

17. 1934

# In the Privy Council

No. of 1933

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

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BETWEEN:

KENNETH DESOLA JOSEPH AND PAULINE JOSEPH,  
Executor and Executrix of the last will and testament of Abe Lyons, deceased,  
(Defendants) APPELLANTS,

AND

ESTHER PHILLIPS,  
(Plaintiff) RESPONDENT.

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## RECORD OF PROCEEDINGS

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*for the Appellants.*

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*for the Respondent.*

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1933

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## RECORD OF PROCEEDINGS

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### INDEX OF REFERENCE

#### PART I

PLEADINGS, EVIDENCE, JUDGMENTS, Etc.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
1.	Statement of Claim . . . . .	24th October, 1930 . . .	1
2.	Statement of Defence . . . . .	31st October, 1930 . . .	2
	PLAINTIFF'S EVIDENCE		
3.	KENNETH DE SOLA JOSEPH Extracts from Examination for Discovery	25th June, 1931 . . . . .	4
	DEFENDANTS' EVIDENCE		
4.	KENNETH DE SOLA JOSEPH Examination . . . . .	25th June, 1931 . . . . .	15
	Cross-Examination . . . . .	25th June, 1931 . . . . .	22
	Re-Examination . . . . .	25th June, 1931 . . . . .	28
5.	ALFONSO R. KELLAR Examination . . . . .	25th June, 1931 . . . . .	32
	Cross-Examination . . . . .	25th June, 1931 . . . . .	33
	Re-Examination . . . . .	25th June, 1931 . . . . .	34

II.

No.	DESCRIPTION OF DOCUMENT	DATE	PAGE
6.	<b>FRANCIS R. COCHRAN</b>		
	Examination . . . . .	25th June, 1931 . . . . .	34
	Cross-Examination . . . . .	25th June, 1931 . . . . .	35
7.	<b>OSCAR KING</b>		
	Examination . . . . .	25th June, 1931 . . . . .	35
	Cross-Examination . . . . .	25th June, 1931 . . . . .	41
8.	<b>SAMUEL KING</b>		
	Examination . . . . .	25th June, 1931 . . . . .	41
9.	Discussion . . . . .	25th June, 1931 . . . . .	41
10.	Reasons for Judgment of Orde, J.A. . . . .	18th September, 1931.	44
11.	Judgment of Orde, J.A. . . . .	18th September, 1931.	49
12.	Notice of Appeal . . . . .	30th September, 1931.	50
13.	Reasons for Judgment of The Court of Appeal for Ontario—		
	Mulock, C.J.O. . . . .	3rd October, 1932 . . . . .	51
	Masten, J.A. . . . .	3rd October, 1932 . . . . .	56
	Grant, J.A. . . . .	3rd October, 1932 . . . . .	56
14.	Order of The Court of Appeal for Ontario . . . . .	3rd October, 1932 . . . . .	57
15.	Order of Middleton, J.A. . . . .	14th June, 1933 . . . . .	58

**PART II  
EXHIBITS**

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE	PAGE
1.	Letters Probate of the Last Will of Abe Lyons . . . . .	14th August, 1930 . . . . .	89
	Last Will of Abe Lyons . . . . .	16th June, 1928 . . . . .	70
2.	Pass Book in the Dominion Bank, corner Bloor and Bathurst Streets, Toronto . . . . .	20th January, 1930 to 31st July, 1930 . . . . .	72
3.	Defendants' Affidavit on Production . . . . .	3rd December, 1930 . . . . .	90
4.	Admission . . . . .	25th April, 1931 . . . . .	92
5.	Ledger of Abe Lyons (Not printed) . . . . .		
6.	Sketch of Roll Top Desk (Not printed) . . . . .		

III.

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE	PAGE
7.	Schedule "A" referred to in Succession Duty Affidavit of Kenneth de Sola Joseph and Pauline Lyons Joseph .....	.....	86
8.	Six Promissory Notes (Summary printed)..	Various dates.....	94
9.	Account of Abe Lyons with the Bank of Montreal, Main Office, Toronto, (Specimen pages printed) .....	12th Sept., 1913, to 2nd September, 1930.	79
	Statement of Balances at intervals of six months in Bank of Montreal Main Office Account .....	30th June, 1917, to 2nd May, 1931.....	85
10.	Statement of Account of Abe Lyons in Bank of Montreal, St. George and Bloor Streets, Toronto .....	25th October, 1919, to 19th August, 1930....	74
11a.	Old form of Bank of Montreal Pass Book (Not printed).		
11b.	New form of Bank of Montreal Pass Book (Not printed).		
12.	Statement of Account of Abe Lyons in Dominion Bank, Bloor and Bathurst Streets, Toronto .....	30th June, 1927 to 19th August, 1930....	76
	Statement of Balances at intervals of one year in Dominion Bank, Bloor and Bathurst Streets, Toronto .....	31st Dec., 1914, to 31st December, 1926.	78
13.	Will of Abe Lyons, dated 5th December, 1902.	5th December, 1902.	60
14.	Will of Abe Lyons, dated 25th September, 1908 .....	25th September, 1908.	60
15.	Will of Abe Lyons, dated 13th July, 1918...	13th July, 1918.....	61
16.	Will of Abe Lyons, dated 14th September, 1921 .....	14th September, 1921.	62
17.	Will of Abe Lyons, dated 19th August, 1922.	19th August, 1922....	64
18.	Will of Abe Lyons, dated 18th July, 1925...	18th July, 1925.....	66
19.	List of Securities and Documents received by Mr. Oscar King from Mr. Nathan Phillips .....	14th June, 1928.....	68

**No. 1.**  
**Statement of Claim**

IN THE SUPREME COURT OF ONTARIO

(Writ issued the 25th day of September, 1930)

BETWEEN :

ESTHER PHILLIPS,

*Plaintiff,*

— AND —

KENNETH DE SOLA JOSEPH AND PAULINE JOSEPH,  
EXECUTOR and EXECUTRIX of the last will  
and testament of Abe Lyons, deceased,

10

*Defendants.*

*In the  
Supreme Court  
of Ontario  
—  
No. 1.  
Statement of  
Claim, 24th  
October, 1930.*

1. The Plaintiff is a married woman, and a sister of the Defendant, Pauline Joseph, and the Defendant, Kenneth de Sola Joseph, is the husband of the Defendant, Pauline Joseph, and the said Defendants are the executor and executrix of the last will and testament of Abe Lyons, late of the City of Toronto, in the County of York, who died on or about the 26th day of July 1930, at the said City of Toronto, letters probate of which last will and testament were granted to the said Defendants by the Surrogate Court of the County of York, in or about the month of August 1930.

