

62, 1930

In the Privy Council

No. 27 of 1930

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

BETWEEN :

T. H. HANCOCK
(Defendant) Appellant,

—and—

IMPERIAL BANK OF CANADA
(Plaintiff) Respondent.

Record of Proceedings

CHAS. RUSSELL & CO.,
37 Norfolk St., W.C.2,
Solicitors for the Appellant.

LEE & PEMBERTONS,
44 Lincoln's Inn Fields, W.C.2,
Solicitors for the Respondent.

TORONTO:
PRINTERS GUILD LIMITED
1930

In the Privy Council

No. /30

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

BETWEEN :

T. H. HANCOCK

(Defendant) Appellant,

—and—

IMPERIAL BANK OF CANADA

(Plaintiff) Respondent.

Statement of Case

This is an Appeal from the judgment of the Second Appellate Division of the Supreme Court of Ontario, pronounced on the 8th day of March 1929, affirming the judgment herein pronounced by The Honourable the Chief Justice of the Common Pleas, at the Trial in the Supreme Court of Ontario on the 7th day of December 1928, finding in favour of the (Plaintiff) Respondent for \$23,775.00, and costs.

INDEX OF REFERENCE

PART I.

No.	Description of Document	Date	Page
1.	Respondent's Claim—Endorsement on Writ of Summons	July 14, 1927	1
2.	Appellant's Statement of Defence and Counterclaim	May 30, 1928	3
3.	Respondent's Reply and Defence to Counterclaim	June 8, 1928	5
4.	Opening Proceedings at Trial	Dec. 4, 1928	7
PLAINTIFF'S EVIDENCE—			
5.	W. H. Coghill Examination		9
	Cross-Examination		10
DEFENDANT'S EVIDENCE—			
6.	T. H. Hancock Examination		11
	Examination	Dec. 5, 1928	19
	Cross-Examination		22
7.	Mary E. Hall Examination		33
	Cross-Examination		34
	Re-Examination		34
8.	J. B. Priestman Examination		35
	Cross-Examination		49
—————			
9.	Reasons for Judgment of Trial Judge (Meredith, C.J.C.P.)		51
	Endorsement on Record		52
—————			
10.	Case Re-opened for Reply	Dec. 7, 1928	53
11.	Objection to Re-opening		53
REPLY—			
12.	J. W. Bain Examination		55
	Cross-Examination		56

No.	Description of Document	Date	Page
13.	W. B. Stirrup		
	Examination		58
	Cross-Examination		60
	Re-Examination		64
14.	W. G. More		
	Examination		64
	Cross-Examination		65

JUDGMENTS, ETC.—

15.	Reasons for Judgment of the Honourable Chief Justice of the Common Pleas confirmed			70
16.	Formal Judgment at Trial	Dec.	7, 1928	71
17.	Notice of Appeal by Defendant	Dec.	17, 1928	72
18.	Supplementary Notice of Appeal by Defen- dant	Dec.	20, 1928	73
19.	Judgment of the Second Appellate Division of the Supreme Court of Ontario	March	8, 1929	74
20.	Order approving security on Appeal to Privy Council	April	18, 1929	75

PART II.

EXHIBITS

1.	Guarantee Bond	Nov.	17, 1925	108
2.	Letter from Plaintiff to Defendant	April	20, 1927	121
3.	Plaintiff's Certificate pursuant to paragraph Number 11 of Guarantee	Dec.	3, 1928	122
4.	(a) Letter from Messrs. Bain, Bicknell & Co. to William Garlock, Esq.	April	20, 1923	80
	(b) Letter from William Garlock to Defen- dant	April	20, 1923	80
5.	Guarantee Bond from Defendant to Plaintiff for \$10,000.00.	April	17, 1923	77

No.	Description of Document	Date	Page
6.	Guarantee Bond from Defendant to Plaintiff for \$15,000.00. Not printed in full	March 1, 1924	86
7.	Letter from Defendant to Plaintiff	April 9, 1927	120
8.	Letter from Plaintiff to Defendant	March 7, 1927	118
9.	Letter from Defendant to Plaintiff	March 23, 1927	119
10.	Telegram from Defendant to Garlock Machinery Company	Newtonville Oct. 20,	93
11.	Plaintiff's card for specimen signatures re Garlock Machinery Limited.	Not dated	85
12.	Correspondence between Branch and Head Office of Imperial Bank		
	Letter, General Supervisor from Manager King & Spadina Branch	April 23, 1923	81
	Letter, to the Manager of the Imperial Bank, King & Spadina Branch, from H. C. Houston, Supervisor	April 24, 1923	81
	Letter, to Gen.-Supervisor from the Manager King & Spadina Branch, Imperial Bank	April 30, 1923	82
	Letter, to the Manager Imperial Bank, King & Spadina Branch, from General Supervisor	May 1, 1923	82
	Letter, to the General Supervisor from the Manager of the King & Spadina Branch	May 5, 1923	83
	Letter, General Supervisor from the Manager King and Spadina Branch	Feb. 13, 1924	86
	Letter, Manager King & Spadina Branch from the Assistant General Manager	Feb. 18, 1924	88
	Letter, Gen. Manager from Manager King & Spadina Branch	Feb. 21, 1924	89
	Letter, Manager King & Spadina Branch from the Ass't General Manager	Feb. 22, 1924	90
	Letter, Gen. Manager from the Manager King & Spadina Branch	Feb. 26, 1924	91
	Letter, Manager King & Spadina Branch from the Assistant Gen. Manager	Feb. 28, 1924	92
	Letter, Gen. Manager from Manager King & Spadina Branch	Feb. 29, 1924	93
	Letter, Gen. Manager from Manager King & Spadina Branch	Mar. 20, 1925	94
	Letter, Gen. Manager from Manager King & Spadina Branch	April 1, 1925	95
	Letter, Gen. Manager from Manager King & Spadina Branch	April 24, 1925	96

No.	Description of Document	Date	Page
	Letter, Manager King & Spadina Branch from Ass't Gen. Manager	April 27, 1925	97
	Letter, Gen. Manager from Manager King & Spadina Branch	April 28, 1925	98
	Letter, Gen. Manager from Manager King & Spadina Branch	Oct. 30, 1925	100
	Letter, Manager King & Spadina Branch from Ass't. Gen. Manager	Nov. 2, 1925	101
	Letter, Gen. Manager from Manager King & Spadina Branch	Nov. 3, 1925	102
	Letter, Manager King & Spadina Branch from Gen. Manager	Nov. 4, 1925	104
	Letter, Gen. Manager from the Manager King & Spadina Branch	Nov. 17, 1925	105
	Letter, Manager King & Spadina Branch from the General Manager	Nov. 19, 1925	112
	Letter, Gen. Manager from the Manager King & Spadina Branch	Nov. 21, 1925	112
	Letter, Gen. Manager from the Manager King & Spadina Branch	May 28, 1926	113
	Letter, Manager King & Spadina Branch from Gen. Manager	June 10, 1926	116
	Letter, Gen. Manager from the Manager of the King & Spadina Branch	June 11, 1926	117
12A.	Letter, Manager at Galt, Ont., from Manager of King & Spadina Branch	Oct. 28, 1925	99
12B.	Letter, Manager of King & Spadina Branch from Manager at Galt, Ont.	Oct. 29, 1925	99
13.	Current Ledger Account Imperial Bank—Garlock (Not printed)		
14.	Letter, from Garlock Machinery Company to Imperial Bank of Canada	June 15, 1923	84

In the Supreme Court of Ontario

RECORD
In the Supreme
Court of Ontario

—
No. 1
—

BETWEEN:

IMPERIAL BANK OF CANADA

Plaintiff

Plaintiff's Claim
Endorsement on
Writ of
Summons, July
14, 1927.

—and—

T. H. HANCOCK

Defendant

ENDORSEMENT ON WRIT OF SUMMONS

The Plaintiff claims from the Defendant the sum of \$24,475.11 and
10 interest thereon at six per cent from the 9th day of July 1927, on a certain
guarantee in writing dated the 17th day of November 1925 under which
the defendant guaranteed the due payment and discharge of all liabilities
to the Plaintiff of Garlock Machinery Limited to the extent of
\$25,000.

The liability of Garlock Machinery Limited to the Plaintiff as of
the 8th day of July 1927, is the sum of \$24,475.11, payment of which
amount has been duly demanded pursuant to the terms of the said guar-
antee.

The following are the particulars of the indebtedness under the said
20 guarantee:—

Promissory Notes Garlock Machinery Ltd.	\$7500.00
Cheque Wm. Shannon Co. Ltd., dated 28/3/27	
Protest fees on Shannon Cheque	1.59
Overdraft	244.53
Insurance premiums paid Policy #715103 Travellers	78.59
Advances against specific assigned accounts:	
Victor Talking Machine Co. Ltd.—Montreal	2000.00
Brompton Lumber Co. Ltd.—Bromptonville	1500.00
Canada Machinery Co. Ltd.—Galt	2208.00
30 Gull River Lumber Co.-Lindsay—\$1,420.00	
Less paid on a/c 7th March	195.00
Boake Mfg. Co. Ltd.	Toronto
	4831.00

<p>RECORD</p> <p>In the Supreme Court of Ontario</p> <p>—</p> <p>No. 1</p> <p>—</p> <p>Plaintiff's Claim</p> <p>Endorsement on Writ of Summons, July 14, 1927.</p> <p>-concluded.</p>	<p>Estate Walter Beatty Waterous Ltd.</p> <p>E, Ruel Ltd.</p> <p>Stone Lumber Co. Ltd.</p> <p>Reliable Mfg. Co.</p> <p>Interest on Lavoie & Frere Note</p> <p>Interest on Beaudry & Fils Note</p> <p>Note Gull Lumber Co.</p> <p>Payment by Beaudry & Fils</p> <p>Proceeds of Loan against Travellers Life Ins. Co.</p>	<p>Pembroke Winnipeg</p> <p>Laexon, Que.</p> <p>Hilton, Beach</p> <p>\$ 7.50</p> <p>283.65 2.50</p> <p>500.00 2.40</p> <p>397.43</p> <p>7.40</p> <p>27165.48</p> <p>2690.37</p>	<p>719.00</p> <p>1500.00</p> <p>3000.00</p> <p>1275.00</p> <hr/> <p>\$27582.71</p> <p>10</p> <hr/> <p>417.23</p> <hr/> <p>\$27165.48</p> <p>2690.37</p> <hr/> <p>\$24475.11</p>
		<p>Balance Due</p>	

In the Supreme Court of Ontario

BETWEEN:

IMPERIAL BANK OF CANADA

Plaintiff

—and—

T. H. HANCOCK

Defendant

RECORD
In the Supreme
Court of Ontario

—
No. 2
—

Statement of
Defence &
Counterclaim

May 30, 1928.

STATEMENT OF DEFENCE AND COUNTERCLAIM

- 1.— In the year 1923, the Defendant agreed, on the strength of a letter prepared by the solicitors for the Plaintiff Bank, to guarantee all advances made by the Plaintiff to Garlock Machinery Company Limited, upon the discounting of bona fide approved trade paper, and the account of Garlock Machinery Company Limited with the Plaintiff Bank was carried on on that basis until November 1925.
- 2.— In November 1925, Garlock Machinery Company Limited applied for and were granted by the Plaintiff Bank additional credit upon their own name, without any reference to the Defendant, and without his knowledge.
- 3.— The Plaintiff's Manager, with full knowledge of the limited nature of the Defendant's previous guarantee, forwarded to him by an agent of the Bank, and secured his execution of the guarantee sued upon in this action, upon the representation that it was the same guarantee, and for the same purpose as that previously in existence, and without disclosing to him that the nature of the credit granted by the Plaintiff Bank to Garlock Machinery Company Limited had been materially altered.
- 4.— Relying upon the representations of the Bank, the Defendant executed the said agreement, which he would not have done except for the representations hereinbefore referred to; and which he would not have done, had it been disclosed to him that advances were being made by the Plaintiff to Garlock Machinery Company Limited on their own credit and unsupported by trade paper.
- 5.— As set forth in the letter from the Bank's solicitors, and to the knowledge of the Bank, it was a condition of the agreement by which the Defendant was to give to the Plaintiff a limited guarantee as hereinbefore set forth, that Garlock Machinery Company Limited should assign to the Plaintiff, and that the Plaintiff should hold, a policy of insurance on the life of William Garlock, Junior, for the sum of \$25,000. as protection to the Defendant under his said guarantee.

RECORD 6.— Subsequently the Plaintiff obtained the loan value of the said
 In the Supreme Court of Ontario policy, instead of the cash surrender value, as the defendant had directed
 — the Plaintiff, and applied the proceeds thereof to the reduction of the gen-
 No. 2 eral indebtedness of Garlock Machinery Limited to the Plaintiff, and not
 — upon the amount (if any) for which the defendant is liable under his
 Statement of guarantee.

Defence & Counterclaim 7.— The defendant submits that he is entitled to credit as against the
 May 30, 1928. amount (if any) for which he is liable and for the full surrender value
 —concluded. of the said policy of insurance.

8.— The defendant submits that many of the accounts and discounts 10
 disclosed in the writ of summons do not represent bona fide trade items,
 but are fictitious items, and were, in fact, direct advances to Garlock
 Machinery Company Limited; and the defendant further submits that in
 any event, he is liable only for such losses, (if any) as the Plaintiff has
 sustained by reason of the discounting of bona fide approved trade paper.

9.— BY WAY OF COUNTERCLAIM the Defendant prays for an
 order of this Court rectifying the agreement of guaranty sued upon here-
 in, so that it shall provide only for the guarantee by the Defendant to the
 Plaintiff for losses (if any) which they have sustained by reason of the
 discounting of bona fide approved trade paper.

20

DELIVERED this 30th day of May 1928 by Jennings & Clute, 65
 Yonge Street, Solicitors for the Defendant.

In the Supreme Court of Ontario

BETWEEN:

IMPERIAL BANK OF CANADA

Plaintiff

—and—

T. H. HANCOCK

Defendant

RECORD
In the Supreme
Court of Ontario

—
No. 3
—

Reply by
Defence to
Counterclaim

June 8, 1928.

REPLY AND DEFENCE TO COUNTERCLAIM

1.— Save as herein expressly admitted the plaintiff denies all the al-
10 legations contained in the Statement of Defence and Counterclaim deliv-
ered herein and puts the defendant to the strict proof thereof.

2.— The Plaintiff denies the allegations contained in paragraph 1 of
the Statement of Defence and Counterclaim and alleges as the fact is that
the letter therein referred to was prepared upon the instructions of, and
on behalf of, Garlock Machinery Company Limited by a clerk in the office
of the solicitors who are now acting as solicitors for the plaintiff bank, but
the said solicitors were not then acting for, nor had any instructions from
the plaintiff bank in respect of any matter in relation to Garlock Machine-
20 rry Company Limited or the defendant, nor was there any litigation then
pending or contemplated between the plaintiff and the defendant.

3.— The plaintiff denies the allegations in paragraph 2 of the said
Statement of Defence and Counterclaim but in any event in view of the
terms of the guarantee in writing furnished to the plaintiff by the defen-
dant the plaintiff was not required to refer to or notify the defendant of
any applications for additional credit by Garlock Machinery Company
Limited.

4.— The Plaintiff denies the allegations contained in paragraph 3 of
the said Statement of Defence and Counterclaim and particularly denies
that the guarantee sued upon in this action was forwarded or delivered
30 to the defendant by an agent of the Bank or that any representations
were made by or on behalf of the plaintiff in connection with the execu-
tion of the said guarantee and the plaintiff is not aware of the circum-
stances under which the defendant signed the said guarantee and alleges
that no representations were at any time made by the plaintiff or on its be-
half to the defendant.

5.— The plaintiff made no representations to the defendant, nor was
it any condition of the guarantee, that the plaintiff should hold the policy
of insurance referred to in paragraphs 5, 6 and 7 of the said Statement of

RECORD Defence and Counterclaim as protection to the defendant under his said
 In the Supreme Court of Ontario guarantee and the Plaintiff alleges that the said policy was assigned to
 the plaintiff as additional security for the indebtedness of Garlock Ma-
 chinery Company Limited and without any relation to the said guarantee,
 No. 3 and the plaintiff denies that the defendant is entitled to any credit in res-
 pect thereof.

Reply
 Defence to
 Counterclaim

June 8, 1928.

—concluded.

6.— By way of defence to the counter claim of the defendant the plain-
 tiff repeats the allegations contained in the Statement of Claim herein
 and in the foregoing and prays that the said counterclaim be dismissed
 with costs.

10

DELIVERED this 8th day of June, 1928, by Messrs. Bain, Bick-
 nell, White & Bristol, Lumsden Bldg., Toronto, solicitors for the Plaintiff.

In the Supreme Court of Ontario

Between :

IMPERIAL BANK OF CANADA,

RECORD
In the Supreme
Court of Ontario.

Plaintiff,

—and—

No. 4

T. H. HANCOCK,

Opening
Proceedings
at Trial

Defendant.

10 Tried before THE HONOURABLE R. M. MEREDITH, C.J.C.P., at
the Toronto Non-Jury Sittings; commencing on Tuesday, December
4, A.D. 1928.

APPEARANCES:

D. L. McCARTHY, K.C.)

and)

E. BRISTOL)

For the Plaintiff.

J. JENNINGS, K.C.)

For the Defendant.

HIS LORDSHIP: What is the case about?

MR. McCARTHY: It is an action upon a guarantee, my Lord.

HIS LORDSHIP: Would you prefer to go on now, or to rise until to-
morrow morning?

20 MR. McCARTHY: I would prefer to go on now. I can prove my
case very shortly, my Lord.

HIS LORDSHIP: Then we will go on.

MR. McCARTHY: The first document I desire to file is the gauran-
tee, my Lord.

HIS LORDSHIP: Is it admitted?

MR. McCARTHY: Yes, my Lord.

EXHIBIT NO. 1: Guarantee Bond of Garlock Machinery Company,
Limited, to Imperial Bank of Canada.

RECORD
In the Supreme
Court of Ontario.

—
—
No. 4
—

Opening
Proceedings
at Trial
—continued.

MR. McCARTHY: Then I desire to file as Exhibit No. 2 a letter dated April 20, 1927, from the plaintiff to the defendant. It is the formal demand made by the bank on the defendant, demanding payment under the Guarantee of the amount claimed in this action:—

“Imperial Bank of Canada,
King & Spadina Branch,

Toronto, Ont. April 20th, 1927.

“REGISTERED.

“Mr. T. H. Hancock,

“1372 Bloor Street W.,

10

“Toronto, Ont.

“Dear Sir:

“re- Garlock Machinery Company, Limited.

“You are hereby required to make payment of your liability to this Bank under Guarantee Bond dated 17th November, 1925 signed by you, whereby you guaranteed the due payment and discharge of all liabilities of the above Company to the Bank to the extent of \$25,000. The liabilities of the above Company to the Bank amount to Twenty-eight thousand, five hundred and seventy-two —93/100 Dollars. The amount of your liability under your guarantee is there- 20 fore \$25,000. and this amount will bear interest at 6% per annum from this date pursuant to the terms of the said guarantee.

“Dated at Toronto, this Twentieth day of April, 1927.

“Imperial Bank of Canada,

“Per J. F. Scarth,

“Acting Manager, King & Spadina Branch.”

EXHIBIT 2: Letter April 20, 1927, plaintiff to defendant.

MR. McCARTHY: Then I desire to file as Exhibit No. 3. the certificate of the amount of the indebtedness under the Guarantee, duly certified by the Manager of the Bank and given pursuant to paragraph 11 of 30 the Guarantee, which makes this prima facie evidence of the claim.

MR. JENNINGS: I object to that without further proof.

MR. McCARTHY: Then I call Mr. Coghill.

WILLIAM HERBERT COGHILL, Sworn.

EXAMINED BY MR. McCARTHY:

RECORD
In the Supreme
Court of Ontario.

Q. You are the Manager of the Imperial Bank's branch at the corner of King & Spadina Streets? A. Yes.

Plaintiff's
Evidence.

Q. And you were the manager at the time this account was made up? A. Yes.

No. 5

Q. And this document, which will be filed as Exhibit No. 3, certifies that the account due and payable to the Imperial Bank of Canada as of December 3, 1928, under the guarantee executed on the 17th day of November, 1925, by T. H. Hancock and William Garlock, Jr., exclusive of costs, is the sum of \$23,822.04, — is that correct? A. That is correct.

W. H. Coghill,
Examination.

EXHIBIT NO. 3: Plaintiffs' certificate pursuant to paragraph No. 11 of guarantee, dated December 3, 1928:—

<p>“I, William Herbert Coghill, Manager Imperial Bank of Canada, King & Spadina Branch, Toronto, hereby certify that the amount due and payable to the Imperial Bank of Canada as of December 3, 1928, under the guarantee executed on the 17th day of November, 1925, by T. H. Hancock and William Garlock Jr., exclusive of costs, is the sum of \$23,822.04, Twenty-three Thousand, Eight Hundred and Twenty-two Dollars and Four Cents, made up as follows:—</p>	
<p>20 “July 12th, 1927, Amount owing at date of writ of summons \$24,475.11</p>	<p>Interest July 12 to November 11/27, 122 days — 6% \$ 490.85</p>
<p>“Nov. 11/27, Payment Stone Lumber Company (deduct) 824.67</p>	<p>Interest Nov. 11/27 to Nov. 15/27, 4 days — 6% 15.54</p>
<p>20 23,650.44</p>	
<p>“Nov. 15/27, Payment Shannon Company (deduct) 1,501.59</p>	<p>Interest Nov. 15/27 to April 30/28 — 166 days — 6% 604.40</p>
<p>30 22,148.85</p>	
<p>“Apr. 30/28, Proceeds Life Policy #708908 (deduct) 194.50</p>	<p>Interest Apr. 30/28 to Dec. 3/28 — 217 days — 6% 783.15</p>
<p>21,954.35</p>	<p>Carried Forward: \$1,893.94</p>
<p>“Insurance Premium Claimed July 12/27, since recovered (deduct) 26.25</p>	
<p>40 21,928.10</p>	
<p>“Interest July 12/27, to December 3, '28 (Add) 1,893.94</p>	
	<p>23,822.04</p>

RECORD
 In the Supreme Court of Ontario. "This certificate is given pursuant to paragraph Number eleven
 "of the said guarantee.

Plaintiff's
 Evidence.

"WHC/A.

(sgd) "William Herbert Coghill,
 "Manager."

No. 5

CROSS-EXAMINATION BY MR. JENNINGS:

W. H. Coghill,
 Examination.
 —continued.

Q. When did you become manager of the branch at King and Spadina Streets, Toronto? A. December 15, 1927.

Plaintiff's
 Evidence.

Q. Then you have no personal knowledge of the earlier transactions with the Garlock Machinery Company?

A. None whatever.

No. 5

Q. What was the amount of their indebtedness when you assumed the management of that branch? A. I could not tell you offhand.

W. H. Coghill
 Cross-
 Examination.

Q. Then you do not know from your own knowledge whether or not this account is correct? You only know what you know of it from your books? A. Yes.

Q. And not from your own personal knowledge? A. No.

Witness withdrew.

MR. McCARTHY: That is the case, my lord.

DEFENCE:

T. H. HANCOCK, Sworn.

EXAMINED BY MR. JENNINGS:

Q. You are the defendant in this action? A. Yes.

Q. What was your first connection with the Garlock Machinery Company's account as related to the Imperial Bank?

MR. McCARTHY: Have we anything to do with that?

MR. JENNINGS: I submit it is for your Lordship to say that.

10 WITNESS: My only connection was that Garlock asked me to guarantee his account on sales.

HIS LORDSHIP: Q. You were not connected with the company?

A. No; I have no connection at all with the company; I never attended a meeting.

Q. Are you a stockholder? A. I am not a stockholder. I think there was an amount of one thousand dollars worth of stock in our safe at one time, but it had been paid up.

Q. Were you a director? A. No, sir.

MR. McCARTHY: He was Vice-president.

MR. JENNINGS: Not to his knowledge.

20 HIS LORDSHIP: Q. What do you say with respect to that suggestion? A. I would say I was not, my Lord.

MR. JENNINGS: Q. Garlock asked you if you would guarantee the discount of his sales with the Imperial Bank? A. Yes.

Q. Did he subsequently bring you a document to sign? A. Yes.

Q. What was that document? A. The document was a regular bank form. I read it over and objected to some of the clauses in it.

Q. Upon what ground? A. Well, I did not think they were quite right. They demanded too much.

30 Q. Yes? A. I said to Garlock: "Here, go back to the bank's solicitors and get a guarantee from them that this amount of money is advanced for the purposes of discounting sales only."

Q. That is, you objected that the guarantee covered more than you agreed to, and that you agreed to guarantee the discount sales?

MR. McCARTHY: Let the witness tell it.

MR. JENNINGS: Q. You told Garlock the document was wider than what you had agreed to? A. Yes.

Q. And to get something from the bank's solicitors? A. Yes.

Q. Did you mention the bank's solicitors? A. Yes.

40 Q. Whom did you mention? A. Messrs. Bain, Bicknell—there are four members in the firm.

Q. What was Garlock's response to your request?

A. He said: "Fine; they are also our solicitors and are in the same building."

RECORD

In the Supreme
Court of OntarioDefendant's
Evidence

No. 6

T. H. Hancock,
Examination.

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Examination.
—continued.

Q. What followed upon that?

MR. McCARTHY: Your Lordship understands that this has nothing whatever to do with the guarantee sued upon?

MR. JENNINGS: We are coming to that.

MR. McCARTHY: I daresay you are coming to it, but this has nothing to do with the guarantee sued upon.

HIS LORDSHIP: This is not the same guarantee?

MR. McCARTHY: No, My Lord.

HIS LORDSHIP: Have we anything to do with this?

MR. JENNINGS: My point is this, that to the knowledge of the 10 bank this guarantor was guaranteeing only the discount of bona fide sales.

HIS LORDSHIP: I will hear the evidence subject to objection.

MR. JENNINGS: Q. Did Mr. Garlock bring you a letter from the firm you have mentioned?

MR. McCARTHY: Just a moment. Had not the witness better give the evidence? You are suggesting the evidence.

MR. JENNINGS: I am not.

HIS LORDSHIP: I think you are.

MR. JENNINGS: Q. What did you get in consequence of that request? A. I got a letter from the solicitors. 20

Q. What is this document I now show you, dated April 12, 1923?

HIS LORDSHIP: Do you say Garlock got it?

A. No; he brought it to me.

MR. McCARTHY: He never said he got that letter. My friend puts a letter in the hand of the witness and says: "What is this?"

HIS LORDSHIP: The witness has said he got this document from Garlock.

MR. McCARTHY: From Garlock?

HIS LORDSHIP: Yes; that is as far as he has gone.

MR. JENNINGS: Q. What is it? A. A letter stating that the 30 guarantee is to be used.

HIS LORDSHIP: The letter speaks for itself.

MR. JENNINGS: Q. Was there more than one letter?

A. Well, there are two letters here.

Q. How did they come to you? A. Mr. Garlock brought them to me personally.

MR. McCARTHY: Which two letters?

MR. JENNINGS: I asked how did they come to him, speaking of two letters of the same date.

HIS LORDSHIP: The witness has not said he got two letters. He 40 said he got one.

MR. JENNINGS: If my learned friend wants to pervert what he said, he must have an object in doing that.

MR. McCARTHY: I am not perverting anything that the witness said.

HIS LORDSHIP: The witness is your witness, Mr. Jennings, and also your client. Do not lead him.

MR. JENNINGS: Q. What did you get from Mr. Garlock on the occasion of which we are speaking? A. I got from him the same letters that you have in your hand.

Q. What are they?

HIS LORDSHIP: That will not do. Let them speak for themselves. Subject to objection they will go in together as Exhibit 4.

MR. JENNINGS: May I state what they contain?

10 HIS LORDSHIP: Let me have them. I shall read them as the case proceeds.

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Examination.
—continued.

EXHIBIT NO. 4: (a) Letter dated April 20, 1923, from Messrs. Bain, Bicknell & Co. to William Garlock, Esq:—

“Dear Sir:

“In pursuance of your instructions I enclose herewith letter to be “signed by you which you intend giving to Mr. T. H. Hancock.

“Yours truly,

(sgd) “Bain, Bicknell, Macdonell & Gordon.

“Encl.”

20 EXHIBIT NO. 4: (b) Letter dated April 20, 1923, from William Garlock to defendant:—

“In pursuance of your guarantee with me of the account of the “Garlock Machinery Limited at the Imperial Bank of Canada, King “and Spadina Avenue, Toronto for Ten Thousand Dollars, I agree not “to borrow any money on the stock and machinery at any time in the “possession of the Garlock Machinery Limited, without first having “obtained from you by a letter in writing your consent to the same.

30 “Further, the guarantee which we have signed with the Imperial “Bank is given for the purpose of discount only. I also agree to pay “you and indemnify you for any loss you may suffer in connection “with this guarantee.

“This guarantee is to remain in force for a period of one year “from this date without the same is further extended by our mutual “consent in writing.

