dollars 10
IMPERIAL BANK OF CANADA

Savings Department
Safety Deposit Boxes

VICTORIA BEGLEY,
Per J. W. McElroy, Atty.

Endorsement on back: DEPOSITED TO THE CREDIT OF
J. W. McElroy

IMPERIAL BANK OF CANADA

CALGARY, ALTA.

G. TAYNTON, per H. P. Cann.

Exhibit 12.

(Plaintiff's Exhibit)

Deposit Slip, Account of J. W. McElroy.

Form No. 15

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 12.
Deposit Slip
Account of J.
W. McElroy,
June 29, 1929.

IMPERIAL BANK OF CANADA

—————
Credit the account of
J. W. McElroy
of June 29, 1929.

	x 1—
10	x 2—
	x 5—
	x 10—
	x 20—
	x 50—
	x100—
	Gold.....
	Silver.....
	Cheques.....
	\$

20	8500
	18 78
	—————
	8518 78
	—————

*In the
Supreme Court
of Alberta*

Exhibit 13.

(Plaintiff's Exhibit)

Exhibits.
Ex. 13.
Demand Note,
\$8500.00, J. W.
McElroy, in
favour of
Victoria
Begley,
July 1, 1929.

Demand Note, \$8500.00, J. W. McElroy in Favour of Victoria Begley.

Due \$8500.00
No Calgary, Alta., July 1st, 1929.

On Demand months after date I promise to pay
To the order of Victoria Begley
At the IMPERIAL BANK OF CANADA, here 17/10
Eighty-five hundred xx/100 Dollars
value received with interest at the rate of seven per cent. per annum 10
before and after maturity until paid.

“J. W. McELROY.”

IMPERIAL BANK OF CANADA
Head Office: Toronto

Endorsement on back:

Pay to the Order of
Any Chartered Bank in Canada.
Imperial Bank of Canada, Calgary.

Stamped on front of note: Imperial Bank of Canada

C.R. 12
Calgary.

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Exhibits.
Ex. 42.
Letter,
M. V. Begley
to J. W.
McElroy,
July 14, 1929.

Exhibit 42.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

ROYAL YORK HOTEL

Toronto

Pt. Dover, July 14th, 1929.

Dear Friend:

The rest of the crowd are in bathing except Mrs. Franklin & myself I
excused myself said I had some letters to write but I am not feeling much 30

like writing as there is to many around & all talking at once but I know you will excuse mistakes as I cant do any better anyway.

No use of me trying to tell you how pleased I was to hear from you after three long weeks. I was sure glad to hear about the wonderful crowd you had at the Stampede. Mrs MacDonald had told me about it a few days earlier & she wished I had stoped & helped as she said there was lots of work for all. I suppose I might have when I didn't go to Bobs Sisters But I can help some other time. We had a swell trip from Brandon East, we stoped with Cecil & Olive three nights & had some
 10 big trips in the old car & then our freinds met us in Winnipeg & we had a lovely visit there & got lots of good advice at each and every place, then we spent a day in Toronto & visited the Royal York Hotel it sure is swell & I think when I get rich I will stop there for a few months, we then came on to Delhi & Oh dear I was never so homesick in my life I felt like taking the train right back to Calgary as it was raining & things never look so blue for four days then the fifth day we hear a car drive up & we looked out & there was a load of five of our cousins from Philadelphia & Cleveland & they started life right away I have'nt seen them
 20 since I was twelve years old but it did'nt take long to get acquainted & we have had some excitement ever since but Oh dear when they leave for home I am afraid it will be rather bad again but then the holidays will soon be over & we think we will take rooms in Hamilton or Simcoe for the four months & then I have promised Jennie to go back to Calgary so she can start school there after Christmas. I think by that time my nerves will be quited down so I will know what I am doing better & I can hear you say she would need to.

You would simply die if you heard the questions they ask me about the business & hear the gasps when I tell them I walked away & left a friend & the Lawyer to settle up for us, they think I have gone crazy but
 30 I said when a fellow dont know anything about business what are they to do & he said say Kid if you need any help when you go back Mabel & I will come over & help you out, I thanked him very kindly but at the same time said to myself I can trust the one who is doing the business thank you (am I not right) I think so any way. The Mrs Franklin I spoke of is Mrs Maley's sister in Simcoe & her daughter is to be married on the 3rd of August & I believe it is to be a very swell wedding & both Jennie & I are invited & Jennie has been asked to play the Wedding March which she thinks is a great honor & of course she will haft to have
 40 a new outfit for that occasion & that is what she likes in fact she is getting just a little too fond of new things but everybody down here is very fond of her & tells me I know how to train a child all right; which I was glad to hear as all her relations are here if I was to write every day I am afraid I would run out of news & then I find when visiting it is rather hard to write it will be easier when we get alone. When you write do tell me about the crops around there for they looked so good when we

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 42.
Letter,
M. V. Begley
to J. W.
McElroy,
July 14, 1929.

—continued

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 42.

Letter,
M. V. Begley
to J. W.
July 14, 1929.
McElroy,

—continued

were there but the farther East we came the poorer they got & around Winnipeg they were pretty well burnt up so dry they have just called me to lunch so I guess I will haft to go or those crazy Cousins will be here carrying me out & they are not a bit particular what they say or do & I sure get teased & they are bound I will go home with them, they all have a man pickd out for me which is lovely & to think I will not have a say.

Jennie intended writing a piece in this but she is bathing so some other time.

Yours sincerely,

M. V. BEGLEY.

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Exhibit 43.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 43.
Letter,
M. V. Begley
to J. W.
McElroy,
July 15, 1929.

Delhi, July 15, 1929.

Dear Friend:

We are back to the berg once more and I am sure glad of a rest, we have taken in a good many hundred miles since a week last Monday & every day we were at a picknic or some resort & there were three cars of us so we sure have had some time of it Just the life I like for a holiday if only Mr. McElroy could have been with us every thing would have been perfect for I know he needs just such a life to rest his brain & perhaps you are away for your holidays by now do you intend going as far as Spokane if so be sure & go to see the Stubblefields as I know they would like to have a talk with you & you could explain all about the business to them. But remember dont mention about that money I gave you before I left Spokane Katie & Billy both said you had done so much for me that before I left for the East I was to leave a check for you but they did'nt just like Mr. Moyer telling me to do it as if I did'nt know myself what you had done for me & I sure do & I appreciate it & I feel that you know that I do even if I had a poor way of showing it, so as to make every thing all right. I just dropped them a line & told them you refused to take the one Mr. Moyer spoke about I said I left one for you my self so I thought it was better to explain it to you so you will know just what I did, they were a little afraid you had put the Bill in so you will see by this little piece of sisters letter how she felt I did wish myself that Mr. Moyer had waited until I came back then no one would have been any the wiser, & you have it and I am glad you have for I know you earnt it. I did'nt intend saying anything about it but got thinking you might go there so now you will know just where you are. I wrote

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you a note from the Port on Sunday but there was so much noise there I dont know what I said but everybody is lying down now so everything is quiet one car leave to morrow & I will miss them they are so jolly do write soon & give me all the news.

Lovingly yours,

M. V. BEGLEY.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 43.
Letter,
M. V. Begley
to J. W.
McElroy,
July 15, 1929.

—continued

Exhibit 8.

(Plaintiff's Exhibit)

Cheque \$1000.00, J. W. McElroy, Attorney for M. V. Begley, in Favour of Strong & Dowler.

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Calgary, Alta., July 22, 1929. No. Bed 3/W.

Exhibits.
Ex. 8.
Cheque
\$1000.00, J. W.
McElroy,
Attorney for
M. V. Begley,
in favour of
Strong &
Dowler.
July 22, 1929.

IMPERIAL BANK OF CANADA

Pay to Strong & Dowler or ~~Bearer~~ **Order.** \$1000.00
One Thousand &00/100 Dollars
IMPERIAL BANK OF CANADA

“J. W. McELROY,
Attorney for M. V. Begley.”

STAMPED: Imperial Bank of Canada,

Jul. 23, 1929,
Calgary, Alta.

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Endorsement on back: For Deposit only to the Credit of
Strong & Dowler Limited

—in the—

Bank of Montreal.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 44.
Letter,
M. V. Begley
to J. W.
McElroy,
August 9.

Exhibit 44.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Delhi, Aug. 9th.

Dear Mr. McElroy:

As always very glad to hear from you. I was commencing to think you had forgotten us, I see you haven't and I will have to forgive you this time as I have heard you have been very busy escorting your lady friend around. You see even I am a long piece away news travels and I didn't ask for the news either it just came, I am glad you have Gerald home with you as I always know how happy you were with him. You are more fortunate than I am just now as Jennie has deserted me for a week she & her sister are away visiting cousins & they are having a swell time she don't want to come back as there are six little girls all together, she & I were down to Hamilton & Simcoe for two weeks & we sure had a swell time, we were driving around in a new Hudson most of the time Hamilton is sure lovely & we intend to move down there in two weeks to get ready for school. Everybody is sure good to us they keep us on the go all the time I hardly have time to write I owe everybody except yourself as you will see I am always very prompt. Now what did you mean you asked me what I got for Jennie for you I didn't know I was to get anything you just mentioned that you intended to give me money to get her something and I told you not to bother with Jennie until Xmas or some time & that was all I knew about it. I got your pen for Jennie to give you for your kindness to her when she was sick taking her to Town so often & flowers & such like so tell me what you mean Jennie & I received the others which you sent at the bottom of the letter but I would sooner have the real if from the right person what do you think. Our friend Dr Fitzsimmons was asking me the other day if I knew what an electric kiss was I said (no) but I believe I had one once. Now say Mr Mac are you making fun of me for I don't believe I just understand you and I would like to know just what you mean. We are going out to a Weanie roast tonight it is heapes of fun.

Lovingly, M. V. Begley. X X

I think you had better come East for your holiday that would be some more gossip.

I was more than delighted to hear about your crop as I had heard so different no one is more pleased to hear it and if you had only mentioned the wages I have have excepted the position. Ha Ha.

Exhibit 7.

(Plaintiff's Exhibit)

Cheque \$500.00, J. W. McElroy, Attorney for M. V. Begley, in Favour of John W. Moyer.

Calgary, Alta., Aug. 21st, 1929. No.....

IMPERIAL BANK OF CANADA 17/10

Order.

Pay to John W. Moyer or ~~Bearer~~ \$500.00
Five Hundredxx/100 Dollars

10 IMPERIAL BANK OF CANADA

“J. W. McELROY,”
Attorney for M. V. Begley.

Endorsement of back: “JOHN W. MOYER.”

Exhibit 45.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Sept. 12th, 1929.

Dear Friend:

20 So glad you have'nt forgotten me entirely and as you think you have been busy I will haft to forgive you this time if you see it dont happen again Ha. Ha.

30 I was so glad to think your grain turned out so well there is always some thing to be thankful for and I hope you get a big price it is just as dry down here no feed for the cattle and living is going to be pretty high butter & eggs are going up each week and everything else I thought we could live cheaper down here but I dont think so. rents and everything is high but we are settled at last and are very comfortable we pay fifty dollars a month for the furnished apt with Piano then the light and gas is extry there is lots of hot water all the time & the rooms will be heated in cold weather and we are on the second floor there is a nice size living room dining kitchen two bedrooms & bath room and a small room for storing your trunks & such like and a large front balcony more room than we need but it was all we could get, have you any idea what Apt's rent for in Calgary and do you think we would be able to get any at Christmas time or dont you think we had better stop here until Summer holidays, I am afraid it is going to be pretty lonesome through the Winter but I am used to that I miss the Oakland car since comming to Hamilton but you know me better than that the car dont count it is the man who drives it and the one who was driving that certain car was a Divorced

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 7.
Cheque
\$500.00, J. W.
McElroy,
Attorney for
M. V. Begley
in favour of
John W.
Moyer,
August 21,
1929.

Exhibits.
Ex. 45.
Letter,
M. V. Begley
to J. W.
McElroy,
September 12,
1929.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 45.

Letter,
M. V. Begley
to J. W.
McElroy,
September 12,
1929.

—continued

man here from Alabama where Edith Hill came from & he was here for his health and boarding and rooming at my sister's and you know what I think of divorced people although he was very nice and a perfect gentleman and he was lonely and so was I so every thing worked out lovely only Jennie didn't like it at all and whenever any one would tease me about him Jennie would cry and say he does not like my Mamma and Mamma don't like no man, so you see I had to stop my drives although we never went alone, if my sister Mrs Ayers could'nt go I took Jennie or some other friends, men are the least of my thoughts at present any way we never know what we might do. There was another Widower who lost his wife last Feb. and as soon as he heard I was here he came to see me quite often and was very nice but he has a swell car but too nervous to run it himself so always had to bring a driver along so I don't like a second party myself but when Mrs Ayers came he through me to one side and is driving my sister so after that when we went for a car ride Jennie and I had to set in the front seat with the driver which we both enjoyed very much I mean Jennie and I and the young man turned out to be a young musician from Edmonton & was only Twenty two so we got along just fine, but I didn't do a thing but tease my sisger about cutting me out. I think if she feels inclined she can have him he said as much to me he took all of us up to his home in St. Thomas & he had a swell home but is tired of his housekeeper but whenever we tease her about him she gets mad so we can't find out anything from here I expect them Saturday to stop over Sunday there will be five of them but I have a cousin living here & she is going to put up part of them for the night & then we intend to get up early Sunday morning and go to Niagara Falls for the day which is a most beautiful drive nothing but beautiful homes & fruit of all kinds, that is one thing which is cheap just now is fruit & vegetables, we get six qts of Ripe tomatoes for ten cts and Peaches Twenty five cents a basket Pears, 35 and large cantilopes 5cts. a piece so we keep our refrigerator full all the time, I have been having a great feed of corn on the cob 15cts a dozen but I have got to stop that as they have started at my teeth I had one out this morning they will only take one out at a time but I think there is just five to come out A. M. Fulton is doing my work but I had another Dr. to take an xray & do you know I have never cut my upper wisdom teeth they say there was no room for them to come through, so I suppose they will have to be cut out & just think how sensible I will be then. Now say before I forget do you know the letter I got from you had been opened & sealed up with sugar did you mail it yourself it came to Delhi & then was sent down here who ever opened it will not be much wiser except that you wanted me to send you one of those kisses so after this you had better mail them yourself and no one knows me at this apartment so there will be no trouble, it was either at Couricet or Delhi and that we will never know unless they start spreading news & we should hear about it and another thing you were wrong in claiming Mrs MacDonald it was not she who told me that but if you would just stop and

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think I bet you would know as the one who wrote just said she had heard you were very attentive to Mrs Beattie & that they had seen you in Town & you was supporting her with your arm and looking so sweet at her now cant you think. Now if you were only here while I am getting my teeth out I would let you hold my hand & smile at me while I haft to go alone come home alone & stop alone and I dont believe I even have feeling enough to give you one of those kisses but I think I will feel so much better when I get them out as they should have been out long ago. I am both sleeping and eating so much better than when I first came down by the time I get a little white wash & paint on I am looking much younger. My counsin Tom and Nina Clough who live in Hamilton sure are good to us but they are talking of going to Florida for the Winter and if they go I will sure miss them. You will haft to write every week then you will think this is a newspaper so I had better stop telling you my troubles but let me know if you think my expenses are more than the firm can stand. I counted it up as near as I could for every thing rent gas, lights, music lessons would bring it close to sixty then we haft to live & I have'nt the least idea what I should do and you are the only one I can ask so please dont get cross but Just tell me plain. Heaps of love from Jennie & M. V. Begley.