20 2. By his last will and testament bearing date the 16th day of June 1928 the said Abe Lyons bequeathed to the Plaintiff the sum of \$5,000 and also the personal effects in his room, including pictures, roll top desk and chiffonier complete, with their contents.

3. The Plaintiff alleges that the said roll top desk bequeathed to her by the said Abe Lyons was the usual repository for the savings bank receipt books, constituting receipts for moneys deposited by the said Abe Lyons with the Bank of Montreal and the Dominion Bank and also the promissory notes and mortgages owned by or belonging to the said Abe Lyons, and that the Defendant, Kenneth de Sola Joseph, with the approbation of the Defendant,  
30 Pauline Joseph, a few days prior to the death of the said Abe Lyons, and after the life of the latter had been given up by his physicians, knowing the contents of the will hereinbefore referred to, surreptitiously removed from the said roll top desk, three savings bank receipt books, constituting receipts for over \$30,000 deposited by the deceased with the Bank of Montreal and the Dominion Bank, and all the promissory notes and mortgages owned by the deceased and some cash, and the said Defendants, since the death of the deceased, have withdrawn from the banks the moneys represented by the said savings bank receipt books.

4. The Plaintiff further alleges that the said Defendant, Kenneth de Sola  
40 Joseph wrongfully destroyed a great number of papers in the said roll top desk and chiffonier.

*In the  
Supreme Court  
of Ontario*

No. 1.  
Statement of  
Claim, 24th  
October, 1930.

—continued

5. The Plaintiff alleges that she is entitled to the said savings bank receipt books and the moneys in the banks represented thereby, and all promissory notes, mortgages and cash removed by the said Defendants, or either of them, from the said roll top desk.

6. The Plaintiff has requested the Defendants to deliver to her the contents of the said roll top desk and chiffonier removed by the Defendants or either of them as aforesaid, and particularly the things mentioned in paragraph 5 hereof, and also a complete list of all papers removed or destroyed by the Defendants, or either of them, and save and except a few articles of little or no value, the Defendants have refused to deliver to the Plaintiff the contents of the said roll top desk or chiffonier or to account to her for the papers removed or destroyed as aforesaid. 10

The Plaintiff therefore claims :

1. An account of all things removed by the Defendants or either of them from the said roll top desk and chiffonier and of all dealings therewith and of all funds, etc., realized therefrom.

2. A declaration that she is entitled to the said savings bank receipt books and the moneys represented thereby, promissory notes, mortgages and cash removed by the Defendants, or either of them, from the said roll top desk. 20

3. An order directing the Defendants to deliver the said savings bank receipt books, promissory notes, mortgages and cash to the Plaintiff and to execute all necessary documents to complete the transfer of the same.

4. An injunction restraining the Defendants from dealing with or disposing of the assets removed from the roll top desk and chiffonier and moneys represented by the said savings bank receipt books.

5. Damages.

6. The costs of this action.

7. Such further and other relief as this Honourable Court shall deem meet.

The Plaintiff proposes that this action be tried at the City of Toronto. 30  
Delivered this 24th day of October, 1930, by D. L. McCarthy, K.C.,  
320 Bay Street, Toronto, Solicitor for the Plaintiff.

*In the  
Supreme Court  
of Ontario*

No. 2.  
Statement of  
Defence, 31st  
October, 1930.

## No. 2.

### Statement of Defence

1. The Defendants admit paragraph 1 of the Plaintiff's statement of claim and deny all other allegations in the said statement of claim contained, except as hereinafter specifically admitted.

2. By the last will and testament referred to in Paragraph 1 of the plaintiff's statement of claim the deceased Abe Lyons among others made the following bequests :

No. 3. I bequeath my jewels, including my diamond bar pin and extra stone in safety deposit vault at Toronto General Trusts Corporation to my niece Leah Singer, wife of Israel Singer. 40

No. 4. I bequeath my personal effects in my room, including pictures, roll top desk and chiffonier, complete with their contents to my neice Esther Phillips, wife of Nathan Phillips.”

and the defendants crave leave to refer to the said last will and testament and the probate thereof at the trial of this action for greater particularity.

3. Pursuant to the said last will and testament the defendants delivered to the plaintiff, on or about the 1st day of September, 1930, the personal effects of the deceased including pictures, roll top desk and chiffonier complete with their contents with the exception of a diamond stick pin which the defendants state was bequeathed to Leah Singer in the will aforesaid, and the defendants submit their right to deliver the same to the said Leah Singer to this Court for adjudication.

4. The defendants admit that the roll top desk of the deceased Abe Lyons had contained savings bank receipt books and the following promissory notes made by

	R. H. Coleman, dated Feb. 1st, 1923.....	450.
	H. C. Somers, dated October 1st, 1927.....	1,000.
	H. B. Fogler, dated December 1st, 1919.....	1,500.
	H. B. Fogler, dated June 1st, 1920.....	1,500.
20	H. B. Fogler, dated Feb. 28th, 1921.....	1,000.
	J. Hirschberg, dated April 5th, 1930.....	200.
	J. A. Tuck, dated February 19th, 1930.....	300.
	Mrs. Stafford, note for.....	188.
	Louis Streamer, note for.....	700.

but the defendants say that the plaintiff has no claim or title to the said promissory notes.

5. The defendants deny that the said roll top desk contained any mortgages owned by or belonging to the said Abe Lyons as alleged by the plaintiffs.

6. The defendants admit that the said roll top desk contained the sum of \$14.85 which the defendant Kenneth de Sola Joseph expended for the deceased Abe Lyons prior to his death.

7. The defendant Kenneth de Sola Joseph admits that he destroyed a number of papers in the roll top desk referred to in paragraph 4 of the plaintiff's statement of claim and says that the said papers were of absolutely no value and were not the property of the plaintiff.

8. The defendants say and the fact is that the defendants have delivered to the plaintiff all her share of the estate of the said Abe Lyons as provided in the last will and testament of the deceased except the sum of five thousand dollars, which the defendants are ready and willing to pay in due course as required by law.

The defendants therefore submit that this action be dismissed with costs.

Delivered this 31st day of October, 1930, by King & King, 67 Yonge Street, Toronto, Solicitors for the Defendants.

*In the  
Supreme Court  
of Ontario*

No. 2.  
Statement of  
Defence, 31st  
October, 1930.

—continued

## TRIAL

*In the  
Supreme Court  
of Ontario*

—  
Plaintiff's  
Evidence.  
No. 3.  
Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

Before the Hon. Mr. Justice Orde, at Toronto, Ontario, Thursday, June 25th, 1931.

D. L. McCARTHY, K.C.

*Counsel for the Plaintiff.*

W. N. TILLEY, K.C.

C. F. H. CARSON

} *Counsel for the Defendants.*

Thursday, June 25th, 1931, at 10.20 a.m. :

HIS LORDSHIP : You are for the Plaintiff, Mr. McCarthy ?