“I agree also that as a further protection to you in connection “with your guarantee, to have the Garlock Machinery continue the “life insurance which they hold on my life and to see that these prem- “iums are paid by the Garlock Machinery Limited as and when they “mature. This Policy is for the sum of \$25,000.00

“Yours truly,
(sgd) “William Garlock, Jr.”

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Examination.
—continued.

Q. Did you then give a guarantee on the form that had been presented to you? A. Yes; after I had received these letters.

Q. Did you have any conversation with any officer of the bank at that time? A. Yes; I had a conversation with somebody down at the bank about a life insurance policy.

Q. Which bank? A. The bank at the corner of King & Spadina Avenue.

Q. Personally, or by telephone?

A. By telephone.

Q. For whom did you ask? A. For the Manager of the branch. 10

Q. What was said between you? A. I asked him did he have a life insurance policy for \$25,000 there as security to this guarantee and he said he had.

HIS LORDSHIP: Q. Who said he had? A. The manager.

Q. How do you know he was the manager? A. He said he was; that is the only evidence I have.

Q. What did he say? A. That he had an insurance policy for \$25,000.

Q. Give me his exact words? A. He said he had—

Q. He did not say: "he had"? Tell us the words he used? 20

A. He said he had a policy for \$25,000.

Q. Did he say: "I have"? A. "I have" or probably "We have" are the words he used.

Q. I do not want probabilities. I want to know what he said?

A. He said he had a policy.

Q. That will not do. He would not say: "...he had a policy." What were his words? It makes me doubt your memory? A. I would ask you—

Q. Just tell me the words he used? A. I will say he assured me that the bank had a policy. 30

Q. That is the best you can do? A. Yes.

Q. You cannot tell me the words he used? A. No; not word for word.

MR. JENNINGS: Q. Did he mention the amount of the policy?

A. \$25,000.

Q. Did he say what it was held for? A. Held for collateral against the guarantee.

Q. Did any conversation pass between you as to the dealings of the bank with Garlock? A. The dealings of the bank?

Q. Yes? A. No. 40

Q. The nature of the transaction? A. What the guarantee was for? Yes; the guarantee was for discounts only. We mentioned that fact on the telephone; the bank understood that.

Q. When you say; "We mentioned..." who mentioned it first?

A. I mentioned it to the bank.

Q. What words did you use? A. I just said: "You hold this life insurance policy as collateral against the guarantee which is signed?" and he said: "Yes."

Q. Did you say anything more? A. Nothing that I remember at that time.

Q. Was the next step in the matter about a year a later?

MR. McCARTHY: You have not told us what year this was?

MR. JENNINGS: Let me have the first guarantee of April 1923, please.

10 Q. What year was this? A. 1923.

Q. Do you remember the month? A. It was in the spring of the year,—April.

Q. What was the amount of your guarantee at that time?

A. The first guarantee was for \$10,000.

Q. Does this document which I now show you bear your signature?

A. Yes.

Q. Is there any earlier guarantee? A. That is the first one.

Q. Dated April 17, 1923? A. Yes.

Q. For \$10,000? A. Yes.

20 —EXHIBIT NO. 5: Guarantee Bond from the defendant to plaintiff for \$10,000.

Q. Was there a time when you were asked to increase the amount of your guarantee? A. Yes; at the end of that year I was asked to increase the guarantee.

Q. To how much? A. To \$15,000.

Q. Who asked you to do that? A. Mr. Garlock.

Q. By the way, where is Mr. Garlock? A. I cannot tell you; I have tried to find out, but so far I have not located him.

30 Q. What was the ground upon which he asked you to increase the amount of the guarantee? A. He wanted to do a little more business.

Q. Of what kind? A. He was selling goods only, but could not turn over enough stock with a small guarantee.

Q. What were his reasons for asking you to increase the amount of the guarantee to \$15,000? A. He wanted to increase his sales.

Q. Did he bring the document to you to sign, or how did you get it?

A. He brought it to me.

Q. Did you read it? A. Not the second one.

Q. What did he say when he asked you to sign it?

A. He said it was practically a repetition of the first one.

40 Q. A repetition of the first one? A. Exactly the same, I understood.

Q. Did you sign it? A. Yes.

Q. And I think you said you did not read it? A. I did not read it.

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Examination.
—continued.

RECORD
In the Supreme
Court of Ontario.

—EXHIBIT NO. 6: Guarantee Bond from defendant to plaintiff for
\$15,000.

Defendant's
Evidence.

No. 6

T. H. Hancock,
Examination.
—continued.

Q. Did you have any communication with the bank at that time?

A. I do not think so; not on the second guarantee bond.

Q. Did anything pass between you and the bank before the date of the document sued upon in November, 1925?

A. Yes. The bank called up about a life insurance policy.

Q. The bank called up? A. Yes.

Q. Who purported to speak? A. A man named Mr. Scarth.

Q. Did he say what office he held in the bank?

A. He was in the bank at the corner of King and Spadina, the Imperial Bank branch.

Q. What did he say? A. He wanted to know would he sell the life insurance policy.

Q. What date would this be? A. Some time after, two and a half or three years later.

Q. But you gave that guarantee in March, 1924, and the third guarantee which is sued upon is November, 1925. Between those two dates was there any communication between you and the bank? A. I think I telephoned them once. I had some communication. What the nature of it was, I could not remember.

Q. We come to the time of giving the guarantee in November, 1925?

A. That is the last guarantee?

Q. Yes. What happened then? A. Well, the last guarantee was supposed to be for the extension of the sales of the Garlock Company. They had taken over the whole line of the wood-working tools—

Q. Just a moment, please. Let us get this a little more concretely. It is for the larger amount. Are you talking of the first or the last?

Q. The last? A. \$25,000.

Q. Who asked you to increase it to \$25,000? A. Mr. Garlock.

Q. Did he give a reason for that increase? A. Yes.

Q. What did he say? A. He said he was taking over the whole line of the selling for the Canada Wood-working Machinery Corporation of Galt, and needed this money for extra sales.

Q. Did you go into that matter with him at all, or did you accept his word? A. I did look around a little, and I knew he brought over a man named Bodwan from the American factory, and I also knew that the Canada Machinery Corporation were making a new line of machines; I investigated that far.

Q. Was there anything else said as to the purpose of the increased guarantee? A. That was the main object of the increased guarantee.

Q. Increased Sales? A. Yes; to put on extra staff, and this and that and the other.

Q. Did he say anything about any other line of advance from the bank at this time? A. Not to me. Of course, if he had said anything

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of any other line I would not have advanced him money on that guarantee and allowed the bank to advance him money personally, because Garlock was not worth a lot of money, and that was my security.

Q. You say the bank was lending him money on his own credit?

A. Yes.

Q. What would you have done if you had known that?

A. I would not have allowed him any credit.

MR. McCARTHY: Is this evidence?

MR. JENNINGS: I think so.

10 Q. Yes? A. In other words, Mr. Jennings, I might say that the Garlock Machinery Company was functioning on sales, and the money which I guaranteed was only against those sales, and it did not require any money for anything else.

Q. Was anything said about the character of the document you were asked to sign on the third occasion?

A. Just the same as the preceding ones.

Q. Who said that? A. Garlock.

Q. Did he say who had asked him?

HIS LORDSHIP: You are leading.

20 MR. JENNINGS: Q. Was he acting for himself?

MR. McCARTHY: How does this witness know?

MR. JENNINGS: He knows if he were—

WITNESS: I presume he was acting for himself. He said the bank required it, and I did not question it any farther.

MR. JENNINGS: Q. Did you read the third one?

A. No; I did not read it.

Q. Did you see the amount for which it was to be good?

A. Yes; I understood that thoroughly.

30 Q. What became of it after you signed it? A. Mr. Garlock took it away.

Q. Did you communicate with the bank at that time?

A. Yes; I telephoned the bank.

MR. McCARTHY: Of what time is he speaking now?

MR. JENNINGS: Q. Can you tell me exactly, with relation to the date of signing the third agreement, when you telephoned the bank?

A. I cannot remember for sure.

Q. How nearly? A. Within two or three days after.

MR. McCARTHY: Q. After? A. I think so.

MR. JENNINGS: Q. To whom did you speak? A. The manager.

40 Q. Did he give his name? A. No.

Q. How did you know it was the manager? A. I just asked for the manager, and for the man who knew about the Garlock account, and I was put on the telephone with him.

Q. What did you say? A. I asked on that occasion did he have a life insurance policy, and he said he had.

RECORD

In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Examination.
—continued.

RECORD

In the Supreme
Court of Ontario.

Defendant's
Evidence.

No. 6

T. H. Hancock,
Examination.
—continued.

Q. Did you identify the policy by name or amount?

A. No; it was a \$25,000 policy which he was supposed to have.

Q. Did you at any time mention the letter (Exhibit 1) to any officer of the bank?

HIS LORDSHIP: This evidence will not impress me very much if you lead the witness. I have to determine whether he is a credible witness or not, and I do not pay much attention to the evidence that counsel is giving by putting the words in the mouth of the witness.

WITNESS: I have to admit that I am not a very good witness.

MR. JENNINGS: Q. What, if anything, passed between you and 10 any officer of the bank with respect to Exhibit 1 at any time?

HIS LORDSHIP: That is rather leading.

MR. JENNINGS: I do not want to lead. I suppose the proper way to ask this man is to ask him to tell all that took place between him and the bank.

HIS LORDSHIP: Have you told all that took place between you and the bank? A. Well, as far as what took place between the bank and I, it was all on the telephone and it was only at the time of the guarantee. As far as the document is concerned, I did not have any conversation about that particular document with the bank, that I remember. 20

MR. JENNINGS: Q. When did you first learn that the bank had made advances to the Garlock Company on its own credit? A. I did not know anything about that until after the assignment.

Q. When did you first learn that they had made advances on drafts and assignments which were not bona fide? A. Not until after the assignment.

MR. McCARTHY: There is no evidence that they ever did such a thing.

MR. JENNINGS: Just Mr. Priestman's sworn statement in the examination for discovery; that is all. 30

Q. Have you learned that since the assignment?

A. Yes.

HIS LORDSHIP: Q. From whom? A. From the bank themselves. For instance, we had a case where Garlock told the bank that we owed him some money. The bank advised me that our firm—

Q. The bank could not talk? A. The bank wrote me and advised me that our firm owed the Garlock Machinery Company \$8,000, which was not a fact, and that was the first intimation I had that the accounts were fictitious.

MR. McCARTHY: What is my friend now putting in the witness's 40 hands?

MR. JENNINGS: The notice from the bank.

MR. McCARTHY: That is a copy.

MR. JENNINGS: It is the original notice.

MR. McCARTHY: That is a letter from Hancock to the bank. Why put in two when you say you are putting in only one?

HIS LORDSHIP: Perhaps you can straighten it out and give us the evidence in the morning.

MR. JENNINGS: I am not giving the Court anything that is not evidence.

HIS LORDSHIP: You are not through with this witness?

MR. JENNINGS: No, my Lord.

HIS LORDSHIP: Then we will adjourn until 10.30 o'clock tomorrow morning.

RECORD
In the Supreme
Court of Ontario.

Defendant's
Evidence.

No. 6

T. H. Hancock,
Examination.
—continued.

10 —Whereupon the Court adjourned at 5.00 o'clock p.m. until 10.30 o'clock a.m. on Wednesday, December 5, A.D. 1928.

—Upon resuming on Wednesday, December 5, A.D. 1928, at 10.30 o'clock a.m.

T. H. HANCOCK resumed the stand.

EXAMINATION CONTINUED BY MR. JENNINGS:

Q. I produce from the bank's file a letter from you to the Imperial Bank of Canada? A. Yes.

—EXHIBIT NO. 7: Letter dated April 9, 1927, from defendant to plaintiffs:—

“Toronto, April 9th, 1927.

20 “The Imperial Bank of Canada,
“King & Spadina Avenue,
“Toronto, Ont.

“Dear Sirs:—

“We have your statement of April 1st, stating that we owe the “Garlock Machinery Limited, \$8,994.29. For your information we “would say that we owe this Company nothing, so kindly have this “corrected.

“Yours truly,

(sgd) “T. H. Hancock, Limited,
“President.”

30 “THH/H.

Q. Did you get a letter from the bank in regard to the insurance policy? A. Yes.

Q. I show you a letter dated March 7, 1927. Did you receive that letter from the bank? A. Yes.

EXHIBIT NO. 8: Letter dated March 7, 1927, from plaintiff to defendant:—

RECORD

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 6

T. H. Hancock, Examination.
--continued.

"March 7, 1927.

"T. H. Hancock, Esq.,
"c/o T. H. Hancock Ltd.,
"1372 Bloor Street W.,
"Toronto, Ont.

"Dear Sir:

"re: Garlock Machinery Limited.

"Included in the company's liability appearing on our books is a
"note of Wm. Garlock for \$3,000. In this connection we hold assign-
"ment of a \$25,000. Life Insurance Policy on the life of Mr. Garlock 10
"which we are advised has a present loan value slightly in excess of
"this amount (\$3,000). Mr. Garlock proposes taking the loan value
"of this policy and retiring the advance of \$3,000 from this source. I
"presume you will have no objection to this procedure, and will ap-
"preciate it if you will kindly let me have your advices to this effect.

"Yours truly,

(sgd)

"Manager".

JBP/MW.

Q. Is that your reply? A. Yes.

EXHIBIT NO. 9: Letter dated March 23, 1927, from defendant to plain- 20
tiff:—

"Toronto, March 23, 1927.

"The Imperial Bank of Canada,
"King & Spadina Avenue,
"Toronto, Ont.

"Dear Sirs:

Attention, the Manager.

"In reference to your letter of March 7th, regarding Assignment
"of Life Insurance Policy you hold on Mr. Garlock—it will be satis-
"factory to us that you take the cash value of the policy, and place 30
"it against the indebtedness of The Garlock Machinery, Limited.

"We would also take this opportunity to ask you to keep us in
"touch with any developments which may arise, for which we thank
"you in advance.

"Your truly,

(sgd) "T. H. Hancock, Limited,
"President."

THH/H

Q. You were telling us of a communication between yourself and the bank. Have you covered that fully?

A. Well, I feel I have. I had other communications, of course, or another communication with the firm of Bain, Bicknell & Company regarding the time before I signed the first guarantee.

Q. How near to the date of signing it? A. Probably two or three days before.

Q. With whom did you communicate? A. I asked for the man who was in charge of Garlock's affairs at Bain, Bicknell & Company, and he
10 said he was getting that letter ready.

Q. What did you say to him?

HIS LORDSHIP: I do not see how this is evidence.

MR. JENNINGS: The bank's solicitors, my Lord.

HIS LORDSHIP: No; according to the letter they were solicitors for the Garlock Company.

MR. JENNINGS: Q. What did you say? A. I asked Messrs. Bain & Bicknell about the letter they were to get for me covering the account which I was going to guarantee for Garlock, and in connection with which they were also acting for the bank.

20 Q. What reply did you get? A. That it would be looked after in the usual manner.

HIS LORDSHIP: You got in the first instance the letter you expected from the solicitors? A. No.

Q. Oh, yes; you have filed it here? A. But before that I had a conversation with the firm regarding the letter; that is the point I was trying to bring out.

Q. Why did you call up Messrs. Bain, Bicknell?

A. I had not received the letter that Garlock promised.

MR. JENNINGS: Q. You called to hurry up that letter?

30 HIS LORDSHIP: That letter was the final dealing between you and the solicitors, was it? A. Yes.

Q. And I suppose you observe that the solicitors there speak as solicitors for the Garlock Company only? You saw that, did you not?

A. I understood that they were solicitors for the bank also.

Q. Can you read? A. Yes.

Q. And you read that letter, and you knew that they were dealing with you in writing that letter as solicitors for the Garlock Company and not for the bank, is that right or wrong? A. No; it is wrong. I also fully understood in my own mind that they were solicitors for the
40 Imperial Bank.

Q. What has that to do with it? You read the letter and you knew, if you knew anything, that they were dealing with you as solicitors for the Garlock Company. Now, tell me what objection you have to this last guarantee you signed? A. The objection I have to the last guarantee is that it is a different guarantee altogether.

RECORD

In the Supreme
Court of Ontario

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Examination.

—continued

RECORD
In the Supreme Court of Ontario.

—
Defendant's Evidence.

—
No. 6

T. H. Hancock, Examination.
—continued.

Q. Is it a guarantee that you signed? A. Yes, absolutely; I do not deny the signature; but I do object to signing a guarantee which did not include the first arrangement which I made with Garlock.

Q. If you objected to that, why did you sign it?
A. I thought it was the same guarantee as the first one.

Q. Then you did not read it, and it is your own negligence that has got you into this difficulty, if you are in a difficulty? A. If that is the way you look at it.

Q. How do you look at it? A. I would say it was negligence on my part not to hand it over to my solicitor before I signed it; but I had been dealing with banks all my life, and I have gone into the Bank of Nova Scotia or the Northern Crown Bank or the Bank of Montreal, and have always said to the Manager: "I am going to advance this money for certain purposes. . . ."

Q. Have they ever cheated you? A. No.

HIS LORDSHIP: Is there anything arising out of this, may I ask, before he is cross-examined?

MR. JENNINGS: No; I think the facts of the defence must come from the bank's witness.

Defendant's Evidence.

—
No. 6

T. H. Hancock, Cross-Examination.

CROSS-EXAMINATION BY MR. McCARTHY:

20

Q. You made the remark to your counsel last evening that you are a bad witness? A. I think I am. My mind has not been trained in a regular way. I have not been in court very much.

Q. But you have been in court before? A. Yes; a few times.

Q. Where did you get the impression that you were a bad witness?
A. Because sometimes I do not give the answers I should have given, when I think them over afterwards. Probably that is my human weakness.

Q. You can read and write, can you not? A. Yes.

Q. And you have been in business in Toronto for a great number of 30 years? A. Yes.

Q. In the lumber business? A. Yes.

Q. And if I am informed correctly, you have accumulated or amassed a very considerable fortune? A. Sometimes I feel that, and sometimes I feel I have not got anything.

Q. But I am told you are rated at at least \$1,000,000?
A. I would like to sell out for that.

Q. And I gathered from what you told his Lordship just now that you have had dealings with a great many banks? A. Yes.

Q. And you have been on guarantees before? A. Yes.

Q. Guaranteeing trading accounts? A. Yes; in other words, I have always felt it was the duty of the bank to protect the man guaranteeing, and to advise him of anything that was going wrong. Whether or not that is the law, I am not prepared to say.

40

Q. Were you connected in any way with Mr. Garlock?

A. No.

Q. Were you related in any way? A. No.

Q. Just friendship? A. Practically friendship.

Q. How long have you and Mr. Garlock been associated?

A. I have known Mr. Garlock for six or seven years.

Q. Do you remember when you joined his company?

A. I think so.

Q. You think you do? A. I did not join his company.

10 Q. You became Vice-president? A. I do not remember that; not to
my knowledge.

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

Q. Let us see if I can call it to your attention.

HIS LORDSHIP Q. Did you attend any meetings of the directors?

A. No, sir.

Q. You told us something about having some stock?

A. When this organization was first organized by Garlock I loaned
him \$2000. and he gave me as security \$2000. worth of stock.

Q. How long were you a shareholder or holder of these shares?

20 A. At the end of the first year when he paid me back that \$2000. the
shares were given back.

Q. How were they given back to him? Did you transfer them to
him? A. I cannot remember that; I think they were just handed back
to him.

Q. Then are they still in your name? A. I could not say that.

Q. At all events, you became a shareholder in that way, and you
never retransferred the shares? A. I would not say that; I would have
to find out.

30 MR. McCARTHY: Q. I notice, Mr. Hancock, in the minutes of the
annual meeting of shareholders of the Garlock Machinery Company
held in Toronto on the 30th April, 1923, you were represented by proxy,
and that you were said to be the owner of 20 shares? A. I do not know
anything about that meeting.

Q. Do you remember giving the proxy? A. No; I do not.

Q. Look and tell me if that is your signature, dated April 20, 1923?

A. That is my signature.

Q. Who is the witness? A. Miss Hagen.

Q. What position has Miss Hagan in your office?

A. No position in our office.

40 Q. Who was she at that time? A. I know she was working for
Mr. Garlock.

Q. Has she any position in your office now? A. No.

Q. She was secretary-treasurer of the Garlock Company?

A. I think so. I think, when I see that letter, that I can remember
something about that. Mr. Garlock said they had their meeting, and it

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Cross-
Examination.
—continued.

was to close their files, and he would like me to sign this report on the meeting.

Q. It is not a report, it is a proxy, in which you appoint Mr. William Garlock to be your attorney in your absence to vote or to give your consent to any business matter or thing relating to the undertakings of the Garlock Machinery Company as may be mentioned or proposed at the annual meeting of the shareholders in such manner as your attorney deems proper. Then:—"I authorize him to waive all statutory by-laws and requirements as to notice, time and place," and so on. You signed that?

A. I signed it, but I do not remember the time definitely. 10

Q. Turning to the second June, I see you gave another proxy as one of the shareholders of the Garlock Machinery Company. You appointed William Garlock to be your attorney. That is dated June 2, 1924. That is your signature? A. Yes.

Q. And I find again another proxy dated 28th March, 1925, in which you again appointed Garlock as your proxy to vote for you at business meetings? A. (No answer)

Q. That is so? A. That is my signature.

Q. In addition I show you a telegram which you sent from Newtonville on the 20th October, in which you say: "Will waive notice of stockholders' meeting Garlock Machinery Company for Monday. (sgd) T. H. Hancock"? 20

A. I remember I was down at Newtonville, and he called me up on the telephone. I was engaged in some lumber business down there. I said: "Here, what do you want this for?" and he said: "Just to close our books up." I said: "All right, I will send it."

Q. And you sent him that telegram? A. Yes.

—EXHIBIT NO. 10: Telegram dated Newtonville, October 20, from defendant to Garlock Machinery Company.

WITNESS: I might also add that I never heard anything about 30 these meetings, and was never sent any notice of them, but was always asked to sign those documents afterwards.

HIS LORDSHIP: Q. After the meetings had been held? A. Yes.

Q. Are you sure of that? A. Positive.

Q. Are they dated after the meetings? A. It was after the meeting was over.

Q. Are you not mistaken about that? A. I was told that.

Q. You would not commit a fraud of that kind, would you, by signing a false proxy after a meeting was over?

A. I understood that the meeting was over. I was only a shareholder 40 at that time.

Q. There was no reason why you should do wrong, even if you were a shareholder? A. I did not think that was wrong.

Q. Ante-dating a proxy in that way? I should have thought that very wrong, on the face of it? A. I did not know it, if it was.

Q. What did you sign it for? What would they need a proxy for after the meeting was over? A. I was told it was just to complete their records.

Q. To make it appear that you had attended at that meeting and had, by reason of that attendance, given them some authority, and that was all false? A. I did not think that way about it; I thought it was just to give my consent to anything that had been done.

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Cross-
Examination.
—continued.

10 MR. McCARTHY: I am looking at the certificate book of the Garlock Machinery Company, and I see that on the 1st February, 1924, there were transferred to you 20 shares of the company, and that you apparently have the certificate,—is that so? A. 20 shares of this company's stock was transferred to me for \$2000., which I loaned Garlock, and at the end of the year the \$2000. was paid back and, as far as I know, the stock was handed back to him.

Q. Where is that certificate? A. I cannot tell you.

Q. You cannot say. A. No.

20 Q. Do you suggest that the company did not get the money for which the certificates were issued? A. No; I am suggesting that they received the money, and that the money was paid back again to our company.

Q. I also show you a card from the Imperial Bank re Garlock Machinery Company:— ,

“Garlock Machinery Limited
“Below you will find signature of officers authorized to sign on behalf of

“William Garlock, Jr.

“T. H. Hancock

“G. M. Hagen”

30

Q. Is that your signature? A. Yes.

Q. So that you were authorized to sign cheques on behalf of the Garlock Machinery Limited which could be honoured by the Imperial Bank of Canada? A. That was not put up to me at all like that. That was put up as my signature to the bank.

Q. What do you mean? A. Garlock brought this to me at the time of the guarantee and said: “Here, the bank wants a specimen of your signature to go with these guarantees,” and I signed that signature for him.

40 Q. You have been doing banking business for many years, and with a great many banks, and you know that the banks do require specimen signatures of the different officers of the company? A. I do not know anything about that; I have been associated with my own company only, and as far as that signature goes, it was given for identification purposes to the bank.

RECORD

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 6

T. H. Hancock, Cross-Examination.

—continued.

Q. And you have given specimen signatures to the bank in connection with your own company to authorize the bank to issue cheques?

A. Yes.

Q. And specimen signatures of persons to sign cheques on behalf of your company? A. Yes.

HIS LORDSHIP: Q. Did you read that card, Exhibit 11?

A. Yes.

Q. Then you knew what it meant? A. No; I did not know it meant to sign cheques.

Q. You did not understand that? A. No. I never had any intention of that. Why should I want to sign cheques or to know anything about the Garlock business? 10

Q. I am talking about this document (Exhibit 11)? If you were in your sane senses you must have known what it was? A. (No answer)

—EXHIBIT NO. 11: Plaintiff's card for specimen signatures re Garlock Machinery Limited.

MR. McCARTHY: Q. I want to take you back to EXHIBIT NO. 4 which contains two letters. When did you get the letter which is addressed to you and signed by William Garlock on the letterhead of the Garlock Machinery Limited? 20

A. Before I signed the first guarantee.

Q. My instructions are that this letter has come to light only comparatively recently? A. Do you mean to say that I made the letter?

Q. I did not say you made the letter at all, but I suggest to you that you did not see this letter until comparatively recently? A. I beg to differ, and say that that letter was in my safe for three years or two years—the whole time that the Garlock Machinery Company was in operation.

Q. Where did this letter come from,—your safe?

A. In a box in our vault. 30

Q. Do you suggest that this letter which was put in and which appears first in Exhibit No. 4 was there, too?

A. Absolutely.

Q. And that it did not come from the papers of the trustee in bankruptcy? A. Not at all.

Q. What? A. Not at all; I never spoke to him.

Q. Do you remember what you said in connection with this subject on your examination for discovery? A. No; but I do object to anybody inferring that that letter was cooked up.

Q. Nobody suggests that it was "cooked up"? 40

A. What are you doing?

Q. I suggest that you did not have this letter at the time you signed the guarantee? A. Yes.

Q. You signed the guarantee on the 17th April?

RECORD

In the Supreme
Court of Ontario.—
Defendant's
Evidence.—
No. 6
—T. H. Hancock,
Cross-
Examination.
—continued.

A. I do not remember the date.

Q. You signed the guarantee on the 17th April?

A. (No answer)

MR. JENNINGS: It is dated April 17th.

WITNESS: The guarantee was not signed until long after that, maybe.

MR. McCARTHY: Q. Maybe it was or was not?

A. What I was insisting upon was that I did not sign the guarantee until I received that letter.

10 Q. You say you did not sign the guarantee until you received the letter? A. No.

Q. And this letter is written by Mr. Garlock on the paper of the Garlock Machinery Limited. Did you see this letter which is attached and which is said to be from the firm of Bain, Bicknell, Macdonell & Gordon?

A. Yes; that was brought to me at the same time.

Q. When were they brought to you,—before or after you signed that guarantee? A. I would not be sure about that.

20 Q. You would not be sure about that? A. I would not be too sure about that.

HIS LORDSHIP: You are speaking of the first guarantee?

MR. McCARTHY: Yes; of the 17th April, 1923, my lord.

Q. Did you have any communication with the bank? Were the communications you had with the bank before or after you signed this first guarantee? A. After.

Q. With whom were your communications? A. With the bank manager.

Q. At the Spadina Avenue branch? A. Yes.

30 Q. What was the purport of the conversation? A. I asked him about life insurance policies. I have told you all that.

Q. You asked him about life insurance policies?

A. Yes.

Q. Why? A. Simply because I felt that there was some security there.

Q. You asked him about whose life insurance policies?

A. Garlock's.

Q. How long after you signed this guarantee did you ask about that? A. Around the end of the year.

40 Q. Around the end of 1923 when the guarantee was coming to an end? A. When the year was out.

Q. And you felt you might be called upon to pay.

A. No; I did not feel anything of the kind.

Q. Why did you call up the bank? A. Because I was checking over and taking stock, as usual, at the end of the year, and felt that everything was perfectly fine.

RECORD
In the Supreme
Court of Ontario.

Defendant's
Evidence.

No. 6

T. H. Hancock,
Cross-
Examination.

—continued.

Q. You were taking stock as usual at the end of the year, and this was one of the matters that you were checking up, and you called up the bank manager, and asked him about a life insurance policy on Garlock's life?

A. Yes; I knew the guarantee would be coming along about that time.

Q. Was that the only communication you had with the bank between the first and second guarantee? A. I could not remember, but I think so.

Q. Then we come to the second guarantee (Exhibit 6). I observe that that is in exactly the same form as the first guarantee? A. Yes.

Q. Did you read the first guarantee? A. Yes.

Q. Did you read the second one? A. No. I thought it was exactly the same.

Q. It is, if it is of any consequence, exactly the same.

MR. JENNINGS: Except the amount.