*In the
Supreme Court
of Alberta*

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Exhibits.
Ex. 45.
Letter,
M. V. Begley
to J. W.
McElroy,
September 12,
1929.

—continued

Exhibit 46.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Oct. 11th, 1929.
52 Cedar Ave.
Apt. A.

Exhibits.
Ex. 46.
Letter,
M. V. Begley
to J. W.
McElroy,
October 11,
1929.

Dear Friend:

I just got your letter this morning and it was mailed on the 4th but you went & sent it to old Delhi I am now living in Hamilton did you forget you want to restnup if it is affecting you like that, what are you so busy at now I thought your work was all done up early this fall & that you would have nothing to do but play and write to me at least once a week for if you only knew how lonely we are surely you would & it is going to be worse from now on as the weather will be getting stormy & my cousins who have been so good to us & the ones who got us to come to Hamilton are going to Florida for the Winter had I known that, we would have gone to Toronto & that is where we should be as I have so many more friends there but however it cant be helped but if Jennie keeps on coaxing for Calgary I am afraid she is going to upset me entirely she came home last night and I was blue any way over my cousins going & she started to cry & said I dont like my Teacher she is a cranky old maid let us go back to Calgary and that started me then I had words

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 46.

Letter,
M. V. Begley
to J. W.
McElroy,
October 11,
1929.

— continued

with the landlord about cockroches in the kitchen & bathroom and I wanted him to let me give up the Apt. last of Oct but he said he would'nt he's holding until Dec 6th so if I have got to pack up in Dec I might as well go to Calgary for if Jennie is happy that helps me & I will have a few friends to come and see us there & perhaps you will once in a while you will think I am a baby but I am not as a rule. While my sister was here I had some one to go out with but now I seldom go. I went with the Fultons Wednesday night to have our fortunes told & if I could only believe what she told me I ought to be happy Dr Fulton thought it a great joke the things she told me & he teased me all the way home he says I am going to be like Carrie, I did'nt say so but I felt like saying I hope I dont get a man like hers, for they all tell me I am going to marry so I might as well get used to it and they also tell me that I will always have lots of money which is a nice thing to have although I dont think it really makes you happy by itself, she told me I was very unsettled just now but she told me I would be happier than I have ever been. I said perhaps & Mrs. Fulton said you dont have faith in her it is pretty hard for me to believe that they can tell although time will tell & they have hit some things pretty straight did you ever go to one, but I dont suppose you would be so foolish but it is really lots of fun, although I would'nt want her to tell me things she tells some of them she told me she could see a farm and a brick building which I had something to do with & she said everything was all right about the farm but she could see a little trouble about a red brick building did'nt that seem funny. Oh say what about the oil now I saw by the paper where they had something pretty good at Oyen, what about the one we are in are they still working at it. I have forgotten the name of it. Well I really think we will be back at Christmas surely we can get rooms some place now that I haft to change for I cant stand bugs & it has upset me & Jennie's sister has been upsetting Jennie so I think we are just as well away to be away from too many relations. Why didn't the Bank send the money to me when you told them to as it is over two weeks & I have been to the Bank asking for it until I am ashamed I guess they think I have'nt got any money to come, they advised me to telegraph the Bank Manager but I did'nt like to do that so I sent one to you so you could call them up or see why they did'nt send it. I have borrowed seventy dollars as I had all the bills to pay first of the month heapes of love to you and Gerald.

Yours sincerely,

M. V. BEGLEY.

P.S. You can scold me just as much as you like when I get there for bothering you you so much do you intend stopping on the farm all Winter. Have you placed any money for us yet I imagine it will take around five hundred to see us home. Yours sincerely, M. V. Begley.

Many thanks for all your trouble.

Exhibit 47.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Oct. 18th, 1929.

Dear Friend:

Here it goes again but as I have my Hat on ready to go down Town I will not detain you very long and I guess you will excuse the scribbling why writing so soon I expect you will get a letter from the Insurance Company (The Canadian Crown Co) They have been pestering me for
 10 some time dropping in every few days & I kept telling them that I could'nt that I had signed all I owned over to you & I also told them that I would do nothing without you advising me if I was doing the right thing. I thought I could get rid of them that way but to day back they came to ask me if I would give my consent for them to write you so I gave your address so if you know the Company & think it wise and all right I will leave it to you to do what ever you think wisest & best for Jennie. I hope your head dont swell because I am telling you that you know so much more than I do but I haft to fess that you do especially in
 20 big sale on Men's & boys swettters & real bargains & if I had of known if you or Gerald needed any I could have got them for you but I did'nt have your size & perhaps you dont need any. In a rush

Sincerely,

M. V. BEGLEY.

Exhibit 48.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Oct. 21st, 1929.

Dear Friend:

30 I sure was delighted to get your letter to-day as it is pouring & has been since six oclock last night everybody is delighted to have it as it sure has been dry there will be no fall wheat, where the land is heavy they could'nt do any ploughing & those who did plough & soe there wheat it has never come up it was so dry you see they have there troubles down here as well as the West, if I only had some real pleasant Company here to talk to, I would say let it rain, but it happens I am all alone, I have had two cousins with me for a few days but they left this morning for Toronto & will be back again for a day or so on there way home to Simcoe.

*In the
Supreme Court
of Alberta*Exhibits.
Ex. 47.McElroy,
Letter,
M. V. Begley
to J. W.
McElroy,
October 18,
1929.Exhibits.
Ex. 48.Letter,
M. V. Begley
to J. W.
McElroy,
October 21,
1929.

*In the
Supreme Court
of Alberta*

—
Exhibits.

Ex. 48.

Letter,
M. V. Begley
to J. W.
McElroy,
October 21,
1929.

—continued

It was sure lovely of you to tell me that you would look up an apt for us as I was wondering who I could ask, for I have bothered you so much I didn't know what to do but you seem to always come forward in the right time, so as you have so kindly offered I will leave it to you & will not say any thing to any one else and you bet we will be there between Xmas and New Years & they want us to stop here until after Xmas but I want to plan to be on the Train that day if possible, I would sooner not be with friends that time as it will be a blue time for me. I dont want to be selfish on account of Jennie but will have a good time on the train & I will stop at Brandon if the weather is not to cold & take a run out to see Bob's sister for a day as she felt so badly to think I didn't stop on my way down we had a lovely visit with Bob's brother & wife & one sister they wrote to me to see why I didn't stop at Sask to see the Sister so I told them that I had expected a letter from her before I left Calgary and I didn't get it so I thought perhaps she didn't want me after Lucy writing that letter to Mr. Moyer, but they knew nothing about it & felt terrible & begged us to come down so we could talk it over so I told them as near as I could what she had written, so the sister asked her about it & she told her that I lied that she never wrote such a letter but they all knew that she did and they were sure nice to me, it cost me about fifty dollar for the trip but it will likely be the last time I will be there as the brother is real poorly & he felt so bad when we left. 10

No I didn't know that Hellen was in training which Hospitail is she in. 20

I was sorry to hear about Ewart you certainly have had your own trouble children are lovely but they can cause lots of heart aches I do hope that Gerald will be more of a comfort to you And I had never heard about that Nun that is sure a blow on the Catholics. I was glad to hear you had a little holiday even if it was only a few days it does you good an gives one something to think about. The Spares were only fifty miles from Hamilton, she sent me a map and pointed out there trip. 30

I had a long letter from Isobel hoping we would come home at Xmas & I also had one from Mrs Birmingham wanting us back & one from Mrs DeLisle May they think we have been away ling enough but let me tell you I would be there now if it was'nt for Jennie at school but then there will be just two months but they will be long ones. This is Wednesday night. I had Company come in from Burlington & they just left this P.M. it was Mr. and Mrs. Weggain Isobel's father & Mother and Jennie & I are going out there to spent some week end it is still raining & it makes one blue I wish you could drop in & deliver those crosses instead of putting them on paper forgive me for being so silly but when you are blue it makes you silly or at least it does me, but only with certain ones I dont take those spell's often. 40

My cousins want to get away about the middle of Nov then it will be lovely and quiet, but I must not complain for I am so much better since I got rid of those teeth & one of them was the one Atkinson charged

me fifteen dollars to cap but it cant be helped. I must go to bed & I guess you will be glad to get a rest & I surely do appreciate your kindness offering to help me out. I have never had a line from Sadie since I left Spokane last Jan.

Thanking you again for all your kindness

Sincerely yo

(X)

VICTORIA BEGLEY.

Hope to hear from you soon.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 48.
Letter,
M. V. Begley
to J. W.
McElroy,
October 21,
1929.

Exhibit 9.

(Plaintiff's Exhibit)

10

Cheque \$500.00, J. W. McElroy, Attorney for M. V. Begley, in Favour of Strong & Dowler.

Exhibits.
Ex. 9.
Cheque
\$500.00, J. W.
McElroy,
Attorney for
M. V. Begley,
in favour of
Strong &
Dowler,
October 25,
1929.

Calgary, Alta., Oct. 25, 1929. No.....

IMPERIAL BANK OF CANADA 17/10

Pay to Strong & Dowler or Bearer. \$500.00/100
Five Hundred/100 Dollars
IMPERIAL BANK OF CANADA "J. W. McELROY,"
Head Office: Toronto. Attorney for M. V. Begley.

STAMPED: Imperial Bank of Canada

20

Oct. 26, 1929,
Calgary, Alta.

Endorsement on back of cheque: For Deposit only to the Credit

of STRONG & DOWLER LIMITED in the BANK OF
MONTREAL.

Pay to the Order of any Bank or Banker

Oct. 25, 1929
C Bank of Montreal C
Calgary, Alta.
Oct. 26, 1929 Cleared.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 49.
Letter,
M. V. Begley
to J. W.
McElroy,
October 30,
1929.

Exhibit 49.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Oct. 30th, 1929.

Dear Friend:

Jennie just found a letter in her rain coat pocket for you I sent her to mail it last week but she forgot all about it so found it to-day and mailed it there was nothing of any importance in it but it would have been just the same had it been a love letter. Ha!

Now say what's rong at the Bank they have never sent me that money 10 yet and I got your letter over a week ago telling me that you had told them to send it, now let me tell you I am broke I had to borrow Twenty dollars on Saturday as I have been sick not only home sick but real. I caught a cold, it was first in my head & lungs then it went to my back and I sure did suffer it was Lumbago.

It has been so damp of late & the apartment is kept so hot. My cousin is taking me down ever other day for treatments so you can see my luck I have always got a doctor bill to pay but I must not complain as we will soon be away from this damp climate not quite two months now & I am feeling so much better. I can straighten my back up now. 20 Well since I started this letter I have had a caller wanting me to take in a show to-night but I had a good excuse as he could hear me coughing & I could smell his breath across the room he lives in Delhi came down on business so I invited him back for Tea but I called my cousin up & envited her to come over & stop with me to-night so she is comming she can help get supper as I feel lazy yet dont feel like Company well I must close please call up the Bank & see why they have'nt sent the money for rent and all bills will soon be due again I dont feel like writing to-day so excuse all mistakes & will hope to hear from you soon.

Lovingly,

TORA BEGLEY.

30

Exhibit 50.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Nov. 4th, 1929.

Dear Friend:

How I wish I could talk to you to-night instead of writing for I am all alone Jennie has gone to a party and will not be home before ten I have had five Ladies here all day from Delhi and Simcoe and one was my sister. they sure think it terrible of me to go back West but I told 40 them right up that I could'nt live down here that I had been in the West

Exhibits.
Ex. 50.
Letter,
M. V. Begley
to J. W.
McElroy,
November 4,
1929.

since I was Twelve or thirteen years old & that Jennie knew no other place & that was where we were going all my life I have been doing or giving up for some one else and I think I ought to have a few years to have a say of my own and I realize I have gone through a lot of money and let me paid the bills before except my own. dont say anything to Mrs McDonald but her brother & wife are great Spirituless and they want me to go with them to there meeting to-morrow & I may go, perhaps I can find out what I am going to do next the same as they told me what I was going to do while in Calgary and perhaps I can find out what you are busy at. Mrs. Fulton told me not to tell Carrie but she is a great believer of the spirits, she even talks to the dead not for me thank you I get blue enough some times without that but I dont mind going once in a while to the public meetings that is fun I hope I am not bothering you to much but I really will haft to have some more money to my account if you please, pretty please, Jennie brought home a New Receipt from school I have'nt tried it out myself but perhaps you can it sounds good. Ha! Ha!

Sincerely,

M. V. BEGLEY.

(page 3)

20 be over as the Dr wanted me to get out of here at once just as I have the rent paid until the first of Dec I will stop but I will haft to get out then so there is no use of me looking for another apt for less than three weeks as school closes for Xmas holidays on the 18th so it will not be long now until we will be in Calgary do you think we can get an Apt all right at that time of the year or are they more plentyful there than here and do you intend to get one for us or would you sooner not you will haft to let me know at once so I could get some one else you spoke as tho you would in your last letter but I am always afraid of bothering you to much but I guess you dont mind. Jennie said Mother I hope Mr McElroy looks up an Apt for us & I said why & she says because he will know just how much we can afford to pay for one and he will get us a nice one the whole family seems to have confidence in poor Mr. McElroy.

I would like to spend three or four days with my sister before I go back as she is getting up in years she was married three years before I was borne & I am no chicken she owned up to-day that I should get out of here when she heard me cough if you could get apt for the first of Dec could have my belongs checked right through before I would go up there as I have that big trunk & suitcase & then I will have a parcel besides of bedding I had to buy as I did'nt have any with me and if it would be all right with you I could send the checks right through to you & you could have a dray take them to the rooms & I will be in Calgary second week in Dec any one I have written to I have told them I would be there for the first of the year and I will not say anything different if you can get some place for us.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 50.

Letter,
M. V. Begley
to J. W.
McElroy,
November 4,
1929.

— continued

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 10.
Cheque
\$265.00,
J. W. McElroy,
Attorney for
M. V. Begley
in favour of
Canadian
Acceptance
Corporation,
November 13,
1929.

Exhibit 10.

(Plaintiff's Exhibit)

**Cheque \$265.00, J. W. McElroy, Attorney for M. V. Begley, in Favour of
Canadian Acceptance Corporation.**

COUNTER CHEQUE

5170 Freeman

Savings Acct.

Calgary, Nov. 13, 1929.

To the IMPERIAL BANK OF CANADA, CALGARY.

Pay Canadian Acceptance Corporationor Order. \$265.00/100
Two Hundred and Sixty-fiveDollars

IMPERIAL BANK OF CANADA
Nov. 16, 1929
Calgary, Alta.

“J. W. McELROY,” 10
Attorney for M. V. Begley.

On back of cheque:

Protest Waived
For Deposit only in the
BANK OF MONTREAL
Calgary

To the Credit of
CANADIAN ACCEPTANCE CORPORATION LTD.

Pay to the Order of any Bank or Banker

20

NOV. 15, 1929

Calgary, Alta.

(indistinct) 16, 1929.

(The rest of Stamp is indistinct.)



Exhibit 11.

(Plaintiff's Exhibit)

Cheque \$735.00, J. W. McElroy, Attorney for M. V. Begley, in Favour of Strong & Dowler.

In the Supreme Court of Alberta

Exhibits.
Ex. 11.
Cheque
\$735.00,
J. W. McElroy,
Attorney for
M. V. Begley,
in favour of
Strong &
Dowler,
November 13
1929.