MR. McCARTHY : Yes, my Lord.

HIS LORDSHIP : And Mr. Tilley and Mr. Carson for the Defendants ? 10

MR. TILLEY : Yes, my Lord.

HIS LORDSHIP : I have read the record. Is there anything you want to say before calling your first witness ?

MR. McCARTHY : No, my Lord, if your Lordship has read the record.

HIS LORDSHIP : I have read the record, yes.

MR. McCARTHY : I read from the examination of Mr. Kenneth de Sola Joseph for discovery :

“1. Q. Mr. Joseph, you are one of the Defendants in this action ?

“A. I am.”

.....

“10. Q. Perhaps you can look at that, Mr. Joseph, and tell me if “that is a true copy of the last will of Abe Lyons ? A. Yes, apparently 20  
“it is—that is the right date.

“11. Q. We will make this copy Exhibit 1, subject to it being “correct. A. I believe it is correct.”

Then I put in the probate, my Lord, as Exhibit No. 1.

EXHIBIT 1. Probate of last will and testament of Abe Lyons, Aug. 14th, 1930.

“16. Q. What do you do, Mr. Joseph ? A. Life underwriter.

“17. Q. Civil engineer, is your occupation ? A. I am at present “a life underwriter.

“18. Q. And you are a graduate of McGill University ? A. Yes. 30

“19. Q. Now how long have you been associated with Mr. Abe “Lyons ? A. In what way associated ?

“20. Q. Closely associated—or were you closely associated with “him ? A. It is hard to define that exactly. We lived in Montreal for “sometime, and he used to call on us every time he was in Montreal. “He was only there on occasional visits.

“21. Q. When did you come to Toronto ? A. About nine years ago.

“22. Q. Were you ever closely associated with him—intimately “associated with him ; I mean insofar as his personal affairs were con- “cerned ? A. Yes, within the last, possibly two and a half years. 40



“23. Q. What were your associations with him? A. As a friend, and we talked over his personal affairs quite freely—and some financial affairs.

“24. Q. Where was he living at the time of his death? A. At the time of his illness?

“25. Q. Yes? A. At the time of his illness he was living at 585 Euclid Avenue.

“26. Q. He just had a room there, had he? A. Yes.

10 “27. Q. Do you know whose house it was? A. Yes; Mrs. Whitehouse. She died while he was there.

“28. Q. How long had he been living there prior to his illness? A. I don't know exactly; approximately a year.

“29. Q. Were you intimate with him during that period? A. Yes.

“30. Q. I believe he was a traveller, was he? A. Yes.

“31. Q. Out on the road all week? A. All week.

“32. Q. And when would you see him? A. I saw him practically every Sunday, and quite frequently—sometimes Friday night, sometimes Saturday. Not at any regular time.

20 “33. Q. Would you see him regularly every Sunday? A. Regularly every Sunday morning.

“34. Q. Sunday morning? A. Yes.

“35. Q. Did he call on you or did you call on him? A. Sometimes I phoned in the morning. I always saw him in his room on Sunday morning.

“36. Q. You always saw him in his room—? A. On Sunday morning.

“37. Q. And did he discuss his business affairs with you often? A. Very often.

“38. Q. Did you know where he kept his securities? A. Yes.

30 “39. Q. Then you are familiar with the contents of his room, are you? A. Yes.

“40. Q. Had he in that room a chiffonier? A. Yes.

“41. Q. Of his own? A. Yes.

“42. Q. And pictures? A. Yes.

“43. Q. And a roll top desk? A. Yes.

“44. Q. What did he keep in the chiffonier? A. Mostly clothing.

40 “45. Q. Mostly clothing—anything else besides clothing? A. Yes, a certain amount of—well, incidentals, what I would call personal effects. He would have a certain amount of cigarettes, and a bottle or two of liquor, and sometimes odd samples from the office.

“46. Q. And were you familiar with the contents of the roll top desk? A. Yes.

“47. Q. Will you just describe what the shape of that desk was?

“A. It was a roll top desk—that part I think is evident—the top rolled back, and there were drawers on each side underneath the roll top, and the drawers at each side, and in the left-hand drawer he kept any—

*In the  
Supreme Court  
of Ontario*

Plaintiff's  
Evidence.  
No. 3.

Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Plaintiff's  
Evidence.  
No. 3.  
Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

"the documents we have produced I think every one of them were kept  
"in that drawer, and to that I had a key.

"48. Q. How long had you had a key for it? A. Well, at the time  
"he moved from Bathurst Street to Euclid Avenue, the moving was done  
"on the Monday morning, and he left town Sunday, and he gave me the  
"keys, and he said, 'I want you to have a copy of this key made,' and  
"he gave me the key. You see, the desk had to be dismantled to be  
"moved, and he gave me the key so that I could look after everything  
"and take the valuables out during the moving. And he said, 'I want  
"you to have a copy of that key made, in case of anything happening 10  
"to me.'

"49. Q. He was living on Bathurst Street at the time? A. Before  
"that, yes.

"50. Q. And had you been on the same terms with him before he  
"left Bathurst as you were subsequently on Euclid Avenue? A. Yes.

"51. Q. For how long? A. A little over a year, I think.

"52. Q. Would it be safe to say that back as far as June, 1928, you  
"and he had been on intimate terms? A. About that.

"53. Q. Then did you move the roll top desk from Bathurst Street  
"to Euclid Avenue? A. I superintended it, yes, with the carters. 20

"54. Q. He was out of town at the time? A. Yes.

"55. Q. And you say he gave you the keys to the desk before he  
"left? A. Yes.

"56. Q. And the desk had to be dismantled, you say, to move it?  
"A. The top had to be taken off.

"57. Q. And you superintended its removal to Euclid Avenue?  
"A. Yes.

"58. Q. And you say that at that time he told you to have a copy  
"made of one of the keys? A. Yes, of the left-hand drawer key.

"59. Q. And you had a copy made, had you? A. Yes. 30

"60. Q. And you retained that? A. Yes.

"61. Q. Up to the time of his death? A. Yes.

"62. Q. And returned the other to him? A. And his other keys,  
"when he came in at the end of the week.

"63. Q. Now, were you familiar with what was in the desk? A. Yes.

"64. Q. And what documents that you have produced in your  
"affidavit; were they the documents that were in this desk? A. In the  
"desk at the time of his illness?

"65. Q. Yes? A. Yes."

.....  
"90. Q. Now, you say all his securities that you have produced 40  
"were in the left-hand drawer? A. Yes.

"91. Q. And what was in the right-hand drawer? A. There were  
"certain Masonic papers. I can't recall anything of any value at all. He  
"kept some of his neckties in there, and there were some family pictures  
"in there and odds and ends. He didn't consider that a receptacle for  
"valuables.