MR. McCARTHY: Thank you. We observed that.

WITNESS: \$5000. difference.

MR. McCARTHY: Q. Did you have any communication with the bank before you signed the second guarantee? 20

A. No; not before I signed it.

Q. And I notice that Miss Hagen was the witness on that guarantee? A. I did not know that.

Q. Do you remember where it was signed? A. Signed in our office.

Q. Would Miss Hagen be in your office? A. She was.

Q. She came up to witness the signature? A. Maybe.

Q. Are you sure? A. I am not too sure, because Miss Hall mostly witnessed my signatures.

Q. Look at the first and second guarantees that you signed. Do you observe the difference between those and the third one? 30

A. I observe it now; I never had these guarantees (indicating) at the time I signed this one.

Q. Then you observe that in this new guarantee it is stated:—

“20. Each Guarantor represents that he has read over the Guarantee before signing the same and is fully aware of the terms and conditions thereof.”

Is there, as a matter of fact, any difference between those three guarantees, except in the form of the paper? A. I would not say.

Q. And I notice in the last one that Miss Hall witnessed your signature, and I think you told my friend on discovery that you had had this in your possession for three days before you signed it? A. Yes. 40

Q. So there was ample opportunity for you to read it, if you wanted to do so? A. I did not think it was necessary.

Q. You had every opportunity to read it if you had wanted to do so?

A. Yes.

Q. And you knew the amount was \$25,000? A. Yes.

Q. I just want to call your attention to your evidence given before the Special Examiner on the 17th September last. This is the examination conducted by my friend Mr. E. Bristol. You were asked particularly about this letter? A. Which letter?

Q. The letter to which we have referred, dated April 20, 1923. At question No. 3 you were asked:—

“3. Q. Is this the letter you are referring to, a letter from Garlock Machinery, Limited, dated April 20th, 1923?”

10 “A. Yes, that is the letter. (letter dated April 20th, 1923, from Garlock to defendant, marked Exhibit No. ‘1’).”

Then you were asked:—

“4. Q. Under what circumstances did you get that letter? Was it sent to you through the mail?”

What do you say to that? A. I say Garlock brought it to me.

Q. Upon your examination for discovery you answered:—

“A. No, I can’t say that now. I haven’t got the envelope. I couldn’t say whether it came through the mail or not.”

Now you say Garlock brought it? A. Yes.

20 Q. Then:—

“5. Q. You don’t remember whether that letter came through the mail or was handed to you?”

“A. No.

“6. Q. Did you have any conversation with Mr. Garlock about that letter?”

“A. Yes, sir:

“7. Q. What were the conversations?”

Now, could you tell us what the conversations were?

30 A. I think you have all that there (indicating examination for discovery).

Q. But I am asking you if you can tell me now what the conversations were? A. (No answer)

Q. Do you remember? A. I did remember.

Q. But you do not remember now? A. No. The principal thing was the amount of money we were going to advance to cover his increased sales.

Q. He was increasing his sales about that time. A. Yes.

Q. And he wanted some more money? A. He had a line of stuff that the Canada Wood-working Corporation—

40 Q. He came to you to get your guarantee because the bank would not lend him the money without it? A. He did not say that.

Q. Why did he come to you? A. He said: “You are taking no risk, and this money will be advanced on bona fide sales, and I have a life insurance policy to back that up.”

Q. Why did he come to you? Did he not tell you the bank required an additional name on the guarantee?

RECORD

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 6

T. H. Hancock,
Cross-
Examination.

—continued.

RECORD

In the Supreme
Court of Ontario.Defendant's
Evidence.

No. 6

T. H. Hancock,
Cross-
Examination.

--continued.

A. All banks require names on the guarantee.

Q. Did he tell you Mr. Earle who had been on the guarantee had gone off? A. No; I did not know he was ever on.

Q. Did you tell him at that time that you were prepared to guarantee the account for \$10,000?

A. No; he was talking about \$25,000.

Q. I am speaking now of the letter of April 20, 1923? A. I would like to see the letter before I answer that question.

Q. I thought you had seen that letter? A. I cannot remember dates and figures; this is a matter of two years ago. 10

Q. We were talking about that letter, and you said you had some discussion with him, and I asked you before you got that letter were you prepared to guarantee this account for \$10,000? A. When I received this letter.

Q. But before? A. Not until I got the letter.

Q. On your examination for discovery you were asked:—

“8. Q. You told him what you wanted and what you were prepared to do in the way of a guarantee?”

And you answered:—

“A. I told him I was prepared to guarantee this account for \$10,000 20
“on trade paper, on all material sold.”

A. Yes.

Q. Then:—

“9. Q. And you said you wanted a letter from him setting out that
“the bank—“A. I told him to go to the bank and get their solicitors to give me a
“letter that would bear that out.”

Is that true? A. Yes.

HIS LORDSHIP: Q. When you did not get it, why did you sign?

A. I thought I did. 30

Q. Oh no. You got a letter from Garlock only, and you knew it,—
is not that right? A. No; it is not right. I got a letter from the
bank's solicitors which I thought was a bona fide letter.Q. The bank's solicitors gave you nothing in that letter? A. Then
I am deceived.

Q. You are not deceived. You are trying to deceive the Court?

A. Thank you, sir, thank you.

MR. JENNINGS: Surely your Lordship should not say that.

HIS LORDSHIP: Mr. Jennings, you must leave me to deal with the
witness. You are not concerned in this. 40MR. JENNINGS: Surely I am entitled to ask for protection against
the charge made by the Court.HIS LORDSHIP: I shall hear no more from you. You will be good
enough not to interfere with my examination of the witness.

MR. JENNINGS: I am just recording my objection.

HIS LORDSHIP: No more.

MR. McCARTHY: Q. Now, Mr. Hancock, to go a little further on, you were asked question 13 on your examination for discovery:—

“Q. 13. When did you see that letter first? When Mr. Jennings got it out of the files of Garlock Machinery Limited a week or a few months ago?”

And you answered:—

“A. This letter was handled the same as any other letters were handled; I guess I read it and it got away in my files. Mr. Jennings hasn't had this letter all the time.”

10 Is that correct? A. Mr. Jennings received this letter as soon as I heard about the Garlock Machinery Company going into liquidation.

Q. Mr. Jennings received that letter from whom?

A. From our office.

Q. If that is so, if Mr. Jennings has had that letter in his possession right after the Garlock Machinery Company went into liquidation, why was not this letter raised in the defence before this time? A. I cannot tell you that.

Q. Then:—

20 “14. Q. I understood that was in the possession of the Trustee of the Garlock Machinery Company?

“A. I wouldn't attempt to—

“15. Q. You don't remember whether you ever saw that letter until a few weeks ago?

“A. I wouldn't attempt to say what became of letters.

“16. Q. Do you remember ever seeing that letter until a few weeks ago?

“A. I don't remember as a matter of fact seeing it a few weeks ago.

“17. Q. When did you first see it?

30 “A. I couldn't identify this letter.

“18. Q. When did you first see it? You must remember when you first saw it?

“A. No, I wouldn't”?

A. You left out some of the evidence there, I think. I receive nearly one hundred letters a day, and it would be humanly impossible for me to memorize and identify every letter. Did I say that in the examination?

Q. Not on the page I have before me. Then you were asked question 19:—

“19. Q. Where did you get the letter?

40 “A. I don't know where it came from.”

HIS LORDSHIP: Q. Do you think that is consistent with what you said a short time ago about it being in your possession all these years?

A. What do you mean?

Q. Do you think what you have sworn to on your examination for discovery is consistent with what you have sworn to here. A. This letter

RECORD

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 6

T. H. Hancock,
Cross-
Examination.
—continued.

RECORD was in our files. Miss Hall had it in her box in which she keeps the securities.
In the Supreme Court of Ontario.

Defendant's Evidence. —
Q. You have heard read what you swore to in your examination for discovery. Do you want to make any explanation of that?

A. I have no explanation to make only it was there.

MR. McCARTHY: Then:—

No. 6

"20. Q. Mr. Jennings produced it and showed it to you. Is that "right?

"MR JENNINGS: It is not right.

"A. I will say I see the letter now, that is the end of it. 10

"21. Q. That is the first time you have seen it?

"A. I don't remember the letter.

"22. Q. You don't remember ever having got that letter? A. No.

"28. Q. You don't ever remember getting that other letter which is "now produced?

"A. I don't even remember getting that one (Exhibit 1). In the ordinary course of business I get one hundred letters a day, and the "questions you ask me are funny to my idea, because a man shouldn't "be expected to remember every letter he receives."

That is correct? A. (No answer) 20

Q. You say at one stage you called up the firm of Bain, Bicknell & Company? A. Yes.

Q. Before I ask you anything further in connection with it I may tell you that no member of the firm recollects having heard of you or ever having spoken to you. With that warning I am going to ask you what member of the firm you say you spoke to? A. I do not know his name.

Q. You do not know his name? A. No. I called up the firm of Bain, Bicknell & Company and asked for the man who was looking after Garlock's affairs.

Q. Did you get a man? A. Yes. 30

Q. Did you ask him what his name was? A. No.

Q. Did you ask him what position he occupied in the firm? A. No. The telephone operator, I suppose, had authority to do that.

Q. What did you say to him? A. I asked him if he was looking after the Garlock business, and that we wanted a letter regarding the guarantee, and they said they were looking after it, and that was the last I heard of it.

HIS LORDSHIP: Q. And at that time it was lying in your vault?

A. No; I received it after that.

Q. From Garlock? A. Yes; from Garlock, after I telephoned them 40 up.

Q. You did not receive it from the firm of solicitors at all? A. No. You see, if this letter had been delivered in the mail it would have been marked—

Q. Never mind that. A. All right.

MR. McCARTHY: Q. Mr. Hancock, you have dealt with many banks and you have had a very large and varied experience in business. Why did you not go to the bank yourself if there was any doubt in your mind as to what you were going to give or get? A. Simply because every bank I have dealt with has notified the man who guarantees an account of any change in the firm or anything going on, and I felt I was perfectly safe in guaranteeing an account in a business like this as long as the bank was advancing the money.

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 6
—

T. H. Hancock,
Cross-
Examination.

—continued.

10 Q. The firm was the Garlock Machinery Limited, in which you were a shareholder and an officer of the company? A. I was not an officer.

Q. You were vice-president, according to the minutes?

A. I did not know it.

Q. You had given them a specimen of your signature?

A. Not for drawing accounts.

Q. That is what the card says? A. It never entered my mind. It was just a signature to identify.

Q. If you had any doubt as to the bona fides, why did you not go straight to the bank? Banks are all open to discuss matters with people who guarantee accounts.

20 A. True, but I just telephoned up, and did this business the same as I handled other accounts.

Q. You 'phoned up about an insurance policy which the bank had, and still have if they have not cashed it in?

A. You would expect if the bank was going to change the kind of guarantee they would notify you.

Q. If they changed it? A. They say so.

Q. Before you ever signed it, why did you not go in if there was any doubt in your mind as to what you were guaranteeing?

30 A. There was no doubt in my mind as to what I was guaranteeing; it was a \$10,000 guarantee on sales of the Garlock Machinery Company.

—Witness withdrew.

MISS MARY E. HALL, Sworn EXAMINED BY MR. JENNINGS:

Defendant's
Evidence.

Q. What is your occupation? A. Stenographer.

Q. For whom? A. Mr. T. H. Hancock.

Q. How long have you been in his employ? A. A little over 20 years.

Q. You have been in his employ about 20 years?

A. A little over that.

40 Q. I show you Exhibit No. 2, consisting of two letters. Tell the Court your knowledge of those two letters?

A. My knowledge of these letters is that they were handed to me in the office of Mr. Hancock to file.

—
No. 7
—

Miss M. E. Hall,
Examination.

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 7
—

Miss M. E. Hall,
Examination.
—continued.

Q. When? A. Probably a few days after they came to the office, and they were put in a little safety box that we have inside our vault.

Q. What is the use of the safety box? A. A little protection for mortgages from the other departments of the vault.

Q. A security box? A. Yes.

Q. Who put them in that box? A. I put them there.

Q. How long did they remain there? A. Until the file was asked for after the assignment of the Garlock Machinery Company.

Q. Who took these two letters out of the security box? A. I did.

Q. Personally? A. Yes.

Q. What did you do with them? A. Sent them on to Messrs. Jennings & Clute.

HIS LORDSHIP: Q. You did what? A. I sent them on to Messrs. Jennings & Clute.

Q. You took them out of the safety box, and what did you do with them? A. I sent them down to Messrs. Jennings & Clute.

Q. For whom? A. For Mr. Jennings.

Q. What? For whom were you acting? A. For Mr. Hancock.

MR. JENNINGS: That is when the notice to produce came along.

CROSS-EXAMINATION BY MR. McCARTHY:

Defendant's
Evidence.

—
No. 7
—

Miss M. E. Hall,
Cross-
Examination.

Q. Were they as they are now? A. Yes.

Q. Attached together? A. Yes.

Q. And you say you got them when? A. A few days after they came into the office.

Q. When did they come to your office? A. I am not prepared to say.

Q. Are you prepared to say within a few weeks or months? Was it this year? A. No.

Q. What year was it? A. A good many years ago, some time ago.

Q. But you are not prepared to say when Mr. Hancock got these letters? A. No.

Q. All you know is that he got them some time ago, and he handed them to you and you filed them, and when the bankruptcy proceedings started you took them from the file and handed them to Messrs. Jennings & Clute? A. Yes.

RE-EXAMINATION BY MR. JENNINGS:

Q. How long did they remain in

A. I imagine two or three years. said "I imagine two or three years."

Q. Three years?

MR. McCARTHY: The witnessn the security box?
Witness withdrew.

Defendant's
Evidence.

—
No. 7
—

Miss M. E. Hall
Re-examination.

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J. B. PRIESTMAN, Sworn. EXAMINED BY MR. JENNINGS:

RECORD
In the Supreme
Court of Ontario.

Q. You are an officer of the Imperial Bank of Canada? A. Yes.

Q. And at one time you were managing the branch at the corner of King and Spadina? A. Yes.

Q. When did you go there as Manager? A. December, 1923.

Q. And you remained there as manager until when?

A. March, 1927.

Q. Had you been in the branch at all in any other capacity than as manager prior to 1923? A. I had not.

10 Q. When you came there was the Garlock Machinery account in that branch? A. Yes.

Q. Was it a borrowing account? A. Yes.

Q. Was it borrowing money in excess of the local manager's individual authority? A. Yes.

Q. And it was an account that required the head office approval?

A. Yes.

HIS LORDSHIP: Q. Did they have a line of credit? A. Yes.

MR. JENNINGS: Q. Is it customary to renew the application each year for a borrowing account of that nature? A. Between branches and 20 head office accounts are reviewed yearly.

Q. And if there is any desire on the part of the customers for a change, an extension of credit, and so on, the branch manager forwards the application to the head office with his recommendation?

A. It is reviewed, whether there is a change desired or not.

Q. But if there is a change desired in between the yearly periods, the branch manager forwards application for a new line of credit, with his recommendation? A. Yes.

Q. And the Garlock Machinery Limited during your management of the branch did receive additional lines of credit on more than one occa- 30 sion? A. Yes.

Q. What was the credit to which they were entitled when you came to the branch? A. The credit called for \$10,000.

Q. On what? A. Trade paper and assigned accounts.

Q. To what credit were they entitled, what advances, on their own credit at that time? A. You mean under the authorized credit from head office?

Q. Yes? A. There was no credit for accommodation advances.

Q. The manager's sole authority was to lend the money against what has been called sales, trade paper or assigned accounts? A. That 40 was the credit.

Q. And the manager had no other authority? A. He is entitled to use his own discretion.

Q. After communicating with head office? A. He is entitled to use his own discretion.

—
Defendant's
Evidence.

—
No. 8
—

J. B. Priestman,
Examination

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 8

J. B. Priestman,
Examination.
—continued.

Q. What was the limit of the lending authority of the manager of that branch on his own discretion? A. \$2500.

Q. But not to be exercised where he had submitted the matter to the head office? A. There is a slight latitude on credits.

Q. And I think you told me in your examination—

MR. McCARTHY: This is your witness.

MR. JENNINGS: I am just reminding him, subject to his Lordship's ruling.

Q. Where there is an authorized credit on trade paper and assigned accounts only, the manager allows an overdraft subject to justifying his action to his head office? A. Quite so. 10

Q. He has to take that responsibility? A. Yes.

Q. Because he is exceeding the authorized line of credit?

A. He would take the responsibility anyway, whether authorized or not.

Q. But he is exceeding the authorized line of credit? A. Yes.

Q. And under those circumstances overdrafts are small in amount and supposed to be temporary?

A. Not necessarily. Very often advances are made and confirmation applied for afterwards. 20

Q. But nothing was done of that kind in this case up to 1925?

A. Yes; I think there was.

Q. Let me understand what was? A. I am inclined to think that I made a loan against Saskatchewan bonds and had it confirmed afterwards.

Q. That is not on their own credit? A. It is on their own name, supported by security.

Q. Produce the head office correspondence with your branch. There was correspondence between your head office and your branch between April 23, 1923, and the obtaining of the last guarantee? A. Yes. 30

Q. And during the currency of the first guarantee and the second guarantee the dealings between the bank and the Garlock Machinery Company were on an authorized line of credit against trade bills and assigned accounts? A. That was the credit in force, yes.

Q. And there was no authorization for any advance on their general credit unsupported by trade bills? A. No.

HIS LORDSHIP: Q. That was a matter of the internal economy of the bank? A. Absolutely.

Q. Had the defendant or the Garlock Machinery Company anything to do with it? A. No, sir. 40

MR. JENNINGS: Q. You have heard read the letter of the 20th April, 1923, have you not, the letter prepared by Messrs. Bain, Bicknell & Company? A. I have heard the letter read.

Q. You know it says that Mr. Hancock's guarantee is to be restricted to trade discounts.

MR. McCARTHY: My friend is going a little far with his witness. This witness never saw that letter.

MR. JENNINGS: He said he had heard it read.

HIS LORDSHIP: What is the question? A. I heard it read to-day.

MR. JENNINGS: You have heard it read and you know it said to Mr. Hancock that his guarantee would be restricted to trade discounts?

A. (No answer)

HIS LORDSHIP: You may ask the witness if there were different discounts and loans, which you may name.

MR. JENNINGS: I am laying the foundation for my next question.

HIS LORDSHIP: I do not think you are. What does it say?

MR. JENNINGS:— "

"Further, the guarantee which we have signed with the Imperial Bank is given for the purpose of discount only. . . ."

Q. Was there anything more than discount?

A. (No answer)

Q. Up to 1925 that was the nature of the business between the bank and the Garlock Machinery Company? A. They had accommodation advances by way of an overdraft.

Q. They had an occasional \$200. or \$300.? A. Possibly more; I do not know. I have not seen the sheets lately

Q. Are these the ledger sheets covering the Garlock account during these years? A. (No answer)

Q. Show me between March, 1923, and November, 1925, what actual advances on their own credit were made? Assume there were advances of \$200. or \$300. for two or three days at times. I am not concerned with that.

HIS LORDSHIP: Do you really need any more than this, that there were transactions other than those?

MR. JENNINGS: The time comes in 1925 when the head office grants \$7500. without any—

HIS LORDSHIP: Why not ask the witness that. I do not think he need waste time pouring over these sheets.

WITNESS: Evidently there were little temporary overdrafts, around \$1000. Here is one for \$2000. at one time.

MR. JENNINGS: Q. How long did that last?

A. Just a few days.

Q. And that was not covered by a head office authorization?

A. No.

Q. You took the risk of that? A. Yes.

Q. Then the account was conducted in accordance with the letter (Exhibit No. 2) down to November, 1925, generally speaking, was it not?

A. I cannot interpret that letter

Q. But during that period it was conducted as an account with an authorized credit against trade paper or assigned accounts? A. Yes.

RECORD

In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 8

J. B. Priestman,
Examination.
—continued.

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 8
—

J. B. Priestman,
Examination.
—continued.

Q. Then was there a change in the nature of the credit in November, 1925? A. We granted an additional line of \$5000.

Q. On what? A. On the company's name, secured by guarantees as outlined, and assignment of book debts, insurance, etc.

Q. That is covered by your letter of November 17, 1925, to your general manager? A. Yes.

Q. On behalf of your customer you applied for an extended line of credit? A. Yes.

Q. And you asked for how much at that time on their own name unsupported— A. Not unsupported.

Q. Unsupported by trade paper or assigned accounts? 10

A. Unsupported by trade paper or specific assignment of trade accounts, yes.

Q. You are asking the head office to allow a line of credit of \$20,000 on trade paper and assigned accounts, and \$5000. on their own name?

A. Yes.

Q. That is new? A. Yes.

Q. That is the first time the bank proposed to lend money to this customer except on trade paper and assigned accounts? A. Yes.

Q. And you pointed out what the security should be with no cash surrender value for the \$25,000 policy? You had two policies? 20

A. Eventually.

Q. The personal guarantee of Garlock of \$25,000,—did you lay any stress upon it? Did you think it had any value? A. No. We did not give any credit on that guarantee.

Q. Then you had the personal guarantee of Hancock?

A. Yes.

Q. \$25,000? A. Yes.

A. And the correspondence from your general manager and assistant general manager and yourself indicate, do they not, that their bank was relying almosts entirely on Hancock? A. They certainly intimated that the credit was considered by reason of having his guarantee. 30

Q. Is there any question about it that you would not have given it without Hancock's guarantee? A. We would not have given it without Hancock's guarantee.

HIS LORDSHIP: Q. It might be understood that the bank would not lend without Hancock's guarantee?

A. Without a responsible guarantor.

MR. JENNINGS: But what they were doing in this case was relying almost exclusively upon Hancock? 40

A. Oh, no, no.

Q. The letters will speak for themselves. The general manager says in one place something about Hancock's guarantee and stability and financial worth?

A. Yes; and on the assumed value of the trade paper and assigned accounts. We considered those were A-1.

HIS LORDSHIP: Q. Did you consider the Garlock Company of any value at all? A. They did not have a great deal.

Q. Had they many shareholders? A. I was told they had only two, Garlock and Hancock.

MR. JENNINGS: Q. By whom were you told that?

A. By Garlock.

Q. Not in Hancock's presence? A. No.

Q. The company made statements to you from time to time.

A. Yes.

10 Q. Had they ever shown an operating profit? A. Garlock intimated that they had.

Q. But their statements? A. He made adjustments. For instance, one year he showed an operating deficit, but explained it by the fact that the year before he had taken into profits—

Q. Please?

HIS LORDSHIP: Let the witness finish his answer.

20 WITNESS: He claimed that the preceding year he had taken into his estimated profits a profit which would accrue on machinery sold, but not actually delivered, and I think that was around several thousand dollars. The next year he showed an operating deficit of \$4000 or \$5000., but he explained it that that statement at the end of that year was on its bona fide business, and there was no allowance for any machinery not delivered, and taking it on the same basis at the end of each year he showed an operating profit of \$4000. or \$5000.

HIS LORDSHIP: Q. He was showing operating losses each year and explaining them away to you?

A. More or less.

MR. JENNINGS: Is that a fair statement?

HIS LORDSHIP: The witness has given his answer: "More or less."

30 MR. JENNINGS: Q. On the 17th November you say to your general manager:—

"Garlock has been struggling around under a severe handicap for some years and had all he could do to keep his head above water." Your head office wrote back and said there was no doubt that this account was insolvent? A. I think there is something to that effect.

HIS LORDSHIP: The letters speak for themselves.

40 MR. JENNINGS: Q. Then there is no doubt that the whole security the bank had was Hancock's guarantee? There was nothing in the Garlock assets that was any good? The assistant general manager told you they were insolvent?

A. No; the company itself was not in an A-1 position; that was recognized.

Q. There was nothing you could get under Section 88 of the Bank Act from this company, A. We never considered that.

Q. And you did not get anything under Section 88?

A. Not in my time.

RECORD

In the Supreme Court of Ontario.

Defendant's Evidence.

No. 8

J. B. Priestman,
Examination.
—continued.

RECORD

In the Supreme
Court of Ontario.Defendant's
Evidence.

No. 8

J. B. Priestman,
Examination.
—continued.

Q. You dealt with the account on Hancock's guarantee for two and a half years, giving credit on trade paper and assigned accounts, and then, when the account was insolvent, according to your assistant general manager, you proposed to give a new line of credit known as accommodation, unsecured in this specific way, for \$5000., and you forward that application on the 17th November, 1925. A. I forwarded the application, yes.

Q. And your head office granted it? A. Yes.

Q. On what security? A. The registered assignment of book debts, trade paper, specific assignment of bona fide trade accounts.

Q. And Hancock's guarantee? A. Yes; and Garlock's guarantee and some life insurance. 10

Q. Then you loaned the money and advanced the money in accordance with this new credit? A. Yes.

Q. And subsequently that was increased by \$3000. to \$8000. on their own credit? A. With a further assignment of another life insurance policy.

Q. You got a further credit up to \$8000. on what is known as accommodation, apart from trade paper, did you not? A. I think so.

Q. And at the time of the assignment they owed you \$7700. for money advanced on what is known as accommodation? 20

A. Against which we held some \$2690, a loan received on another life insurance policy.

Q. But that was the policy that you had been holding all along for Hancock's protection? A. It was not; that policy was not received for a considerable time after the third guarantee of Hancock.

Q. What became of the policy? You said you had a policy in 1923?

A. With no cash surrender value.

Q. And when the guarantor asked you if you had a policy to protect his guarantee, did you tell him it was a term policy without any cash surrender value? A. I do not know. 30

Q. Is it not true that all you said was: "Yes; we have a \$25,000 policy"? You did not put him on notice that it was a term policy with no cash surrender value?

A. I do not know that I did.

Q. And you were a good friend of Garlock? A. I was not.

Q. Have you not lunched with him two or three times a week?

A. No, I did not.

Q. You were pretty intimate with him? A. I was not.

Q. You did go to lunch with him? A. I did.

Q. Your head office letters show you were very assiduous in getting him credit? A. (No answer). 40

Q. From what you said to Hancock could he fairly believe that you held the ordinary policy with ordinary privileges including cash surrender value, and so on? A. I cannot tell you what he assumed?

Q. But you did not warn him to the contrary? A. No.

HIS LORDSHIP: Did you give him all the information he asked for? A. I did.

MR. JENNINGS: Q. When in November, 1925, the nature of the dealings between the bank and its customers was altered, and a different line of credit was set up—A. An increased line.

Q. Of a different nature? A. An accommodation credit.

Q. Did you bring that to the notice of your guarantor?

A. I did not.

Q. Did you at that time and in connection with that increase require your customer to get a new guarantee signed? A. He wanted more money, and I told him if he wanted more money we would have to
10 have an additional guarantee.

Q. From whom? A. From anybody.

Q. Did you not name anybody? A. No.

Q. Did he say who he would get it from? A. Yes; he had several suggestions.

Q. Your letter of November 17, 1925, says that you are going to get Hancock's \$25,000 guarantee?

A. It was Garlock who told me so.

Q. Before the document was signed and before you applied for credit you knew it was to be supported by Hancock's new guarantee?

20 A. Yes. I understood we were to receive Hancock's guarantee, when we received that letter.

Q. And in the meantime your forms of guarantee since the year 19-24 had been altered? A. Yes.

Q. And the nature of the dealings between the bank and its customers were to be altered? A. They were getting more money.

Q. And is this correct, that you gave the form to Garlock to take to Hancock? A. I did not.

Q. To whom did you give it? A. Garlock.

Q. What for, to put in a case? A. (No answer)

30 Q. What was the object of giving it to Garlock?

A. When Garlock got that form I think he expected to get the guarantee of T. H. Watson of the Canada Machinery Company.

Q. Oh now! Your letter shows that is all wrong.

MR. McCARTHY: This is your witness, Mr. Jennings.

HIS LORDSHIP: It is not fair to the witness.

MR. JENNINGS: I am trying with my feeble ability to be fair.

HIS LORDSHIP: You may ask him as to his memory, referring to that letter.

MR. JENNINGS: Q. In your letter 17th November, 1925, to the
40 general manager, did you not point out—

MR. McCARTHY: Please read the letter.

MR. JENNINGS: Perhaps I am thinking of a later letter.

Q. You say now that you expected what? A. I said when Garlock got the guarantee form—

MR. McCARTHY: Does not my friend think he should be fair to the witness now that he finds there is a reference to Watson?

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 8
—

J. B. Priestman,
Examination.
—continued.

RECORDIn the Supreme
Court of Ontario.—
Defendant's
Evidence.—
No. 8
—J. B. Priestman,
Examination
—continued.

MR. JENNINGS: There is not a word about Watson in this letter.

WITNESS: Yes; there is a reference to Watson.

HIS LORDSHIP: Q. You say there is a reference to Watson in a letter? A. Yes.

MR. JENNINGS: Q. When did you hand the form to Garlock? A. He received the form about the end of October, as I recall it.

Q. Blank entirely at that time? A. I do not know.

Q. Some time between then and the 17th November you did know that it was Hancock's guarantee that you were to get? A. Yes.