Calgary, Alta., Nov. 13, 1929.

IMPERIAL BANK OF CANADA

To the ~~BANK OF MONTREAL~~

Calgary.

L-LO

Order

Pay to Strong & Dowler or ~~Bearer~~
10 Seven Hundred & Thirty-five/100 Dollars
\$735.00 "J. W. McELROY,"
Attorney for M. V. Begley.

(The stamps on the face of this cheque were indistinct.)

Endorsement on back: For Deposit only to the credit of

STRONG & DOWLER LIMITED
—in the—
BANK OF MONTREAL.

Exhibit 51.

(Defendant's Exhibit)

20 **Letter, M. V. Begley to J. W. McElroy.**

Exhibits.
Ex. 51.
Letter,
M. V. Begley
to J. W.
McElroy,
November 17,
1929.

Hamilton, Nov. 17th, 1929.

Dear Friend:

Have not heard from you for some time I wonder if you are snowed under as I hear you have over a foot of snow however we hope not well the money came all right but I have not heard why they didn't send it however my bills are all paid up except for gas light & Piano for this month and we expect to leave Haimlton on the 30th for Delhi and will stop there for a week a day or so in Toronto, it is quite warm here but plenty of foggy weather and rain this fall, I am still taking those treat-
30 ments and they sure are fine I have not felt so well for years.

They are rather severe but they do the work it is just the same as they used on the King when he was so sick it is such a change to hear the people tell me I am looking so much better he wanted me to stop another month but I couldn't do it and I am sure I will be all right now if I can just get away with Jennie without to much trouble it was half that which upset my nerves so last summer but one thing they can see for them selves that she is anxious to get away they have even set her up to

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 51.

Letter,
M. V. Begley
to J. W.
McElroy,
November 17,
1929.

— *continued*

tell me she would'nt go west with me but she just comes & tells me & says let us hurry and get away you cant blame the little thing for they are all strangers to her down here.

To tell the truth I think she thinks more of you than her own Daddy I feel sorry for Stanly he talks lovely about it & said he was so pleased with the way I had trained her & that he would like her closer but he said he would'nt think of trying to keep her, as he knew it would brake her heat it is the wife and the Grandparents who are trying to up set her.

Enough of my troubles but as you know when it is raining and I am alone I always bother you Jennie is at S. School we were envited out to Burlington for this week end to Isobells parents but it was raining & next Saturday we go to St. Catharines with Mrs. Phillips who used to be Mrs Begley from Calgary Mable Gunn's mother, the Buss runs out there two or three times a day. 10

And I also had a letter from Dr Hills mother wanting me to come and see them but I cant this time I just got a phone call some of my Cousins are on the road over to take us for a little run we were at Galt last Sunday that is a very pretty place please write soon for you will not be bother much longer heaps of love from

M. V. BEGLEY.

20

Exhibit 52.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Nov. 18th, 1929.

Dear Friend:

I mailed a letter to you yesterday and here I am writing mother to-day I just got your letter asking about the Apt and as there is not very much time left I thought I had better ans at once and the reason why I did'nt mention where, or what kind, I thought you likely haft to take what ever you could get this time of the year I think I would sooner be over around fifteen, sixteenth or eighteenth Ave West in that neighbourhood but you know I am not particular so long as they are clean I mean free of vermon and we dont need them too large three or four rooms would do but it will be a case of take what you can get and I dont mind even if they were in some of those up on fifth or six Ave I am very agreeable you see when it suits me. Ha. 30

Now if you cant get an Apt before the first of the year, we will haft to board for a while I expect. Mrs. Birmingham and Isobell have written & wanted me to stop with them until I could look up a place I would much sooner not. My baggage is the worst trouble I haft to get my ticket the last of the month to have my things shipped from here as I cant take 40

Exhibits.
Ex. 52.

Letter,
M. V. Begley
to J. W.
McElroy,
November 18,
1929.

them around with me and then I haft to be at my Journey's end in so many days he said it would cost me \$1.50 or 2.00 a day after Twenty four hrs. I guess the only thing to do will be to get a room some place & put them in & I will send the checks to you. I am sick of this mooning around bothering people so much but perhaps I can do as much for you some day.

Are you aware that it is a widow you are writing to, they tell me they are dangerous people, & I might accidentally happen to take you up on some of the offers you are making so be careful. Your Radio & Cars must be pretty swell I wish I had you here with one of them for a few
10 days I have so many places to go and it takes up so much time running around in the Buss, and you know my time is very valuable. I forgot to tell you that I am thinking of comming home C.N.R. instead of C.P.R. as the C.N.R. Depot is so much closer to us and then it will be a little change.

Jennie has two little girls here and they are running around & talking so much I hardly know what I am writing.

Yours lovingly,

M. V. BEGLEY.

Exhibit 53.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Hamilton, Nov. 27th.

Dear Friend:

This is our last day here as we go to Delhi to morrow morning and you never saw such a happy person in your life as Jennie every few minutes she says Hooppe we will soon be in Calgary and of course I am crying. Ha! Ha!

I hope I get another letter from you before we go as I am anxious to know if you have been successful in getting an Apt, as I had a letter from
30 Mrs MacDonald and she wants me to go in there house & look after J. A. & Charlie and let her go to the Coast.

Now I would be very glad to do it for her, but now that I have got my nerves quieted down pretty good and feeling stronger the Dr said I was to go easy for a few months & if I would, he said I would be better than I have been for a long time and I dont feel I want the responsibility of looking after Carlie but I am going to write her to-day and tell her so, it rained all night & is still raining I took my last treatment this A.M.

Yours lovingly,

M. V. BEGLEY.

40 I am sending checks in this by C.N.R.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 52.

Letter,
M. V. Begley
to J. W.
McElroy,
November 18,
1929.

—continued

Exhibits.
Ex. 53.

Letter,
M. V. Begley
to J. W.
McElroy,
November 27.

*In the
Supreme Court
of Alberta*

Exhibit 54.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Delhi, Dec. 4th.

Exhibits.
Ex. 54.
Letter,
M. V. Begley
to J. W.
McElroy,
December 4.

Dear Friend:

This will be my last letter I hope before I reach Calgary. I was looking for a letter from you, but I hope you have been successful in getting us an Apt we leave here Friday morning for Toronto and will stop there until Sunday night then we go to Winnipeg & they tell me we get in Winnipeg at 8 oclock Tuesday morning and then we will leave 10 there Thursday morning for Calgary so that should bring us in there Saturday morning 9 A.M. We dont intend stopping at Cecil May's this time as we get in there 2 oclock in the morning will hope to see you soon.

Sincerely,

M. V. BEGLEY.

Exhibit 14.

(Plaintiff's Exhibit)

Cheque \$1400.00, Victoria Begley in Favour of J. W. McElroy.

Depositors are requested to fill in number of account.

Calgary, Alta., Jan. 2, 1930. No..... 20

IMPERIAL BANK OF CANADA 17/10

Pay to J. W. McElroyor Bearer. \$1400.00
Fourteen HundredDollars

SAVINGS DEPARTMENT

VICTORIA BEGLEY.

Endorsement on back of cheque: "J. W. McElroy."

Exhibits.
Ex. 14.
Cheque
\$1400.00,
Victoria
Begley in
favour of J.
W. McElroy,
January 2,
1930.

Exhibit 55.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Calgary, Feb. 2nd/30.

Dear Mr. McElroy:

The last time I saw you you said you would be around soon & if not you would call up & as you have not seen fit to do either, I would like if you would come & let me know why you have treated me like this & if you remember you said you would see me the last of the month or the 1st. and both have been here & gone & you have not made any signs of coming and I would like to know just what you mean by it.

And I am very sorry I forgot to pay you for moving my trunks from the Depo but will do so when I see you which I hope will be before long, & please bring that Pie plate as it is the only glass one I have. Sincerely yours, "M. V. Begley."

Exhibit 56.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Calgary, Mar. 31st, 1930.

20 Dear Mr. McElroy:

The third & last time it may make your headache but nothing about mine I have sure had pain enough & you have never given a Darn for me as I wrote from Brandon last summer & told you all I wanted was your friendship nothing more now things have gone so far that I dont give a Dam what happen & you can show this to Mr Moyer if you wish, or any one else & perhaps they can still set you up to try love making to keep me quiet but you nor no one else can do that now I am through & the sooner you make out a full statement & fix it up with me the better and dont treat me as if I was a child any longer, for if you dont I am feeling desperate enough to do anything I am so sick of the whole thing I just dont care a thing of anyone for if this keeps on I will be clear out of my mind.

and I will have you to thank for it. I will hope to hear from you very soon.

Yours sincerely,

M. V. BEGLEY.

(Envelope attached) From Suite 15 Sills Apt.
Calgary.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 55.

Letter,
M. V. Begley
to J. W.
McElroy,
February 2,
1930.

Exhibits.
Ex. 56.

Letter,
M. V. Begley
to J. W.
McElroy,
March 31,
1930.

In the
Supreme Court
of Alberta

Exhibit 57.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 57.
Letter,
M. V. Begley
to J. W.
McElroy,
Monday.

Monday Morning.

My Dear Friend:

As I am all alone thought I would drop you a few lines we have not heard from you yet but hope to get a card to-day telling us that you arrived home safely, providing there were no Widows on the way to vamp you as you seem to think so kindly of them.

Well what kind of a trip did you have returning it just seems like a 10 dream that you were here.

Mailman just came in with your always welcome letter and I was sure glad to hear you had no trouble on the way, it has been much cooler ever since you left so I knew you would have a much pleasanter trip.

As for me I think I am gaining a little each day, but should as I am eating Cantelopes or those large bing cherries the man with the fruit came in just as we came back from see you off. I was so sorry to think you were away as the cherrie would have been so nice for you to have eaten on the road home & only fifteen cents a lb but Jennie & I are eating enough for all of us. They tell me they make blood so that is what 20 I need just now to get my strength, was out to Ayers & spent Sat Afternoon & all day yesterday & it done me so much good to see how much happier they seem to be than they were last summer. I think there has been an understanding between them & was exercising it before you. As Morton told me a few things comming in last night, you knew some times men get careless when they are in love with a woman & send letter to other men's wives & the Husband gets them and in the letter was asking his wife to meet him in another City & she tells all & he tells her or gives his permission for her to go & stay with him but she tells that she loves his bother then the brother turns on her & calls her a fool & such like 30 but the Mother comes along in time to fix things up & she has promised to love her Husband if he will forgive & love her so that is the way things stand but she has not spoken of it to me but treats me so much nicer than she did last summer & I asked her why the change & she said some day she would tell me every thing but not just now.

What I think is she is waiting to see what turns out between you & I but if I wanted to I could settle that for some times the way you treat me I think you think I am so in love with you that I expect you to marry me but get that out of your head right now my dear friend as I have never thought that you would every do any think like that as I wrote to you from Brandon & told you so, as yet I have never thought of marrying any one & was satisfied to have you for a dear friend, I fess I do like 40 you very much & always will I hope as old friends I could say more but

would't sound good on paper but we can have a good talk when I return which will not be long & dont forget me all to-gether as I could'nt get along without you altogether I have heard some thing which hurt me most terrible, but I am having lots of hurts the last few months what I never had in my life before but I guess I can stand them as they dont seem to be able to kill me off and when I get my strength things will not bother me so much please excuse the scribbling as I could'nt sleep last night and it is hard to thing.

Will said to tell you that you will remember where the exident was
 10 he said you got out of the car and looked over it was a terrible thing write soon & give me all the news love to Gerald & heapes for yourself.

Lovingly,

M. V. BEGLEY.

P.S. Stubblefields wish to be remembered to you & Gerald. Thanking you once more for all your kindness.

V. B.

Exhibit 58.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, July 31st.

20 My Dear Friend:

Just got your letter about one hour ago & as always, glad to hear from you. This is Thursday & we have never heard a word about the Election in Calgary there was nothing in the papers here only Ottawa news I am delighted to think so many Conservates are going in.

Sorry you are so bosy but so long as you get that Crop taken care of without any hail I guess you dont mind & as for the Lake we know you have good company handy, which will make things more pleant you know I like to tease so dont mind.

30 Will Stubb was so disappointed to think you were not here to take that four days trip with him he left next day after you, & he was all through the Walla Walla & Wenatchie country & he said things never looked better & they were thrashing in most places & the fruit was a grand sight hanging on the trees & a great crop of everything. But I tell you times are hard in Spokane one of the largest store has gone broke closed down last week, & opened up to-day with a big sale I was down & got myself a pretty little dress for this Winter—Silk chiffon Velvet for Twenty Dollars they usually sell for about fourty & fourty five. My Sister Mrs Ayers has been here for three days left for the
 40 School again last night I was so glad to see her before going back which will not be long now, as we start for home a week from Tuesday morning.

*In the
Supreme Court
of Alberta*

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Exhibits.
Ex. 57.

Letter,
M. V. Begley
to J. W.
McElroy,
Monday.

--continued

Exhibits.
Ex. 58.

Letter,
M. V. Begley
to J. W.
McElroy,
July 31.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 58.

Letter,
M. V. Begley
to J. W.
McElroy,
July 31.

—continued

The Stubblefields cant bear to hear us speak about going it has done them good to have us as they are tied down here I think you will see them quitting another year, they are getting tired of being tied down so much.

Will likes you very much but said he was just getting acquainted when you left.

Jennie is sure having a swell time on the go all the time. Berenice Bently plays in the Orchestry & she takes Jennie to all the lawn parties with her & they go swimming about every other day but that will soon be over. She is getting so she can swim pretty good. She had her picture finished up & there were only two any good the Bear & myself are not to bad considering material, I am sending you one of mine but when you look at it you can stick it in the stove, that is the one she took at Radium where we stopped all night. 10

Two Cars have just gone to-gether out in front, I saw them taking out one woman all blood so I got out of the road to hard on the nerves, it is sure terrible the way they drive through this City. We are sure having some hot weather, although I dont seem to mind it while the rest are suffering there has been two or three deaths on the street over come by heat. Tell Gerald I am so glad the Bear was pretty good after him being so brave to get out to take it. Will wish to be remembered to you & Gerald. Best regards 20

from

M. V. BEGLEY.

Envelope attached: From 27 W-2 Ave., Spokane, Wash.

Exhibit 59.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, Aug. 8th.

Dear Friend:

Your letter just came and as we are going to the Lake this afternoon thought would answer at once altho there is nothing much to write about, as the only thing we do is trips to the different Parks or Lakes, as I find I cant walk very far yet altho I can tell my Arms are getting more strength in them each day so you had better look out you had better bring some one with you the first trip, as I found out how scart you were of me afraid to be alone. I am so very sorry I scart you so badly, but one thing I have never ran after a man in my life & I am not going to start it now so dont get to badly scared. 30

I had a lovely long letter from Mrs Birch gave me quite a bit of news also called me down for gossip so be careful what you tell Mr Davis she tells me he has had her out for some lovely rides & the last time they 40

Exhibits
Ex. 59.
Letter,
M. V. Begley
to J. W.
McElroy,
August 8.

went alone. She also said it was very kind of you to call & tell her how I was she seemed to appreciate it.

So I am going to bother you once more if you will please call or Phone & ask her if she will kindly let the Cannon's know that we want to moove in Wednesday afternoon, as she told me she would let them know if I would write, but as I only have such a short time now & a good many places to go through you wouldn't mind, I sure have enjoyed my trips to the Country, they all have such beautiful home set in among the trees, I spent last week end with my friend they have a very large
 10 green houses to the North, & a beautiful home & three small children & a perfect mother & she & her hubby are little sweet hearts instead of husband & wife it does you good to find them like that these days.