"92. Q. Was it kept locked? A. Yes.

"93. Q. You didn't have any key for that? A. No.

"94. Q. Then below the drawer there were cupboards, I believe?

"A. Yes.

"95. Q. And what was kept in the cupboards? A. Well, he had "a lot of toothpaste and odds and ends like that. I looked them over; "there were different books on Masonry and different books that he "kept in there.

10 "96. Q. And he had the keys to those? A. They were in the roll "top desk.

"97. Q. You hadn't duplicates of those keys—he kept those himself? "A. No, I hadn't duplicates of those.

"98. Q. But there were duplicates of the keys kept inside the roll, "were there not? A. Not duplicates; the original keys were kept inside "the roll.

"99. Q. Had he not the originals in his pocket? A. Not of the "cupboard and the left-hand drawer.

"100. Q. He didn't carry those with him? A. He didn't carry "them with him at all.

20 "101. Q. Was the roll locked? A. The roll was kept locked, too.

"102. Q. And he had the key to that? A. Yes, he had that with "his other keys.

"103. Q. And what was kept in the pigeon holes under the roll— "was there anything kept there at all? A. Yes, there were certain "letters and stamps and samples—correspondence, car tickets he used to "have; and he had a little bag that he used to keep silver in, mostly "American silver—and notepaper and things like that. He never kept "any securities there.

30 "104. Q. There were no securities kept there? A. No—a lot of "notebooks—"

.....

"118. Q. So that you had a key to the left-hand drawer of the "desk? A. Yes.

"119. Q. And a key to the Dominion Bank safety deposit box? "A. Yes."

.....

"121. Q. Then, when did you first know that he had made his new "will, Mr. Joseph? A. He telephoned me one Saturday morning that "he wanted to see me, and I saw him at his office, and he told me then.

40 "122. Q. That would be in June, was it? A. Right after he made "it—I think it was the end of June—soon after he made it. I think he "had made it a day or so before. It was within a week after he made "it, anyway.

"123. Q. And did he tell you the contents of it? A. Yes, and "showed me the will.

*In the  
Supreme Court  
of Ontario*  
—  
Plaintiff's  
Evidence.  
No. 3.  
Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario.*

—  
Plaintiff's  
Evidence.  
No. 3.

Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

"124. Q. So that you were familiar with what your interest was,  
"and your wife's interest? A. Yes.

"125. Q. Then where were these bank books kept? A. His bank  
"books were ordinarily kept in that left-hand upper drawer.

"126. Q. Yes? A. Of course, they were taken out from time to  
"time—I frequently made deposits for him in the Dominion Bank on  
"Bloor Street, because he would not be there during banking hours, and  
"in that case I would return the book to him later, and he made the  
"deposits in the other banks, and they were out frequently for that.

"127. Q. But their usual place of deposit was in the left-hand 10  
"drawer? A. Up to the time of his illness, yes.

"128. Q. How many had he——? A. At the time of his illness,  
"three. He had other accounts, but they were closed out some time  
"previous.

"129. Q. And where were the three accounts? A. The Bank of  
"Montreal, Front and Yonge; the Bank of Montreal, Bloor and St.  
"George; and the Dominion Bank, Bloor and Bathurst.

"130. Q. Some of those—two of those books were returned by you,  
"I believe, to the Bank of Montreal? A. Yes, the three were returned.  
"The Bank immediately took the cancelled books. 20

"131. Q. What was your idea in cancelling them? A. The man was  
"dead, and I was executor, and it was my duty to transfer the accounts  
"into an estate account, as I saw it.

"132. Q. And you transferred the amounts into an estate account?  
"A. Yes.

"133. Q. And can you tell me what the amounts were in each bank,  
"Mr. Joseph? A. Well, it was approximately \$30,000 all told——

"134. Q. Just give me the exact figures in each bank, will you?

"MR. KING: This is also subject to my objection.

"A. Dominion Bank, \$2,715.41. The Bank of Montreal—you want 30  
"me to include accrued interest?

"135. Q. Yes? A. \$27,603.64. And the Bank of Montreal, Bloor  
"and St. George, \$256.57.

"136. Q. Were they all savings accounts? A. Yes.

"137. Q. This Dominion Bank book will be marked Exhibit 4."

Perhaps it would be convenient to put that in at the present time. That  
will be Exhibit 2.

EXHIBIT 2. Dominion Bank book.

"And the cancelled ones have not been returned? A. No.

"138. Q. Then you say that you frequently made deposits for him 40  
"in the Dominion Bank? A. Yes.

"139. Q. And he made the deposits in the Bank of Montreal him-  
"self, did he? A. I might have made deposits for him once or twice in  
"the Bank of Montreal—I think I did once or twice, but usually he  
"made them himself.

"140. Q. Did he bring home money with him every week-end?  
"A. Yes, usually.

“141. Q. And he would turn it over to you? A. No, sometimes he “deposited it himself in the Bank of Montreal. He kept out some for “expenses, and he generally deposited a small amount in the Dominion “Bank every week.

“142. Q. And you did that? A. I nearly always did that—just “a small amount, as it is shown in there.”

.....

10 “158. Q. Then do I take it that the list of documents in your “affidavit, Mr. Joseph, is a complete list of what was in the left-hand “top drawer? A. This correspondence at the end was not in the drawer— “this correspondence between the two solicitors—and this correspondence “between myself and Zanitz was all subsequent to his illness.

“159. Q. Yes? A. And these two wills were not in the desk.

“160. Q. What documents appearing in your affidavit were in the “left-hand top drawer? Perhaps if you use the number in the affidavit, “that would be more convenient. A. From one to sixteen.

“161. Q. From 1 to 16? A. The rest are all subsequent.”

20 Possibly it would be better if I put in a copy of the affidavit, which will enable you to identify the documents.

EXHIBIT 3. Affidavit as to production of documents.

MR. McCARTHY: From 1 to 16 they are as follows, my Lord; perhaps it would be convenient if I referred to them now:

1. Note, dated February 1st, 1923, made by one R. H. Coleman, payable to Abe Lyons, due eleven months after date, for \$450.

HIS LORDSHIP: Perhaps the simplest way in regard to that—there are a lot of notes set out in the defence.

MR. McCARTHY: I will see if I can identify them, my Lord.

30 HIS LORDSHIP: If nine of those items are the items mentioned in paragraph 4 of the Statement of Defence, it would simplify that.

MR. McCARTHY: Yes. Would your Lordship mind checking them while I read them from the affidavit? Coleman, \$450; Somers, \$1,000; H. B. Fogler, \$1,500; H. B. Fogler, \$1,000; H. B. Fogler, \$1,500; J. Hirschberg, \$200; then there is another one, J. A. Tuck, \$300; and Mrs. Stafford, \$188; and Louis Streamer, \$700.