Q. And so stated in your letter to your head office? A. Yes. 10

Q. Did you give Garlock any other form? A. I do not think so.

Q. Did you tell him he was bringing in Mr. Hancock's guarantee?

A. No.

Q. What did you say to him about Hancock's guarantee?

A. I think he eventually told me Hancock would be signing a guarantee, and I said I thought that would be satisfactory, and that I was prepared to recommend a credit on that basis.

Q. And you did so with the knowledge that Hancock alone would be with Garlock on the guarantee? A. Yes.

HIS LORDSHIP: Q. Did that go to the head office? A. Yes. 20

Q. Had the guarantee to go to the head office? A. No.

Q. Had they to be informed of it and assent to it, or was that a matter for your judgment? A. They confirm it. I simply tell them what is proposed that we will hold, and they must assent to it.

Q. You have no power to consent to a guarantee of this character?

A. Not to this extent.

MR. JENNINGS: Q. What steps did you take to advise the guarantor that the third document he was to sign would cover advances different in character and kind from those that had been made heretofore? 30

A. I took none.

Q. What steps did you take to draw to his attention that there were several new paragraphs in your forms different from those he had signed before? A. I took none.

Q. Then as far as the bank was concerned, to your knowledge as its representative, what knowledge had Hancock of the change in the nature of the account between the Bank and its customer? A. Garlock and Hancock were supposed to be hand in hand in this business.

Q. I am not asking that. I am asking you as far as the bank is concerned what means of knowledge had the surety that there was a change?

A. As far as I know the bank itself had no communications with Hancock about this guarantee. 40

HIS LORDSHIP: Q. You certainly did not send him a pair of spectacles to enable him to read it, or anything of that sort? A. No; I did not.

MR. JENNINGS: Q. Who are the bank's solicitors? A. We have several.

RECORDIn the Supreme
Court of Ontario.—
Defendant's
Evidence.—
No. 8
—J. B. Priestman,
Examination.
—continued.

Q. Answer as you did in your examination? A. You asked me if Bain & Bicknell were the bank's solicitors.

Q. Are they? A. I understand they are one firm.

Q. They are the general solicitors for the bank?

A. They do work for the head office, I understand; they are not the solicitors for the King & Spadina Branch.

Q. Why did you not tell me that when you were examined?

A. You asked me if Bain, Bicknell were the bank's solicitors and I said: "Yes." We have our own legal department at the head office

10 Q. Mr. Moore? A. Yes; and two others.

Q. You told me, did you not, at question No. 90—

MR. McCARTHY: This is your own witness.

HIS LORDSHIP: The witness says you asked him if Bain, Bicknell were the solicitors for the bank and he said they were. He was not bound to tell you there were other solicitors. He now tells you there were.

MR. JENNINGS: He tells me that there is a legal department at the head office.

HIS LORDSHIP: And that this firm of solicitors were not solicitors for his branch.

20 MR. JENNINGS: Have Bain, Bicknell done any work for your branch? A. Not to my knowledge.

Q. Not to your knowledge? A. The late Mr. Vickers did a certain amount for the branch of a minor character.

Q. And if solicitors act for you they render an account to your branch, do they? A. If the work is given through the branch directly I suppose they would.

Q. And where you can, you debit it to the customer concerned?

A. Yes.

Q. At least, if you follow the practice of other banks? A. Yes.

30 HIS LORDSHIP: What authority have you for that,—the customer's authority? A. (No answer)

Q. You have said you sometimes pay solicitors for work done and charge it to your customers? A. Work done at his request.

Q. Is it at his request that you charge it to his account? A. It is under his authority.

Q. I am wondering why you pay it unless he requests you to pay it?

A. Sometimes there are special securities taken that we would prefer to have our solicitors deal with rather than the customers, in which case we pay our solicitors and reimburse ourselves from the customer.

40 Q. That is to say, you are sort of splitting the fees? A. Not at all.

MR. JENNINGS: Q. What were the maximum advances made after 1925 to this company? What is the largest figure the account reached?

A. I think it was something over \$30,000.

Q. Was it always over \$25,000? A. No.

Q. Run over your ledger sheets and let us see how the balance was running from November, 1925, on?

RECORD

In the Supreme
Court of Ontario.—
Defendant's
Evidence.—
No. 8J. B. Priestman,
Examination.
—continued.

A. I would have to have the liability sheet.

Q. What is this I now show you? A. The current ledger sheet.
Here is the liability sheet.

MR. JENNINGS: I put in the current ledger sheet and this correspondence, my Lord.

—EXHIBIT NO. 12: Bundle of correspondence between branch and head offices of Imperial Bank.

—EXHIBIT NO. 13: Current Ledger Account, Imperial Bank and Garlock.

WITNESS: What do you want to know? 10

Q. I want to know the maximum of the total advances from the bank to Garlock after November 20, 1925? A. You will have to add the three up.

Q. Without going into detail, from November, 1925, on during a considerable period the total advances exceeded \$25,000? A. Yes.

Q. Was interest on the total added into the account from time to time? A. Yes; it would be paid by the customer.

Q. How often did you add interest to the account,—monthly?

A. No; we did not add interest. We charged interest when each particular bill was discounted. 20

Q. Naturally you would take your money first. That is good banking practice, but on the accommodation advances where there was no discount, how did you charge up interest?

A. In exactly the same way as on trade paper.

Q. And how often? A. Whenever the note was put through.

Q. Not always overdraft, but on the customer's demand note?

A. Yes.

Q. Usually a demand note? A. No; a term note.

Q. \$4000. or such round sums? A. Yes.

Q. And do the discounts so taken off over this period from November to the date of the assignment enter into your account against Hancock? A. Those were paid by the customer. 30

Q. By being charged to his account? (No answer)

HIS LORDSHIP: Q. They give him credit for the net amount?

A. Yes.

MR. JENNINGS: Q. For the proceeds of the note less the discount? A. Yes.

Q. Then that balance produced here is greater by reason of the amounts so deducted from time to time? A. (No answer)

HIS LORDSHIP: Do you need to ask the witness that? 40

MR. JENNINGS: Q. Do the discounts ever exceed \$25,000, apart from the accommodation? A. Do you mean the trade paper and specific assigned accounts?

Q. The trade paper and assigned accounts, did they ever exceed \$25,000? A. I do not think so.

Q. Then you had at one time some Saskatchewan bonds as collateral to this account? A. Yes.

Q. What happened to them?

A. They were sold and applied on the liability.

Q. When? A. About the 1st January, 1928.

Q. Applied on what department of the liability?

A. On an advance made against them.

10 Q. That is, on what we term here the accommodation advance?

A. Yes.

Q. It did not go to the relief of Hancock? A. It automatically reduced the liability for which Hancock was liable.

Q. Show me the entry.

HIS LORDSHIP: Is that not a matter of taking an account, if necessary?

MR. JENNINGS: Yes; if your Lordship looks at it in this way, we will not bother now.

20 Q. At the time in 1923 when the first guarantee was given, what insurance policy did you hold? A. I am speaking only from records; I was not there when the first guarantee was given.

Q. What did you find when you came to the branch?

A. A \$25,000 ten-year term life insurance policy.

Q. Made payable to whom? A. The Garlock Machinery Limited, and assigned by Garlock and the company to the bank.

Q. And covered by any documents specifying what it was for?

A. The usual assignment form; that is all.

Q. When was the policy dated? A. From memory, some time in 1921.

30 Q. And it was a ten-year term policy? A. Yes.

Q. Who paid the premiums on that policy? A. I do not know.

Q. Were they paid by the bank at any time?

A. Subsequent to the assignment, I think the arrangement—

HIS LORDSHIP: Not subsequent to the assignment.

MR. JENNINGS: No, my Lord.

Q. What was the object in holding that insurance?

A. Collateral security to the account, whatever it may have been; it was general security.

Q. When did you acquire the second policy?

40 A. I would have to have the assignment forms to quote you the date.

Q. While that is being looked up, give us the circumstances under which you got the second policy?

A. I think Garlock stated in this period when he was considering negotiations with the Canada Machinery Company and the American Machinery Company or the Woods Machinery Company, or whoever it

RECORD
In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 8
—

J. B. Priestman,
Examination.
—continued.

RECORD
in the Supreme
Court of Ontario.

Defendant's
Evidence.

No. 8

J. B. Priestman,
Examination.

—continued.

may be, that he and Hancock had been buying up the outstanding shares of the company.

Q. Of his own company? A. Yes; of the Garlock Machinery Company, Limited.

Q. Yes?

A. First he had an arrangement with the American Wood-working Machinery Company, and then it was switched over to the Woods Machinery Company, and he rather intimated that he had been holding back orders until he saw which way the cat was going to jump, and he had a substantial amount of commissions owing to him in connection with this business which he had placed but not delivered, and he had a \$25,000 policy payable to Mrs. Garlock.

Q. On his own life?

A. Yes. What he wanted to do was to utilize the loan value as security to reduce his liability to the company, and it was to be worked back when he got his commissions.

Q. In other words, in the Garlock Machinery Company account Garlock's personal note was discounted for the company, and he owed that money to the company and desired to lessen that indebtedness?

A. No; it was an outstanding account; I think it was as an open account that he owed the company; there was no note discounted.

Q. Did you advance new money when you got that assignment?

A. To the company, yes.

Q. How much? A. \$3000. or \$4000.

Q. And your position is that that was a specific loan apart from the general credit? A. No; but I considered I had security against the advance.

Q. What became of that policy?

A. The loan value was subsequently taken.

Q. After consultation with this guarantor? A. Yes.

Q. And he wrote back and said: "Take the cash surrender value." Why did you take the loan value instead of the full cash surrender value as the guarantor asked?

A. In my letter to him I suggest the loan value.

Q. And he wrote back and said: "I am willing that you should take the cash surrender value."?

A. I do not think I noticed the difference.

Q. The cash surrender value is greater than the loan value?

HIS LORDSHIP: Surely that is a matter of an account.

MR. JENNINGS: Quite so, my Lord.

Q. You assumed that apart from the authorized credit on accommodation you were simply advancing monies against bona fide sales?

A. Absolutely.

Q. Now, in the light of your present knowledge, is that true?

A. No; it certainly is not.

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Q. Is it true that Garlock put through a great many transactions that had no basis in sales whatever?

A. (No answer)

Q. In other words, he falsified the documents?

A. At the last it appears that he did.

Q. And a large amount of your claim against the guarantee is for advances made that do not represent bona fide sales?

A. We have not been able to recover our money.

HIS LORDSHIP: Q. What do you know about it?

10 A. We have not been able to recover.

MR. JENNINGS: Q. Have the bank taken steps to see whether these were bona fide or not? A. They have notified all the supposed debtors.

Q. What position do the supposed debtors take?

A. They refuse to pay them.

Q. On what ground? A. Largely that they did not owe them.

HIS LORDSHIP: That will not take us a step further.

MR. JENNINGS: On what ground did they refuse to pay?

HIS LORDSHIP: He has said that they refused to pay on the
20 ground that they were not liable.

MR. JENNINGS: Q. Was it on the ground that there were no sales to them as represented?

A. I do not know; they simply said they did not owe the money.

MR. JENNINGS: Where are the letters?

HIS LORDSHIP: I do not think it is material.

MR. McCARTHY: That was after the assignment.

HIS LORDSHIP: Their letters would not be evidence.

MR. JENNINGS: I am asking that the letters from the various
30 debtors to the bank, giving their reasons, be produced.

HIS LORDSHIP: Whose letters?

MR. JENNINGS: Q. In your writ of summons you have Victor Talking Machine Company, Limited, Montreal, \$2,000? What position did they take?

HIS LORDSHIP: I am not going into that.

MR. JENNINGS: May I put the question?

HIS LORDSHIP: Put the question, and it will be rejected.

MR. JENNINGS: Q. Did you get any written communication from the Victor Talking Machine Company?

A. That was subsequent to the time I left the branch.

40 HIS LORDSHIP: You cannot go any further. You have asked the question and I say you cannot go further in that direction.

MR. JENNINGS: May I, for the purpose of the record, treat it with the other debtors shown in the writ of summons?

HIS LORDSHIP: In regard to none of them can you go further in that direction. That will preserve all your rights.

RECORD
in the Supreme
Court of Ontario.

Defendant's
Evidence.

— —
No. 8
— —

J. B. Priestman,
Examination.

—continued.

RECORD
In the Supreme
Court of Ontario,

Defendant's
Evidence.

No. 8

J. B. Priestman,
Examination.
—continued.

MR. JENNINGS: Q. Please indicate on your writ of summons the accounts against which you made advances and on which the bank has been unable to collect?

A. I would like to have the up-to-date statement.

HIS LORDSHIP: I do not think we are concerned with that. How does it affect the question I have to try?

MR. JENNINGS: Because if the advances are to be confined to advances on bona fide trade bills or assigned accounts and they are not, the bank has been deceived in that, and they, having made advances,—

HIS LORDSHIP: Ask him generally if that was so or not. 10

MR. JENNINGS: Q. Is it not true that these four accounts: Victor Talking Machine Company, Limited, Montreal, Brompton Lumber Company, Limited, Bromptonville, Canada Machinery Company, Limited, Galt and Boake Manufacturing Company, Limited, Toronto, and also Watrouse Limited, Winnipeg and E. Ruel Limited, Laexon, Que., were advances made on what you now know were not bona fide sales?

A. They are apparently uncollectable.

HIS LORDSHIP: That is going over the same ground, Mr. Jennings.

MR. JENNINGS: Q. Have you not satisfied yourself— 20

HIS LORDSHIP: That will not do. What he had satisfied himself of is not evidence. This line of examination must cease.

MR. JENNINGS: Q. Did you receive written communication from these various debtors in answer to your demands?

HIS LORDSHIP: You are persisting in asking what has been ruled out. I shall have to rule further if you continue.

MR. JENNINGS: Q. Did the bank make some advances on what were not bona fide sales?

HIS LORDSHIP: We have had that before.

Q. Was anything done by the bank at any time that was not authorized by this guarantee that you are suing on now? A. Certainly not. 30

MR. JENNINGS: I submit that that is for the Court to decide.

HIS LORDSHIP: I am asking, whether as a matter of fact, anything was done.

WITNESS: Certainly not.

MR. JENNINGS: Q. Where is Garlock? A. I do not know.

HIS LORDSHIP: Are we concerned in that.

MR. JENNINGS: Q. He has disappeared out of the country?

A. As far as I know.

Q. The bank has made efforts to find him? 40

HIS LORDSHIP: I am not concerned with that.

CROSS EXAMINATION BY MR. McCARTHY:

Q. I want to put in a letter of June 15, 1923, from the Garlock Machinery Limited to the Imperial Bank of Canada, King & Spadina Avenue, attention of Mr. Duncan Cameron. He was your predecessor?

A. Yes.

MR. McCARTHY: The letter reads:—

“Gentlemen:

10 “As Mr. O. B. Earle has severed his connection with our Company, “we hereby cancel his authority to sign any cheques, drafts or other “documents on behalf of this Company.

“Mr. T. H. Hancock has now been elected Vice-President, as well as “Director, in Mr. Earle’s place with authority to sign cheques, drafts, “etc.

“We therefore, enclose new specimen signature card, any two of which “are authorized to sign cheques, drafts, etc. on behalf of the Com- “pany as per Banking By-law, copy of which you already have on your “files.

“Very truly yours,

“Garlock Machinery Limited,

20 (sgd) “G. M. Hagen, “Secretary-Treasurer.”

“G.M.H.

MR. JENNINGS: I object to that letter going in.

HIS LORDSHIP: It will go in subject to your objection.

—EXHIBIT NO. 14: Letter dated June 15, 1923, from Garlock Machinery Limited to Imperial Bank of Canada.

MR. McCARTHY: In fairness to the witness I should state that in Exhibit No. 12, which my friend filed and in which he said there was no reference to Mr. Watson—

30 MR. JENNINGS: I did not say that; I said in the letter of Novem- ber 17.

MR. McCARTHY: You went further, and I want to show you that in a letter of the 28th October, 1925, the witness wrote to the Manager of the Imperial Bank recommending Mr. T. H. Watson as guarantee.

HIS LORDSHIP: That particular letter will be identified as Exhibit No. 12A

—EXHIBIT NO. 12A: Copy of letter dated October 28, 1925, from J. B. Priestman to H. Robarts, Esq., Manager Imperial Bank of Canada:—

RECORD

in the Supreme Court of Ontario.

Defendant's Evidence.

No. 8

J. B. Priestman, Cross-Examination.

RECORD

In the Supreme
Court of Ontario.

—
Defendant's
Evidence.

—
No. 8
—

J. B. Priestman,
Cross-
Examination.
—continued.

“Dear Mr. Robarts:

“Confidentially I may say that the Canada Machinery Corporation of Galt are entering into a business relationship with the Garlock Machinery, Limited, of Toronto. The latter concern is a customer of this office. I gather that we will probably be asked for a substantial line of credit and will be offered the personal guarantee of Mr. T. H. Watson of the Canada Machinery Corporation. I would, accordingly, very much appreciate any information you might be able to obtain and let me have regarding Mr. Watson's financial responsibility. In case you make enquiry of the company's bankers, kindly do not divulge the nature of our interest.” 10

MR. McCARTHY: The reply from the General-Manager is dated October 29, 1925, in which he says he is aware of Watson's financial position, and so on.

HIS LORDSHIP: Mark that letter 12B.

—EXHIBIT NO. 12B: Letter dated October 29, 1925, from H. Robarts to J. B. Priestman:—

“Dear Mr. Priestman:

“re T. H. Watson:

“I am in receipt of your letter of the 28th instant and am sorry that I cannot obtain any information for you regarding Mr. Watson's financial condition. I know him very well myself, and know that he is a director in the Spanish River Pulp & Paper Co. besides holding other Directorates in responsible concerns. He is well-known to Mr. Boulton, and several times has given us the benefit of his advice here, in connection with machine company accounts, and I think perhaps head office may have some information on him. Mr. Watson lives in Toronto, and only comes up here several days a week, and does not carry a personal account in any of the local banks, although the Bank of Nova Scotia handles the business of the Canada Machinery Corporation.” 30

MR. McCARTHY: Q. You never saw or heard of this letter (Exhibit 4) until this litigation started? A. No; I never did.

—Witness withdrew.

MR. JENNINGS: That is the Defence, my Lord.

MR. McCARTHY: No reply, my Lord.

—Argument.

JUDGMENT

RECORD

In the Supreme
Court of Ontario

No. 9

Reasons for
Judgment of
Meredith,
C.J.C.P.

MEREDITH, C. J.:

There is no defence to this action. No honest and fair-dealing person would endeavour to get out of a contract of this character. Many persons, perhaps the majority of persons, do endeavour to evade their obligations in any way they can, and that seems to me to be so in this matter.

10 Garlock, being a personal friend of the defendant Hancock, and Hancock being more or less mixed up with the affairs of the Garlock Machinery Company through Garlock, obtained from Hancock a promise to guarantee an account of the Garlock Machinery Company. That was an arrangement between Garlock and Hancock alone; the bank did nothing but give to Garlock the form in which they required the guarantee to be, before they would advance any money.

20 Garlock took that form to Hancock and Hancock according to his testimony demurred. He wanted something else before signing it. Garlock went to his own solicitors and obtained from them a writing and brought it to Hancock, who was satisfied with it and then signed the guarantee, knowing its contents from beginning to end, and thoroughly understanding the whole obligation which he took and gave it to Garlock so that he might give it to the plaintiffs. Hancock was in no way deceived by anyone or in any way; he got that he wanted—a sort of sub-guaranty, a contract by Garlocks in the terms of that letter.

It seems to me farcical to try to fasten on the plaintiffs the obligation of that letter, which is the Garlocks' letter and obligation, and was never intended to be anything else.

30 The guaranties were renewed from time to time. Hancock, an intelligent, shrewd man of business and a careful dealer in his own interests, signed these writings from time to time, knowing throughout exactly what they were and exactly what his obligation to the plaintiffs was under them.

I am bound to say again that it seems to me to be extraordinary that anyone could hope to escape from obligations so entered into.

40 In no sense was Garlock the agent of the bank. In fact he was the agent of Hancock when he handed these guaranties to the plaintiffs, Hancock authorized him to do so. He knew that the plaintiffs relied upon the guaranties, and parted with their money, as he intended that they should do on them; otherwise being a sane business man, he would have insisted on the guaranties being changed, or at least that the letter should be the plaintiffs', not the Garlocks'; but instead of that he accepted the Garlock

RECORD
In the Supreme
Court of Ontario.

No. 9

Reasons for
Judgment of
Meredith,
C.J.C.P.
—continued.

promises and locked up this writing in his safe without giving the plaintiffs any notice or knowledge of it, inducing them to part with their money as they did in complete ignorance of it.

There is little more to be said, but I feel it necessary to add these remarks regarding cases of this kind generally: A stranger sitting in court and hearing the trial of a case of this sort would have great difficulty, at the end of the case, in understanding who was the guarantor and who was guaranteed. At the end of the plaintiff's case it would be plain that the defendants were the guarantors having signed the bond; but the mystification would arise when in the defence, it is said that so many things should have been said and done or left unsaid and undone by the person guaranteed to save the guarantor harmless that the stranger might well imagine that after all the person giving the guaranty was really the person indemnified; that the person indemnifying was really himself to be indemnified against any consequences of his guaranty. I am sorry to have to say that in cases of this kind defendants often go to that extreme. 10

But the defendant is the guarantor, and he is bound by his guaranty. There is nothing substantial in his defences, nothing that can relieve him from that obligation, and work something like a fraud upon the plaintiffs.

I cannot tell, I do not know, how defences of this character would be treated in that "Wonderland" which a certain "Alice" is said to have visited; for I cannot but think that, if such defences were raised in a court there, there should at least be a decree: "Off with the heads" of those who made such unreasonable and extraordinary contentions. 20

There will be judgment for the plaintiff for the amount due upon that guaranty. If the parties cannot agree upon the amount—

MR. McCARTHY: It is certified, my Lord; and the certificate is in.

MR. JENNINGS: The certificate is only prima facie evidence.

HIS LORDSHIP: It will be for the judgment clerk to consider these things. 30

ENDORSEMENT ON RECORD:

Let judgment be entered for the plaintiffs against the defendant for the amount now payable by defendant to plaintiffs under the guaranty in question—to be ascertained by the judgment clerk if the parties differ as to it—with costs. Stay two weeks.

MR. JENNINGS: Will your Lordship direct a reference?

HIS LORDSHIP: I think the judgment clerk can settle this. If he cannot, and you gentlemen agree upon a referee, you may go to that referee; if you cannot agree, you may come to me again. If the judgment clerk does not want to take the reference, I shall refer it to the proper officer. I should think there would be no difficulty about it. 40

MR. JENNINGS: I think we shall probably agree, my Lord.
 HIS LORDSHIP: If there is any difficulty about it, you may have your reference.
 MR. JENNINGS: Thank you, my Lord.
 HIS LORDSHIP: I am granting two weeks' stay. Is that sufficient?
 MR. JENNINGS: I think so, my Lord.

RECORD
 In the Supreme
 Court of Ontario.

No. 9

Reasons for
 Judgment of
 Meredith,
 C.J.C.P.

—continued.

Certified to be correct,

SYDNEY W. BROWN,
 Official Reporter, S.C.O.

No. 10

Case re-opened
 for Reply.

10

(IMPERIAL BANK V. HANCOCK)

Toronto, Friday December 7; 1928

MR. McCARTHY: My motion is to allow me to adduce some further evidence by way of Reply. Owing either to my stupidity or to the bad acoustics—

HIS LORDSHIP: Do you oppose the motion, Mr. Jennings?

MR. JENNINGS: Yes, my lord.

MR. McCARTHY: Owing to matters which I did not hear, or misunderstood, on the part of some of the witnesses, I desire to call evidence to straighten out certain matters in connection with the authority of the Bank to Mr. Bain's firm regarding a certain letter which was written on the 20th. April 1923.

I desire to call Mr. Bain, Mr. More the supervisor of the Bank, and Mr. Stirrup who wrote the letter.

MR. JENNINGS: In the first place I submit your lordship has no power to hear further evidence, after judgment is given and the record endorsed.

HIS LORDSHIP: Has judgment been entered? (No) If it is not the matter is open. Is that not so?

MR. McCARTHY: That is the law.

MR. JENNINGS: I submit not. May I point to two cases; English Reports; Weekly notes 1916; —of Bristol v. G.W.RY; p. 47 4 Chancery Divison (1876) p.24: Bigsby v. Dickinson.

I submit your lordship has no power to allow evidence at this stage.

I also ask your lordship to consider whether if it were in your lordship's discretion, it would be a proper thing to do. Your lordship has given your reasons for judgment, and the judgment has been endorsed upon the Record and the Record returned.

In the third place, if your lordship should over-rule these objections, I submit it is a case in which the costs of this hearing ought to be to the defendant in any event.

No. 11

Objection.

RECORD
In the Supreme
Court of Ontario,
No. 11

But that is a minor matter; I submit the case is closed, counsel of great experience, instructed by the general counsel for the Bank of great experience, were given opportunity to put in evidence in reply, and they informed the Court— and it is a matter of record—that they had no reply; and judgment passed in their favor.

Objection.
— continued.

I submit on the two grounds; (1) that there is no power; and (2) if there is your lordship's discretion should be exercised against it, that there should be no further evidence heard at this stage.

HIS LORDSHIP: There can be no doubt about the power of the Court to receive further evidence in this case. There can be no doubt about the power of a Judge to alter his judgment, to deal with a case as in his judgment seems best, until his judgment has been made a matter of record. In case of an Order the Order is issued, in case of a judgment, judgment is entered. 10

There is no doubt about the power, and there is no doubt about the wisdom of having such power. Through a mere slip a case might be decided wrongly, evidence about which there could be no doubt might make it necessary that the judgment which was directed to be entered, or the Order directed to be made, should be altered. 20

But in all these cases of after-thought evidence the Court must be careful; careful in the first place as to admitting it, and more careful in the second place as to the weight of evidence of that character. Of course it depends on the character of the witnesses, the nature of the case, and many other things. The inclination of the Courts of this Province has been tersely, if somewhat vulgarly, expressed in the words of one of our Chancellors; "Let the parties swear themselves out."

This case seems to be one in which there should be additional evidence received on each side or both sides, if the parties desire it; not because I have any doubts about the facts of the case, about the very truth of the matter, but because my judgment may not be the final judgment. Other judges might take a different view. It is my duty to see that they who may deal with the case after me have the benefit of all the material evidence that can be obtained upon the matter which is to be determined. 30

I therefore give leave. And I agree with Mr. Jennings, subject to anything Mr. McCarthy may say, that the costs of the day shall be costs in the action to the defendant. That is to say, if the defendant succeeds he shall get these costs, if the plaintiffs succeed they shall not get them.

You understand I open the case for evidence from both sides. 40

REPLY

RECORD

In the Supreme
Court of Ontario.

JAMES WILLIAM BAIN sworn; Examined by MR. McCARTHY:

Q. Mr. Bain, you are a member of the legal profession, one of His Majesty's counsel, and senior member of the firm of Bain, Bicknell, White & Bristol, I believe? A. I am.

Reply
Plaintiffs
Evidence.

Q. What is the position of your firm as far as the Imperial Bank is concerned? A. We act in certain specific matters where they are expressly sent to us by the head office of the bank. Our instructions come either from the legal department of the bank or the general manager.

No. 12

J. W. Bain,
Examination.

10 Q. Have you any retainer from the bank?

A. None at all.

Q. Or any authority to bind the bank? A. No.

Q. Or accept service of papers on behalf of the bank?

A. No, nor to accept notice.

Q. Then I gather from what you say that you do not act for the bank except on express instructions?

A. That is all.

Q. And in specific matters? A. In specific matters.

20 Q. When if ever did you receive any instructions in this particular matter? A. It was some time in July 1927.

Q. I believe the Imperial Bank have a legal department of their own? A. They have.

Q. Which department sometimes handles their own cases?

A. Yes.

Q. And I also understand that letters of instruction are addressed to which member of the firm?

A. They are always addressed to me personally.

Q. Have you any authority yourself to bind the bank? A. No.

Q. Or accept service of any papers on behalf of the bank?

30 A. No.

MR. JENNINGS: It is all very leading.

MR. McCARTHY: Where do your communications and instructions come from? A. They come either from the general manager of the bank or the legal department.

HIS LORDSHIP: Do you mean at the head office?

A. Yes, at the head office, my lord.

Q. Where is that? A. On Leader Lane in Toronto.

MR. McCARTHY: I show you letter of July 7 1927; does that help to recall to your mind the first instructions you got from the Bank?

40 MR. JENNINGS: Is that in the affidavit of documents? If not it cannot be evidence.

HIS LORDSHIP: I think the witness may refer to any writing to refresh his memory. Perhaps you can speak without needing your memory refreshed.

RECORD

In the Supreme
Court of Ontario.

Reply
Plaintiff's
Evidence.

No. 12

J. W. Bain,
Examination.

A. Well this was some time in July 1927 the first instructions I received in this matter. This is my letter of instructions.