You forgot to put the list in about the election but you can soon tell me all about it.

A very sad thing happened down East in Delhi on Election Day one of our good Conservates had been working hard all day driving voter to the Pole & at six o'clock he put his car in & turned to cross the street & he stumbled over something & fell in front of a car & was killed instantly & he was one of Delhi's most prominent men they were planning to cele-
 20 brate for the Conservate but it stopped every thing as he was thought so much of by every one who knew him. I do pity his poor wife it would be such a shock.

Now my Dear Friend the next I talk to you will depend on yourself as we get home Wednesday so come when you can will be glad to see you.

Lovingly, M. V. BEGLEY.

My new add 1024-15th Ave W
 ring bell & if they dont ans walk in & come up stairs. So glad you have had no hail as Mrs Birch said they had hail in town.
 (Envelope attached) From 27 W-2 Ave., Spokane, Wash.

30

Exhibit 24.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Calgary, Jan. 13th, 1931.

Dear Friend:

Dont get scart when you see who this letter is from I am not going to hurt you, take notice this is Friday the 13th our lucky day.

I just thought I would see what luck I would have I have tried for a year to have a little talk with you but there has always been some one around or you have been in such a hurry to get out of my Company and
 40 another thing you are always so ready to take me up rong.

And you think I am listening to so much gossip & yet you will not

*In the
 Supreme Court
 of Alberta*

Exhibits.
 Ex. 59.
 Letter,
 M. V. Begley
 to J. W.
 McElroy,
 August 8.

—continued

Exhibits.
 Ex. 24.
 Letter,
 M. V. Begley
 to J. W.
 McElroy,
 January 13,
 1931.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 24.

Letter,
M. V. Begley
to J. W.
McElroy,
January 13,
1931.

—continued

explain one thing to me and I have been loosing friends right along telling (lies) to shield my Friend at least I always though you were a friend, until lately I am commencing to think you dont even want to be a friend and for what reason I dont know.

I have been told I was such a worry to you, now if you would only just talk it over with me, and if it is your wish, I am sure I will not bother you.

I was called up again yesterday by one who has been very kind to me and they wanted to know if I had heard Mr Mc had lost around Twenty thousand & that the Banks had refused to lend him any & she said we were told that I lent you the money. Now I know if you hear this you think so much of me, that you will say I told them. And all I said was it is a pack of lies & if you still want to be friendly with me stop asking me such personal questions & she said now dont get cross for we are doing it for your own good, now cant you see the position I am in & I must not speak to a soul & yet you told me you talk over everything with Carrie, now I think it would be lots better if you would talk it over with me & there wouldn't be half the worry for either of us. I am your friend, "M. V. Begley."

Exhibit 23.

20

(Defendant's Exhibit)

Exhibits.
Ex. 23.
Promissory
Note,
\$9419.11, J. W.
McElroy in
favour of
M. V. Begley,
August 1, 1931.

Promissory Note, \$9419.11, J. W. McElroy in Favour of M. V. Begley.

THE	\$9419.11	
ROYAL	Int. 6	
BANK	—————	Due CALGARY, Alta., Augt. 1, 1931.
OF	\$	One year after date I promise to pay to the order
CANADA	—————	of M. V. Begley
		Nine Thousand Four Hundred Nineteen 11/100 Dollars, at
		THE ROYAL BANK OF CANADA, Calgary, Alta., value
		received with interest at the rate of 6 per cent. per annum 30
		as well after as before maturity.

No.....

"J. W. McELROY."

Exhibit 60.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 60.

Letter,
M. V. Begley
to J. W.
McElroy.
No date.

Calgary.

Dear Mr. McElroy:

My address will be General Delivery Victoria B. C. and would you kindly explain why you have treated me so leaving in such a hurry & telling me you had to be home at noon & at night you were still in Town I dont think I have ever done anything to you for the way you treated me, I suppose it was because I asked you to make out a new note & it was your self who has always told me to look after those things & with my own relations I make them make out a first mortgage but no wonder I have a bad heart the way you have been acting towards me am in a hurry.

M. V. BEGLEY.

(Envelope attached.)

Exhibit 70.

(Defendant's Exhibit)

Agreement, J. W. McElroy and Herman Halverson.

Exhibits.
Ex. 70
Agreement.
J. W. McElroy
and Herman
Halverson,
January 2,
1932.

THIS AGREEMENT made in duplicate this 2nd day of January, 20 A.D. 1932.

BETWEEN:

JAMES WESLEY McELROY of the City of Calgary, in the Province of Alberta, Farmer, hereinafter called the Vendor,

of the First Part,

and

HERMAN HALVERSON of Vauxhall, in the Province of Alberta, Farmer, hereinafter called the Purchaser,

of the Second Part.

NOW THIS AGREEMENT WITNESSETH that in consideration of the conditions and stipulations and the payments to be made as hereinafter specified the performance of each and every of such conditions and stipulations as well as the said payments being hereby expressly declared to be conditions precedent and of the essence of this Agreement the Vendor hereby agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor all and singular those certain parcels or tracts of land situate lying and being in the Province of Alberta and being composed of:

*In the
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of Alberta*

—
Exhibits,
Ex. 70.

Agreement,
J. W. McElroy
and Herman
Halverson,
January 2,
1932.

—*continued*

(a) All of Section Twenty-three (23), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 640 acres more or less excepting: Firstly—Out of the North East Quarter (N.E. $\frac{1}{4}$) 24.5 acres more or less and out of the North West Quarter (N.W. $\frac{1}{4}$) 78.2 acres more or less for canal right-of-way as shown on plan filed in the Land Titles Office for the South Alberta Land Registration District as “Irr. 72;” Secondly—Out of the South East Quarter (S.E. $\frac{1}{4}$) 3.99 acres more or less and out of the South West Quarter (S.W. $\frac{1}{4}$) 3.2 acres more or less for a roadway as shown on plan filed in the said Land Titles Office as “6643 Q.,” Thirdly—Out of the said South West Quarter (S.W. $\frac{1}{4}$) 16.78 acres more or less for canal right-of-way as shown on plan filed in said Land Titles Office as “Irr. 60” and, Fourthly—Out of said South West Quarter (S.W. $\frac{1}{4}$) 68.7 acres more or less as shown on plan filed in the said Land Titles Office as “Chestermere 75208 P.” and out of the said South West Quarter (S.W. $\frac{1}{4}$) the lands shown on plan filed in said Land Titles Office as “Chestermere Heights 5120 A.R.” the land herein comprised containing 444.63 acres more or less subject to the right of expropriation of certain portions thereof and to such other rights and conditions as are reserved and contained in Transfers registered as “735-U” and “736-U” and reserving unto the Canadian Pacific Railway Company all mines and minerals. 10 20

(b) The North East Quarter (N.E. $\frac{1}{4}$) of Section Twenty-two (22), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less excepting thereout 6.1 acres more or less for a reservoir site and 1.7 acres more or less for a road division as shown on a plan filed in the Land Titles Office for the South Alberta Land Registration District as “Irr. 87” the land herein comprised containing 152.2 acres more or less excepting thereout all mines and minerals.

(c) The South West Quarter (S.W. $\frac{1}{4}$), of Section Twenty-two (22), 30 in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less, reserving unto His Majesty, His Successors and Assigns all mines and minerals and the right to work the same.

(d) The South East Quarter (S.E. $\frac{1}{4}$) of Section Twenty-two (22), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less, reserving unto His Majesty, His Successors and Assigns all mines and minerals and the right to work the same excepting thereout those portions comprised in canal right-of-way and roadway as shown on plan “Irr. 87” and coloured green 40 and red and as described in Transfer registered as “2211 W.,” the land herein comprised containing 92.6 acres more or less.

(e) The North West Quarter (N.W. $\frac{1}{4}$) of Section Twenty-two (22), in Township Twenty-four (24), Range Twenty-eight (28), West of the

Fourth Meridian, containing 160 acres more or less, reserving unto His Majesty, His Successors and Assigns all mines and minerals and the right to work the same.

*In the
Supreme Court
of Alberta*

10 (f) The North West Quarter (N.W. $\frac{1}{4}$) of Section Fifteen (15), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less subject to the right of expropriation of certain portions thereof and to such other rights and conditions as are reserved and contained in Transfer registered as "1293 A.D." reserving unto the Canadian Pacific Railway Company, their successors and assigns all mines and minerals including petroleum belonging to them and the right to work the same.

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Ex. 70.
Agreement,
J. W. McElroy
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Halverson,
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1932.

—continued

(g) Those portions of land situate in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian and being: First—That portion of the North East Quarter (N.E. $\frac{1}{4}$) of Section Fifteen (15) which lies to the North and West of a road diversion and to the West of the canal right-of-way of the Canadian Pacific Railway Company as said canal right-of-way and road diversion are shown on a plan filed in the Land Titles Office for the South Alberta Land Registration District as "Irr. 86" containing 65.77 acres more or less; Secondly—That
20 portion of the South East Quarter (S.E. $\frac{1}{4}$) of said Section Fifteen (15) which lies to the North and West of said Road diversion and containing .03 of an acre more or less, and, Thirdly—That portion of the South West Quarter (S.W. $\frac{1}{4}$) of said Section which lies to the North and West of said road diversion containing 97.7 acres more or less excepting thereout the most Southerly $3\frac{1}{2}$ acres of the said portion of the South West Quarter herein above described and which most Southerly $3\frac{1}{2}$ acres is particularly described as follows:

Beginning at the South West corner of the said South West Quarter; thence Northerly along the West boundary of the said Quarter Section, a
30 distance of Three Hundred and Ten feet and Five-tenth of a foot (310.5); thence East a distance of Six Hundred and Seventy-three feet more or less to the Westerly limit of the aforesaid road diversion; thence on the bearing South Forty-nine degrees Thirty-two minutes West along the Westerly limit of the said road diversion, a distance of Four Hundred and Seventy-eight feet and Five-tenths of a foot (478.5) more or less to the South boundary of the said South West Quarter Section; thence on a bearing North Eighty-nine degrees Fifty-four minutes West along the South boundary of the said South West Quarter Section, a distance of
40 Three Hundred and Nine (309) feet to the place of beginning, the land herein comprised containing 160 acres more or less subject to the right of expropriation of certain portions thereof and to such other rights and conditions as are reserved and contained in Transfer registered as "1293 A.D." and reserving unto the Canadian Pacific Railway Company, their successors and assigns all mines and minerals including petroleum belonging to them and the right to work the same, at and for the price or sum of Fifty Three Thousand One Hundred and Seventy-seven Dollars and

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Exhibits.
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Agreement,
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—continued

Twenty Cents (\$53,177.20) of lawful money of Canada payable in manner and on the days and times hereinafter mentioned until the purchase price with interest as hereinafter provided is fully paid and satisfied on the terms herein set forth, that is to say:

Firstly—By the payment in cash of the sum of Five Hundred (500.00) Dollars on the execution of this Agreement, receipt whereof is hereby acknowledged.

Secondly—(a) Until the Mortgages made by the Vendor in favor of the Manufacturers Life Insurance Company and registered against the said lands (which Mortgages are registered in the Land Titles Office for the South Alberta Land Registration District at “5360 E.A.” and “7383 E.A.” respectively) are put in good standing to the satisfaction of the said Mortgagee and the arrears of taxes are paid, by the delivery to the Vendor of a full one-half share or portion of the whole of the crop or crops of grain of different kinds and qualities which shall be grown upon the said lands during each year of the life of this contract without any deduction, defalcation or abatement whatsoever provided however that the Vendor shall apply the full proceeds of the said share of crop in payment of the current taxes against the said lands and the balance thereof on the moneys payable under the said Mortgages and on account of the said arrears of taxes; (b) After the said Mortgages are put in good standing as aforesaid and the said arrears of taxes are paid by the delivery to the Vendor of a full one-third share or portion of the whole of the said crop or crops of grain as aforesaid subject to the obligation of the Vendor to pay out of the proceeds of the sale of the said share of crop the annual interest payable on the said Mortgages but in the event that in any year the share of crop payable to the Vendor is not sufficient to meet the said annual interest charges the Purchaser shall pay the deficiency in that behalf up to an amount not exceeding Five Hundred (\$500.00) Dollars. The said share or portion of crop of grain shall be delivered by the Purchaser free of all expense to the Vendor on or before the 1st day of October in each and every year during the currency hereof at a grain elevator either at the Village of Janet or the Village of Conrich or at the Village of Norfolk or on cars at either of the said Villages aforesaid provided however that in any year the Vendor may direct the Purchaser to store the share or portion of crop payable to the Vendor on the said lands for delivery at a time not later than the 31st day of December of such year and in such case the Purchaser shall so store the said share and deliver the same as directed by the Vendor. The said share if so delivered shall be delivered by having the grain tickets or receipts or bills of lading made out in the name of and in favor of the Vendor or his nominee and by delivering the same to the Vendor. The said share or portion shall be sold on or before the 31st day of December in each year and the amount received as the proceeds of such sale less any storage, elevator or handling charges shall be credited on the purchase price of the said lands as hereinafter provided.

The Purchaser covenants and agrees to and with the Vendor to pay the said sum of money in manner and on the days and times as herein provided together with interest thereon from and after the date hereof at the rate of six (6) per centum per annum on so much of the principal moneys as remain unpaid from time to time and payable annually at the time and place payments are herein agreed to be made on the principal sum payable hereunder and interest not paid when due shall be added to the principal sum remaining unpaid hereunder and shall bear interest at the rate aforesaid.

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—
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Ex. 70.
Agreement.
J. W. McElroy
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Halverson,
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—*continued*

10 The Purchaser covenants and agrees to and with the Vendor to keep and maintain in good repair during the currency hereof all buildings and fences now or hereafter placed on the said lands and that the Vendor or his representative may enter upon the said lands at all times to view the state of repair thereof and to ascertain or investigate the fulfilment by the Purchaser or any or all of the covenants on his part herein contained.

The Purchaser covenants and agrees to and with the Vendor in each and every year during the currency hereof either to put in crop or summerfallow in good and farmer-like manner and in due and proper season all the cultivated lands of the premises hereby agreed to be sold and to
20 leave no part of the said cultivated lands lying idle in any year except for the purpose of summerfallow or preparing the same for crop in the interest of good husbandry.

The Purchaser further covenants and agrees to and with the Vendor to pay all taxes, rates and assessments wherewith the said lands may be rated or charged from and after the 1st day of January A.D. 1932 as and when the same become due and to insure and keep insured from and after the date hereof and to pay the premiums therefor all buildings now or hereafter placed on the said lands in some Insurance Company approved of by the Vendor with loss, if any, payable to the Vendor as his interest
30 may appear and to deliver to the Vendor all policies of insurance in respect thereof with all necessary endorsements or assignments in favor of the Vendor properly executed by the Purchaser.

The Purchaser further covenants and agrees to and with the Vendor that in any year in which the Purchaser insures the crop or crops grown upon the said lands against loss by hail that such insurance shall not be made with the Municipal District within which the said lands are situated without the written consent of the Vendor first being obtained for that purpose. In the event of any insurance being placed or any such insurance being effected on the said crop or crops in any year and a loss there-
40 under occurring, the same share thereof shall be payable to the Vendor as would have been payable hereunder in crop and the proceeds of such share received by the Vendor shall be applied in the same manner as herein provided for the said share of crop.