HIS LORDSHIP: Yes, those are all here. Are those in the affidavit?

MR. McCARTHY: They are all in the affidavit, yes, my Lord. They are not all in that order, because some of them were no longer in the possession of the executor.

40 HIS LORDSHIP: Then just give me the other items.

MR. McCARTHY: That takes us down as far as 9. They only go as far as 6 in that column in notes. The other three are in the other schedule. The next is 7, a personal ledger of the deceased Abe Lyons. Eight is the bank book of the Dominion Bank, which is now Exhibit 2. Nine is a letter, Louis Streamer to Lyons, dated March 7th, 1923. Ten is a letter from the Bank of Montreal to Abe Lyons, of July 3rd, 1923. Eleven is a letter from Stevenson, Carpenter & Company to Lyons, dated October 27th, 1923. Twelve is a letter,

*In the  
Supreme Court  
of Ontario.*  
—  
Plaintiff's  
Evidence.  
No. 3.  
Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Plaintiff's  
Evidence.  
No. 3.  
Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

Stevenson, Carpenter & Company to Lyons, dated December 13th, 1923. Thirteen is a letter, Stevenson, Carpenter & Company to Lyons, dated December 27th, 1923. Fourteen is a letter from the same people to Lyons, January 10th, 1924. Fifteen is a letter from the same people to Lyons, January 29th, 1924. Sixteen is a letter, Stevenson & Carpenter to Lyons, dated February 16th, 1924. Now, all those were in the left-hand top drawer, and they are contained in the first schedule.

HIS LORDSHIP: As well as those other three that are not in that part of his affidavit, but in another part.

MR. MCCARTHY: Then if your Lordship reads on in the examination 10  
for discovery:

"162. Q. Then if you look at the second schedule——? A. 1 to 3."

One to 3 in the second schedule are the following:

1. Bank books of Bank of Montreal, Yonge and Front, and Bloor and St. George, which were returned to the Banks.

2. Note of Mrs. Natalia Stafford for \$188, which was returned to her.

3. Note of Dr. J. A. Tuck, which was returned to him.

So that is why those two notes are not included with the others, my Lord.

HIS LORDSHIP: Only one Bank of Montreal book?

MR. MCCARTHY: No, there are two, my Lord. 20

HIS LORDSHIP: They are both mentioned?

MR. MCCARTHY: Yes, my Lord.

In that connection, there are also these two Bank of Montreal books which were returned to the bank and which I understand were destroyed, but something turns on the question of what was in the cover of those books, and my friends and I have agreed what was in the cover, subject to the bank books being admissible themselves, and there are certain rules respecting accounts, a copy of which I sent to the solicitors for the Defendants, and which I think were agreed on. My friend, Mr. Tilley, has a copy.

HIS LORDSHIP: You are putting that in? 30

MR. MCCARTHY: I am putting that in. The rules respecting accounts are as follows:

"1. Depositors when making their first deposit will be furnished with  
"a Pass Book, and must declare their name, residence and occupation,  
"and leave a specimen of their signature. They must notify the Bank  
"of any subsequent change of address.

"2. All deposits must be made with the Teller, and such deposits  
"must be entered and initialled in Customer's Pass Book by the Ledger  
"Keeper. Strict attention to this is necessary to constitute a proper  
"receipt. 40

"3. Pass Book should be presented when money is withdrawn and  
"surrendered when account is closed. The Bank reserves the right to  
"refuse payment on all withdrawal forms unless accompanied by Pass  
"Book, and should be notified immediately if Pass Book is lost, stolen  
"or destroyed.

"4. All withdrawals should be made on the receipt forms provided  
"for that purpose by the Bank, and the Bank reserves the right to refuse

“payment of withdrawal orders on any other form. Money deposited cannot be withdrawn until three clear working days have passed. Funds represented by cheques, drafts, etc., deposited cannot be withdrawn until sufficient time has elapsed to enable the Bank to receive advice of payment.

“5. Interest will be allowed at such rate as the Bank may from time to time establish, and will be credited in usual course. Depositors are requested to present their Pass Books on all occasions when either making deposits or withdrawals. The current rate of interest can at all times be ascertained at the Bank.

“6. Depositors are particularly requested to present their Pass Books to the Ledger Keeper at least twice a year for verification.

“7. On the death of a depositor, the amount at the credit of the deceased will be paid to his or her legal representative upon production of the proper legal authority.

“8. The Bank reserves the right to demand seven days’ notice of withdrawal.”

EXHIBIT 4. Admission regarding rules respecting accounts.

MR. McCARTHY: In that connection, I would also ask for the production of the private ledger which is mentioned as one of the productions.

HIS LORDSHIP: Item 7 in the affidavit; that is Exhibit 5.

EXHIBIT 5. Personal ledger of deceased Abe Lyons.

MR. McCARTHY: Then I will go on reading, if I may, my Lord:

“163. Q. 1 to 3 were in the left-hand top drawer? A. Yes.

“164. Q. Then do you remember the occasion of Mr. Lyons falling ill? A. Very well, yes.

“165. Q. And where did you first see him after his illness? A. His landlady telephoned me that he was ill, and asked me to come right down.

“166. Q. And he was removed, I believe at once, to the hospital? A. I took him to the hospital in my car.

“167. Q. And what condition was he in at that time—did he ever recover consciousness? A. He never recovered sensibility, you might say.

“168. Q. He never recovered sensibility? A. Yes, conscious, but not mentally sensible.

“169. Q. And, I believe, you visited his room after he was taken ill, Mr. Joseph? A. Yes.

“170. Q. On how many occasions? A. Visited his room, after his illness—

“171. Q. Yes, his room on Euclid Avenue? A. I can’t say—probably three or four times.

“172. Q. Do you remember what was the occasion of your first visit? A. Yes.

“173. Q. Will you tell me? A. Well, I was looking for some pyjamas for him, for use in the hospital, and we hadn’t his keys—his keys were lost, and we hadn’t access to the chiffonier, and we looked in his cupboard and there was nothing there—I don’t think on the first visit there was anything disturbed in his room at all.

*In the  
Supreme Court  
of Ontario*  
—  
Plaintiff’s  
Evidence.  
No. 3.

Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

10

20

30

40

*In the  
Supreme Court  
of Ontario*

—  
Plaintiff's  
Evidence.

No. 3.  
Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

"174. Q. Then what happened on the second visit? A. On the  
"Saturday morning—we went first Friday night—

"175. Q. Yes? A. On the Saturday morning his partner, Mr.  
"Marks, and I—I will tell you what led up to it—Mr. Marks was consult-  
"ing his solicitor, Mr. Oscar King, and Mr. Marks was worried that in  
"his mental condition he might issue cheques on the road, and might  
"issue cheques that should not have been issued, and he asked if I would  
"check up the bank balances. And I took the bank books out of his desk  
"and visited all the banks—visited one or more of them on Saturday and  
"the others on Monday, and had the bank books made up to date. 10

"176. Q. And then what happened to the books? A. I kept them  
"in the safety deposit box.