Q. You have no doubt seen that letter recently? A. I have.

Q. Can you speak without reference to it?

A. I say that on the 7th. July 1927 was the first time I received instructions in this matter; those were instructions to demand payment.

Q. The first instructions you ever had in regard to this matter?

A. Yes, my lord.

MR. McCARTHY: When if ever did you see Exhibit No. 2? (This is only a carbon copy, the original I think is on the way down) a letter addressed to William Garlock from your firm? A. I never saw it, my lord, until some time after the commencement of this action. 10

Q. Did your firm act for Hancock in any matters? A. Never.

Q. Did they ever act for Garlock? A. At times, yes.

Q. Did you ever know Hancock? A. No.

Q. Either personally or professionally?

A. Never, never met him.

Q. Did you ever have occasion to speak to Hancock? A. Never.

Q. Over the telephone? A. Never.

Q. Have you made enquiry from other members of your firm as to whether they— 20

MR. JENNINGS: I object.

HIS LORDSHIP: It is no harm to say whether he made enquiry. The next question may be objectionable.

A. I have.

MR. McCARTHY: Mr. Hancock referred to a conversation which he said he had with some member of your firm or staff. Was that conversation ever held with you? A. No.

Q. Have you any knowledge of it? A. No.

Q. Is there any record in your office of such a conversation? 30

A. None.

CROSS-EXAMINED by MR. JENNINGS:

MR. JENNINGS: The cross-examination will be without prejudice to my position, my lord?

HIS LORDSHIP: Of course, that will be noted.

MR. JENNINGS: The firm of which you are now the head, under various names have been general solicitors for the Imperial Bank from its inception, hasn't it?

A. They were general solicitors up to a certain time, until the legal department was established, I think about fifteen years ago or twenty years ago. 40

Q. Well they have continued a general solicitors? A. No, we have been merely acting as solicitors for the head office.

Q. What was the change in that time? Had you a general retainer before that? A. Never had a general retainer.

Reply
Plaintiff's
Evidence.

No. 12

J. W. Bain,
Cross-
Examination.

Q. Then there is no change in the relation of your firm that you now head to the bank, is there?

A. I think there has been a change.

Q. What change? A. I think the legal department,—I am sure, the head office do a great deal more work than we do.

Q. But that is simply a matter of volume, there is no change in the relationship? A. I act personally you might say for the bank now, and have for the last ten or fifteen years. No other member of my firm does any business for the bank, except on my instructions.

10 Q. Then your firm from time to time acts for branches through the city? A. No we do not, we have never acted for the branches. McWhinney & Brown act for one, the Yonge St., I think.

Q. How is it that Mr. Priestman, the manager at King & Spadina during this transaction, when asked, Who are the Bank's solicitors? without hesitation said, Bain Bicknell & Co.? That was generally understood in the Bank, wasn't it? A. I think it would be generally understood that we act for the head office, or for the legal department, in matters that are sent out by the bank, that the legal department does not attend to.

20 Q. All the branch managers know your firm as general solicitors for the bank, don't they? A. I do not know that. I certainly do not know all the branch managers, there are 35 in Toronto.

Q. Now in regard to the letter, you have a large staff. In 1923 how many professional men were in your office, either as partners or on salary, qualified solicitors?

A. Off-hand I would say about ten or eleven.

Q. And other members. A large staff?

A. We have a fairly large staff.

30 Q. You do not intend to say that you know what each one of them does day by day? A. No.

Q. Have you any personal knowledge of the instructions upon which the letter Exhibit No. 2 was written by your firm? A. No.

Q. All you can say is that as far as you are concerned you had no instructions? A. That I knew nothing of the letter whatsoever.

Q. And the same applies to the telephone conversation with Hancock? It was not suggested that it was with you; all you can say is that this conversation, whoever it may have been with, was not with you?

A. I am quite positive I had no conversation with him.

40 Q. I do not assume that you did. Who had charge of the docket and rendering of accounts in your office?

A. We have an accounting branch.

Q. Who was in charge of that in 1923, Mr. Stirrup?

A. No. I think in 1923 Mr. Giles was chief accountant, and he had assistants. I am not sure if at that time it was Mr. Giles or Miss Harrison, there was a change made about that time, there were three in the accounting dept.

RECORD

Reply

In the Supreme Court of Ontario

Plaintiff's Evidence.

No. 12

J. W. Bain,
Cross-
Examination.
—continued.

RECORD
In the Supreme
Court of Ontario.

Reply
Plaintiff's
Evidence.

No. 12

J. W. Bain
Cross-
Examination.
—continued.

Q. What was Mr. Stirrup in 1923? A. He was in the mortgage dept. and also managing clerk in the office.

Q. He was what has been referred to as office manager?

A. Well I said managing clerk.

Q. And he sometimes saw clients? A. He would see them in connection with the real estate department I imagine. He is not a barrister or solicitor.

Q. But he did from time to time to your knowledge see clients and receive instructions? A. I do not know whether he did receive instructions; he may have from his own personal friends.

HIS LORDSHIP: Do you know anything about the letter that was written by your firm to the Garlock company enclosing a form of letter from the Garlock Co. to the defendant? A. No my lord, I never knew such a letter was written until after this action started.

10

Plaintiff's
Evidence.

WILLIS BERTRAM STIRRUP sworn.

No. 13

W. B. Stirrup,
Examination.

Examined by MR. McCARTHY:

Q. What position did you occupy in the firm of Bain Bicknell & Company in 1923?

A. Managing clerk and in charge of the mortgage dept.

Q. Have you ever met the defendant Hancock in this action?

A. No never.

Q. Had you any correspondence with him or conversation with him?

A. No.

Q. Over the telephone or otherwise? A. Or otherwise.

Q. Never. Then have you any authority as far as you are personally concerned to bind the Imperial Bank?

A. Absolutely none.

MR. JENNINGS: Surely that is leading.

HIS LORDSHIP: He is not dealing with matters of law.

Q. As a matter of fact had you any instructions from or connection with the bank? A. None whatever.

MR. McCARTHY: Have you ever acted for the Imperial Bank?

A. No. If they bought any property which our firm was acting for sometimes I did some of the titles.

Q. Do you remember the occasion of the writing of this letter of April 20 1923? (part of Exhibit No. 2) A. Yes.

Q. That is a carbon copy which you produce? A. I do.

Q. Under what circumstances was that letter written?

A. Mr. Garlock telephoned me and gave me certain instructions and asked me to prepare a letter which he wanted to sign and send to Mr. Hancock, which I did later in the day, and sent to Mr. Garlock.

40

Q. Did you keep a copy of the letter which you prepared for Mr. Garlock? A. I cannot find any copy. I do not think I did. It was drawn on plain paper, it was not on Mr. Garlock's stationery.

RECORD
In the Supreme
Court of Ontario.

HIS LORDSHIP: Was it on your stationery?

A. Not our firm stationery, just plain paper we used, either white or yellow paper like this, just plain drafting paper.

Plaintiff's
Evidence.

Q. And that was enclosed in a letter copy of which you now hold in your hand?

No. 13

HIS LORDSHIP: Well, isn't the witness mistaken about that? My recollection is it was written on the firm's paper.

W. B. Stirrup,
Examination.
—continued.

MR. McCARTHY: No, the letter put in was not written in Mr. Bain's office at all, it was dictated in Garlock's on Garlock's paper. The exhibits will be here soon.

MR. JENNINGS: The copy which is in was on Garlock's paper, but it was prepared—

MR. McCARTHY: Now my friend is giving evidence.

HIS LORDSHIP: I am speaking of the letter from the Bain firm to Garlock, enclosing this copy.

MR. McCARTHY: That is true.

Q. Then the letter which you sent to Mr. Garlock was on your firm paper? A. Yes.

Q. And that is a copy of it which you have in your hand?

A. This is our office copy.

Q. And those initials in the corner are your initials?

A. My initials, yes.

Q. And you prepared a letter, a draft letter, for Mr. Garlock to sign, which was enclosed in that letter?

A. Yes sir.

Q. Now whether he followed your draft or not do you know?

A. I could not say positively.

Q. Are you a solicitor or barrister? A. No.

HIS LORDSHIP: Nor a member of the firm? A. No.

MR. McCARTHY: Then did you have any communication from Mr. Garlock from which you are able to say as to whether he did forward that letter to Mr. Hancock or not?

A. I never thought any more about it until after the examination of Hancock, when Mr. Bain drew my attention, or someone in the office.

Q. So what Mr Garlock. did with the draft you sent to him you do not know?

A. I have not the faintest idea.

Q. Did you ever mention the letter to any member of the firm or to the bank? A. Absolutely no.

HIS LORDSHIP: Or to anyone? A. No, my lord.

MR. McCARTHY: And you say there is no copy of the draft which you sent to Mr. Garlock on your files?

A. No, I cannot find a copy of it.

RECORD
In the Supreme
Court of Ontario.

Plaintiff's
Evidence.

No. 13

W. B. Stirrup,
Examination.
—continued.

Q. Did you subsequently have any telephone communication with Hancock? A. I never talked to Mr. Hancock in my life.

Q. Were you the person in the office who was looking after Garlock's affairs? A. Yes, Mr. Garlock was a friend of mine, I had known him for 14 or 15 years.

Q. And he used to come to you occasionally with his affairs?

A. Yes.

Q. And this was an occasion on which he came and asked you to draft this letter? A. Yes.

Q. Then at the time you wrote this letter, for whom were you acting? A. For Mr. Garlock. 10

HIS LORDSHIP: Did you charge him anything for it?

A. I would say No sir, I did not; I did dozens of things for him that I never charged him for, small matters like this. I would say No sir, I did not charge him.

Plaintiff's
Evidence.

CROSS-EXAMINATION by MR. JENNINGS:

No. 13

W. B. Stirrup,
Cross-
Examination.

Q. How long had you been in the office of Bain Bicknell & Company in 1923? A. I had been there since 1911.

Q. Had you been an articulated clerk? A. No.

Q. And you were in charge of the real estate dept.? A. Yes. 20

Q. And of course had authority to sign the firm's name?

A. Well all letters are signed—

Q. I did not ask about the practice—A. I signed Bain Bicknell & Co. to the letters.

Q. per you? A. No sir.

MR. McCARTHY: I object, the question is ambiguous; when he says authority to sign the firm's name, it depends what he is signing it to. Does he mean cheques, mortgages?

MR. JENNINGS: I assume my friend knows he has the right to re-examine. 30

Q. Then were you doing anything wrong in signing the letter you sent to Mr. Garlock with the firm's name?

A. Absolutely not.

Q. You were acting within your authority? A. Yes.

Q. Then you had authority to interview clients and receive instructions? A. Well I have interviewed.—Yes, in my capacity, someone might come in and enquire for Mr. Bain and Mr. Bain might be in New York—

Q. Well I do not want a speech—

HIS LORDSHIP: Let him "swear himself out." 40

MR. JENNINGS: All right; of course we have to pay for it later on. Well go ahead.

A. That is all.

Q. And you were just acting in the ordinary course of your occupation in the employ of Bain Bicknell & Co. in what you told Mr. McCarthy? A. Yes, and in addition for Mr. Garlock.

Q. And did you really prepare this letter yourself on telephone instructions? A. Yes.

Q. Well you ought to be a solicitor.

A. Well I studied law in the West Indies.

Q. You knew it was an important matter didn't you, involving a large amount of money? A. Yes.

10 Q. And you knew it concerned a transaction with the Imperial Bank? A. Yes.

Q. And you knew your office were their general solicitors?

A. I knew we acted for them.

Q. Generally, didn't you? A. Well that depends on the interpretation.

Q. You yourself had prior to this acted in matters where the bank was concerned?

A. In real estate transactions.

Q. And in collection matters? A. No.

20 Q. Was this the first time you undertook to act in a matter where the bank was concerned involving \$25,000.?

A. Well if they bought a property for more than that,—I helped on the title when they bought King & Yonge.

Q. You had to do only with real estate, you say? A. Yes.

Q. Preparing a letter involving liability for \$25,000. between two clients of your office, the Imperial Bank and Garlock, setting out three or four terms of the guarantee contract, that is a pretty important matter isn't it?

A. Well those were the instructions Mr. Garlock gave me.

30 Q. Well it was a pretty important matter even to you, wasn't it?

A. It was fairly important.

Q. Did you speak to Mr. Bain, who was the counsel for the Bank, about it? A. No.

Q. Did you show this letter to anyone? A. No.

Q. Do you wish the Court to understand that you prepared this letter as shown here on telephone instructions? A. Yes.

Q. Have you read it as it is in the exhibit?

A. Yes I have read it since.

Q. Is the letter that is in Court the same letter that you drew?

40 A. I would say that is my language, yes.

Q. Is it the same letter that you drew?

A. I could not swear positively to that, I would say that letter certainly is the language I would use.

Q. Did you take down notes as Mr. Garlock spoke over the telephone? A. Yes I scribbled down some notes.

Q. Did he tell you why he wanted it?

RECORD
In the Supreme
Court of Ontario.

Plaintiff's
Evidence.

No. 13

W. B. Stirrup,
Cross-
Examination.
—continued.

RECORD

In the Supreme
Court of Ontario.Plaintiff's
Evidence.

No. 13

W. B. Stirrup,
Cross-
Examination.

—continued.

A. That he wanted Mr. Hancock to sign a guarantee for him.

Q. Did he say that Mr. Hancock was demanding such a letter?

A. No he said he was going to give this letter to Mr. Hancock, or Mr. Hancock wanted it.

Q. He may have said he wanted you to prepare a letter that Mr. Hancock wanted? A. Yes he might have said that.

Q. Did he say anything about your being the Bank's solicitors as well as his? A. No, I acted for Mr. Garlock.

Q. Now wait; are you quite sure that was not mentioned?

A. Positive.

Q. And you knew of course that this letter was to be given to the party who was to guarantee the account to the Imperial Bank?

A. Well I would imagine so.

Q. That was the purpose? A. Yes sure.

Q. And is there any doubt, as between the principal debtor and the guarantor, that the terms of the guarantee are set forth in this letter?

A. Yes, that letter carried out specifically, I would say, Mr. Garlock's instructions to me.

Q. And Mr. Hancock, unless he wanted to believe Mr. Garlock a rogue, would believe that was the terms of his undertaking?

HIS LORDSHIP: I am afraid he cannot answer that; how can he tell what Hancock would believe?

A. Mr. Garlock might have changed the letter after I sent it to him, I cannot say.

MR. JENNINGS: You have said he did not,

A. No I have not.

Q. You have identified the letter as the letter you drew.

A. No, I say it is my language, I cannot say whether he changed it or did not.

Q. I understood you to say you had no doubt the letter in Court was the letter you drew. A. I said I would recognize it as my letter.

Q. Does it differ in any particular?

A. I cannot carry my memory back five years.

Q. Of course one would not expect you to. You could not remember the details even of this important matter?

A. I would say that is the letter I drew.

Q. Well the letter confined the guarantee to the purpose of discounts, didn't it, that was Mr. Garlock's clear instruction to you?

A. Yes, the two things I have specifically in mind when I drew that letter are that Mr. Hancock wanted a guarantee from Mr. Garlock that he would not put any chattel mortgage or pledge the assets of the company, he was more concerned about that than anything else.

Q. And that the guarantee would cover discounts only? A. Yes.

Q. That is clearly set forth isn't it? A. Yes.

Q. And that was on Garlock's instructions to you? A. Yes.

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Q. And then the guarantee was to remain in force only for a year, was that Garlock's instruction? A. Yes.

Q. And was insurance referred to in your instructions, to protect the guarantor? A. I think so. If I saw that letter I would remember.

Q. I can only show you my Brief copy. (shown) A. Yes.

Q. Did Garlock tell you what insurance the bank held at that time, or he was intending to give, what kind of insurance? A. No.

Q. Did he tell you the amount?

A. \$25,000.

10 Q. No details about the kind? A. No.

Q. Now what you wish us to understand is that you, a managing clerk, doing mortgage business, entirely on your own authority and without reference to any member of the firm, prepared this important letter, a matter involving \$25,000., in which two clients of your office were involved, the bank and Garlock?

A. Yes, because Garlock was a friend of mine. This letter bears me out; it says—"I enclose herewith letter to sign—"

20 Q. You had then a very broad authority in the office, hadn't you? I mean I could not conceive of myself giving that authority to a managing clerk. A. Well if a friend of mine came into the office tomorrow and asked me to write a letter to the Royal Bank—

Q. But you owe no duty to the Royal Bank.

A. Well or the Imperial. Mr. Garlock had been a friend of mine since 1912 or 1913.

Q. At any rate that is your story?

A. That is my story.

Q. Of course as you say you cannot remember the details of the letter except as you see it and try to recall it? A. No.

30 Q. Can you remember whether just before you wrote that letter you answered a telephone call from Mr. Hancock.

A. I would say positively I never talked to Mr. Hancock, never saw Mr. Hancock until this action, never in my life.

Q. Yes I know you would say that positively, yet while you remember that so positively you cannot remember the details of the letter which you prepared.

A. I would remember if Mr. Hancock telephoned he would telephone something in connection with this, which would be impressed on my mind.

40 Q. All he says he telephoned was to ask for the man in charge of the bank and Garlock matter and ask him to hurry up the letter.

MR. McCARTHY: Oh no, my friend should stick to the facts. He did not say the bank and Garlock matter at all.

HIS LORDSHIP: Well the witness says he never had any conversation of any character with Hancock.

MR. JENNINGS: All that hesays is that he telephoned to you to

RECORD

In the Supreme
Court of Ontario.

Plaintiff's
Evidence.

No. 13

W. B. Stirrup,
Cross-
Examination.
--continued.

RECORD ask you to hurry up the letter,—I do not want to provoke my friend
In the Supreme Court of Ontario. again, he is excitable this morning—
 — A. I would say he did not.
Plaintiff's Evidence. Q. You are prepared to say point blank after 5½ years that that
 — never happened? A. I would say so.
No. 13 Q. Then you have an extra-ordinary memory, haven't you?
 — A. No not necessarily.
W. B. Stirrup, Cross-Examination. Q. You cannot remember all the details of the letter you prepared—
 — A. But when I read the letter it refreshes my memory.
 — *—continued.* Q. But you can say that such a casual conversation as "Mr. Garlock is in a hurry, can't you hurry up the letter——" 10
 — A. I remember Mr. Garlock might have said to me, he himself said he was in a hurry, he would always want what he wanted within half an hour.
 — Q. You cannot say that no-one else in your office got such a telephone message? A. No I cannot say.
 — Q. And you say now, although your memory is so defective on the main thing, that you are positive you never got the message?
 — A. I never got the message.
 — Q. Well I congratulate you on your memory. 20

Plaintiff's Evidence.

RE-EXAMINED by MR. McCARTHY;

No. 13 Q. On whose instructions did you act when you did any work for the
 — Imperial Bank? A. Mr. Bain's.
W. B. Stirrup, Re-examination. MR. JENNINGS: That is not new.
 — HIS LORDSHIP: No; he may ask it, re-opening the matter. Still
 — the old rule. Let them swear themselves out.
 — MR. McCARTHY: Then my friend asked if you had authority to
 — sign the firm's name. To what documents had you authority to sign the
 — firm name? A. Only to letters. It is the custom of the office.
 — MR. JENNINGS: Do you know of any other documents to which 30
 — legal firm's names are appended except letters? What writings except
 — letters are legal firms' names appended to? A. I don't know,—well if
 — you sign an agreement, if the firm signed an agreement—
 — Q. Did you ever know them to sign an agreement? A. Yes sure.
 — Q. How often? A. I have known our firm to sign agreements.

Plaintiff's Evidence.

WILLIAM GIBB MORE sworn; Examined by MR. McCARTHY;

No. 14 Q. What is your position in the Imperial Bank?
 — A. I am secretary of the bank and superintendent of branches.
W. G. More, Examination. Q. And what authority if any over the legal department?
 — A. They are responsible to me, I am supervisor over that depart- 40

ment.

Q. Is that the legal department of the head office? A. Yes.

Q. The bank has a legal department of its own? A. Yes.

Q. In regard to this letter, you have since this litigation commenced seen this letter of 20th. April said to have been written by Mr. Garlock and addressed to Mr. Hancock? A. No I have never seen it.

Q. Haven't you seen it since? A. I have been told about it.

Q. You have been asked to search your files to see if any such letter exists in your files? A. Yes.

10 Q. Does such a letter exist? A. No.

Q. Is there any record of the bank showing you ever had notice of this letter? A. No.

Q. You have made a search through the files of the bank for that purpose, I believe? A. Yes.

HIS LORDSHIP: That is Exhibit No. 2, is it?

MR. McCARTHY: Yes, my lord.

Q. Then have the firm of Bain Bicknell & Co. any retainer from your bank? A. No.

MR. JENNINGS: This is absolutely leading——.

20 MR. McCARTHY: What is the connection of the Bain Bicknell firm with the bank, in what matters do they act for you?

A. They act in any matters in which they are given special instructions from the bank.

HIS LORDSHIP: And on that only?

A. On that only, yes.

MR. McCARTHY: Where do those instructions come from?

A. From the head office, either the general manager or the legal department.

Q. Have they any authority to bind the bank in any matters?

30 A. None at all.

CROSS-EXAMINATION by MR. JENNINGS;

Q. I suppose they have the authority which the law gives to solicitors in every matter entrusted to them, to bind the bank? There is no question about that?

A. They have authority to accept papers and so on, in litigation in which they are acting as solicitors for the bank.

Q. And wherever you retain them as solicitors they have the authority that the law gives to solicitors so retained? A. I don't know about that.

40 Q. They are recognized by your head office as their general solicitors, aren't they? A. They generally act for the bank.

Q. And they have, don't you know, since the bank was incorporated? A. I don't know.

RECORD

In the Supreme Court of Ontario.

Plaintiff's Evidence.

No. 14

W. G. More, Examination.

—continued.

Plaintiff's Evidence.

No. 14

W. G. More, Cross-Examination.

RECORD
In the Supreme
Court of Ontario.

Plaintiff's
Evidence.

No. 14

W. G. More,
Cross-
Examination.

—continued.

Q. Since you came to the bank? A. Since I came to the bank in 1911 the firm has been changed two or three times.

Q. But the firm now headed by Mr. Bain—

A. They have been generally used by the head office as our solicitors.

Q. In fact you would have to get very special instructions from your general manager to send anything from the legal department to anyone else, wouldn't you?

A. Well we have sent things to other solicitors.

Q. I know, but really, Mr. More, without wanting to be discourteous to you, that is not what I asked you. Isn't it the case that in order to send matters from your legal department to any other legal firm you would require to get special instructions from the general manager? 10

A. They are designated generally as the solicitors who would act for the head office of the bank.

Q. Then I ask you again, in order to send matters from your legal department to any other firm would you not require special instructions from the general manager?

A. We would inform the general manager.

Q. That again is not an answer; would you not require special instructions from the general manager? 20

A. No I would take the responsibility myself sometimes.

Q. To send it to some other legal firm. Have you done it?

A. I have done it, yes.

Q. To whom; can you name an instance?

A. Yes, Mr. Vickers.

Q. But Mr. Vickers we know is the son-in-law of the former president, and acted for one or two branches.

A. Nevertheless we have sent matters to him.

Q. From the one or two branches for which he had the solicitorship, that is all, isn't it? A. No. 30

Q. You do not mean you referred it to Mr. Vickers as Counsel for the legal department? A. We have referred a matter to Mr. Tilley.

Q. Direct, or through Mr. Bain? A. Direct.

Q. You have referred a matter? A. You asked have we referred a matter; I said yes.

Q. Can you refer to any other matter than this one time?

A. McWhinney & Brown have had matters for the bank.

Q. They also have one or two branches? A. Yes.

Q. How many branches in Toronto? A. About thirty.

Q. And how many in the bank as a whole? A. About 195. 40

Q. And in respect of matters which come to the head office for consideration from all its branches, with these two exceptions are not Bain Bicknell & Co. recognized as general solicitors for the bank? A. We have solicitors at every branch of the bank.

Q. Of course; it does not help not to answer, because I am persistent enough to go on. When matters from branches come in refer-

red to the head office for legal action, in those matters the head office recognizes Bain Bicknell & Co. as their general solicitors?

Q. Yes, they are referred to the legal department, and if we want to consult outside advice we would refer it to Mr. Bain.

Q. Then did you see at any time up to this moment the letter which Bain Bicknell, through Mr. Stirrup, prepared in connection with this guarantee being sued on?

A. I do not remember seeing it; I may have sworn the affidavit on production of the documents, that would be the only time.

10 Q. Have you seen it at all up to now? A. No.

Q. I am sorry it is not here—

HIS LORDSHIP: We shall have it before we close this further hearing—

MR. JENNINGS: My I use my Brief copy?

HIS LORDSHIP: Certainly.

MR. JENNINGS: You are a solicitor, aren't you?

A. I am a solicitor, yes.

Q. And your first experience in the bank was in the legal department? A. Yes.

20 Q. From there you went to the executive department and are now secretary and supervisor? A. Yes.

Q. Would you just read that letter, which at least as far as my client is concerned purported to come from the bank's solicitor's—it is for his lordship to say whether it did or not, but he received it as such.

A. I never saw that letter before.

Q. But you have seen it now. I want to ask you, as a solicitor and former legal department man, and now superintendent of branches, if the bank had been aware of this letter at the time they received Hancock's first guarantee, is there any doubt in your mind that the guarantee
30 would cover only discounts of sales?

HIS LORDSHIP: That is not a proper question.

MR. McCARTHY: That is surely a matter of law.

MR. JENNINGS: I do not want to press it against your lordship's ruling. May I ask this;

Q. Would the bank, had they received this letter, have sought to recover in this action from Hancock for money advanced on pure accommodation?

MR. McCARTHY: Surely that is not proper.

HIS LORDSHIP: I do not think that is a proper question. Even if
40 it were I do not think this witness can answer for the bank without the authority. of the bank.

MR. JENNINGS: I could bring out his authority, because the authority of the superintendent of branches is very large. However I am bound by your lordship's ruling.

Q. In banking practice, you as superintendent of branches can tell us; each branch manager has a limit of credit, hasn't he, within which he may make loans without special reference to head office? A. Yes.

RECORD

In the Supreme
Court of Ontario.

Plaintiff's
Evidence.

No. 14

W. G. More,
Cross-
Examination.

—continued.

RECORD

in the Supreme
Court of Ontario.

Plaintiff's
Evidence.

No. 14

W. G. More,
Cross-
Examination.

—Continued

Q. Then if the application for credit exceeds the manager's discretionary power, the application is forwarded to head office in due course; is that right? A. Right.

Q. And the manager can only act then in accordance with the credit which the head office grants?

A. He sometimes does act and of course refers it afterward.

Q. He takes the risk of getting his head office to approve.

A. No, he takes the responsibility.

Q. Well I mean he does it on his own responsibility, and if the head office do not approve he is in trouble? 10

A. That is right.

Q. And Mr. Priestman had this branch at King & Spadina is it?

A. Yes.

Q. What was the limit of his discretionary power?

A. I could not tell you offhand, it would probably be \$5000.

Q. As much as \$5000. A. Yes.

Q. Without reference to head office? A. Yes.

Q. He said \$2500. A. Well it might be \$2500.

Q. Is there any difference in the risk which the guarantor assumes between a guarantee limited to advances made on bona fide trade paper from acceptable customers, and a guarantee given solely upon the credit of the company, the customer? A. Is there a difference in the risk? 20

Q. Yes.

MR. McCARTHY: Surely that is a matter of law.

MR. JENNINGS: No, I am asking as a banker; a matter of fact.

A. I would say there is certainly a difference in the risk, because in one case there are two peoples' names on the paper, and in the other case only one.

Q. Exactly, that appeals to us all.

Q. Where the guarantee is limited to advances made on bona fide sales, by which I mean assigned accounts or accepted trade paper, between the guarantor and his responsibility there is a third person liable to the bank? A. Yes. 30

Q. Primarily liable on the acceptance or the assigned account?

A. Yes.

Q. Where there is a credit upon accommodation only to the bank's customer the guarantor has not that third person's responsibility for his protection?

A. No, but we have direct security.

Q. You may have section 88 for instance, or something? A. Yes. 40

Q. But there is that element lacking in the protection to the guarantor, isn't there? A. Yes.

Q. The responsibility of the purchaser? A. Yes.

Q. And your authorization of credit to Mr. Priestman, as the correspondence shows, was on discounts of acceptable paper; that is he must

scrutinize the buyers as responsible people and only discount acceptable paper, that is right, isn't it? A. Yes.

Q. Then if an account has gone on for two and a half years, the bank holding a guarantee, with no business done between the bank and its customer except the discount of acceptable trade paper and assigned accounts; and then the bank grants a new credit of thousands of dollars upon accommodation only, that is a change, in the risk, a change in the nature of the dealings? A. Yes, the bank would only grant that on request.

10 Q. But that is a change in the nature of the dealings between the bank and the customer?

HIS LORDSHIP: Does the witness know any more than you and I know? I think you are wandering too far afield.

MR. JENNINGS: I just want to get on record the change in the risk. May I follow it a little? It seems to me important.