In the event of default by the Purchaser in the fulfilment of any covenants on his part herein contained the Vendor may proceed to remedy such default and may enter upon the said lands for the purpose thereof

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Exhibits.
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Agreement,
J. W. McElroy
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—*continued*

including the right to take delivery of the Vendor's share of the said crop and in such case all moneys paid or expenses incurred by the Vendor in respect thereof shall be repaid by the Purchaser to the Vendor with interest as aforesaid and in the meantime the same shall be added to the principal moneys payable hereunder and become a charge against the said lands.

It is mutually agreed between the parties hereto that the proceeds of the said share or portion hereinbefore referred to and deliverable as aforesaid to the Vendor shall be applied by the Vendor as follows:

Firstly—In payment of any interest due, unpaid or accruing due on the principal sum and unpaid interest, if any, on the purchase price of the said lands. 10

Secondly—The balance to be applied on the principal sum until the full purchase price is fully paid and satisfied provided however that if the proceeds of the said share or portion do not pay up the principal sum with interest as aforesaid in full by the 1st day of October, A.D. 1942, the Purchaser agrees to pay the balance of same in cash on the 1st day of October, A.D. 1942.

The Purchaser shall be entitled to possession of the said lands from and after the date hereof and may occupy and enjoy the same until default be made by the Purchaser in any of the covenants on his part herein contained and until the completion of the purchase price the Purchaser shall hold the said lands as tenant of the Vendor from the date hereof at a yearly rental equivalent to and applicable in satisfaction of any payable at the times the installments of principal and interest on the principal sum hereunder are required to be paid and the legal relationship of landlord and tenant is hereby constituted between the Vendor and the Purchaser. 20

In default in payment of the said moneys and interest or any part thereof on the days and times aforesaid or the performance or fulfilment of any of the covenants on the part of the Purchaser herein contained the whole of the principal money and interest unpaid shall immediately become due and payable and at the option of the Vendor this Agreement may by notice given by the Vendor to the Purchaser be determined and cancelled and the Vendor shall be at liberty to retain any sum or sums paid hereunder as and by way of liquidated damages. 30

The time is to be in every respect the essence of this Agreement.

The Purchaser shall have the privilege of paying off the whole or any part of the unpaid purchase price in advance at any time during the currency hereof. 40

It is agreed by and between the parties hereto that the title in and to all crops of every nature and description grown and produced on the said lands during the currency hereof shall be and remain in the Vendor until the same has been divided and the share deliverable hereunder has been delivered to the Vendor as herein set forth.

In consideration whereof and on the payment of the said sum of

money with interest as aforesaid and the performance of each and every covenant herein on the part of the Purchaser contained the Vendor agrees with the Purchaser to convey and assure or cause to be conveyed and assured to the Purchaser the said lands by transfer under the Land Titles Act free and secure of encumbrances but subject to the conditions, reservations, restrictions and exceptions contained in the existing Certificate or Certificates of Title or in the Vendor's title hereto.

In WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

*In the
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—
Exhibits.
Ex. 70.
Agreement,
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and Herman
Halverson,
January 2,
1932.

—continued

10 SIGNED, SEALED and DELIVERED } "Herman Halverson"
in the presence of } (SEAL)
"Winnifred Nablur" } "J. W. McElroy"
} (SEAL)

CANADA }
PROVINCE OF ALBERTA } I, Winnifred Nablur, of the City of
TO WIT: } Calgary, in the Province of Alberta,
} Stenographer, make oath and say:

1. That I was personally present and did see James Wesley McElroy and Herman Halverson named in the within instrument, duly sign, seal and execute the same for the purposes named therein.

20 2. The same was executed at the City of Calgary, in the Province of Alberta, and I am the subscribing witness thereto.

3. That I know the said James Wesley McElroy and Herman Halverson and each is in my belief of the full age of twenty-one years.

SWORN before me at the City of Calgary, in the Province of Alberta, this }
30th day of January, A.D. 1932. } "Winnifred Nablur"
"JOHN W. MOYER," }
A Commissioner for Oaths in and for the Province of Alberta.

30 CANADA }
PROVINCE OF ALBERTA } I, James Wesley McElroy, of the City
TO WIT: } of Calgary, in the Province of Al-
} berta, Farmer, make oath and say:

1. That I am the Vendor named in the within instrument.
2. That I have no wife.

SWORN before me at the City of Calgary, in the Province of Alberta, this }
30th day of January, A.D. 1932. } "J. W. McElroy"
"JOHN W. MOYER," }
A Commissioner for oaths in and for the Province of Alberta.

*In the
Supreme Court
of Alberta*

Exhibits,
Ex. 61.
Letter,
M. V. Begley
to J. W.
McElroy,
July 24, 1932.

Exhibit 61.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, July 24th, 32.

Dear Mr. McElroy:

I hope you are not suffering with the heat, as we are in Spokane, it is fierce one thing we have lots of park to go to Now say dont get nervous at me for writing but as I hear your friend had her Divorce I thought I had better try and get ahead of her and as this is Leap year, I think I told you New Years day that I must either have a new silk dress or a man so what about starting out on you as I have heard you thought I have been in love with you before I even lost my Husband, I thought there was only one Mell Brown, in the Country but I think there must be lots if that is th case. 10

Now as you know I am fair, fat & forty and I have no car, no Radio & very little money how are chances for you to be my companion, if you look at the envelop you will see where my thoughts were running and as you know I will be very anxious to hear what my future is to be will look for an early reply and please excuse all these mistakes as I am very nervous over such a letter as it is my first. 20

I hope you are having a good summer and are real well, the Stubblefields were asking for you, and hoped you would have a better summer, Mr. Moyer was to let me know if Murphy paid that money, but I have not heard as yet so I suppose he has'nt got it yet has he ever mentioned anything about it to you, or McClelland Mr McElroys note will soon be due which he put off on an ignorant woman who was in love & sick & new nothing about business and he had to get some one else to tell her the mistake, she had made I am learning fast and you know those who laughs last, laughs longest kindest regards.

M. V. BEGLEY. 30

P.S. I have written this on my lap so please excuse once more my Jennie is growing almost a young lady and I am afraid she will be spoiled if we stop here very long as every one tells her she is pretty & such like.

(Envelope attached)

~~MR.~~ J. W. McELROY,

CALGARY, ALTA.

P.O. Box

Exhibit 62.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, Aug. 2nd, 1932.

E 1504

*In the
Supreme Court
of Alberta*Exhibits.
Ex. 62.Letter.
M. V. Begley
to J. W.
McElroy.
August 2, 1932.

Dear Friend:

I was in the dumps yesterday when your letter came and it sure made me feel much better It was such a long time since I have been called down by you that it was good medicine for me. I was more than pleased to
10 hear that you have some ready money not only for my self but for your self and we will hope that your good luck will continue.

You said why did'nt I phone before I left I did'nt even know that you had a Phone! Why did'nt you call up and let me know you had one. As for me never gossiping I dont think there are any of us free from that, although by the tone of your letter you think I must go half way to hear so much. I dont say I have said or done nothing for I am anything but perfect but one thing I do know, had you treated me different, every-
thing would have been different but that is all over now, and I hope I never go thro it again what I have the last three years for I know I was
20 not deserving of the treatment I got.

I have had three letters from Mrs Macdonald I think she is pretty lonesome, I know she wanted to come to Spokane with Jennie and I but I could'nt do that which you know, and especially when there was sick-
ness in the house. I don't know if I told you or not that my Sister Mrs Stubblefield got her hand in the ringer last March and it was torn so badly they were afraid of infection and the shock of it, was to much for her she had a nervous break down and Billy sent to see if I could'nt come over and I wrote back and told them my money was tied up so that I possibly could'nt, and then she was just getting around nicely when she
30 fell down stairs and was badly bruised but no bones broken so Billy wrote and said come if possible and I will help pay expenses, so as Jennie got out on the 18th of June passed without writing I got ready in two days she was so glad to see us that it done her good they have sold out the little store and they have mooved out to a nice little Bunlow not grand but very comfortable and she is looking much better but her hand is not all healed up yet. I was glad to be able to help her she is looking so much older, I dont expect we will be home before the last week in Aug just allow ourselves a few days before school opens, I intend going back to the same Apt 105 President I love it there, never was more contented and
40 did'nt cost any more than it did at Cannons and no conveniences like we have there. Did you know we came over by bus, and I have our return tickets we saved about thirty dollars comming that way altho I was very very tired but I have gained five lbs since I came but no wonder I am eat-

*In the
Supreme Court
of Alberta*

Exhibits,
Ex. 62.

Letter,
M. V. Begley
to J. W.
McElroy,
August 2, 1932.

—continued

ing fruit all the time, it is so very cheap just think bing cherries 2 and 3 cts lb and watermellons 30 and 40 cts. six Cantelopes for 25 cts and strawberries and raspberries were just 60 and 70 cts a crate apricots 80 and 90 cts for an Apple box and they are looking for a big crop of Apples this fall the only thing the poor farmer dont get any thing.

The exchange on our money has been from sixteen to twenty cents ever since I came, so I am not spending one sent more than necessary, times are very hard here and so many stores going broke great bargains in dry goods.

I got a dress last week for 25cts. and not to bad what we would pay 10 \$1.50 for at home and I got a better one for \$1.95 Sister just came in and said who are you writing to and I said Mr. McElroy so she wants to be remembered and said to say she would be able to treat you better now she has a house if you came again, and she also says to tell you that she has'nt forgotten you told her she could come and live in one of your houses for two weeks and she may take you up at it, I guess that is what she told, if not that is was something like it. My Sister Mrs Ayers is home for her holidays and poor woman has to keep Mortons he lots his job over a year ago, only a day or two once in a while, Morton at present is out threshing and Zetta is looking fine quite fleshy for her if you have 20 the time I will be very pleased to hear from you again

Yours sincerely,

M. V. BEGLEY.

Exhibit 63.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Spokane, Aug. 16th, 1932.

Dear Friend:

I am all alone for a short time so thought I would pass the time writing you a short note, the heat is terrible here and very dry we have only 30 had one little shower since we came & that is over seven weeks.

We intend starting for home next Tuesday morning at seven oclock, I think that will be Aug 23rd how time does fly I dont know just where we will go as I got a letter yesterday that our Apt had been sub-let until the last of the month and as we dont get into Calgary until seven P.M. Wednesday we will likely go to the York Hotel as it is so handy to the bus depo.

Now you said you would come and see us with my permission Now just stop and think did I ever refuse you permission to our house, I think I have always made you welcome and will do so again if you care to come. 40

Exhibits,
Ex. 63.

Letter,
M. V. Begley
to J. W.
McElroy,
August 16,
1932.

Most of my friends are away for there holidays so I am not telling any of them when I intend comming.

*In the
Supreme Court
of Alberta*

Did you know that Fred and Mrs Birch took Mary down to Sam's at Winnipeg and she did'nt seem to be gaining and she has been there since the first of June until last week she returned with Sam's wife, she got her hand in the Electric ringer and it made her home sick she sure is giving her mother plenty of worry and so much expense.

Exhibits.
Ex. 63.
Letter,
M. V. Begley
to J. W.
McElroy,
August 16,
1932.

I say Darn these old Widower's who cant leave young girls and married woman alone. Ha! Ha!

—continued

10 We have been having quite a bit of excitement over her the last two weeks. Norman Ayers has been bringing a young Widow around quite often lately and a certain Lady is sure making trouble for him. I guess you know the party. I never saw such jealousy Morton is out of work and at present is out threshing the folks are just comming in so I will stop my nonsense and help get dinner wish you could step in & have some with us will expect to see you before long.

Yours 10 dearly,

M. V. BEGLEY.

I destroyed your letter & have forgotten the Box number.

20

Exhibit 69.

(Defendant's Exhibit)

Promissory Note, \$10,244.75, J. W. McElroy in Favour of M. V. Begley.

Exhibits.
Ex. 69.
Promissory
Note,
\$10,244.75, J.
W. McElroy
in favour of
M. V. Begley,
September 1,
1932.

\$10,244.75.

Calgary, September 1st, 1932.

Two years after date I promise to pay
to the order of M. Victoria Begley at Calgary, Alberta
Ten thousand Two Hundred and Twenty-four and 75/100 Dollars with
interest at the rate of Six per cent per annum as well after as before
maturity.

For value received. (Stamp.)

“J. W. McELROY.”

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 64.

Letter,
M. V. Begley
to J. W.
McElroy,
September 16.

Exhibit 64.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Calgary, Sept. 16th.

Dear Mr. McElroy:

You are really not deserving of a letter of this kind from me. As you know I have a forgiven nature when any one no matter how mean they have treated me I forgive for the time even if I dont forget and I was really very sorry when I called up to day to find you were laid up and I would really like to know how badly you are hurt but we will hope it is not to searious for a speedy recovery. 10

You always tell me you are at a loss to understand some of my letters. I am also at a loss to know why you treat me so dirty at times we left the best of friends and you were to come and talk things over with me, and Mr. Moyer asked me to call you up and have you come and talk the matter over which I did and left my Phone number and as usual I was ignored, perhaps you have a reason for not doing so but I fail to understand you, and I hope as soon as you are able you will drop me a line, and as soon as you are able to drive I hope youwill come in as an old time friend and explain. 20

I promise not to hurt you or your feelings if possible.

It does seem a shame to be laid up this grand weather and we will hope to be able to see you very soon.

Yours sincerely,

M. V. BEGLEY.

Exhibit 65.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 65.
Letter,
M. V. Begley
to J. W.
McElroy,
Postmarked
September 29,
1932.

Dear Mr. McElroy:

I have called up and left my phone number and I have written and you take no notice now This is the last time I will ask you as I hear you are in Town every few days now if you dont come and see me very soon I will be out to see you. 30

M. V. BEGLEY.

Exhibit 71.

(Defendant's Exhibit)

*In the
Supreme Court
of Alberta*

Assignment, J. W. McElroy to Mary V. Begley and Herman Halverson.

Exhibits.
Ex. 71.
Assignment,
J. W. McElroy
to Mary V.
Begley and
Herman
Halverson,
September,
1932.

THIS INDENTURE made in triplicate this _____ day of
September, A.D. 1932.

BETWEEN:

JOHN WESLEY McELROY of Calgary, in the Province of
Alberta, Farmer, hereinafter called the "Assignor,"
of the First Part,

10 and

MARY V. BEGLEY of the City of Calgary, in the Province of
Alberta, Widow, hereinafter called the "Assignee,"
of the Second Part,

and

HERMAN HALVERSON of the City of Calgary, in the Province of
Alberta, Farmer, hereinafter called the "Purchaser,"
of the Third Part.