"177. Q. In the Dominion Bank? A. In the Dominion Bank.  
"They reminded me—they knew I was in personal touch with his affairs,  
"and they asked me to do it.

"178. Q. And is that everything that you removed on that occasion  
"from the desk—just the bank books? A. Either on that or on the  
"second occasion I removed the ledger—that is the pocket ledger we are  
"producing—with the notes in it—because I knew it was up to me to 20  
"keep track of everything. There were obligations coming due all the  
"time—moneys that had to be paid out and moneys to be collected, and  
"I looked after those things for him.

"179. Q. How long was he in the hospital? A. From June 6th to  
"July 26th. About seven weeks.

"180. Q. And during that time you were looking after his affairs,  
"were you? A. Yes.

"181. Q. And you produce here what you call a personal ledger?  
"A. Yes.

"182. Q. And this was kept in the left-hand top drawer, was it?  
"A. Yes. 30

"183. Q. And whose entries are these—yours or his? A. Mainly  
"his. There is one that is mine, this July 10th. During his illness there  
"was interest coming in, and there are other amounts. There is an odd  
"entry in my writing. July 9th—I kept it up to date for him.

"184. Q. You kept it up to date after his illness? A. During his  
"illness. I knew that is what he would want when he would recover—  
"and I kept a record of what transpired during his illness."

.....

"201. Q. You say this book, Exhibit 5, is a record of all his invest- 40  
"ments, particularly? A. I think so.

"202. Q. And all the entries made after his illness on June 6th,  
"that would be made by you? A. Yes.

"203. Q. You just kept it up to date? A. I kept it up to date.  
"The hand writings are very different, there is no trouble telling which  
"is which.



"204. Q. Then you say the reason that you removed the bank books was on Mr. Marks' suggestion that cheques might have been written? A. Yes.

"205. Q. And did you on a subsequent day remove the valuables from the left-hand top drawer? A. The ledger and the notes that were in it, and the diamond pin was removed to the safety deposit—I think that was at the same time as the bank books.

"206. Q. They were removed for safe keeping? A. Yes; and the bank books and the ledger for subsequent use.

10 "207. Q. Then when did the doctors first tell you that Mr. Lyons could not live? When did they give up hope of his recovery? A. Not until Dr. McKenzie was called in, about a week before he died.

"208. Q. And was it before or after that that you had removed everything from the—? A. Long before that.

"209. Q. You had removed everything from the desk long before that? A. Yes.

"210. Q. Cleaned it out completely? A. Not cleaned it out completely, but removed the valuables which we have mentioned.

20 "211. Q. And they were put where you have mentioned? A. Yes.

"212. Q. And there was some cash? A. Yes.

"213. Q. How much? A. \$12 in his pockets and \$14.85 in the desk.

"214. Q. Anything in his pockets? A. \$12.

"215. Q. Then did he ever recover sufficiently to be able to instruct you in any matter at all? A. No."

HIS LORDSHIP: May I ask a question here? What relationship is Mr. Joseph to the deceased?

MR. MCCARTHY: Mrs. Joseph is a niece, and the Plaintiff is a niece, my Lord.

30 HIS LORDSHIP: I suppose it will be developed later one way or the other—was there any actual authority on Joseph's part to do what he was doing, apart from that relationship?

MR. MCCARTHY: No, my Lord, not that I know of.

MR. TILLEY: He had the key of the desk.

MR. MCCARTHY: He hadn't the key of the desk; he had the key of the drawer.

HIS LORDSHIP: Was he in any sense in Mr. Lyons' employ?

MR. MCCARTHY: No, my Lord. He was an employee of the Canada Life.

"230. Q. Then how did you get into the desk? A. The upper part?

"231. Q. Yes? A. His keys had been found before that.

40 "232. Q. The keys were found? A. Yes, the keys were in his grip; it was lost at the time of his illness first.

"233. Q. It has been suggested that you slit the top of the roll top desk to get in and get the keys that were in there? A. I think I did that one time I was there looking in the top of the desk.

"234. Q. You could remove it without unlocking it? A. Yes, the top part of it—that didn't affect the drawers at all.

*In the  
Supreme Court  
of Ontario*

Plaintiff's  
Evidence.

No. 3.

Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario.*

—  
Plaintiff's  
Evidence.

No. 3.  
Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

"235. Q. Was not the key to the left-hand drawer there? A. Not the left-hand drawer. He had one key to the left-hand drawer and I had another one; there were no keys for that in the desk.

"236. Q. Now, were the conditions in the other savings bank books similar to this, Mr. Joseph? A. Conditions—in what way?

"237. Q. The conditions as to the production of the book whenever any business is transacted? A. That is a thing I couldn't say.

"238. Q. I suppose they are still in existence? This one provides that the depositors with the Bank shall, on the occasion of making their first deposit, declare their name, residence and occupation, and the strictest secrecy is observed as to the names of the depositors and the amounts deposited—and deposits must be made at the teller's wicket—and the depositor will be furnished with a pass book, in which all deposits shall be entered and confirmed by the initials of the ledger keeper of the bank, and strict attention to this condition is necessary to form a credit voucher for the deposit. Interest allowed on the deposit at the current rate on the minimum monthly balance, and 15 days' notice of withdrawal is required, and, in the case of the death of the depositor, the claimant shall be required to furnish satisfactory legal evidence of the title thereto. The pass book must be produced whenever business is transacted, and should be exhibited to the savings ledger keeper once at least in every year for the purpose of being examined. The book bears the signature of the manager.

"You don't know whether the conditions on all these pass books were the same? A. No, I don't know.

"239. Q. I understand you kept no track or made no list of these documents that you destroyed? A. No, because they were valueless.

"240. Q. But you were familiar with the terms of the will at that time, under which Mrs. Phillips got the contents—? A. No. As I told you, I had read the will when it was first made, but I hadn't seen it since, and there was nothing in my recollection about anything material in connection with it. I knew of course that I was executor, and my own part in it.

"241. Q. But you say you had forgotten the clause which gave the desk to Mrs. Phillips? A. Yes, I didn't recollect it.

"242. Q. When did you first see the will, after the illness or death? A. After the death, or very soon after.

"243. Q. Did you see it during his illness at all? A. No.

"244. Q. Then did you remove everything from the desk and destroy all these useless documents before his death? A. I don't know whether—I think that was done after his death, or just before.

"245. Q. You knew then that the roll top desk and its contents belonged to Mrs. Phillips, didn't you? A. No, I didn't know that they belonged—if I had seen the will it didn't impress itself on my mind at all that a lot of useless trade journals could belong to anybody.