HIS LORDSHIP: You may ask him any facts. But this witness knows nothing about the facts. We had them thoroughly elicited from the other witnesses.

MR. JENNINGS: May I, just for the record—

20 HIS LORDSHIP: Ask the question and I will rule.

MR. JENNINGS: Was there not, taking then the concrete case, after some years of dealings between the Garlock Machinery Co., and the bank, with advances limited to advances on sales and trade paper and assigned accounts, was there not a very material change in the nature of the dealings between the bank and its customer when in 1925 they granted an advance on the company's own credit unsecured in that way?

A. There was a change in the nature of the advances.

Q. Which altered the risk which the guarantor assumed—

30 HIS LORDSHIP: I do not think it is for him to say. How does he know?

MR. JENNINGS: He knows as a matter of fact and experience.

HIS LORDSHIP: Does he know any more than you or I? He is speaking in general terms.

MR. JENNINGS: No, I am speaking about this concrete case.

HIS LORDSHIP: No, he is speaking in general terms, and he knows no more about it in general terms than anyone else. Any fact you desire to get, ask him. I do not want his opinion.

40 MR. JENNINGS: As a bank solicitor and bank executive, would you as manager of that branch have communicated to the guarantor that now for the first time you are about to advance money to the customer on his own credit?

MR. McCARTHY: I object?

HIS LORDSHIP: I do not think it is a proper question. It is rejected.

RECORD

In the Supreme
Court of Ontario.

—
Plaintiff's
Evidence.

—
No. 14
—

W. G. More,
Cross-
Examination.

—Continued

RECORD

In the Supreme
Court of OntarioPlaintiff's
Evidence.

No. 14

W. G. More,
Cross-
Examination.

--Continued

MR. McCARTHY: That closes the reply.

HIS LORDSHIP: Now the whole case is wide open to the defend-
ant. Do you desire to give any evidence, Mr. Jennings?

MR. JENNINGS: No, my lord.

HIS LORDSHIP: Is any further argument needed? I do not need
any from you, Mr. McCarthy, and I do not think your case is helped by
this.

Mr. Jennings?

MR. JENNINGS: No, my lord. I do not think I can attempt to
discharge that heavy onus to which your lordship referred before. I
think as far as this court is concerned no argument can help. 10

No. 15

Reasons for
Judgment of
the Honourable
Chief Justice
of the Common
Pleas confirmedHIS LORDSHIP: I cannot tell, until I see the transcript of that
which I am reported to have said when this case was closed the other
day, whether it will be necessary to modify anything I said then, or add
anything to it, by reason of this additional evidence.At the moment, I may say that at the close of the defendants' testi-
mony I expected that the solicitor would be called to corroborate his testi-
mony. But he was not, the resulting conclusion in my mind being that
if he had called him he would not have said anything in his favor, be-
cause parties abstain from calling a witness generally, if not invariably, 20
for that reason.Then at the close of the reply I came to the conclusion that the
plaintiffs had not called the solicitor for one of two reasons; either that
they did not deem it necessary in view of the course the case had tak-
en,—perhaps they were justified in that conclusion—or possibly they
thought that if the witness were called he would not help their case.However, we have now heard this additional evidence, which does
not affect my judgment. It may, as I have said, make it necessary for
me to make some alteration in the words I used at the close of the case
the other day, but otherwise the case remains just as it was. The Min- 30
ute on the back of the Record stands and may be acted upon.CERTIFIED CORRECT
(as to pages 78 to 104)

GEO. H. PLAYLE

of Nelson R. Butcher & Company
Official Reporters; S.C.O.

IN THE SUPREME COURT OF ONTARIO

The Honourable The Chief Justice) Friday, the 7th day
of the Common Pleas) of December, 1928

IMPERIAL BANK OF CANADA

Plaintiff

RECORD
In the Supreme
Court of Ontario

—
No. 16
—

Judgment of
the Chief Justice
of the Common
Pleas.

vs.

T. H. HANCOCK

Defendant

10 THIS ACTION coming on for trial on the 4th and 5th days of De-
ember, 1928, and this day before this Court at the Sittings holden at To-
ronto for trial of actions without a jury in the presence of Counsel for all
parties, upon hearing read the pleadings and hearing the evidence adduc-
ed, and what was alleged by Counsel aforesaid,

1. THIS COURT DOTH ORDER and adjudge that the plaintiff do re-
cover against the defendant the sum of \$23,775.00.
2. THIS COURT DOTH FURTHER ORDER and adjudge that the de-
fendant do pay to the plaintiff his costs of this action forthwith after
taxation thereof.
- 20 3. THIS COURT DOTH FURTHER ORDER and adjudge that the
costs of the plaintiff's motion to adduce further evidence after judgment
and the costs of the hearing of said further evidence be costs to the de-
fendant in the cause to be set off pro tanto against the plaintiff's costs of
this action.

Judgment signed this 19th day of January, 1929

"E. HARLEY"
Senior Registrar S. C. O.

Entered J. B. 40 Page 101
January 19, 1929

30

"E. B."

RECORD
In the Supreme
Court of Ontario

IN THE SUPREME COURT OF ONTARIO
APPELLATE DIVISION

No. 17 BETWEEN:—
Notice of Appeal
of Defendant

IMPERIAL BANK OF CANADA

Plaintiffs (Respondents),

—and—

T. H. HANCOCK

Defendant (Appellant).

NOTICE OF APPEAL

TAKE NOTICE that the above-named Defendant (Appellant) ap- 10
peals to a Divisional Court from the Judgment herein pronounced by The
Honourable The Chief Justice of the Common Pleas on the 5th day of
December A. D. 1928, on the following grounds:—

1. That the Judgment is contrary to the evidence and the weight of
evidence.

2. That the Learned Trial Judge erred in dismissing the Defendant's
counter-claim for cancellation or rectification of the Agreement of Guar-
anty sued upon.

3. That the Plaintiffs had knowledge of the limited nature of the
Plaintiffs' guarantee, and in any event are entitled to recover only such 20
sums as are owing to them on the discount of bona fide sales made by Gar-
lock Machinery Company Limited.

4. That the Agreement of Guaranty sued upon was obtained by
wrongful concealment of material change in the dealings between the
Bank and its customer, and is void ab initio.

5. On such further and other grounds as counsel may advise.

Dated at Toronto this 17th day of December, 1928.

JENNINGS & CLUTE,

67 Yonge Street Toronto 2,

Solicitors for the Defendant

(Appellant). 30

To Messrs. Bain, Bicknell, White & Bristol,
Solicitors for the Plaintiffs (Respondents).

IN THE SUPREME COURT OF ONTARIO
APPELLATE DIVISION

BETWEEN:—

IMPERIAL BANK OF CANADA

Plaintiffs (Respondents).

—and—

T. H. HANCOCK

Defendant (Appellant).

RECORD

In the Supreme
Court of Ontario

—
No. 18
—

Supplemental
Notice of
Appeal by
Defendant

SUPPLEMENTARY NOTICE OF APPEAL

10 TAKE NOTICE that, in addition to the grounds set forth in the Notice of Appeal herein dated the 17th day of December 1928, the Appellant will submit that the Judgment of The Honourable The Chief Justice of the Common Pleas should be set aside on these further grounds:—

6. That the Learned Trial Judge erred in rejecting evidence as tendered on behalf of the Defendant.

7. That the Learned Trial Judge, having delivered judgment with his reasons therefor, and endorsed and returned the Record, had no power at a later date to receive further oral evidence.

20 8. That if the Learned Trial Judge had at the time mentioned in Paragraph numbered 7 hereof power to receive further oral evidence, it is submitted that the Learned Trial Judge erred in the exercise of his discretion in permitting such evidence to be received; and that the same should be stricken from the Record.

DATED at Toronto this 20th day of December, 1928.

JENNINGS & CLUTE,

67 Yonge Street, Toronto—2,
Solicitors for the Defendant,
(Appellant).

30 To—Messrs. Bain, Bicknell, White & Bristol,
Solicitors for the Plaintiffs (Respondent).

RECORD

IN THE SUPREME COURT OF ONTARIO

In the Supreme
Court of Ontario

No. 19

Judgment of the
Second
Appellate
Division of the
Supreme Court
of OntarioThe Honourable Chief Justice of the)
Second Divisional Court)
The Honourable Mr. Justice Riddell,)
The Honourable Mr. Justice Masten,)
The Honourable Mr. Justice Orde,)
The Honourable Mr. Justice Fisher,)Friday, the 8th
day of March,
A. D. 1929

BETWEEN:—

IMPERIAL BANK OF CANADA

Plaintiff (Respondent) 10

(SEAL)

11/3/29
I. J. L.

—and—

T. H. HANCOCK

Defendant (Appellant)

Upon Motion made to this court on Wednesday, 6th day of March, 1929 and again on Thursday, the 7th day of March, 1929 and again on this day by Counsel for the defendant by way of appeal from the Judgment of the Honourable the Chief Justice of the Common Pleas, dated the 7th day of December, 1928; In presence for counsel for the Plaintiff, Upon hearing read the pleadings and proceedings in the action and the evidence at the trial and the aforesaid judgment; and upon hearing what was alleged by Counsel aforesaid. 20

1. THIS COURT DOTH ORDER that the said appeal be and the same is hereby dismissed with costs to be paid by the Defendant to the Plaintiff forthwith after taxation thereof.

"E. HARLEY"

Entered O. B. 105 pages 325-6
March 11th, 1929
L. G.Senior Registrar
S. C. O. 30

RECORD 2. AND IT IS FURTHER ORDERED that the execution upon the
In the Supreme Judgment herein be and the same is hereby stayed until the final disposi-
Court of Ontario tion of the said Appeal;

No. 20 3. AND IT IS FURTHER ORDERED that the said Appeal be and
the same is hereby allowed;

Order Approving Security on Appeal to Privy Council 4. AND IT IS FURTHER ORDERED that the costs of this applica-
tion be costs in the said Appeal.

—concluded.

“E. HARLEY”

Senior Registrar.

S. C. O. 10

“Entered A. B. 104 Pages 568-9
April 19th, 1929.
L. G.”

PART 2—EXHIBITS

TO

IMPERIAL BANK OF CANADA,

1. For valuable consideration, the undersigned (herein called the Guarantors), and each of them (if more than one), guarantees the due payment and discharge of all liabilities to Imperial Bank of Canada (herein called the Bank) of

GARLOCK MACHINERY LIMITED

10 (herein called the Customer), whether incurred before or after the date hereof, and whether incurred by the Customer alone or jointly with others, and whether as principal or surety, and whether such liabilities are matured or not, and whether absolute or contingent, including liabilities, in respect of advances and cheques, bills or other negotiable or non-negotiable instruments, drawn, accepted, endorsed or guaranteed by the Customer, and in respect of interest, commissions and banking charges, together with any costs and expenses incurred with respect to any such liabilities or any securities therefor.

20 2. This shall be a continuing guarantee, and shall secure the general balance due, or that may be due, from time to time and at any time from the Customer to the Bank notwithstanding any payments from time to time made to the Bank, or any settlement of account or any other thing whatsoever.

3. All benefits of discussion and division are hereby waived, and the Bank shall not be bound to exhaust its recourse against the Customer or other parties or the securities it may hold, nor to value such securities, before requiring payment from the Guarantors, or any of them, or their personal representatives.

30 4. Notwithstanding the discontinuance of this Guarantee as to one or more of the Guarantors, it shall remain a continuing security as to the other or others, and this Guarantee shall, as to each Guarantor and his legal personal representatives, remain in force and cover all liabilities of the customer, inclusive of those incurred down to the expiration of three months after notice of discontinuance thereof shall be given in writing to the Bank by such Guarantor or his legal personal representatives.

5. This Guarantee shall be in addition to and without prejudice to any other securities negotiable or otherwise which the Bank may now or hereafter possess, and the Bank shall be under no obligation to marshal in

RECORD
In the Supreme
Court of Ontario
—
Exhibits
No. 5
—
Defendant's
Exhibit
Guarantee Bond
Dated, April
17th, 1923.

RECORD
 In the Supreme Court of Ontario
 Exhibits
 No. 5
 Defendant's Exhibit
 Guarantee Bond
 Dated, April 17th, 1923.
 --continued.

favor of the Guarantors any such securities or any of the funds or assets the Bank may be entitled to receive or have a claim upon, and the Bank may in its own absolute discretion, and without diminishing the liability of the Guarantors grant time or other indulgences to the Customer or any other person or persons liable to the Bank on or in respect of any bills, notes, guarantees or undertakings, and give up or modify, vary, exchange, renew or abstain from perfecting or taking advantage of any securities, and may discharge any party or parties, and accept or make any compositions or arrangements, and realize any securities, when and in such manner as the Bank may think expedient, and in no case shall the Bank be responsible for any neglect or omission with reference to any such securities. 10

6. All dividends, compositions and payments received are to be treated as payments in gross, and the Guarantors are not to have any right to participate except to the extent of the surplus remaining after satisfaction of the ultimate balance due to the Bank.

7. All debts and liabilities, present and future, of the Customer to the Guarantors or any of them are hereby postponed to the liabilities of the Customer to the Bank, and all moneys received by any of the Guarantors or their representatives or assigns thereon shall be received as Trustees for the Bank and shall be paid over to the Bank. 20

8. Where the Customer is a Corporation, the Bank is not to be concerned to see or enquire into the powers of the Customer or its directors or other agents acting or purporting to act, on its behalf, and moneys in fact borrowed from the Bank in professed exercise of such powers shall be deemed to form part of the moneys guaranteed, even though the borrowing or obtaining of such moneys be in excess of the powers of the Customer or of the directors or other agents thereof, or shall be in any way irregular or defective or informal.

9. Where the Customer is a partnership, this Guarantee is to extend 30 to the person or persons for the time being and from time to time carrying on the business now carried on by the Customer, notwithstanding any change or changes in the name or membership of the Customer's firm.

10. Any account settled or stated by or between the Bank and the Customer, or admitted by or on behalf of the Customer, may be adduced by the Bank, and shall in that case be accepted by the Guarantors and each of them and their respective representatives as conclusive evidence that the balance or amount thereby appearing is due by the Customer to the Bank.

11. A certificate in writing, under the hand of any Manager of the 40 Bank where the Customer's account relating to the same is kept, stating the amount at any particular time due and payable to the Bank under this Guarantee, shall be conclusive evidence as against the Guarantors and each of them and their respective representatives.

12. The liability of each Guarantor to pay shall first arise when notice in writing is given to him requiring him to pay, and any notice may be served on him or his legal personal representatives either personally or by sending the same through the post to the address appearing beneath his signature hereto, and any notice so sent shall be deemed to be served on the day following that on which it is posted.

RECORD
In the Supreme
Court of Ontario

—
Exhibits
No. 5
—

Defendant's
Exhibit

Guarantee Bond
Dated, April
17th, 1923.
—continued.

13. Any moneys received under this Guarantee may be deposited to a separate account with the Bank bearing interest at three per cent. per annum, and may be appropriated by the Bank from time to time in satisfaction in part or in whole of the indebtedness hereby secured, when and as the Bank may see fit, and the receipt by the Bank of any sum from any Guarantor shall be without prejudice to the Bank's rights against each of the other Guarantors for the full amount of their liability respectively.

14. Any sum which shall become payable hereunder shall be payable at the office of the Bank where the Customer's account relating to the same is kept.

15. This Guarantee shall be construed in accordance with the laws of the Province of (1) Ontario and any judgment recovered in any Court of such Province against any Guarantor or his personal representatives shall be binding on him and them.

16. Each Guarantor is to be severally liable only for the sum of Ten Thousand Dollars and interest on that amount at six per cent. per annum from the time notice in writing is served requiring him to pay.

17. In the foregoing the plural shall include the singular and vice versa. This Guarantee shall be binding upon every person signing the same, notwithstanding the non-execution thereof by any other proposed Guarantor.

DATED the seventeenth day of April 1923.

Witnesses: Signature of Guarantor "WILLIAM GARLOCK JR."

30 "G. M. HAGEN"

Address — 320 Bay St. Toronto.

as to both
signatures.

Signature of Guarantor "T. H. HANCOCK"

Address — 1372 Bloor St. West.

RECORDIn the Supreme
Court of Ontario

BAIN, BICKNELL, MACDONELL & GORDON

Toronto,
April 20th, 1923.—
Exhibits
No. 4AWilliam Garlock, Esq.,
163 Dufferin St.,
Toronto.—
Defendant's
Exhibit

Dear Sir,—

—
Letter from
Bain, Bicknell
& Co., to Wm.
Garlock, dated
April 20, 1923.In pursuance of your instructions I enclose herewith letter to be
signed by you which you intend giving to Mr. T. H. Hancock.

ENCL.

Yours truly,
"Bain, Bicknell, Macdonell & Gordon".

10

GARLOCK MACHINERY LIMITED

Toronto, April 20th, 1923.

—
Exhibits
No. 4BT. H. Hancock, Esq.,
1372 Bloor St. West,
Toronto.—
Defendant's
Exhibit

Dear Sir,—

—
Letter from
Wm. Garlock
to Defendant

re GARLOCK MACHINERY LIMITED

dated April 20,
1923.

In pursuance of your guarantee with me of the account of the Garlock Machinery, Limited at the Imperial Bank of Canada, King and Spadnia Avenue, Toronto for Ten Thousand Dollars, I agree not to borrow any money on the stock and machinery at any time in the possession of the Garlock Machinery Limited without first having obtained from you by a letter in writing your consent to the same. 20

Further, the guarantee which we have signed with the Imperial Bank is given for the purpose of discount only. I also agree to pay you and indemnify you for any loss you may suffer in connection with this guarantee.

This guarantee is to remain in force for a period of one year from this date without the same is further extended by our mutual consent in writing. 30

I agree also that as a further protection to you in connection with your guarantee, to have the Garlock Machinery continue the life insurance which they hold on my life and to see that these premiums are paid by the Garlock Machinery Limited as and when they mature. This policy is for the sum of \$25,000.00.

Yours truly,
"WILLIAM GARLOCK JR."

The General Supervisor,
Toronto.

April 23, 1923.

RECORD
In the Supreme
Court of Ontario

Dear Sir:—

Garlock Machinery Limited, \$3380.
Credit \$10,000. Liability \$3,380.

—
Exhibits
Part of No. 12.

—
Defendant's
Exhibit

Correspond-
ence between
the branch and
Head Offices of
the Imperial
Bank.

10 Mr. O. B. Earle has withdrawn from the Company and we are asked to accept the guarantee of Mr. T. H. Hancock in place of his. The guarantee is already in my hands and is for \$10,000. I enclose copy of report of R. G. Dun & Company on Mr. Hancock and his Company. I recommend that you authorize me to release Mr. Earle's guarantee and substitute Mr. Hancock's.

Yours truly,

Manager.

DC/H.
Encl.

—————
IMPERIAL BANK OF CANADA
Office of the General Supervisor

Toronto, April 24, 1923.

—
Exhibits
Part of No. 12

—
Defendant's
Exhibit

Correspond-
ence between
the branch and
Head Offices of
the Imperial
Bank.

—continued.

20 The Manager,
King & Spadina Branch,
Toronto, Ont.

Dear Sir:

We are in receipt of your No. 108 of the 23rd instant.

Re: Garlock Machinery Ltd. \$3,380.

30 We note that Mr. O. B. Earle has withdrawn from the Company and has asked us to release him from his guarantee, which is to be replaced by the guarantee of Mr. T. H. Hancock, President of T. H. Hancock Limited, lumber dealers. While the mercantile report is satisfactory as far as it goes, if we are to accept Mr. Hancock's guarantee we will have to have a statement of his personal affairs; after you have obtained this, and submitted it to Head Office, we will give you definite instructions.

Yours truly,

"H. C. HOUSTON"
Supervisor

HCH/S

RECORD

In the Supreme
Court of Ontario

April
Thirtieth
1923

Exhibits
Part of No. 12

The General Supervisor,
Toronto.

Defendant's
Exhibit

Dear Sir:—

Correspond-
ence between
the branch and
Head Offices of
the Imperial
Bank.

—continued.

Garlock Machinery Limited

The Bank of Montreal, Bloor & Lansdowne, reports as follows on
Mr. T. H. Hancock, the new guarantor:—

“Referring to our telephone conversation of to-day, we may say 10
that Mr. T. H. Hancock is worth in the neighborhood of \$1,000,-
000. His liabilities are very small, and we consider him quite
undoubted on a guarantee of \$10,000.”

Before writing, the Manager of that Bank rang me up and stated
that Mr. Hancock had referred my request for a personal statement to
him. He stated that Mr. Hancock was a very wealthy man and had ask-
ed him to vouch for his responsibility.

Please advise me, if on the strength of this report, I may accept Mr.
Hancock's guarantee in lieu of that of Mr. O. B. Earle.

Yours truly,

20

Manager.

DC/H

Exhibits
Part of No. 12

IMPERIAL BANK OF CANADA

No. 146

Defendant's
Exhibit

Office of the General Supervisor

Toronto, May, 1 1923

Correspondence
between the
Branch & Head
Office of the
Imperial Bank.

—continued.

The Manager,
King & Spadina Br.,
Toronto, Ont.

Dear Sir:

We are in receipt of your No. 116 of the 30th ultimo.

30

Re: Garlock Machinery Limited \$3,380.

In view of the favourable reports which you have received on the
financial responsibility of Mr. T. H. Hancock, we will approve of substi-
tuting his guarantee for \$10,000 in place of that of Mr. O. B. Earle, who
has withdrawn from the Company. You, of course, will continue to hold

the other securities as mentioned in your application of 16th October last.

If advances will be required in future, it would be more satisfactory if you ascertained the Company's requirements and submitted to the Head Office a revised application.

HCH/S

Yours truly,
"R. A. DARK",
General Supervisor.

RECORD
In the Supreme
Court of Ontario
—
Exhibits
Part of No. 12
—
Defendant's
Exhibit
Correspondence
between the
Branch & Head
Office of the
Imperial Bank.
—continued.

10

May
Fifth
1923

The General Supervisor,
Toronto

—
Exhibits
Part of No. 12
—

Dear Sir:

Garlock Machinery Limited

I am in receipt of your letter of the 1st inst., No. 146, authorizing me to accept the guarantee of Mr. T. H. Hancock in place of that of Mr. O. B. Earle, who has withdrawn from the Company.

Defendant's
Exhibit
Correspondence
between the
Branch & Head
Office of the
Imperial Bank.
—continued.

20 I note what you say as to future advances and if an increase in the near future should be required I shall take up with you a revision of the credit.

Yours truly,
Manager.

DC/H

RECORD

In the Supreme
Court of Ontario

Exhibits
No. 14

Plaintiff's
Exhibit,

Letter dated
June 15, 1923
from Garlock
Machinery Ltd.
to Plaintiff.

GARLOCK MACHINERY LIMITED

Wood Working and Metal Working Machinery

Warehouse

163 Dufferin Street
TORONTO
Canada

Office:
320 Bay Street,
June 15, 1923.

Imperial Bank of Canada,
King & Spadina Ave.,
City.

10

Gentlemen: Attention of Mr. Duncan Cameron.

As Mr. O. B. Earle has severed his connection with our Company, we hereby cancel his authority to sign cheques, drafts or other documents on behalf of this Company.

Mr. T. H. Hancock has now been elected Vice-President as well as Director in Mr. Earle's place with authority to sign cheques, drafts, etc.

We, therefore, enclose new specimen signature card, any two of which are authorized to sign cheques, drafts, etc. on behalf of the Company as 20 per Banking By-law, copy of which you already have on your files.

Very truly yours,
GARLOCK MACHINERY LIMITED.

"G. M. Hagen"
Secretary-Treasurer.

GMH.

(FRONT)

IMPERIAL BANK OF CANADA

Authority

Registration No.

Cheques to be signed by

.....
.....
.....

RECORD

In the Supreme Court of Ontario

Exhibits No. 11

Plaintiff's Exhibit,

Plaintiff's card for specimen signatures, re Garlock Machinery Ltd.

(BACK)

GARLOCK MACHINERY LIMITED

10

Below you will find signature of officers authorized to sign on behalf of

Specimen Signatures

- "William Garlock Jr."
- "T. H. Hancock"
- "G. M. Hagen"

Date

RECORD

EXHIBIT NO. 6

In the Supreme Court of Ontario

(Not Printed)

Exhibits No. 6

Guarantee Bond same as Exhibit No. Five, except that it is dated March 1st, 1924, and is for \$15,000.00.

(not printed)

Defendant's Exhibit

Guarantee Bond, dated March 1, 1924.

210

13 February, 1924.

Exhibits

Part of No. 12. The General Supervisor,
Head Office,
Toronto.

Defendant's Exhibit

Dear Sir:

10

Correspondence between the Branch & Head Office of the Imperial Bank.

Re: Garlock Machinery Ltd. \$9,567.

The Company's liability today is:

Business Paper discounted	\$2,477.
Advances against specifically assigned accounts—Seaman Kent Ltd. Meaford.	7,090.
	<hr/>
	9,567.
	<hr/>

I enclose copy of letter from the Machinery Company asking for an additional credit until July 15th of \$5,000. making a total credit of \$15,000. A short time ago Garlock was successful in obtaining an order from the Seaman Kent Ltd. for \$112,000. worth of machinery. Of this approximately \$20,000. has been installed and the balance is being shipped as rapidly as possible.. It is in this connection that the additional credit is required. The Seaman Company are rated in Duns at from \$300,000. to \$500,000. of good credit. I enclose copy of Company's annual statement which has just been received, together with comparative figures. Last year showed a loss in trading operations of \$13,133. on a turn-over of \$69,018. Expenses in connection with the business obtained were all out of proportion but Garlock states that they will reap the benefit of the traveller's expenses and other pioneer work this year. Last year in addition they were compelled to pay O. B. Earle, who withdrew from the Company, a salary of \$200.00 per month until they were able to repay him in full. For this they received no value. Earle put \$14,000. into the Concern and drew \$10,000.00 in cash, plus his salary, out of it. This handicapped them tremendously and as well, accounts for the indebted-

20

30

ness of Wm. Garlock, Jr. of \$4,575.18. Garlock tells me that in order to have the Company's statement on a rock bottom basis, everything was cut as much as possible. The inventory of machinery and supplies on hand, which are all in perfect working order and ready for installation showed at \$16,000. odd and are readily saleable as required at that figure. However, a depreciation of 33 1/3% was made leaving an apparent surplus over the amount shown of some \$5000.

The Company disposed of the lease they had of their old warehouse and have taken much smaller quarters at a monthly rental of \$30.00. 10 The overhead has been out where ever possible and at the present time they are working on an average monthly budget of \$650.00, exclusive of salesman's salaries and traveller's expenses. Garlock is very hopeful of this years business. At the present time outside of the Seaman Kent business he has orders signed and on hand of approximately \$15,000. and several prospects and considerable prospective business which he is reasonable sure of obtaining. The Seaman Kent Company have also intimated to him that they have practically decided to further increase their plant and to place a similar order to the one now under-way. Providing this is obtained it will mean \$112,000. with a further profit to Garlock 20 of \$12,000. Garlock is confident that this Season with increased sales and a substantially decreased overhead will show a profit.

Regarding the guarantors. Mr. Garlock has little outside of the business. Mr. T. H. Hancock, a very wealthy man, and evidently undoubted for his guarantee. In April last the Bank of Montreal, Bloor and Lansdowne reported as follows, "we may say that Mr. T. H. Hancock is worth in the neighborhood of \$1,000,000. His liabilities are very small and we consider him quite undoubted for a guarantee of \$10,000." I 'phoned the Manager again yesterday when he told me that Mr. Hancock's affairs 30 show a further improvement this year and that he is undoubted for his undertakings.

I have accordingly no hesitation in recommending a credit in favor of the Company of:

\$15,000. against good Business Paper or Specific Assignments of Accounts

Secured by:

40 General Assignment of book debts registered. Personal guarantee Wm. Garlock Jr. and T. H. Hancock for \$15,000. each, the credit to be reduced to \$10,000. by July 15th on completion of the Seaman-Kent contract. Assignment Life Insurance, W. J. Garlock, Jr. \$25,000. (Ten year policy, no cash surrender value.)

Yours truly,
Manager.

JBP/H

Ch 62 C

RECORD
In the Supreme
Court of Ontario.
—
Exhibits
Part of No. 12.
—
Defendant's
Exhibit,
—
Correspondence
between the
Branch & Head
Office of the
Imperial Bank.
—*continued.*

RECORD

In the Supreme
Court of Ontario

IMPERIAL BANK OF CANADA

General Manager's Office,

Toronto, 18th February, 1924.

Exhibits
Part of No. 12.

Defendant's
Exhibit,

The Manager,
King and Spadina Branch,
Toronto.

Dear Sir:

Correspondence
between the
Branch & Head
Office of the
Imperial Bank.
—continued.

Re: Garlock Machinery Co. Ltd. \$9,567.

I am in receipt of your letter No. 210.