20 WHEREAS the Assignor is indebted to the Assignee in the sum of
\$10,224.75 Dollars, together with interest thereon at the rate of _____ per
centum per annum from the 1st day of September, A.D. 19____, and has
made default in the payment of the monies agreed to be paid to the
Assignee, and the Assignee has demanded security for the payment of
the said monies and interest payable in respect of the said indebtedness

AND WHEREAS by an agreement in writing under seal dated the
22nd day of January, A.D. 1932, the Assignor agreed to sell to the Pur-
chaser and the Purchaser to purchase from the Assignor the lands and
premises situate, lying and being in the Province of Alberta, and being
composed of:

30 (a) All of Section Twenty-three (23), in Township Twenty-four
(24), Range Twenty-eight (28), West of the Fourth Meridian, containing
640 acres more or less excepting: Firstly—Out of the North East Quarter
(N.E. ¼) 2.45 acres more or less and out of the North West Quarter (N.W.
¼) 7.82 acres more or less for canal right-of-way as shown on plan filed in
the Land Titles Office for the South Alberta Land Registration District
as "Irr. 72;" Secondly—Out of the South East Quarter (S.E. ¼) 3.99
acres more or less and out of the South West Quarter (S.W. ¼) 3.2 acres
more or less for a roadway as shown on plan filed in the said Land Titles
Office as "6643 Q.;" Thirdly—Out of said South West Quarter (S.W.
¼) 16.78 acres more or less for canal right-of-way as shown on plan filed

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 71.
Assignment,
J. W. McElroy
to Mary V.
Begley and
Herman
Halverson,
September,
1932.

—continued

in said Land Titles Office as "Irr. 60" and, Fourthly—Out of said South West Quarter (S.W. $\frac{1}{4}$) 68.7 acres more or less as shown on plan filed in the said Land Titles Office as "Chestermere 7520 A.P." (and out of the said South West Quarter (S.W. $\frac{1}{4}$) the lands shown on plan filed in said Land Titles Office as "Chestermere Heights 5120 A.R.") the land herein comprised containing 444.63 acres more or less subject to the right of expropriation of certain portions thereof and to such other rights and conditions as are reserved and contained in Transfers registered as "735-U" and "736-U" and reserving unto the Canadian Pacific Railway Company all mines and minerals.

10

(b) The North East Quarter (N.E. $\frac{1}{4}$) of Section Twenty-two (22), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less excepting thereout 6.1 acres more or less for a reservoir site and 1.7 acres more or less for a road division as shown on a plan filed in the Land Titles Office for the South Alberta Land Registration District as "Irr. 87" the land herein comprised containing 152.2 acres more or less excepting thereout all mines and minerals.

(c) The South West Quarter (S.W. $\frac{1}{4}$) of Section Twenty-two (22), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less, reserving unto His Majesty, His Successors and Assigns all mines and minerals and the right to work the same.

(d) The South East Quarter (S.E. $\frac{1}{4}$) of Section Twenty-two (22), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less, reserving unto His Majesty, His Successors and Assigns all mines and minerals and the right to work the same excepting thereout those portions comprised in canal right-of-way and roadway as shown on plan "Irr. 87" and coloured green and red and as described in Transfer registered as "2211 W.," the land herein comprised containing 92.6 acres more or less.

(e) The North West Quarter (N.W. $\frac{1}{4}$) of Section Twenty-two (22), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less, reserving unto His Majesty, His Successors and Assigns all mines and minerals and the right to work the same.

(f) The North West Quarter (N.W. $\frac{1}{4}$) of Section Fifteen (15), in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian, containing 160 acres more or less subject to the right of expropriation of certain portions thereof and to such other rights and conditions as are reserved and contained in transfer registered as "1293 A.D." reserving unto the Canadian Pacific Railway Company, their successors and assigns all mines and minerals including petroleum belonging to them and the right to work the same.

(g) Those portions of land situate in Township Twenty-four (24), Range Twenty-eight (28), West of the Fourth Meridian and being: First-

ly—That portion of the North East Quarter (N.E. $\frac{1}{4}$) of Section Fifteen (15) which lies to the North and West of a road diversion and to the West of the canal right-of-way of the Canadian Pacific Railway Company as said canal right-of-way and road diversion are shown on a plan filed in the Land Titles Office for the South Alberta Land Registration District as “Irr. 86” containing 65.77 acres more or less; Secondly—That portion of the South East Quarter (S.E. $\frac{1}{4}$) of said Section Fifteen (15) which lies to the North and West of said Road diversion and containing .03 of an acre more or less and, Thirdly—That portion of the South West Quarter (S.W. $\frac{1}{4}$) of said Section which lies to the North and West of said road diversion containing 97.7 acres more or less excepting thereout the most Southerly $3\frac{1}{2}$ acres of the said portion of the South West Quarter hereinabove described and which most Southerly $3\frac{1}{2}$ acres is particularly described as follows:

Beginning at the South West corner of the said South West Quarter; thence Northerly along the West boundary of the said Quarter Section, a distance of Three Hundred and Ten feet and Five-Tenths of a foot (310.5); thence East a distance of Six Hundred and Seventy-three feet more or less to the Westerly limit of the aforesaid road diversion; thence
 20 on the bearing of the South Forty-nine degrees Thirty-two minutes West along the Westerly limit of the said road diversion, a distance of Four Hundred and Seventy-eight feet and Five-tenths of a foot (478.5) more or less to the South boundary of the said South West Quarter Section; thence on a bearing of the North Eighty-nine degrees Fifty-four minutes West along the South boundary of the said South West Quarter Section, a distance of Three Hundred and Nine (309) feet to the place of beginning, the land herein comprised containing 160 acres more or less subject to the right of expropriation of certain portions thereof and to such other rights and conditions as are reserved and contained in Transfer
 30 registered as “1293 A.D.” and reserving unto the Canadian Pacific Railway Company, their successors and assigns all mines and minerals including petroleum belonging to them and the right to work the same at the price or sum of Fifty-three Thousand One Hundred and Seventy-seven Dollars and Twenty Cents (53,177.20) of lawful money of Canada payable in the manner and on the days and times in the said agreement mentioned and in particular by the delivery to the Assignor by the said Purchaser of the share or portions of crops of grain of every nature and description, grown and produced on the said lands above described in each and every year during the currency of the said agreement.

40 NOW THIS INDENTURE WITNESS that in consideration of the premises and of the sum of One Dollar (\$1.00) now paid by the Assignee to the Assignor (the receipt whereof is hereby acknowledged) the Assignor hereby assigns and transfers unto the Assignee all the estate, right, title and interest of the Assignor, in to and in respect of the said agreement as collateral security in the payment of the said indebtedness of the Assignor to the Assignee.

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 71.
Assignment,
J. W. McElroy
to Mary V.
Begley and
Herman
Halverson,
September,
1932.

—continued

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 71.

Assignment,
J. W. McElroy
to Mary V.
Begley and
Herman
Halverson,
September,
1932.

—continued

The Assignor hereby covenants and agrees with the Assignee to deliver to the Assignee the said agreement and to do all such acts and execute all such further assurances as may be necessary from time to time to more fully vest in the Assignee the said rights under the said agreement for the purposes hereof.

IT IS UNDERSTOOD AND AGREED between the Assignor and the Assignee that this assignment shall not be construed as an entry into possession by the Assignee of the said lands nor render the Assignee liable for any failure or default on the part of the Purchaser in the delivery of the said share or portion of the said crop or any part thereof, nor shall this assignment impose on the Assignee any obligations or duty to enforce delivery thereof and in no case shall render the Assignee liable for any accounting to the Assignor except for the actual monies realized by the Assignee out of the sale of the said share or portion received by or delivered to the Assignee. 10

AND IT IS FURTHER UNDERSTOOD AND AGREED between the Assignor and Assignee and it is hereby declared that this assignment is given as a continuing security collateral to the indebtedness of the Assignor to the Assignee and that the execution of this Indenture shall not, in any way whatever suspend or affect the right or remedies of the Assignee in respect of the said indebtedness or any part thereof. 20

IN WITNESS WHEREOF the Assignor has hereunto set his hand and seal the day and year first above written.

SIGNED, SEALED and DELIVERED in the presence of as to McElroy "E. A. Dunbar"	}	"J. W. McElroy" (SEAL) (SEAL) (SEAL)
---	---	---

CANADA PROVINCE OF ALBERTA TO WIT:	}	I, James Wesley McElroy, of the City of Calgary, in the Province of Alberta, Farmer, MAKE OATH AND SAY: 30
--	---	--

1. THAT I am the Assignor named in the within instrument.
2. THAT I have no wife.

SWORN before me at the City of Cal- gary, in the Province of Alberta, this 6th day of September, A.D. 1932. "E. A. DUNBAR"	}	"J. W. McElroy"
---	---	-----------------

A Commissioner for Oaths in and for the Province of Alberta.

Exhibit 2.

(Plaintiff's Exhibit)

Bank Pass Book, M. V. Begley.

Depositors will please read carefully REGULATIONS as below.

IMPERIAL BANK OF CANADA

..... Branch

SAVINGS DEPARTMENT

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 2.
Bank Pass
Book,
M. V. Begley,
April 4, 1918,
to October 2,
1930.

REGULATIONS

No. 1. The Bank will receive on deposit sums of one dollar and
10 upwards.

No. 2. Depositors with the Bank, shall, on the occasion of making
their first deposit, declare their name, residence and occupation.

No. 3. Until further notice to depositor in person or by letter
mailed to last known address of depositor, the Bank agrees to allow
interest at the rate of % per annum, calculated upon the minimum
monthly balance, and the interest accrued shall be added to the principal
of the Depositor on the 30th April and 31st October of each year.

Depositors should present pass books as soon after dates mentioned
as possible, to have accrued interest added therein.

20 No. 4. All deposits should be entered in the Bank Book at the time
they are made, and must be initialed by the Ledger Keeper. It is re-
quested that the Bank Book be produced when the withdrawal of any
portion of deposit is desired.

No. 5. No withdrawal shall be made for less than one dollar, unless
it be for balance remaining on deposit.

No. 6. All withdrawals must be made personally, or by order in
writing, duly authenticated when the signature is not known to the Bank.

30 No. 7. On the decease of any depositor the amount to the credit of
the deceased shall be paid to his or her legal representatives upon the
production of the proper authority.

No. 8. The Bank reserves to itself the privilege of requiring fifteen
days' notice of all intended withdrawals.

Manager.

MARRIED WOMEN AND MINORS MAY MAKE DEPOSITS
AND WITHDRAW THE SAME WITHOUT THE INTERVENTION
OF ANY PERSON.

IMPERIAL BANK OF CANADA
SAVINGS DEPARTMENT

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 2.
Bank Pass
Book,
M. V. Begley,
April 4, 1918,
to October 2,
1930.

Money deposited under foregoing Regulations.
No. Ledger Folio BE-3

Date	Particulars	Initials	Dr.	Cr.	Balance
<i>—continued</i> 1918					
Apr. 4	Dep.	P,		82	82
April 30, 1918	Int. to Date			20	82 20
Aug. 6	Dep.			20	102 20
Oct. 31/18	Int.			1 35	103 55
Apl. 30	Interest to Date			1 50	105 05
My. 31				25	130 05
	Int.			1 65	131 70
	"			1 90	133 60
	"			1 90	135 50
	Interest to Date, Apr. 30, 1921			1 95	137 45
	Interest to Date, Oct. 31st, 1921			1 95	139 40
Dec. 27			110		29 40
	Brought forward				29 40
	Int. to Ap. 30/22			70	36 40
	Int. to Oct. 31/22			50	41 40
	Int. to Ap. 30/23			40	45 40
Jul. 9			5		26 00
	Int. Apl. 31/23			40	30 00
Dec. 11	L.		20		6 40
Jan. 11/29	D.			115 51	121 91
1929	P.L.			900	121 91
15	O/s.		100		121 91
O/s.	21		800		121 91
18	D.			141 75	263 66
26	D.			115 05	378 71
28	✓		115		493 71
28	D.	D.		1346 05	1609 76
	Trav. Cks.		503 95		1105 81
		Carried Forward			
		Brought Forward			
Jan. 31	c.		12 80		1118 61
"	D.			624	494 61
Ck. chgd.	BE-2		289 30		205 31
	c.		1399 10		28 61 40
May 7	Timms			240	28 61 40
	Lay			258 75	28 61 40
8	Dep.			2100	28 61 40

Date	Particulars	Initials	Dr.	Cr.	Balance	In the Supreme Court of Alberta
	C.		2100		527 36	
June 21	D.			13081 35	13608 71	Exhibits. Ex. 2. Bank Pass Book, M. V. Begley, April 4, 1918, to October 2, 1930.
	C.V.B. Bearer		200			
22	Re Estate Interest			54 44		
25	C. J.W.McE.		750			
	C. (?)		500			
	Dft. Spokane		101			
28	C. McDonald Grain Co.		185			
10		Carried Forward				
		Brought Forward				
June 27	C.		8500			
July 17	C.		23 50			
23	✓		1000			
30	McElroy			133 28		
Aug. 20	C.		15			
22	Moyer		500			
Oct. 26	C.		500			
31	Interest			22 50		
20 Nov. 7	Wire		502 05			
13	C.		735			
16	✓		265			
Dec. 6	Dep.			1400		
17	C.		500			
	D.			500		
20	C. Cash		25			
23	✓		100			
		Carried Forward				
		Brought Forward				
30 Dec. 24	C. Gills		53			
	D.			1438 17		
1930	C.		13 95			
Jan. 2	C.		35			
	C.		1400		1253 60	
9	Box recet.		3			
17	c.		12			
	C.		25		1213 60	
22	✓		60			
23	✓		75			
40 Feb. 5	C.		25			
6	Terrill		3			
8	Bolter		7 50			
12	Tisdale		11 60			
	Telephone		2 25			
13	Cash		20			

- continued

*In the
Supreme Court
of Alberta*

Exhibits.
Ex. 2.
Bank Pass
Book,
M. V. Begley,
April 4, 1918,
to October 2,
1930.

—continued

Date	Particulars	Initials	Dr.	Cr.	Balance
		Carried Forward			
		Brought Forward			
1930					
Feb. 26	✓		50		
Mar. 1	D.			270 20	1229 45
5	C.		75		
11	C.		9 50		
	Moore L. W.		5		
			6 25		
13			40		
18			11 75		10
	✓		7 50		
	✓		50		
22	✓		25		
27	✓		2 31		
29	✓		75		
Apr. 1	C.		25		
9	✓		37 50		
14	✓		15		
30	Interest		16 40		20
		Carried Forward			
1930		Brought Forward			
Apr. 28	C.		50		
May 10	C.		11 06		799 98
13	C.		15		
14	C.		75		
	D.			530	1239 98
17	C.		7 05		
22	✓		75		
24	C.		25		1132 93
30	C.		25		1107 93
June 2	C.		5		1102 93
11	C.		154 40		948 53
19	C.		15		933 53
23	C.		25		908 53
25	C.		91 45		
Jy. 2	C.		14 10		
5	C.		6 60		
		Carried Forward			40
		Brought Forward			
Jy. 5	C.		75		
7	C.		170		
			500		
8	McElroy			Aug. 5 429	

Date	Particulars	Initials	Dr.	Cr.	Balance	<i>In the Supreme Court of Alberta</i>
9	C.		10 63			—
	C.		125		344 73	Exhibits. Ex. 2.
10	C.		24 17			Bank Pass Book,
11	C.		34 75			M. V. Begley, April 4, 1918, to October 2, 1930.
15	C.		10			
16	C.		45			
Aug. 13	C.		10			
16	C.		75			<i>—continued</i>
10 18	C.		11 50		134 33	
23	C.		10		124 23	
26			3 15		121 18	
27	C.		10		111 18	
		Carried Forward			111 18	
		Brought Forward				
Aug. 30	C.		7 05		104 13	
Sept. 5	C.		25		79 13	
12	C.		5 05			
19	C.		45			
20 24	✓		15		14 08	
25	C.		1 60		12 48	
Oct. 2	C.		10		2 48	

Exhibit 5.