"246. Q. They were in the desk? A. In the desk or in the room—they were in the room.

"247. Q. I am not concerned about the ones that were around the "room; I am only concerned with what was in the desk. You didn't "keep any list of what you destroyed? A. No.

"248. Q. And there was a note of Streamer's that you destroyed? "A. It looks as if I did, by this correspondence. I can't recall if there "was a note, but if there was it was an outlawed note or a paid note. "I didn't destroy any note that was of any value.

10 "249. Q. Then you say you removed nothing except what is set out "in the affidavit? A. Except what is contained in the affidavit, and the "worthless papers that were destroyed.

"250. Q. And the documents you destroyed, were they destroyed "right on the premises? A. Right on the premises, in front of the "landlady.

"251. Q. And I take it that everything you actually removed is "shown in the affidavit? A. Yes.

"252. Q. And everything you destroyed was destroyed on the "premises, in front of Mrs. Stafford? A. Yes."

That is the Plaintiff's case, my Lord.  
HIS LORDSHIP: Defence.

*In the  
Supreme Court  
of Ontario.*

Plaintiff's  
Evidence.

No. 3.

Kenneth de Sola  
Joseph,  
Extracts from  
Examination  
for Discovery,  
read on  
25th June, 1931.

—continued

20

## DEFENCE

KENNETH DE SOLA JOSEPH, Sworn. Examined by MR. CARSON:

Q. Mr. Joseph, you are the Defendant in this action? A. Yes, one of the Defendants.

Q. And your wife is Pauline Joseph, the other Defendant? A. Yes.

Q. What relationship was she to the deceased? A. Niece.

Q. What relation is the Plaintiff to the deceased? A. A niece.

Q. Were the two nieces sisters? A. Yes.

Q. And how long had you known the deceased? A. Oh, approximately fifteen or sixteen—well, about fifteen years.

30 Q. How long have you been married to his niece? A. Nearly fourteen years.

Q. Have you lived in Toronto during all that time? A. No. I have lived in Toronto for the past eight years.

Q. Where did you live prior to that? A. First Sudbury, after I was married, and then Montreal.

Q. And when did you get to know the deceased well? A. He was frequently—occasionally at my house in Montreal. I got to know him better, of course, in Toronto.

40 Q. What was your relationship as to business matters; that is, his business matters? A. Very friendly for some time before his death; very close.

Q. What was the nature of your relationship as to his business matters? A. Well, I was his confidant in a great many things. He used to discuss his affairs with me. He gave me the key of his desk. He gave me joint ownership

Defendants'  
Evidence.

No. 4.

Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

—continued

of his safe deposit box, and asked me to look after anything of his when he was away.

Q. At what time was that? A. This was approximately two years before he died.

HIS LORDSHIP: Q. Joint ownership of the box—you mean you deposited things in the box as well as he; is that it? A. Well, we had joint ownership; it was not a power of attorney.

Q. You had rented the box from the bank, had you? A. Yes; I meant by that, that it was not a power of attorney, it was a joint tenancy.

MR. CARSON: Q. Did you both have access to the box? A. Both had 10 access to the box.

HIS LORDSHIP: Q. That was in the Dominion Bank, was it? A. Yes.

MR. CARSON: Q. And did you have any authority with regard to the securities that were in that box, the testator's box? A. There was no written authority. I took care of them, put papers in from time to time, and withdrew papers for him, cut the coupons off the bonds every month.

Q. Every month? A. Every month.

Q. Did that extend over the entire period from the time the box was taken until his death? A. Yes.

Q. And then did you report to him or account to him for what you— 20 A. Yes, I accounted to him for everything.

Q. What would you do with the coupons after you clipped them?

A. I generally gave them to him when he came in on a Saturday morning.

Q. He being out of town? A. He being out of town during the week. Sometimes I deposited them for him if he asked me to.

Q. When you made the deposits, would you have the bank book with you? A. I had it with me on one or two occasions, the Bank of Montreal book.

Q. Where did you make the deposits with respect to the coupons that you cut off? A. That was Bank of Montreal, at Front and Yonge.

Q. And then, coming up to the time of his illness, when did he take ill? 30 A. On the 8th of June, I think, 1928, to the best of my knowledge.

Q. And he died when? A. The 26th of July, 1930.

HIS LORDSHIP: Q. 1930? A. Yes.

MR. CARSON: Q. You said in your examination that you had a key to this box? A. Yes.

Q. At what time did you get that key? A. The key to the box?

Q. The key to the drawer. A. The key to the drawer? About a year previous, when he moved.

Q. About a year previous to his death? A. About a year previous to his death. 40

HIS LORDSHIP: Q. That was not the key of the desk, itself, but a key of the drawer in the desk, the left-hand drawer? A. The left-hand drawer. That was part of the desk, of course.

Q. Inside the roll? A. No.

Q. Below the roll? A. Below the roll.

MR. TILLEY: You could open the drawer by the key.

WITNESS: Yes.

MR. CARSON : Q. Would you just describe the desk to his Lordship?  
A. There was a roll in the upper part, and underneath—then there was like a platform that you write on. Underneath the platform there was a drawer and a cupboard on each side.

HIS LORDSHIP : Q. But the roll came down and covered the whole writing portion? A. The writing portion, but not where the drawers were.

Q. Underneath that there was a drawer; just one drawer, or more than one? A. One drawer on each side, then below was a cupboard.

MR. TILLEY : Q. Is that it? (producing sketch of desk). A. Yes.

10 HIS LORDSHIP : The cupboards formed the pillars of the desk.

MR. TILLEY : Show that to his Lordship.

WITNESS : That is it.

HIS LORDSHIP : Q. The cupboards formed the pillars, as it were, of the desk? A. Yes, the pillars of the desk.

MR. TILLEY : That might be just marked.

HIS LORDSHIP : Q. Is that nearly like it? A. Yes, very close to it.

Q. The pigeon holes were inside the roll; the roll completely covered everything? A. Covered the pigeon holes, but it didn't cover these drawers.

HIS LORDSHIP : I understand. That will be Exhibit 6.

20 EXHIBIT 6. Sketch of roll top desk.

MR. CARSON : Q. The drawer to which you were given the key was the left-hand drawer below the roll top part of the desk and outside the roll top part? A. Yes.

Q. And it was in that drawer that these documents were kept that have been referred to? A. Yes.

Q. How did you come to get that key? A. He was out of town all during the week, and he did—the moving from one house to another was done on Monday. He gave me the key, gave me all his keys, and asked me to look after the moving, to take the valuables out before the carters moved the things.

30 Q. When you say he gave you all the keys, he gave you the key to the left-hand drawer and the key to the roll top? A. And the key to the chiffonier; and he asked me to have a key made for the desk drawer in case of anything happening to him.