10

Before considering the application for a credit of \$15,000. on business paper or specifically assigned accounts backed up by the guarantees of Wm. Garlock, Jr., and T. H. Hancock, I would like to know a little more about this business. Are they manufacturers of machinery or merely machinery agents, and if the former how can they, with their lack of working capital, finance the order from the Seaman Kent Company, amounting to \$112,000? I note you have already advanced them \$7090. against a specifically assigned account, but has machinery to this extent gone forward, been installed and accepted, and what are the terms of payment?

The Company has no working capital; their floating liabilities are some \$3,000. in excess of their liquid assets, as the amount owing by Wm. Garlock Jr., of some \$4575. can, I suppose, only be collected if the business meets with success. Their turnover last year was only \$69,000. they incurred a loss of \$13,000., they evidently occupy very modest premises, and it looks to me as if a very substantial amount of capital was urgently required. Mr. Hancock is, we understand, a man of considerable substance, but even at that we must know all about the business before passing on the credit now before us.

When did you ascertain that Mr. O. B. Earle succeeded in withdrawing \$10,000. from this business? We have, as you know, a proposition from him to relieve him of his guarantee in connection with the Earle Electric account, and it is unfortunate that he has evidently been able to lay his hands on some \$10,000. without our having an opportunity of attaching it.

I note that on making telephone enquiries of the Bank of Montreal, Bloor and Lansdowne, the Manager advised you Hancock is undoubted for his undertaking, all of which is satisfactory, but as a matter of business courtesy I think enquiries of this nature should be made by letter and not over the telephone.

Yours truly,
"G. D. BOULTON"
Assistant General Manager.

40

B—G

21st February, 1924.

The General Manager,
Head Office,
Toronto.

RECORD
In the Supreme
Court of Ontario

—
Exhibits
Part of No. 12.

—
Defendant's
Exhibit,

—
Correspondence
between the
Branch & Head
Office of the
Imperial Bank.

—
—continued.

Dear Sir:

Re: Garlock Machinery Limited, \$9,567.

I am in receipt of your No. 62 of the 18th instant and have delayed replying as Mr. Garlock was expected back in the City to-day, however he has been delayed and will not return until the end of the week.

10 The Company are not manufacturers but machinery agents and also dealers in 2nd hand equipment. In the case of Seaman-Kent order, amounting to \$112,000. they merely placed the order with the Company in the United States ship direct to the Seaman-Kent Company. Miss Hagen, the secretary is not entirely clear as to the dating given by the U.S. Company to Garlock and in turn by Garlock to Seaman-Kent Company. It evidently varies but there would appear to be a spread of sixty to ninety days. I will get the particulars from Mr. Garlock and submit them to you. The machinery in connection with which we hold the present specifically assigned accounts has been shipped and is installed.

20 The Company's affairs, as you state, are not in good shape and additional capital would be the proper solution. Last years showing was a disappointing one but Garlock claims the statement shows the situation as adversally as possible. According to him there is a margin of at least \$5000. in the inventory. On top of this travelling and other expenses, were entirely out of porportion to the sales. He claims they will reap the benefit from this during the present Season. He is satisfied that even without the possibility of a further order from the Seaman-Kent Company for \$112,000. they will be able to show at least a small profit, and from what he tells me I believe this is correct. I note your remarks re-
30 garding the making of telephone enquiries and will govern myself accordingly in the future.

Regarding Mr. O. B. Earle's drawings from the Company. This was first mentioned to me by Mr. Garlock in December last, the last payment to Earle having been made in either June or July, 1923.

As stated above I will advise you further regarding the Seaman-Kent datings by the first of the next week.

Yours truly,
Manager.

JBP/H

RECORD

In the Supreme
Court of Ontario

—
Exhibits
Part of No. 12.

—
Defendant's
Exhibit,

—
Correspondence
between the
Office of the
Branch & Head
Imperial Bank.

—continued.

IMPERIAL BANK OF CANADA

General Manager's Office,

Toronto, 22nd February, 1924

The Manager,
King and Spadina Branch,
Toronto.

Dear Sir:

Re: Garlock Machinery Co. Ltd. \$9,567.

I am in receipt of your letter of the 21st February, and as you are 10
not familiar with the terms of the Seaman-Kent contract we are not in a
position to consider the application for a credit of \$15,000., the greater
part of which will be represented by assigned accounts. What you must
ascertain is if the Seaman-Kent people have undertaken to make pay-
ments from time to time as portions of the machinery are installed, and
what are the responsibilities of your people as far as installing the mach-
inery is concerned? What are the terms regarding payment to the mak-
ers of the machinery in the United States? You cannot afford to take
anything for granted; your customers have no working capital, and even
if you do hold a substantial guarantee we must know all about the Com- 20
pany's operations before granting any credit, as it seems to me if they
are merely agents all they would get out of the deal would be a commis-
sion on the sale and that they would not in any way assume any liability
in connection with the sale. You refer to there probably being orders
of \$224,000. all told to the Seaman-Kent people, but they must be putting
up an enormous plant to call for such an investment in wood working
machinery, and where is the plant being erected? My recollection is
that the Seaman-Kent people invested a fairly large amount of money in
a plant in Fort William some years ago, the venture turned out a failure
and is it not likely that they have a lot of old machinery of their own on 30
their hands?

Yours truly,

"G. D. BOULTON"
Assistant General Manager.

B—G

C RECORD
 In the Supreme
 Court of Ontario
 —
 Exhibits
 Part of No. 12.
 —
 Defendant's
 Exhibit,
 —
 Correspondence
 between the
 Branch & Head
 Office of the
 Imperial Bank.
 —*continued.*

26th February, 1924

The General Manager,
 Head Office,
 Toronto.

Dear Sir:

Re: Garlock Machinery Co. Ltd. \$9,567.

I am in receipt of your No. 66 of the 22nd instant. Regarding the Seaman-Kent contract amounting to \$112,000., nearly 80% of this equipment is supplied by the American Woodworking Machinery Company. In this case Garlock is not interested in the financing as the American Company simply take over the paper of Seaman-Kents and collect it themselves. The balance of the contract consists of motors, shafting, grinders, setters, etc., and for this Garlock pays cash, selling to the Company on sixty day terms, with the privileges of a further thirty days, if desired. This end of the business runs into some \$20,000. odd, and it is in connection with this that the additional credit of \$5,000. is required. The Garlock Machinery Company are not responsible for installation or operation of the various machinery. This point is covered in his purchase agreements with the various Concerns from whom he buys.

Garlock states that the Seaman-Kent Company tells him that they received \$125,000. fire insurance when their plant at St. Agathe, Que. was destroyed by fire. In addition to this Mr. M. J. O'Brien of Ottawa is either advancing them or backing them to the extent of \$150,000.00. The Molsons Bank, Toronto, report as follows:

"Claim a paid up capital of \$383,200. Operate mills at Meaford, and West Lorne, Ontario. Are doing a large and profitable business and should be a good risk for requirements at short dates. The gentlemen connected with the Concern are of excellent character and good business ability."

Garlock states that the plant at Renfrew is now in the course of construction and that they are contemplating a new plant somewhere in Quebec to replace the one destroyed by fire. They also figure on replacing certain old machinery with new at the Meaford plant and in this connection it is estimated that they will be ordering four additional units costing approximately \$75,000. to \$80,000. before the end of the year. Regarding the Fort William plant, according to Garlock, this was opened around 1911 and closed in 1915 or 16. There were six units operating in this plant which were distributed

3 to West Lorne, Ontario
 2 to St. Agathe, Quebec
 1 to Midland, Ontario

RECORD The two at St. Agathe were destroyed in the fire.

In the Supreme Court of Ontario
—
Exhibits Part of No. 12.
—
Defendant's Exhibit,
—
Correspondence between the Branch & Head Office of the Imperial Bank.
--continued.

I trust I have given you the information required. Garlock gives the impression of knowing his business and while the Company's affairs are decidedly not in good shape at the present time, I think with the Seaman-Kent Business in addition to his usual turn-over, he has a good chance of making some money this year and putting the Company on its feet. With the Hancock guarantee we are well secured and can, I think, safely grant the credit asked for.

Yours truly,
Manager.

10

No. 70

IMPERIAL BANK OF CANADA
General Manager's Office,

Toronto, February 28, 1924.

—
Exhibit, Part of No. 12.
—
Defendant's Exhibits
—
Correspondence between the Branch & Head Office of the Imperial Bank.
--continued.

The Manager,
King & Spadina,
Toronto.

Dear Sir:

We are in receipt of your letter of the 26th inst.

Re: Garlock Machinery Co. Ltd. \$9,567.

20

The delay in our coming to a decision in regard to this application is due to your having given us insufficient information in the first place, but now that we have been apprised of all the circumstances relating to the account, we will approve of a total credit as follows:

\$15,000 Business paper or specifically assigned accounts against first class concerns,

further secured by:

Registered assignment of book debts,
Personal guarantees Wm. Garlock Jr. & T. H. Hancock each for all advances.

30

rate of interest 7%.

We would again emphasize the point that the Company are badly in need of working capital and if a substantial profit is made during the year, we shall expect it to be retained in the business to improve the liquid position. Otherwise we think that Mr. Hancock should put in further capital.

Yours truly

"G. D. BOULTON"
Assistant General Manager.

HCH/B

40

CANADIAN NATIONAL TELEGRAPHS

T E L E G R A M

RECORDIn the Supreme
Court of Ontario—
Exhibits
No. 10.—
Plaintiff's
Exhibit,—
Telegram from
Defendant to
Garlock Mach.
Co.

B 69 N DE 11 FONED

NEWTONVILLE STN ONT OCT 20 TH

69—GARLOCK MCH CO

WILL WAIVE NOTICE OF STOCKHOLDERS MEETING GARLOCK
MACHINERY CO FOR MONDAY

T H HANCOCK

437PM

10

29th February, 1924.

The General Manager,
Head Office,
Toronto.—
Exhibits
Part of No. 12

Dear Sir:

—
Defendant's
Exhibit,

Re: Garlock Machinery Co. Ltd. \$9,567

—
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

I am in receipt of your No. 70 of the 28th instant and note your approval of a credit of;

\$15,000. Business paper or specifically assigned accounts against first class concerns.

20 further secured by;

Registered assignment of book debts.

Personal guarantees Wm. Garlock Jr. and T. H. Hancock for all advances.

rate of interest 7%.

Yours truly,
Manager.

JBP/H

20th March, 1925

RECORD

In the Supreme
Court of Ontario

The General Manager,
Head Office,
Toronto.

—
Exhibits
Part of No. 12

—
Defendant's
Exhibit,

Dear Sir:

Re: Garlock Machinery Co. Ltd., \$15,500.

Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

—continued.

I have delayed making an application for this year owing to the fact that there have been, for some time, negotiations between the Garlock Machinery Co. Limited, The Canada Machinery Corporation Limited of Galt, and the American Woodworking Machine Co. of Rochester, N.Y. 10 They have practically completed a working arrangement for the manufacture of the lines of the American Concern by the Canadian Company. If this goes through it will mean that the requirements of the Garlock Machinery Co. Limited will either be greatly increased or practically eliminated. Garlock is to have charge of the selling. If the financing is done by the Canada Machinery Corp. Limited, this will be through their own Bank. On the other hand if Garlock looks after this end of the business, it will be offered to us with the guarantee of the two other Concerns behind it. In this case their requirements will probably run from \$100,000. to \$200,000. My understanding is that both of these Concerns 20 are undoubtedly responsible, (C.M.Co. rated A-A1, and A.W.M. Co. Aa-A1), if so, the business would appear to be desirable and I have been endeavoring to influence it our way. I anticipate the question of the arrangement and means of financing will be settled within the next week or ten days and would, accordingly ask that the existing credit be allowed to stand until the end of the month.

Yours truly,

Manager.

JBP/H

1st April, 1925

The General Manager,
Head Office,
Toronto.

RECORD
In the Supreme
Court of Ontario

—
Exhibits
Part of No. 12

Dear Sir:

Re: Garlock Machinery Co. Ltd., \$14,793.

—
Defendant's
Exhibit,

10 This credit expired on February 28th last. Referring to my letter of March 20th Mr. Garlock advised me today that the negotiations have been completed and that the agreements are now being prepared for signature by the three interested Concerns. I gather it has been practically arranged for the Canada Machinery Corp. Limited to do the bulk of the financing, although possibly some of it will be done through our customer. Garlock states that it may possibly take until towards the end of the month before all arrangements are definitely made. I would, accordingly, ask you to allow the matter to stand, if necessary, until April 30th.

—
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.
—continued.

All advances consist of Business Paper and Assigned accounts supported by the guarantee of Mr. T. H. Hancock of T. H. Hancock Limited, wholesale lumber. Mr. Hancock's bankers report him to be worth in excess of \$1,000,000. and to be quite undoubted for his obligations.

20

Yours truly,
Manager.

BP/H

RECORD

In the Supreme
Court of Ontario

24th April, 1925

—
Exhibits
Part of No. 12

The General Manager,
Head Office,
Toronto.

—
Defendant's
Exhibit,

Dear Sir:

—
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

Re: Garlock Machinery Limited, \$13,881.

I enclose copy of letter received from the Company asking for a continuation of the present credit of \$15,000. against Business Paper and specifically Assigned Accounts. The working agreement between the American Wood Working Machinery Company of Rochester, the Canada Machinery Corp. of Galt and the Garlock Machinery Limited has now been practically completed. It will probably be some months yet before this effects the requirements of our customers and it is hard to say just what this will mean. Garlock asks that, in the meantime, we renew the existing credit. 10

I attach copy of the Company's statement as on December 31st, 1924. While this shows an operating loss during the year of \$4,368., an actual profit of \$4,642. was earned. This is accounted for by the fact that, on the end of last year, the estimated profits on orders on hand amounting to \$9,000. were taken into the statement. This year this has not been done although similar orders are on hand amounting to approximately \$40,000.00 with considerable more in view. Garlock has the situation now in hand and should show substantial profits from now on. His personal indebtedness to the Company has increased during the year from \$4,575. to \$6,986. These monies represent the purchase by Garlock of stock in the Company held by other shareholders. At the present time all of the shares are owned by Garlock and Mr. T. H. Hancock. If the new arrangement between the three Companies referred to go through as is expected, it will mean a substantial profit for Garlock. His Concern is to have entire charge of the selling. All profits over manufacturing cost are to be divided equally between the three Concerns. The Garlock Machinery Limited will bear the selling expenses less certain charges for advertising, etc. 20 30

The account operates satisfactorily. The Business Paper and Assigned Accounts are of good quality and well provided for. On the end of the year the Company showed accounts receivable at \$60,878. and accounts payable at \$55,493. The bulk of the accounts payable were to the American Wood Working Machinery Company in connection with the Seaman-Kent contracts which Concern owed the greater part of the accounts receivable. We will continue to hold: 40

Personal guarantee of William Garlock and T. H. Hancock for \$15,000. each.

Registered assignment of book debts.

Assignment of ten year life policy, William Garlock, \$25,000., (no c.s.v.)

Mr. Hancock is of the T. H. Hancock Lumber Company Limited. His bankers report him to be worth in excess of \$1,000,000. and to have his affairs in first class shape. The account is profitable as we obtain 7%, and $\frac{1}{8}$ of 1% on Branch points, $\frac{1}{4}$ of 1% on outside points with $\frac{1}{8}$ of 1% commission on all specifically assigned accounts.

Yours truly,
Manager.

10
JBP/H

RECORD
In the Supreme
Court of Ontario

—
Exhibits
Part of No. 12

—
Defendant's
Exhibit,

—
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

—continued.

Imperial Bank of Canada
General Manager's Office,

Toronto, 27th April 1925

The Manager,
King & Spadina, Toronto.

Dear Sir:

We are in receipt of your No. 55 of the 24th inst.

re: Garlock Machinery Limited \$13,881.

20 This business is not in a satisfactory liquid position and is not making money but we have your strong assurances regarding the financial responsibility of Thos. H. Hancock, guarantor, and as you mention the business paper and assigned accounts are of good quality we will approve of a renewal of the credit—

\$15,000. Business Paper or specifically assigned accounts against first class concerns,

the whole account further secured by:

Registered assignment of book debts,
Assignment of life insurance \$25,000.

30 Personal guarantee of Wm. Garlock Jr. and T. H. Hancock for \$15,000. each,

rate of interest 7%; exchange rates $\frac{1}{8}$ of 1% on Branches in Ontario, $\frac{1}{4}$ of 1% elsewhere in Canada; $\frac{1}{8}$ of 1% commission to be charged on advances against specifically assigned accounts in addition to interest.

—
Exhibits
Part of No. 12

—
Defendant's
Exhibit,

—
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

—continued.

RECORD
 In the Supreme Court of Ontario We understand that there are negotiations under way which may favorably affect the Company's future and as soon as you know definitely the result, we shall be glad to have your further advices.

Exhibits
 Part of No 12

Defendant's
 Exhibit

HCH/B

Correspondence
 between the
 Branch and
 Head Office of
 the Imperial
 Bank.

—continued.

Yours truly,

“H. T. Jaffray”
 Assistant General Manager.

28th. April 1925.

Exhibits
 Part of No. 12.

Defendant's
 Exhibit,

The General Manager,
 Head Office,
 Toronto.

10

Dear Sir:—

Correspondence
 between the
 Branch & Head
 Office of the
 Imperial Bank.

Re Garlock Machinery Ltd. \$13,881.

I am in receipt of your No. 70 of the 27th inst. and note your approval of a renewal of the credit of:

\$15,000. Business Paper or specifically assigned accounts against first class concerns.

Registered assignment of book debts.

Assignment of life insurance, \$25,000.

Personal guarantee of Wm. Garlock Jr. and T. H. Hancock for \$15,000. each.

20

rate of interest 7%; exchange rates 1/8 of 1% on branches in Ontario, 1/4 of 1% elsewhere in Canada; 1/8 of 1% commission to be charged on advances against specifically assigned accounts in addition to interest.

As soon as the present negotiations between the three interested Companies are completed, should they effect the future requirements of our customer to any marked degree, I will advise you.

Yours truly,

Manager.

JBP/H

28th. October 1925.

H. Robarts, Esq.,
Mgr. Imperial Bank of Canada.
Galt, Ontario.

RECORD
In the Supreme
Court of Ontario

—
Exhibits
No. 12-A.

Dear Mr. Roberts:—

—
Defendant's
Exhibit,

Confidentially I may say that the Canada Machinery Corporation of Galt are entering into a business relationship with the Garlock Machinery Limited of Toronto. The latter Concern is a customer of this office. I gather that we will probably be asked for a substantial line of credit and will be offered the personal guarantee of Mr. T. H. Watson of the Canada Machinery Corporation. I would, accordingly, very much appreciate any information you might be able to obtain and let me have regarding Mr. Watson's financial responsibility. In case you make enquiry of the Company's bankers, kindly do not divulge the nature of our interest.

—
Letter dated
28th Oct., 1925,
Manager at Galt
Branch from
Manager at King
& Spadina.

Yours truly,

Manager.

JBP/H

P. S. Dear Robarts—

I had hoped to see you long before this but needless to say Mrs. Priestman and I have never gotten up to Galt and probably you have not been down to Toronto. No doubt we will see you at the Annual Meeting which is not so far away.

—————
COPY

IMPERIAL BANK OF CANADA

Galt, Ont., Oct. 29, 1925

J. B. Priestman, Esq.,
Manager, King & Spadina Br.,
Toronto 2, Ont.

—
Exhibits
No. 12-B.

—
Defendant's
Exhibit,

Re: T. H. Watson

—
Letter dated
Oct., 29, 1925
Manager at King
& Spadina from
Manager at Galt.

30 Dear Mr. Priestman:

I am in receipt of your letter of the 28th inst., and am sorry that I cannot obtain any information for you regarding Mr. Watson's financial condition. I know him very well myself, and know that he is a Director in the Spanish River Pulp and Paper Co. besides holding other Directorates in responsible concerns. He is well-known to Mr. Boulton, and

RECORD several times has given us the benefit of his advice here, in connection
 In the Supreme with machine company accounts, and I think perhaps Head Office may
 Court of Ontario have some information on him. Mr. Watson lives in Toronto, and only
 — comes up here several days a week and does not carry a personal account
 Exhibits Exhibit No. 12B in any of the local Banks, although the Bank of Nova Scotia handles the
 — business of the Canada Machinery Corporation.

Defendant's Exhibit,

Yours truly,
(Signed) Manager.

Letter dated
Oct. 29, 1925
Manager at King
& Spadina from
Manager at Galt

P. S. The first time I am in Toronto, I shall certainly look you up. My 10
 —concluded very occasional visits there have always been business trips, with speed
 the main item. I do not expect you will be up here so late in the year, but
 next year I am sure we can get together and have a game of golf, or in-
 dulse in some other diversion.

With kindest regards.

COPY

The General Manager,
Head Office,
Toronto.

30th October, 1925

Exhibits Part of No. 12.

Re: Garlock Machinery Limited

20

Defendant's Exhibit,

Dear Sir:—

Correspondence between the Branch & Head Office of the Imperial Bank.
—continued.

Some months ago I advised Head Office first that there was a propos-
 ed amalgamation of interests between the American Wood-working
 Machinery Co., of Rochester, N.Y. and the Canada Machinery Corp. of
 Galt. Subsequently an amalgamation was effected a few weeks ago be-
 tween the American Wood-working Machinery Co. and the P. B. Yates
 Machinery Co. This resulted in the calling off of negotiations with the
 Canada Machinery Corp. and leaving the latter concern out in the cold.

It has been assumed that Garlock would throw in his lot with his
 former associates and, in fact, this was provided for in the negotiations. 30
 Mr. T. H. Watson of the Canada Machinery Corp. has been using every
 influence to have Garlock throw his connection their way and I now un-
 derstand from the Secretary-Treasurer of the Company that Mr. Garlock,
 who is out of town for a few days, has practically decided to do so. I gath-
 er from a conversation I had with Mr. Garlock a week or two ago that
 his chief concern was the fact that, while his former associates held the
 chief executive positions in the new combine, they have no financial in-
 terest having received cash for their holdings. I understand these gen-

lemen are men of substantial independent means and it meant that, should friction arise at any time, they would merely step out and Garlock's relations with the Yates Management would be problematical.

The Secretary-Treasurer 'phoned me on the 28th instant to the effect that should they link up with the Canada Machinery Corp. we would probably be asked for a substantial increased line of credit with the guarantee of Mr. T. H. Watson and that Mr. Garlock has suggested that we make enquiries regarding this gentleman's financial responsibility in the meantime. I attach copy of letter I have received from our Manager at Galt in which he intimates that Mr. Watson is well known to Head Office. Until I see Mr. Garlock I cannot give you an idea what line will be required but if Mr. Watson's responsibility can be determined before this matter is discussed, so much the better.

Yours truly,

Manager.

JBP/H.

IMPERIAL BANK OF CANADA

General Manager's Office
Toronto 2, Nov. 2, 1925

20 The Manager,
King & Spadina
Toronto

Re: Garlock Machinery Limited, \$18,381.

Dear Sir:—

I am in receipt of your letter of 30th October.

As I read your letter the Canada Machinery Corp. is likely to absorb the Garlock Machinery Ltd., and as I understand the business of the Canada Machinery Corp. is now with the Bank of Nova Scotia I do not see how we could expect the business to come to us in the event of the Garlock Company being swallowed up. I know Mr. T. H. Watson quite well, but he is a Bank of Nova Scotia man, and I am afraid it would do little good if we were to interfere.

While on this subject, will you please let me have some definite information regarding the operations of the Garlock Machinery Ltd. For the year ending last December their sales were \$173,000., they lost something over \$4,000. and their liquid position was anything but good. What were their sales for the ten months ending the 31st October and are they mak-

RECORD
In the Supreme
Court of Ontario

—
Exhibits
Part of No. 12.

—
Defendant's
Exhibit,

—
Correspondence
between Branch
and Head Office
of the
Imperial Bank.
—continued.

—
Exhibits
Part of No. 12.

—
Defendant's
Exhibit,

—
Correspondence
between Branch
and Head Office
of the
Imperial Bank.
—continued.

RECORD
In the Supreme
Court of Ontario

ing money or going behind? What value is there in the guarantee of Mr. Wm. Garlock, Jr., for \$15,000., and are you satisfied in your own mind that the guarantee which you hold from Mr. T. H. Hancock for \$15,000. is undoubtedly good?

Exhibits
Part of No. 12.

Defendant's
Exhibit,

Correspondence B—G.
between Branch
and Head Office
of the
Imperial Bank.
—continued.

Yours truly,

(Signed) G. D. Boulton
Assistant General Manager

3rd November, 1925

10

Exhibits
Part of No. 12.

The General Manager,
Head Office,
Toronto

Defendant's
Exhibit,

Re: Garlock Machinery Ltd. \$18,381.

Correspondence
between Branch
and Head Office
of the
Imperial Bank.
—continued.

Dear Sir:—

I am in receipt of your No. 96 of the 2nd instant.

Mr. Garlock obtained from me on the 31st ulto. a guarantee bond form and advised me that a meeting was being held at Head Office on the 5th instant between himself, Mr. Watson of the Canada Machinery Co. and a representative of two or three other concerns who are considering pooling their wood-working machinery interests to a certain extent. All preliminary details have been worked out and Mr. Garlock expects that no complications will arise at the meeting in question. It is not a case of the Canada Machinery Co. taking over Garlock Machinery Ltd., but rather an arrangement whereby certain manufacturers of wood-working machinery, including one in the United States, intend to get together in connection with the handling of their product. It is understood that Garlock Machinery Ltd. will continue in existence and handle the sales end of the business.

Unless some change is made in the proposition I gather we will, for the present, be asked for a line of credit of \$25,000. against Business Paper and assigned accounts secured by the guarantee of Mr. Garlock, Mr. T. H. Hancock and Mr. Watson and possibly one or two others. I expect to see Garlock the end of this week or the first of next and will then obtain from him definite figures as to their sales for this year. These have apparently been quite as good as last year, although I know that Garlock has been holding back certain business until he sees where the cat is going to jump.

Regarding your remark that the Company showed an operating loss of something over \$4,000, during 1924. It must be borne in mind that this was really occasioned by the fact that at the end of 1923 \$9,000. of estimated profits on orders booked and not filled had been taken into profits. This procedure was not followed at the end of 1924 so that as a matter of fact, an actual profit of some \$4,642. was earned.

Regarding the guarantees. The guarantee of Wm. Garlock has little financial responsibility behind it as practically all of his assets are represented by his holdings in the company. There is no doubt but that
 10 Mr. T. H. Hancock is quite undoubted for the amount. He owns T. H. Hancock which is rated by Duns at \$700,000. to \$750,000. with high grade credit. A year ago Mr. Hancock's bankers advised me that he was worth in the neighborhood of \$1,000,000. and was undoubted for any obligations. For record purposes I have asked them for an up-to-date expression of opinion.

As stated above I expect to have a definite application from Mr. Garlock by the first of next week when I will submit the account to you.

Yours truly,

Manager.

20 JBP/H.

RECORD
 In the Supreme
 Court of Ontario
 —
 Exhibits
 Part of No. 12.
 —
 Defendant's
 Exhibit,
 —
 Correspondence
 between Branch
 and Head Office
 of the
 Imperial Bank.
 —continued.

RECORD

In the Supreme
Court of Ontario

—
Exhibits

Part of No. 12.

—
Defendant's
Exhibit,

The Manager,
King & Spadina

—
Dear Sir,

Correspondence
between Branch
and Head Office
of the
Imperial Bank.
—continued.

IMPERIAL BANK OF CANADA

General Manager's Office
Toronto, November 4th, 1925

We are in receipt of your letter of 3rd inst.

Re: Garlock Machinery Limited—\$18,381.

I note that if this business comes to us that it will be on the basis of a credit of \$25,000. or so guaranteed by the proprietors including Mr. Watson and Mr. T. H. Hancock and I think that you may assume that with the guarantee of those gentlemen any reasonable credit will be without question. I do not think it will be necessary for you to pursue your enquiries further on the Garlock Machinery Limited at this time unless you think there is any danger of the deal not going through. In that event we would appear to be amply protected by Hancock's guarantee, which I understand you now hold for the full amount. 10

Yours truly,

(Signed) A. E. Phipps

General Manager 20

HPB:EMJ:

COPY

17th November 1925

The General Manager,
Head Office,
Toronto

Re: Garlock Machinery, Limited \$17,142

Dear Sir:—

The Company's liability today consists of—

10	Business Paper & Assigned Accounts,	\$14,642.
	Own note secured by \$2,400. Province Of Saskatchewan debentures	2,500.
		<hr/>
		\$17,142.
		<hr/>

20 During the past few months I have been in correspondence with you regarding certain working arrangements under consideration by our customers. Owing to unforeseen circumstances this has worked out considerably different from what was first intended. An agreement has now been entered into whereby the Canada Machinery Co. Ltd. of Galt is to manufacture in Canada the wood-working machines now being turned out in Boston by the S. A. Woods Machinery Co. Inc. I understand this concern is one of the largest of its kind in the United States. They are furnishing the plans, drawings, etc. and any necessary supervision, and receiving therefor a royalty of 10% based on the American price. Garlock Machinery Ltd. are to handle the entire sales receiving therefor a gross commission of 15%. At the present time negotiations are under way whereby it is expected that this arrangement will also include—

Preston Woodworking Machinery Co. Ltd. of Preston, (rated \$50,000. to \$75,000. high credit.)