(Plaintiff's Exhibit)

Liability Ledger Sheets, J. W. McElroy to Imperial Bank of Canada.

In Liquidation

J. W. McELROY, H. O. Cr. No. 15837 7%
DELACOUR, ALTA, FARMER

Date	No.	Name	Address	When Due	Direct Liability		Indirect Liability	
					Dr.	Cr.	Dr.	Cr.
1925								
Jan. 31		Demand Notes			15931		15931	
Feb. 28		do.			16016		16016	
Mar. 31		do.			16112		16112	
April 30		do.			16204		16204	
		Tax			6			
May 31		Int.			96		16307	
July 27	259	Dun		Sept. 29	367		16674	
June 30		Int.			94		16768	
July 31					97		16865	
		Tax			6		16871	
Aug. 12	521	Own		Nov. 4	304		17175	
Aug. 31		Int.			98		17273	
Sep. 14	664	Own		Nov. 17	354		17627	
Sep. 29	259					367	17260	
Sep. 30		Int.			95		17355	
Oct. 31, 1925		Int.			99		17454	
Nov. 4	521					304	17150	
Nov. 17	664					354	16796	
Nov. 30		To conform with Note Int.					16895	
Dec. 31		Interest			100		16995	

Date	No.	Name	Address	When Due	Direct Liability		Indirect Liability	
					Dr.	Cr.	Dr.	Cr.
		Tax				17002		
Jan. 31/26		Interest			101	17103		
Feb. 28		"			92	17195		
Mch. 31		"			103	17298		
		Tax			7	17305		
Apr. 30		Interest			99	17404		
May 10						15856		
May 31		Interest			96	15942		
June 30		"			92	16034		
July 31		"			95	16129		
Aug. 31		"			96	16225		
Sept. 30		"			93	16318		
Oct. 31		"			97	16415		
		Tax			6	16422		
Nov. 11		A/c.				14422		
Nov. 24						13422		
Nov. 30		Int.			85	13507		
Dec. 30		Int. & Tax			80	13594		
Jan. 31/27		"			81	13675		
Feb. 28		"			74	13749		
Mar. 31		" & Tax			87	13836		
April 30		"			79	13915		
1927								
May 31		"			83	13998		
June 30		"			80	14078		
		Tax			6	14084		
July 30		Int.			84	14168		
Aug. 31		"			84	14252		

In the
Supreme Court
of Alberta

Exhibits.
Ex. 5.

Liability
Ledger Sheets,
J. W. McElroy
to Imperial
Bank of
Canada,
January 31,
1925, to
June 18, 1930.

—continued

In the
Supreme Court
of Alberta

Exhibits.
Ex. 5.
Liability
Ledger Sheets,
J. W. McElroy
to Imperial
Bank of
Canada.
January 31,
1925, to
June 19, 1930.

--continued

Date	No.	Name	Address	When Due	Direct Liability		Indirect Liability	
					Promissor		Endorser	
					Dr.	Cr.	Dr.	Cr.
1927								
Sept. 12		Ford (Own Dem. Note)		Dun		14252		
Sept. 30		Int.			82	14334		
Nov. 3		Int.			85	14419		
Nov. 30		"			83	14502		
Dec. 31		"			86	14588		
Jan. 18/28	436	Verrin W. J.		Mar. 20			254	
	7	Irving A. E.		April 19	87	14675	203	457
Jan. 31/28		Int.			82	14757		
Feb. 29, 1928		Int.						254
Mar. 20	436				87	14844		203
Mar. 31, 1928								
April 19	437							
April 30		Int.			86	14930		
May 30		"			89	15019		
June 30, 1928		"			86	15105		
July 31		Int.			90	15195		
Aug. 31		"			90	15285		
Sept. 29		Int.			88	15373		
Oct. 31		"			91	15464		
Nov. 30		"			89	15553		
Dec. 31		Int.			92	15645		
		A/C.				13404		
Jan. 31/29		Int.			13	2241		
Feb. 28		"			12	2254		
Mar. 31		"			13	2266		
Apr. 30		"			13	2279		
May 31		"			13	2292		
		"			13	2305		

Date	No.	Name	Address	When Due	Promissor		Endorser	
					Direct Liability		Indirect Liability	
					Dr.	Cr.	Dr.	Cr.
July 2								
June 30		Int.						
Nov. 8	76	Own		Jan. 10	1500	1500		
Jan. 10	76	Own		April 14	1833	1833		
Jan. 11								
Apr. 14	541	Own		Jan. 18	1518	1518		
Apr. 30	1470	Own		✓				
June 11		A/C. 1470				500		
June 18		Bal. 1470				1018		
								2321

*In the
Supreme Court
of Alberta*

—
Exhibits.
Ex. 5.
Liability
Ledger Sheets,
J. W. McElroy
to Imperial
Bank of
Canada,
January 31,
1925, to
June 18, 1930.

—continued

*In the
Supreme Court
of Alberta*

Exhibit 36.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 36.
Letter,
M. V. Begley
to J. W.
McElroy,
no date.

Dear Mr. McElroy:

I wrote that letter just as near as I could remember what was said, but you can read just what you think best to him, I didn't have his address or I might have dropped a note to himself but I think it will be just as well if you read this to him, now say you sure are proud when ones has worked as hard as you have & the gas you have used to think you wouldn't even take a hundred to buy gas & I dont see how I am ever going to pay you for all your kindness, I guess I will haft to give up & not try. Now about the telegram I sent it the day I got your letter, I guess you didn't understand me getting the two letters for the one I wrote first they all tried to talk me out of doing it but I wanted to from the first & Billy Stubb said if you want to do it but the rest kept saying you are crazy & all kinds of pet naims & I felt a thousand wouldn't hurt me very much which ever way it goes, & Just as soon as Zetta & Kate found out I had sent it they think now it was all right, I haven't seen the Ayers for two weeks Zetta was pieved at me but I will tell you all about it when I see you, there came near being a Divorce & I think there would have been if it hadn't been for her brother & myself I think we have got it fixed up & she called me up to-day & invited us out for dinner to-morrow so I will go and not make any difference although she treated me dirty I think you & I were born for trouble be sure & burn this.

M. V. BEGLEY.

Exhibit 66.

(Defendant's Exhibit)

Letter, M. V. Begley to J. W. McElroy.

Exhibits.
Ex. 66.
Letter,
M. V. Begley
to J. W.
McElroy,
March 17.

Mar. 17.

Dear Mrs. McElroy:

Dont think I have gone crazy but I got the Ayers & Sister away to Church & I said to Billy I would like to take a chance on that oil will you go down Town with me & he said sure I will so I started at once write soon & tell me all about it.

Yours truly,

M. V. BEGLEY.

Exhibit 72.

(Defendant's Exhibit)

Current Account Ledger Sheets, J. W. McElroy with Imperial Bank of Canada.

IMPERIAL BANK OF CANADA

Account No.

Sheet No. 303.

McELROY, J. W.

CALGARY, ALTA.

"M"

Dalton

Accountant

*In the
Supreme Court
of Alberta*Exhibits.
Ex. 72.
Current
Account
Ledger Sheets,
J. W. McElroy
With Imperial
Bank of
Canada,
June 2, 1928, to
July 31, 1930.

10	Old Balance	Date	Cheques in Detail	Deposits	Date	New Balance
			Balance Brought Forward			
	149.39	Jun. 2-28	150.00	18.75	Jun. 2-28	318.14-s
	318.14	Jun. 4-28	896.25		Jun. 4-28	1214.39-s
	1214.39	Jun. 4-28	15.00	40.00	Jun. 4-28	1269.39-s
	1269.39	Jun. 4-28	40.00	e.c. 4.00		
	1233.39	Jun. 6-28	25.00		Jun. 4-28	1233.39-s
	1258.39	Jun. 6-28	25.00	e.c. 35.00	Jun. 6-28	1258.39-s
	1268.39	Jun. 8-28	52.00	112.50	Jun. 6-28	1268.39-s
20	1432.89	Jun. 9-28	75.85	25.00	Jun. 8-28	1432.89-s
	1533.74	Jun. 14-28	25.00	30.00	Jun. 9-28	1533.74-s
	1588.74	Jun. 16-28	100.00		Jun. 14-28	1588.74-s
	1688.74	Jun. 18-28	125.00	15.00 50.00	Jun. 16-28	1688.74-s
	1878.74	Jun. 19-28	25.00	14.00	Jun. 18-28	1878.74-s
	1917.74	Jun. 21-28	25.00		Jun. 19-28	1917.74-s
	1942.74	Jun. 25-28	40.00		Jun. 21-28	1942.74-s
	1982.74	Jun. 28-28	35.00		Jun. 25-28	1982.74-s
	2017.74	Jun. 29-28	9.80	Int.	Jun. 28-28	2017.74-s
	2027.54	Jul. 10-28	20.00		Jun. 29-28	2027.54-s
30	2047.54	Jul. 30-28	13.40	Int.	Jul. 10-28	2047.54-s
	2060.94	Aug. 1-28	67.00		Jul. 30-28	2060.94-s
					Aug. 1-28	2127.94-s
	2127.94			121.42	Aug. 7-28	2006.52-s
	2006.52			1398.25	Aug. 18-28	608.27-s
	608.27	Aug. 20-28	70.00	100.00	Aug. 20-28	778.27-s
	778.27	Aug. 22-28	110.97		Aug. 22-28	889.24-s
	889.24	Aug. 25-28	85.00		Aug. 25-28	974.24-s
	974.24	Aug. 27-28	150.00		Aug. 27-28	1124.24-s
	1124.24	Aug. 29-28	211.00		Aug. 29-28	1335.24-s
	1335.24			31.24	Aug. 30-28	1304.00-s

<i>In the Supreme Court of Alberta</i>	Old Balance	Date	Cheques in Detail	Deposits	Date	New Balance
Exhibits. Ex. 72.	1304.00	Aug. 31-28	10.95	Int.	Aug. 31-28	1314.95-s
Current Account	1314.95	Sep. 4-28	20.00		Aug. 31-28	
Ledger Sheets, J. W. McEiroy	1334.95	Sep. 4-28	100.00		Sep. 4-28	1334.95-s
With Imperial Bank of Canada,	1434.95	Sep. 6-28	46.25		Sep. 4-28	1434.95-s
June 2, 1928, to July 31, 1930.	1481.20	Sep. 7-28	25.00		Sep. 6-28	1481.20-s
	1506.20	Sep. 8-28	17.85	299.25	Sep. 7-28	1506.20-s
	1224.80			1000.00	Sep. 8-28	1224.80-s
<i>—continued</i>	224.80	Sep. 19-28	50.00		Sep. 15-28	224.80-s 10
	274.80	Sep. 20-28	57.40		Sep. 19-28	274.80-s
	332.20			500.00	Sep. 20-28	332.20-s
	167.80	Sep. 22-28	15.00		Sep. 21-28	167.80-s
	152.80			500.00	Sep. 22-28	152.80-s
	652.80	Sep. 25-28	16.00		Sep. 24-28	652.80-s
	636.80	Sep. 28-28	4.80	Int.	Sep. 25-28	636.80-s
	632.00	Sep. 28-28	5.00	25.00 10.20	Sep. 28-28	632.00-s
	591.80			500.00	Sep. 28-28	591.80-s
	1091.80	Sep. 29-28	131.88		Sep. 28-28	1091.80-s
	959.92	Oct. 2-28	154.75	10.00	Sep. 29-28	959.92-s 20
	795.17	Oct. 2-28	25.00		Oct. 2-28	795.17-s
	770.17	Oct. 4-28	11.10	200.00 15.00	Oct. 2-28	770.17-s
	554.05	Nov. 30-28	27.25	25.00 15.00	Oct. 4-28	544.07-s
	476.82	Dec. 3-28	100.00		Nov. 30-28	476.82-s
	376.82	Dec. 4-28	10.00		Dec. 3-28	376.82-s
	366.82	Dec. 4-28	13.50		Dec. 4-28	366.82-s
	353.32	Dec. 5-28	10.00		Dec. 4-28	353.32-s
	343.32	Dec. 6-28	326.00		Dec. 5-28	343.32-s
	17.32	Dec. 8-28	15.00		Dec. 6-28	17.32-s
	2.32	Dec. 20-28	25.00		Dec. 8-28	2.32-s 30
	22.68	Dec. 24-28	2922.59		Dec. 20-28	22.68-s
	2945.27	Dec. 26-28	100.00		Dec. 24-28	2945.27-s
	3045.27	Dec. 31-28	2.20	Int.	Dec. 26-28	3045.27-s
	3047.47	Jan. 5-29	100.00		Dec. 31-28	3047.47-s
	3147.47	Jan. 19-28	646.65		Jan. 5-29	3147.47-s
	3704.12	Jan. 21-28	238.07		Jan. 19-29	3794.12-s
	4032.19	Jan. 25-29	72.50		Jan. 21-29	4032.19-s
	4104.69	Jan. 28-29	87.50		Jan. 25-29	4104.69-s
	4192.19	Jan. 29-29	35.00		Jan. 28-29	4192.19-s
	4227.19	Jan. 30-29	22.40	D.M.	Jan. 29-29	4227.19-s 40
	4249.59	Feb. 1-29	100.00		Jan. 30-29	4249.59-s
	4349.59	Feb. 16-29	50.00		Feb. 1-29	4349.59-s
	4399.59	Feb. 26-29	75.00		Feb. 16-29	4399.59-s
	4474.59	Feb. 28-29	28.93	Int.	Feb. 26-29	4474.59-s
	4503.52	Feb. 28-29	.90	9.00	Feb. 28-29	4503.52-s
					Feb. 28-29	4513.42-s