30 Jackson, Cochrane & Co., Kitchener, (rated \$50,000. to \$75,000. high credit)

Cown & Co. Ltd., Galt (rated \$200,000. to \$300,000. high credit)
Whether the last mentioned firms join hands or not, the agreement has now been signed by the Woods Co., Canada Machinery Corp. Ltd. and Garlock Machinery Ltd. to take effect December 1st.

All sales of new machinery will be financed by the manufacturers, (Canada Machinery Corp. or one of the others as the case may be). Any second hand machines taken in exchange will be handled by Garlock Machinery Ltd. As a matter of fact Garlock rarely takes in a second

RECORD

In the Supreme
Court of Ontario

—
Exhibits
Part of No. 12.

—
Defendant's
Exhibit,

—
Correspondence
between Branch
and Head Office
of the
Imperial Bank.

—continued.

<p><u>RECORD</u> In the Supreme Court of Ontario — Exhibits Part of No. 12. — Defendant's Exhibit, — Correspondence between the Branch and Head Office of the Imperial Bank.</p>	<p>hand machine as part payment of a sale without having that machine practically sold. To finance the sales of the second hand machinery and also salaries, commissions and other selling expense, Garlock estimates he will require from us accomodation to the extent of \$25,000. namely—</p>	<p>Accommodation, \$5,000. Trade paper and assigned accts. 20,000. ————— \$25,000. —————</p>
--	---	--

—continued. The whole account to be secured by—

- Registered assignment of book debts. 10
- Assignment of life insurance, \$25,000., (no c.s.v.)
- Personal guarantees of Wm. Garlock, \$25,000.
- Personal guarantee of T. H. Hancock, \$25,000.

Garlock has been struggling along under a severe handicap for some years and had all he could do to keep his head above water. He is now confident that substantial profits will accrue under the present work arrangement and this would appear to be the case. On the basis of previous operations of his own concern and the Canada Machinery Corp. Ltd. he fixes minimum sales at \$250,000. per annum. This would yield him a gross profit, (exclusive of any profit on second hand machinery) of \$37,500. He estimates total selling expenses at \$25,000. or a net profit of \$12,000. per annum. Should the other three concerns come in, as is expected, the sales and consequent profit would, of course, be greater. Without going into details Garlock feels that he can retain the greater part of his previous connection notwithstanding the fact that he is now selling a Woods Machine instead of an American Wood-working one. 20

The stock of Garlock Machinery Ltd. is owned entirely up to now, by Mr. Garlock and Mr. T. H. Hancock of T. H. Hancock, Ltd. Mr. Hancock is giving us a new guarantee for the full amount of the credit asked for at the present time, namely \$25,000. and is, I understand prepared to go farther should their requirements increase. Garlock expects that, should their sales increase as is expected, they may eventually require a credit of \$50,000. or \$60,000. This can, however, be considered as occasion arises. Garlock's guarantee does not amount to a great deal as practically all of his assets are tied up in the Company. Mr. Hancock is, of course, undoubted for any reasonable amount. In my letter of November 3rd I forwarded you a Dun's report on T. H. Hancock Ltd. which Co. is owned by him. They rate the Company \$500,000. to \$750,000. high grade credit. I also obtained the following report on Mr. Hancock from his bankers under the same date. 30

“There is little or no change in the financial position of Mr. T. H. Hancock since we last reported. He is practically sole proprietor of T. H. Hancock Limited who show a surplus of nearly One Million Dollars with comparatively negligible liabilities.”

Now that Mr. Hancock is prepared to guarantee for the full amount, Garlock does not wish to dispose of any shares of the Company to Watson or the other associates. This is entirely reasonable and consequently the guarantee of Mr. Watson will not be available. With Mr. Hancock behind the proposition it is, in any event, undoubted, and I have no hesitation in recommending it. A new statement of the Company will be taken off on December 31st. and a copy will be forwarded to you when available.

Yours truly,

Manager.

RECORD

In the Supreme
Court of Ontario

—
Exhibits

Part of No. 12

—
Defendant's
Exhibit,

—
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

—continued.

RECORD ToIn the Supreme
Court of Ontario

IMPERIAL BANK OF CANADA,

—
Exhibits
No. 1.
—Plaintiff's
Exhibit,
—Guarantee Bond
dated 17 Nov.
1925.

1. For valuable consideration, the undersigned (herein called the Guarantors), and each of them (if more than one), guarantees the due payment and discharge of all liabilities to Imperial Bank of Canada (herein called the Bank) of GARLOCK MACHINERY LIMITED (herein called the Customer), whether incurred before or after the date hereof, and whether incurred by the Customer alone or jointly with others, and whether as principal or surety, and whether such liabilities are matured or not, and whether absolute or contingent, including liabilities in respect of advances and cheques, bills or other negotiable or non-negotiable instruments, drawn, accepted, endorsed or guaranteed by the Customer, and in respect of interest, commissions and banking charges, together with any costs and expenses incurred with respect to any such liabilities or any securities therefor, or costs incurred by or awarded against the Bank in connection with any proceedings taken against the Customer or any Guarantor or Guarantors, or any moneys paid by the Bank on account of taxes, wages, insurance, or the remuneration or costs of any liquidator, trustee, agent or other person or on any other account whatsoever, 10

2. This shall be a continuing guarantee, and shall secure the general balance due, or that may be due, from time to time and at any time from the Customer to the Bank notwithstanding any payments from time to time made to the Bank, or any settlement of account or any other thing whatsoever. 20

3. All benefits of discussion and division are hereby waived, and the Bank shall not be bound to exhaust its recourse against the Customer or other parties or the securities it may hold, nor to value such securities, before requiring payment from the Guarantors, or any of them, or their personal representatives. 30

4. Notwithstanding the discontinuance of this Guarantee as to one or more of the Guarantors, it shall remain a continuing security as to the other or others, and this Guarantee shall, as to each Guarantor and his legal personal representatives, remain in force and cover all liabilities of the Customer, inclusive of those incurred down to the expiration of three months after notice of discontinuance thereof shall be given by registered letter addressed to the General Manager of the Bank.

5. This Guarantee shall be in addition to and without prejudice to any other securities negotiable or otherwise which the Bank may now or hereafter possess, and the Bank shall be under no obligation to marshal 40 in favor of the Guarantors any such securities or any of the funds or assets the Bank may be entitled to receive or have a claim upon, and the Bank may in its absolute discretion, and without diminishing the liability

of the Guarantors, grant time or other indulgences to the Customer or any other person or persons liable to the Bank on or in respect of any bills, notes guarantees or undertakings, and give up or modify, vary, exchange, renew or abstain from perfecting or taking advantage of any securities, and may discharge any party or parties, and accept or make any compositions or arrangements, and realize any securities, when and in such manner as the Bank may think expedient, and in no case shall the Bank be responsible nor shall the Guarantors be released either in whole or in part for any act or omission in connection with the realization of any security or the postponement of such realization or for any sale at an under-value but only for moneys actually received.

6. All dividends, compositions and payments received are to be treated as payments in gross, and the Guarantors are not to have any right to participate except to the extent of the surplus remaining after satisfaction of the ultimate balance due to the Bank.

7. All debts and liabilities, present and future, of the Customer to the Guarantors or any of them are hereby assigned to the Bank and postponed to the liabilities of the Customer to the Bank, and all moneys received by any of the Guarantors or their representatives or assigns in respect thereof shall be received as Trustees for the Bank and shall be paid over to the Bank.

8. Where the Customer is a Corporation or partnership, the Bank is not to be concerned to see or enquire into the powers of the Customer or its directors, partners or other agents acting or purporting to act, on its behalf, and moneys in fact borrowed from the Bank in professed exercise of such powers shall be deemed to form part of the moneys guaranteed, even though the borrowing or obtaining of such moneys is in excess of the powers of the Customer or of the directors, partners or other agents thereof and notwithstanding the fact that the Bank has specific notice of the powers of the Customer or the directors, partners or agents, any moneys used for the payment of the liabilities of the Customer shall be deemed to form part of the moneys guaranteed and the onus of showing that any money was not so applied shall rest on the Guarantors.

9. Where the Customer is a partnership, this Guarantee is to extend to the person, persons or corporations for the time being and from time to time carrying on the business now carried on by the Customer, notwithstanding any change or changes in the name or membership of the partnership or the incorporation of a Company for the purpose of acquiring the business of the said partnership, and where the Customer is a corporation the guarantee is to extend to any amalgamation or new company formed to take over the business of the Customer or any reorganization thereof whether the new company is the same or different in its objects, character or constitution.

10. Where the Customer becomes bankrupt or makes an assignment

RECORD

—
Exhibits
No. 1.

—
Plaintiff's
Exhibit,

—
Guarantee Bond
dated 17 Nov.
1925.

—*continued.*

RECORD
In the Supreme
Court of Ontario

—
Exhibits
No. 1.

—
Plaintiff's
Exhibit,
—

Guarantee Bond
dated 17 Nov.
1925.

—continued.

for the benefit of creditors, or if any circumstances arise necessitating the Bank to file its claim against the Customer and to value its securities, the Bank shall be entitled to place such valuations on its securities as it, in its sole discretion shall consider fit and proper, and the filing of any such claim and the valuing of securities shall not in any way prejudice or restrict the claim of the Bank against the Guarantors or in any way discharge the Guarantors from the liability to the Bank hereunder either in whole or in part.

11. Any account settled or stated by or between the Bank and the Customer, or admitted by or on behalf of the Customer, may be adduced by the Bank, and shall in that case be accepted by the Guarantors and each of them and their respective representatives as conclusive evidence that the balance or amount thereby appearing is due by the Customer to the Bank. 10

12. A certificate in writing, under the hand of any Manager or Acting Manager at the time such certificate is given of the branch of the Bank where the Customers' account relating to the same is kept, stating the amount at any particular time due and payable to the bank under this Guarantee, shall be prima facie evidence as against the Guarantors and each of them and their respective representatives. 20

13. The liability of each Guarantor to pay shall first arise when notice in writing is given to him requiring him to pay. Such notice shall be sufficient if given personally or by sending the same through the post to the address appearing beneath his signature hereto, and in the event of there being no address then to his last known Post Office address. Any notice so sent shall be deemed to be given on the day following that on which it is posted. In the event of the death of any Guarantor such notice may be given in a similiar manner to his Executors or Administrators or any of them.

14. Any moneys received under this Guarantee may be deposited to a separate account with the Bank bearing interest at three per cent. per annum, and may be appropriated by the Bank from time to time in satisfaction in part or in whole of the indebtedness hereby secured, when and as the Bank may see fit, and the receipt by the Bank of any sum from any Guarantor shall be without prejudice to the Bank's rights against each of the other Guarantors for the full amount of the liability of each of them hereunder. 30

15. Any sum which shall become payable hereunder shall be payable at the office of the Bank where the Customer's account relating to the same is kept. 40

16. This Guarantee shall be construed in accordance with the laws of the Province where the Customer's account is kept and any judgment recovered in any Court of such Province against any Guarantor or his personal representatives shall be binding on him and them.

17. Unless the amount of the Guarantor's liability is limited in the space set opposite the signature of the Guarantor on the last page hereof, then each Guarantor shall be severally liable for the total amount of all liabilities of the Customer to the Bank as set out in Paragraph One of this Agreement whether the same are incurred prior to or subsequent to the notice demanding payment, together with interest on that amount at six per cent. per annum from the time notice in writing is given pursuant to paragraph 13 of this Guarantee, or in case of liabilities incurred subsequent to such notice then from the date of the incurring of such liabilities: Provided, however, that if any Guarantor's liability is limited as aforesaid then such Guarantor shall be severally liable for the amount set opposite such Guarantor's signature.

18. The delivery of this Guarantee to the Bank shall be conclusive evidence against each of the Guarantors that the same was not delivered in escrow or pursuant to any agreement that the same should not be effective until any conditions precedent or subsequent had been complied with or the signatures of other persons obtained thereto, unless at the time of delivery of the Guarantee the person signing the same obtains from the representative of the Bank receiving the said Guarantee a letter setting out the terms and conditions under which the said Guarantee was delivered and the conditions, if any, to be observed before it becomes effective.

19. The Guarantors and each of them admit that the signature to this Guarantee was not obtained by any verbal representation, promise or statement made by or on behalf of any representative or employee of the Bank. No representative or employee of the Bank has any authority to make any verbal representation or promise and without restricting the generality of the foregoing to verbally represent the financial responsibility of the Customer or any other Guarantor or as to the state of the account or the business prospects of the Customer. The Guarantors are hereby estopped from setting up any such representations or promises unless made in writing by the representatives of the Bank receiving the Guarantee prior to the execution thereof.

20. Each Guarantor represents that he has read over the Guarantee before signing the same and is fully aware of the terms and conditions thereof.

21. In the foregoing the plural shall include the singular and vice versa.

DATED the 17th day of November, 1925.

40 Witnesses:

"G. M. Hagen"	"William Garlock Jr." 320 Bay St. Toronto	\$25,000.
"M. E. HALL"	"T. H. Hancock" 1372 Bloor St. W.	\$25,000.

RECORD

In the Supreme
Court of Ontario

—
Exhibits
No. 1.
—

Plaintiff's
Exhibit,
—

Guarantee Bond
dated 17 Nov.
1925.
—continued.

IMPERIAL BANK OF CANADA

RECORD
In the Supreme
Court of Ontario

General Manager's Office
Toronto 2, November 19th, 1925

Exhibits
Part of No. 12
—
The Manager,
King & Spadina

Defendant's
Exhibit,
—
Dear Sir:—

We are in receipt of your #3 of 17th inst.

Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

Re: Garlock Machinery, Limited. \$17,142.

and note your advices regarding the new arrangement entered into between the Woods Machinery Co. and the Canada Machinery Co. of Galt, 10
and that your customers, the Garlock Machinery Co. are to handle the entire sales for these Companies. I trust that the business will prove as satisfactory and profitable to your customers as they anticipate and depending largely on the financial responsibility of Mr. T. H. Hancock who is personally guaranteeing the account we are prepared to grant the credit applied for in your letter against good business paper or specifically assigned accounts, \$20,000. and \$5,000. accommodation. As security for the whole account I note that you will hold—

Registered assignment of the Company's book debts,

Assignment of \$25,000. life insurance, no present c.s.v. 20

Personal guarantee of Messrs. Wm. Garlock and T. H. Hancock for \$25,000. each.

Rate of interest 7%.

Yours truly,
(Signed)
A. E. Phipps
General Manager

21st November, 1925

Exhibits
Part of No. 12
—
The General Manager,
Head Office,
Toronto.

Defendant's
Exhibit,
—

Re: Garlock Machinery Ltd. \$17,142.

Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

Dear Sir:

I am in receipt of your No. 10 of the 19th instant and note your approval of a credit of:

\$5,000. accommodation

20,000. against Business paper, or specifically assigned accounts.

secured by:

Registered assignment of the Company's book accounts

Assignment of \$25,000. life insurance, (no c.s.v.) 40

Personal guarantee of Wm. Garlock and T. H. Hancock for \$25,000.00 each.

rate of interest 7%.

JBP/H.

Yours truly,
Manager.

—continued.

30

28th May, 1926

The General Manager,
Head Office,
Toronto.

Re: Garlock Machinery Ltd. \$31,932.

RECORD
In the Supreme
Court of Ontario

Exhibits
Part of No. 12

Defendant's
Exhibit,

Correspondence
between the
Branch and
Head Office of
Bank.

—continued.

Dear Sir:—

The Company's advances consist of—

- \$2,000. special accommodation secured by assignment \$25,000.00 life in-
surance, having a cash surrender value of \$3,238.
10 2,500. special accommodation secured by hypothecation of \$2,500.00
Province of Saskatchewan bonds.
5,000. accommodation
21,723. trade paper and specifically assigned accounts.
709. overdrawn account.

\$31,932.

further secured by—

- Registered assignment of the Co's book accounts.
Assignment of \$25,000. life insurance, no present c.s.v.
20 Personal guarantees of Messrs. Wm. Garlock and T. H. Han-
cock for \$25,000. each

The Co's statement as of December 31st 1925 has now come to hand
together with letter from the Co., copy of which I attach. While I realiz-
ed that the operations for the year would show a substantial loss, I had no
idea this would reach \$11,214.60 as shown. As you are aware, during
the first part of 1925, the Company were working on a proposed ar-
rangement between themselves, the Canada Machinery Corp. of Galt and
the American Wood-working Machinery Co. of Rochester. In June these
negotiations fell through due to an amalgamation between the P. B. Yates
Machinery Co. and the American Wood-working Machinery Co. Subse-
30 quently an arrangement was arrived at between the Garlock Machinery
Co., Canada Machinery Corp. and the Woods Machine Co. of Boston which
is in force and working advantageously to all parties. In the meantime,
naturally no sales were made; any orders received being held over. Our
customers were under heavy expense and to off-set this, the Canada Ma-
chinery Corp. made them an advance of \$12,000. which was to be repaid
as circumstances permitted.

You will note from Mr. Garlock's letter that Mr. I. J. Budlong, form-
erly General Sales Manager of the American Wood-working Machinery
Co., entered the employ of the Garlock Machinery Ltd. the first of the

RECORD
In the Supreme
Court of Ontario

Exhibits
Part of No. 12

Defendant's
Exhibit,

Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

—continued.

year. I understand he is probably the foremost authority and designer of wood-working machinery on the Continent. He is now engaged in overhauling the C.M.C and Woods Machinery lines. The arrangement with the two concerns is that Garlock will allow them to utilize Mr. Budlong's services as may be required, paying Garlock the sum of \$600.00 monthly for his services. This \$600.00 is being applied in reduction of the \$12,000. loan from the Canada Machinery Corp.

Under the circumstances, sales for the year amounted to only \$60,689. as compared with \$173,045. a year ago. While the loss on the year's trading is a serious one, Garlock states that commissions on sales to date, filled and unfilled, have shown a net profit of approximately \$3,700. He anticipates that the net profit for the year will certainly not be less than \$7,000. 10

Garlock's personal indebtedness to the Company shows an increase, over a year ago, from \$6,986. to \$12,952. The net increase is, in reality, \$2,468. as in the 1924 statement, unpaid subscriptions were shown as \$3,498.13. The net increase of \$2,468. represents the purchase of the preferred shares formerly held by the late Dr. Gee.

The capital of the Co. has been practically wiped out and, while Garlock did not wish to obtain outside capital if it could be avoided, he was considering accepting the offer of Mr. Watson of the Canada Machinery Corp. to take stock in the Company in exchange of the \$12,000. loan. I understand that Mr. Budlong also asked Mr. Garlock if he would allow him to invest \$5,000. in the Co. Evidently all parties are equally confident of the possibilities of the Co. under the new selling arrangement. Garlock states, however, that he felt bound to refer the matter to Mr. T. H. Hancock who had stood by him during most adverse conditions. Mr Hancock was not agreeable to allow any outside parties to purchase stock in the Co. now that it was on the up-grade, evidently feeling that he was the one entitled to any consideration. He told Garlock if any monies were required to come to him. 20 30

The Co's statement is certainly not a satisfactory basis for credit. At the same time we are undoubtedly protected by the personal guarantee of Mr. T. H. Hancock. I attach mercantile report on T. H. Hancock Ltd. which, according to Duns, is entirely owned by him with the exception of \$12,000.00 stock. I also enclose copy of letter from the Co's bankers.

The trade paper and assigned accounts continue to be of good quality. Of the paper at present under discount, \$10,879. matured within the next thirty days.

Mr. Garlock is working very closely with Mr. Watson of the Canada Machinery Corp. and Garlock told me, *in strict confidence*, a short time ago that Mr. Watson had offered him the General Managership of the Canada Machinery Corp. with he, (Mr. Watson) retaining the Presidency. It was subsequently decided to allow matters to stand as they are for 40

the present, Garlock feeling that until he has a longer connection with the organization, there was a strong possibility of friction with the Department Managers of the Co. providing he stepped in over their heads.

The present understanding is that the Canada Machinery Corp. will provide for any requirements of the Garlock Machinery Ltd. in excess of regular credit of \$25,000. In view of the satisfactory nature of the trade paper and assigned accounts and the undoubted responsibility of Mr. T. H. Hancock, I am prepared to recommend a renewal of the present credit, namely—

- 10 \$2,000. special accommodation secured by hypothecation of \$25,000. life insurance having a present c.s.v. of \$3,238.
 2,500. special accommodation secured by hypothecation of \$2,500. Province of Saskatchewan bonds.
 5,000. accommodation.
 20,000. trade paper and assigned accounts.
-
- 29,500.
-
-

further secured by—

- Registered assignment of book accounts.
 Assignment of \$25,000. life insurance, no c.s.v
 20 Personal guarantee of Wm. Garlock and T. H. Hancock for \$25,000. each.

JBP/H

Yours truly,
 Manager.

RECORD
 In the Supreme
 Court of Ontario

Exhibits
 Part of No 12

Defendant's
 Exhibit,

Correspondence
 between the
 Branch and
 Head Office of
 the Imperial
 Bank.

—continued.

RECORDIn the Supreme
Court of Ontario---
Exhibits

Part of No. 12

Defendant's
Exhibit,---
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

---continued.

IMPERIAL BANK OF CANADA

General Manager's Office
Toronto 2, June 10, 1926.The Manager,
King & Spadina.

Dear Sir:—

We are in receipt of your letter No. 13 of 28th ult.

Re: Garlock Machinery Ltd. \$31,932.

There has been some delay in disposing of this application as we were unable to have it ready in time for the Board on Wednesday, 2nd 10 instant. The business of course is bankrupt and the substantial loss made last year is very disappointing. The one bright feature, however, is the outlook for the future as a result of the selling arrangements which the Company have made and as the accommodation is protected by cash securities and as long as you give your very best attention to the quality of the business paper and assigned accounts discounted, there should be little risk in the account particularly as we hold Mr. Hancock's guarantee which we are told is good and the Board accordingly at the Meeting yesterday authorized a renewal of credit as applied for, i.e.

5,000. accommodation. 20

2,000. special accommodation, secured by an assignment of \$25,000. life insurance having a c.s.v. of \$3,238.

2,500. special accommodation, secured by hyp. Prov. of Saskatchewan bonds \$2,500.

20,000. business paper and assigned accounts,
the whole further secured by—Registered general assignment of book accounts, and the
Personal guarantees of Wm. Garlock and T. H. Hancock for
\$25,000. each.

rate of interest 7%. 30

Yours truly,

(Signed) A. E. Phipps,
General Manager.

June 11th, 1926

The General Manager,
Head Office,
Toronto.

RECORD
In the Supreme
Court of Ontario

—
Exhibits
Part of No. 12

Dear Sir:—

Re: Garlock Machinery Ltd. \$30,140.

I am in receipt of your No. 17 of the 10th inst. and note your remarks regarding this account which will receive my careful attention. I have entered up a credit of—

—
Defendant's
Exhibit,

—
Correspondence
between the
Branch and
Head Office of
the Imperial
Bank.

—continued.

10 \$5,000. accommodation

2,000. special accommodation, secured by an assignment of \$25,000. life insurance having a c.s.v. of \$3,238.

2,500 special accommodation, secured by hypothecation Province of Saskatchewan bonds, \$2,500.

20,000. business paper and assigned accounts
the whole further secured by—

Registered general assignment of book accounts
Personal guarantees of Wm. Garlock and T. H. Hancock for \$25,000. each.

20

Yours truly,
Manager.

JBP/H.

RECORD

In the Supreme
Court of Ontario

Exhibits
No. 8

Defendant's
Exhibit,

Letter dated
March 7, 1927
plaintiff to
defendant.

IMPERIAL BANK OF CANADA

King & Spadina Branch,
Toronto, Ont. March 7, 1927.

T. H. Hancock, Esq.,
c/o T. H. Hancock Ltd.,
1372 Bloor Street W.,
Toronto, Ont.

Dear Sir:—

Re: Garlock Machinery Limited

Included in the Company's liability appearing on our books is 10
a note of Wm. Garlock for \$3,000. In this connection we hold assign-
ment of a \$25,000. Life Insurance Policy on the life of Mr. Garlock which
we are advised has a present loan value slightly in excess of this amount
(\$3,000.). Mr. Garlock proposes taking the loan value of this policy and
retiring the advance of \$3,000. from this source. I presume you will
have no objections to this procedure, and will appreciate it if you will
kindly let me have your advices to this effect.

Yours truly,

"J. B. P."

Manager.

JBP/MW.

20

T. H. HANCOCK, LIMITED
Lumber and Planing Mill Products
TORONTO, ONT.

1372 Bloor Street West,
Toronto, March 23, 1927.

The Imperial Bank of Canada,
King & Spadina Ave.,
Toronto, Ont.

RECORD
In the Supreme
Court of Ontario

Exhibits
No. 9

Defendant's
Exhibit.

Letter dated
March 23, 1927,
defendant to
plaintiff.

Dear Sirs:—

10

Attention, The Manager.

In reference to your letter of March 7th, regarding Assignment of Life Insurance Policy you hold on Mr. Garlock—it will be satisfactory to us that you take the cash value of the policy, and place it against the indebtedness of The Garlock Machinery, Limited.

We would also take this opportunity to ask you to keep us in touch with any developments which may arise, for which we thank you in advance.

Yours truly,

T. H. HANCOCK, LIMITED,
"T. H. Hancock"
President.

20

THH/H

RECORD

In the Supreme
Court of Ontario

Exhibits
No. 7

Defendant's
Exhibit,

Letter dated
Apr. 9, 1927.
Defendant. to
Plaintiff

T. H. HANCOCK, LIMITED
Lumber and Planing Mill Products
TORONTO, ONT.

1372 Bloor Street West,
Toronto, April 9th, 1927

The Imperial Bank of Canada,
King & Spadina Ave.,
Toronto, Ont.

Dear Sirs:—

We have your statement of April 1st, stating that we owe the 10
Garlock Machinery Limited, \$8,994.29. For your information we would
say that we owe this Company nothing, so kindly have this corrected.

Yours truly,

T. H. HANCOCK, LIMITED,
"T. H. Hancock"
President.

THH/H

IMPERIAL BANK OF CANADA

Toronto, Ont. April 20th, 1927.

REGISTERED.

Mr. T. H. Hancock,
1372 Bloor Street W.,
Toronto, Ont.

Dear Sir:—

Re: Garlock Machinery Company Limited.

10 You are hereby required to make payment of your liability to this Bank under Guarantee Bond dated 17th November, 1925, signed by you, whereby you guaranteed the due payment and discharge of all liabilities of the above company to the Bank to the extent of \$25,000. The liabilities of the above company to the Bank amount to Twenty-eight thousand, five hundred and seventy-two. $.93/100$ Dollars. The amount of your liability under your guarantee is therefore \$25,000. and this amount will bear interest at 6% per annum from this date pursuant to the terms of the said guarantee.

DATED at Toronto, this Twentieth day of April, 1927.

IMPERIAL BANK OF CANADA

20

Per "J. F. Scarth"
Acting Manager, King & Spadina Branch.

RECORDIn the Supreme
Court of Ontario—
Exhibits
No. 2—
Plaintiff's
Exhibit,—
Letter dated
Apr. 20, 1927
plaintiff to de-
fendant.

RECORD
In the Supreme
Court of Ontario
Exhibits
No. 3
Plaintiff's
Exhibit,

I, William Herbert Coghill, Manager Imperial Bank of Canada, King and Spadina Branch, Toronto, hereby certify that the amount due and payable to the Imperial Bank of Canada as of December 3rd, 1928, under the guarantee executed on the 17th day of November, 1925, by T. H. Hancock and William Garlock Jr., exclusive of costs, is the sum of \$23,822.04, Twenty-three Thousand, Eight Hundred and Twenty-two Dollars and Four Cents, made up as follows:—

Plaintiff's Cer-
tificate pursu-
ant to Para 11
to Guarantee,
Dated Dec. 3,
1928.

July 12th, 1927,			
Amount owing at date of writ of summons	\$24,475.11	Interest July 12 to Nov. 11/27, 122 days-6%—	10
Nov. 11/27, Payment Stone Lumber Company (deduct)	824.67	Interest Nov. 11/27 to Nov. 15/27, 4 days 6%	\$490.85
	<u>23,650.44</u>		15.54
Nov. 15/27, Payment Shannon Company, (deduct)	1,501.59	Interest Nov. 15th/27 to April 30/28, 166 days-6%	20
	<u>22,148.85</u>		604.40
Apr. 30/28, Proceeds Life Policy #708908 (deduct)	194.50	Interest Apr. 30/28 to Dec. 3/28, 217 days 6%	
	<u>21,954.35</u>		783.15
Insurance Premium claimed July 12/27, since recovered (deduct)	26.25	Carried Forward:—	\$1893.94 30
	<u>21,928.10</u>		
Interest July 12/27, to December 3/28, (add)	1,893.94		
	<u>\$23,822.04</u>		

This certificate is given pursuant to paragraph number eleven of the said guarantee.

WHC/A.

“William Herbert Coghill”

MANAGER.