Old Balance		Cheques in		Deposits	Date	New Balance	<i>In the Supreme Court of Alberta</i>
	Date	Detail					
	4513.42	Mar. 4-29	6.25	D.M.	Mar. 4-29	4519.67-s	Exhibits.
	4519.67	Mar. 6-29	25.00		Mar. 6-29	4544.67-s	Ex. 72.
	4544.67	Mar. 12-29	13.16		Mar. 12-29	4557.83-s	Current
	4557.83	Mar. 12-29	10.00		Mar. 12-29	4567.83-s	Account
	4567.83	Mar. 13-29	65.50		Mar. 13-29	4633.33-s	Ledger Sheets,
	4633.33	Mar. 14-29	25.00		Mar. 14-29	4658.33-s	J. W. McElroy
	4658.33	Mar. 19-29	30.00		Mar. 19-29	4688.33-s	With Imperial
10	4688.33	Mar. 21-29	76.25		Mar. 21-29	4764.58-s	Bank of
	4764.58	Mar. 22-29	221.40		Mar. 22-29	4985.98-s	Canada,
	4985.98	Mar. 25-29	69.75		Mar. 25-29	5055.73-s	June 2, 1928, to
	5055.73			3873.05	Mar. 26-29	1182.68-s	July 31, 1930.
	1182.68	Mar. 27-29	52.70	1006.90	Mar. 27-29	2242.28-s	—continued
	2242.28	Mar. 28-29	28.35	Int.	Mar. 28-29	2270.63-s	
	2270.63	Mar. 28-29	65.00		Mar. 28-29	2335.63-s	
	2335.63	Apr. 2-29	199.00		Apr. 2-29	2534.63-s	
	2534.63	Apr. 3-29	99.00		Apr. 3-29	2857.43-s	
		Apr. 3-29	223.80				
20	2857.43	Apr. 4-29	50.00		Apr. 4-29	2907.43-s	
	2907.43	Apr. 6-29	20.00		Apr. 6-29	2927.43-s	
	2927.43	Apr. 8-29	23.15		Apr. 8-29	2950.58-s	
	2950.58	Apr. 9-29	30.00	25.00	Apr. 9-29	3005.58-s	
	3005.58	Apr. 9-29	40.00		Apr. 9-29	3045.58-s	
	3045.58	Apr. 9-29	4.00		Apr. 9-29	3049.58-s	
	3049.58	Apr. 10-29	30.00		Apr. 10-29	3079.58-s	
	3079.58	Apr. 12-29	256.20	20.00	Apr. 12-29	3355.78-s	
	3355.78	Apr. 13-29	71.20		Apr. 13-29	3426.98-s	
	3426.98	Apr. 15-29	250.00	173.40	Apr. 15-29	3850.38-s	
30	3850.38	Apr. 16-29	5.00		Apr. 16-29	3855.38-s	
	3855.38	Apr. 19-29	8.00		Apr. 19-29	3863.38-s	
	3863.38	Apr. 20-29	50.00		Apr. 20-29	3913.38-s	
	3913.39	Apr. 20-29	29.50		Apr. 20-29	3942.88-s	
	3942.88	Apr. 25-29	258.33		Apr. 25-29	4201.21-s	
	4201.21	Apr. 29-29	21.20	Int.	Apr. 29-29	4222.41-s	
	4222.41	Apr. 30-29	35.00	50.00	Apr. 30-29	4307.41-s	
	4307.41	May 1-29	139.00		May 1-29	4446.41-s	
	4446.41	May 3-29	10.00		May 3-29	4456.41-s	
	4456.41	May 4-29	79.00		May 4-29	4535.41-s	
40	4535.41	May 9-29	30.00		May 9-29	4565.41-s	
INSPECTION							
	4565.41	May 18-29	10.00		May 18-29	4575.41-s	
	4575.41	May 23-29	47.20		May 23-29	4622.61-s	
	4622.61	May 25-29	10.00	159.54	May 25-29	4792.15-s	
	4792.15	May 29-29	58.45		May 29-29	4850.60-s	
	4850.60	May 29-29	76.05		May 29-29	4926.65-s	

<i>In the Supreme Court of Alberta</i>	Old Balance	Date	Cheques in Detail	Deposits	Date	New Balance
Exhibits.	4926.65	May 30-29	31.65	Int.	May 30-29	4958.30-s
Ex. 72.	4958.30	May 30-29	16.00		May 30-29	4974.30-s
Current Account	4974.30	Jun. 4-29	16.50		Jun. 4-29	4990.80-s
Ledger Sheets, J. W. McElroy	4990.80	Jun. 4-29	25.00		Jun. 4-29	5015.80-s
With Imperial Bank of Canada,	5015.80	Jun. 5-29	23.50	18.45	Jun. 5-29	5057.75-s
June 2, 1928, to July 31, 1930.	5057.75	Jun. 6-29	119.75	64.40	Jun. 6-29	5241.90-s
	5241.90	Jun. 8-29	58.10	20.00	Jun. 8-29	5320.00-s
	5320.00	Jun. 10-29	115.00		Jun. 10-29	5435.00-s 10
—continued	5435.00	Jun. 11-29	20.00		Jun. 11-29	5455.00-s
	5455.00	Jun. 11-29	152.90-c/c.		Jun. 11-29	5607.90-s
	5607.90	Jun. 12-29	56.25		Jun. 12-29	5664.15-s
	5664.15	Jun. 14-29	50.00		Jun. 14-29	5714.15-s
	5714.15	Jun. 14-29	13.71		Jun. 14-29	5727.86-s
	5727.86	Jun. 19-29	200.00		Jun. 19-29	5927.86-s
	5927.86	Jun. 22-29	183.71		Jun. 22-29	6111.57-s
	6111.57	Jun. 24-29	50.00		Jun. 24-29	6161.57-s
	6161.57	Jun. 29-29	36.15	Int.	Jun. 29-29	6197.72-s
	6197.72			8518.78	Jun. 29-29	2321.06-s 20
	2321.06	Jul. 2-29	2321.06		Jul. 2-29	.00-s
		Jul. 18-29			Jul. 19-29	-s
		Jul. 12-29	8677.63	D.M. 8378.05	8378.05	
				8378.05	D.M.	
	299.58	Jul. 15-29	230.00		Jul. 12-29	299.58-s
					Jul. 15-29	529.58-s
						536.58 Dr.
	536.58	Jul. 19-29	7.00		Jul. 19-29	543.58-s
	543.58	Jul. 21-29	325.00		Jul. 21-29	869.08-s
	869.08	Jul. 23-29	10.00		Jul. 23-29	879.08-s
	879.08	Jul. 27-29	7.00		Jul. 27-29	886.08-s 30
	886.08	Jul. 30-29	4.75	Int.	Jul. 30-29	890.83-s
	890.83	Jul. 30-29	66.70	1267.25	Jul. 30-29	309.72-s
	309.72	Jul. 31-29	45.55	30.00	Jul. 31-29	234.17-s
	234.17	Aug. 1-29	42.50		Aug. 1-29	191.67-s
	191.67	Aug. 1-29	656.83		Aug. 1-29	465.16-s
	465.16	Aug. 2-29	73.74		Aug. 2-29	538.90-s
	538.90	Aug. 6-29	20.00		Aug. 6-29	558.90-s
	558.90	Aug. 7-29	30.00		Aug. 7-29	588.90-s
	588.90	Aug. 8-29	23.15		Aug. 8-29	612.05-s
	612.05			368.75	Aug. 8-29	243.30-s 40
	243.30	Aug. 12-29	35.00		Aug. 12-29	278.30-s
	278.30	Aug. 13-29	30.00		Aug. 13-29	308.30-s
	308.30	Aug. 13-29	20.00		Aug. 13-29	328.30-s
	328.30	Aug. 19-29	279.37		Aug. 19-29	607.67-s
	607.67	Aug. 26-29	10.00		Aug. 26-29	617.67-s
	617.67			1500.00	Aug. 27-29	882.33-s

Old Balance		Cheques in		Deposits		Date	New Balance	In the Supreme Court of Alberta
	Date	Detail						
	882.33	Aug. 27-29	1000.00	c/c.		Aug. 27-29	117.67-s	Exhibits.
	117.67	Aug. 28-29	27.00			Aug. 28-29	144.67-s	Ex. 72.
	144.67	Aug. 28-29	70.00			Aug. 28-29	214.67-s	Current
	214.67	Aug. 30-29	1.95	Int.		Aug. 30-29	216.62-s	Account
	216.62	Aug. 30-29	642.50			Aug. 30-29	859.12-s	Ledger Sheets,
	859.12	Sep. 3-29	30.00		27.65	Sep. 3-29	916.77-s	J. W. McElroy
	916.77				1000.00	Sep. 3-29	83.23-s	With Imperial
10	83.23	Sep. 3-29	20.00			Sep. 3-29	63.23-s	Bank of
	63.23	Sep. 4-29	30.00			Sep. 4-29	8.23-s	Canada,
	8.23	Sep. 4-29	20.00			Sep. 4-29	11.77-s	June 2, 1928, to
	11.77	Sep. 5-29	68.50			Sep. 5-29	80.27-s	July 31, 1930.
	80.27	Sep. 5-29	51.70			Sep. 5-29	131.97-s	
	131.97	Sep. 5-29	5.00			Sep. 5-29	136.97-s	
	136.97	Sep. 6-29	200.00			Sep. 6-29	336.97-s	
	336.97	Sep. 10-29	40.00	3000.00		Sep. 10-29	2623.03-s	
	2623.03	Sep. 10-29	582.05			Sep. 10-29	2040.98-s	
	2040.98	Sep. 11-29	63.15			Sep. 11-29	1977.83-s	
20	1977.83	Sep. 11-29	1000.00			Sep. 11-29	977.83-s	
	977.83	Sep. 11-29	33.00			Sep. 11-29	944.83-s	
	944.83	Sep. 12-29	94.85	220.14	514.60	Sep. 12-29	115.24-s	
	115.24			3000.00		Sep. 12-29	3115.24-s	
	3115.24	Sep. 12-29	3000.00	c/c.		Sep. 12-29	115.24-s	
	115.24	Sep. 14-29	15.00			Sep. 14-29	100.24-s	
	100.24	Sep. 14-29	150.00			Sep. 14-29	49.76-s	
	49.76	Sep. 17-29	200.00	50.00		Sep. 17-29	299.76-s	
	299.76	Sep. 19-29	77.00			Sep. 19-29	376.76-s	
	376.76	Sep. 20-29	84.40	100.00		Sep. 20-29	561.16-s	
30	561.16	Sep. 25-29	100.00			Sep. 25-29	661.16-s	
	661.16	Sep. 27-29	20.00			Sep. 27-29	681.16-s	
	681.16	Sep. 27-29	25.00			Sep. 27-29	706.16-s	
	706.16	Sep. 30-29	2.40	Int.		Sep. 30-29	708.56-s	
	708.56	Oct. 1-29	29.00			Oct. 1-29	733.56-s	
	733.56	Oct. 1-29	50.00			Oct. 1-29	783.56-s	
	783.56	Oct. 3-29	50.00	13.50		Oct. 3-29	847.06-s	
	847.06	Oct. 7-29	4.45			Oct. 7-29	851.51-s	
	851.51	Oct. 8-29	12.75			Oct. 8-29	864.26-s	
	864.26	Oct. 9-29	25.00	17.00		Oct. 9-29	906.26-s	
40	906.26	Oct. 30-29	5.55	Int.		Oct. 30-29	911.81-s	
	911.81			1481.55		Nov. 7-29	569.74-s	
	569.74	Nov. 9-29	443.19			Nov. 9-29	126.55-s	
	126.55	Nov. 12-29	99.05			Nov. 12-29	27.50-s	
	27.50	Nov.	1500.00	c/c. 1500.00		Nov. 14-29	27.50-s	
	27.50	Nov. 21-29	38.00			Nov. 21-29 R.	10.50-s	
	10.50	Nov. 29-29	.50	Int.		Nov. 29-29	11.00-s	

—continued

*In the
Supreme Court
of Alberta*

<i>Exhibits. Ex. 72.</i>	Old	Cheques in		Deposits	Date	New Balance
	Balance	Date	Detail			
	11.00			1188.48	Dec. 9-29	1177.48-s
Current	1177.48	Dec. 10-29	648.88	5.00	Dec. 10-29	523.60-s
Account	523.60	Dec. 10-29	93.40		Dec. 10-29	430.20-s
Ledger Sheets, J. W. McElroy	430.20	Dec. 12-29	452.33		Dec. 12-29	22.13-s
With Imperial Bank of Canada,	22.13	Dec. 16-29	25.00		Dec. 16-29	47.13-s
June 2, 1928, to July 31, 1930.	47.13			30.72 O/DL.	Dec. 27-29	16.41-s
—continued	16.41			42.32	Dec. 30-29	25.91-s
	25.91	Dec. 30-29	.75	Int.	Dec. 30-29	25.16-s 10
	25.16	Jan. 2-30	478.80		Jan. 2-30	453.64-s
	453.64	Jan. 2-30	23.00	Handed to Short, Ross, Shaw & May- hood Jan. 12/33	Jan. 2-30	476.64-s
	476.64			1400.00	Jan. 2-30	923.36-s
	923.36	Jan. 4-30	1407.89		Jan. 4-30	484.53-s
	484.53	Jan. 11-30	1500.00	D.M. 215.60	Jan. 11-30	1768.93-s
	1768.93			1800.00	Jan. 11-30	31.07-s
	31.07	Jan. 30-30	25.00		Jan. 30-30	6.07-s
	6.07	Jan. 31-30	.50	Int.	Jan. 31-30	5.57-s 20
	5.57	Mar. 1-30	270.20	300.00	Mar. 1-30	35.37-s
	35.37	Mar. 4-30	25.00		Mar. 4-30	5.37-s
	5.37	Mar. 12-30	100.00		Mar. 6-30	5.37-s
	10.37	Mar. 6-30	5.00		Mar. 12-30	94.63-s
	94.63	Mar. 15-30	50.00		Mar. 15-30	144.63-s
	144.63			100.00	Mar. 21-30	44.63-s
	44.63	Mar. 31-30	1.00	Int.	Mar. 31-30	45.63-s
	45.63			45.00	Apr. 12-30	.63-s
	.63			333.36	Apr. 28-30	332.73-s
	332.73	Apr. 29-30	.50	Int.	Apr. 29-30	332.23-s 30
	332.23	Apr. 29-30	333.00		Apr. 29-30	.77-s
	.77	Apr. 30-30	1500.00	D.M.	Apr. 30-30	1500.77-s
	1500.77			1500.00 D.		
	.77	May 30-30	.50	1350.00 D.	Apr. 30-30	.77-s
	1.27	Jun. 18-30	1018.65	Int.	May 30-30	1.27-s
	19.92			D.M. 1000.00	Jun. 18-30	19.92-s
	1.28	Jun. 30-30	.50	18.64	Jun. 21-30	1.28-s
	1.78	Jul. 31-30	.50	Int.	Jun. 30-30	1.78-s
	2.28			Int.	Jul. 31-30	2.28-s
				2.28	Aug. 28-30	.00-s 40

Exhibit 73.

(Defendant's Exhibit)

Statement of Farm Commodities Values, E. B. Nowers.*In the
Supreme Court
of Alberta*—
Exhibits.
Ex. 73.
Statement
of Farm
Commodities
Values,
E. B. Nowers.
No Date.

Jan. 1st, 1930—

	Steers	\$10.00	per cwt.	Wheat No. 1 Nor.	\$1.40	—net	\$1.22
	Heifers	9.00	" "	Oats	.56		
	Cows	7.75	" "	Creamery butter	.44		
	Calves	10.00	" "	Eggs (Extras)	.45		
	Lambs	10.00	" "	Wool	.9-10		
10	Hogs	11.00	" "				

July 9th, 1930—

	Steers	10.50	" "	Wheat No. 1 Nor	.96½—net	.78½
	Heifers	9.00	" "	Oats	.47	
	Cows	7.50	" "	Creamery butter	.35	
	Calves	11.00	" "	Wool	.7-.8	
	Lambs	9.00	" "			
	Hogs	10.25	" "			

Aug. 1st, 1931—

	Steers	5.00	" "	Wheat No. 1 Nor.	.53	—net	.35
20	Heifers	4.00	" "	Oats	.25		
	Cows	3.00	" "	Eggs (Extras)	.15		
	Calves	5.00	" "	Wool	.04		
	Lambs	6.00	" "				
	Hogs	7.00	" "				

Oct. 1st, 1932—

	Steers	3.50	" "	Wheat No. 1 Nor.	.49¼—net	.32
	Heifers	3.50	" "	Oats	.25	
	Cows	2.50	" "	Creamery butter	.25	
	Calves	4.50	" "	Eggs (Extras)	.16	
30	Lambs	4.25	" "	Wool	.03½	
	Hogs	4.25	" "			

Present Time—Oct. 24th, 1933—

	Steers	3.00	" "	Wheat No. 1 Nor.	.65½—net	.47½
	Heifers	3.00	" "	Feed oats	.28⅝	
	Cows	1.50	" "			
	Calves	2.75	" "			
	Lambs	4.00	" "			
	Hogs	4.75	" "			