Q. For the left-hand desk drawer? A. Yes.

Q. In case anything happened to him? A. In case of anything happening to him at any time.

Q. And did you have that done? A. I had that done.

Q. Was there a key to the right-hand drawer? A. There was a key, but I never had a key to that.

40 HIS LORDSHIP : Q. What was the exact date of that, do you recall?  
A. I can't recall the exact date.

Q. Even the date when he moved? A. It was about a year before.

Q. It was before the making of the will? A. Mrs. Stafford, the landlady, is here—

MR. CARSON : He says about a year before the death.

HIS LORDSHIP : And how long before the death was the will?

MR. CARSON : The 16th of June, 1928.

*In the  
Supreme Court  
of Ontario.*

—  
Defendants'  
Evidence.  
No. 4.

Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

—continued

HIS LORDSHIP: Q. Then was the move before that or afterwards?  
A. The move was after that.

MR. CARSON: Q. At the time of the will he was living with Mrs. McLaughlin? A. Yes, on Bathurst Street.

Q. And then he moved from there to——

HIS LORDSHIP: That is all I wanted to know.

MR. CARSON: Q. Then you had the key to the left-hand drawer from the time you had the duplicate made, about a year before his death? A. Yes.

Q. Down to the time of his illness? A. Yes.

Q. And then also after his illness until the time of his death? A. Yes. 10

Q. Taking the first period, that is, from the date you obtained it down to the date of the illness, what use did you make of the key? A. I don't think I used it at all. I wouldn't be positive, but I don't think I had.

Q. Did you have any occasion to go to the desk during that period of time? A. I am not positive. I may have gone into it.

Q. But no occasion that is——A. No occasion that I can recall.

Q. Then coming to the next period, that is, from the time he took ill until his death, what occasions did you have to go to the desk? A. On several occasions, to make deposits for him, and to take his diamond pin out, and valuables to put for safe keeping. 20

Q. When you say to make deposits for him—to get the deposit books? A. Yes, to get the bank deposit books.

Q. Any other purpose? A. To have them made up, the date—his partner asked me to have them made up at the time——

Q. Was there money coming in frequently during that interval? A. Yes.

Q. How frequently? A. Well, there was interest on mortgages, and interest on notes, possibly—I think the—it is in the records—about, possibly, three or four times a month. That little notebook will show it.

Q. Was this going to the desk after the testator took ill done with his knowledge or instructions? A. No, because he wasn't in a mental condition 30 to——

Q. What was the nature of his illness? A. The doctors disagreed on that for some time.

Q. I don't want to go into any diagnosis of it; how did he take ill? A. Complete loss of memory.

Q. Was this a sudden illness? A. Yes.

Q. So that he had no memory. Did he have any capacity to look after his affairs, as you see it? A. No.

Q. That is, from the time he was taken ill? A. Yes.

Q. So that from then on you looked after his affairs until the time of 40 his death, in the way of receiving money and making deposits, making disbursements? A. Yes.

Q. How many occasions would you have to go to the desk in a matter of a week, say, during the time of his illness? A. Oh, very infrequently, because I had the bank books out. I think I was there three or four times altogether during the time of his illness.

HIS LORDSHIP : Q. I gather from what you said on the examination for discovery that on the first occasion that you had to make use of the bank books you kept them out? A. Yes.

Q. Did not return them to the desk, and they never got into the desk again at all? A. That is correct, your Lordship.

MR. CARSON : Q. And I think you said on your examination you removed them to the safety deposit box? A. Yes.

Q. And they were kept there from then on? A. Yes.

HIS LORDSHIP : Q. And the same thing applies to the ledger; you took  
10 it out, too? A. The same thing applies to the ledger.

Q. And the notes? A. Yes; they were all put in the safe deposit box.

MR. TILLEY : Q. The first time you opened it? A. The first or the second time.

MR. CARSON : Q. And how soon was that after Mr. Lyons took sick?  
A. The day after he took sick.

Q. When did he take ill? A. He came in from the road on a Friday evening. He had been wandering for two or three days before that on the road somewhere.

Q. He had been wandering—do you mean mentally wandering or travel-  
20 ling? A. Practically lost. He went backwards and forwards between two or three different towns.

Q. And, I think, you had some alarm about it when he came in, according to your examination? A. Yes; I was telephoned that he was ill, and asked to come right down to see him.

Q. And as a result what did you do? A. I called his doctor.

Q. Not so much about the doctor; about his affairs, his banking?  
A. That night I didn't do anything; I got him to the hospital. Next day his partner, Mr. Marks—

Q. Next day being? A. Next day being Saturday. His partner, Mr.  
30 Marks, got in touch with Mr. Oscar King, his solicitor, and they asked me to look after anything personal that was coming, take care of his affairs.

Q. And it was in that connection that you went to the banks, as you described, and had his books brought up to date? A. Yes.

Q. And spoke to the bankers about any cheques that might be coming through? A. Yes. His partner, of course, knew my relations with him.

Q. What was in the left-hand drawer after you removed the bank books and the ledger and that, the day or so after he took ill, and the notes?  
A. There wasn't much in there. There may have been some odd corres-  
pondence.

40 Q. Anything of any consequence? A. Nothing of any consequence.

Q. What is this little black book (produced), Mr. Joseph? A. That is just a little memorandum book that I kept of any disbursements and receipts during his illness.

Q. And that is in your writing, is it? A. That is in my handwriting.

MR. MCCARTHY : Is that evidence.

HIS LORDSHIP : I don't see how that is evidence.

MR. TILLEY : I thought it was the testator's.

*In the  
Supreme Court  
of Ontario*

—  
Defendants'  
Evidence.

No. 4.  
Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

—continued

WITNESS : No, it is my handwriting.

MR. CARSON : Q. I think there was some money in the desk at the time the testator took ill? A. Yes.

Q. And you used some of that money and kept account of it in that book? A. Yes.

HIS LORDSHIP : If there is any question of accounting here, there will have to be a reference.

MR. TILLEY : Oh, there is no question of accounting, but I thought it was the testator's book, that is all.

HIS LORDSHIP : It was a book the testator was entitled to, but Mr. 10 McCarthy is not acting for the estate in any sense, and he is not calling for it.

MR. CARSON : Q. Was there any other money in the desk?

A. Just the money that is accounted for in that. I think it was approximately fourteen dollars.

Q. And was that all used up before his death? A. That was used up in paying current expenses before his death.

Q. Before his death? A. Before his death.

Q. What about the ledger that has been put in as Exhibit 5? A. That was his own record of his investments and receipts, and I kept that up to date from the time of his illness. 20

Q. Was that in the left-hand drawer? A. That was in the left-hand drawer.

Q. Was that also removed to the safety deposit box along with the bank books? A. Yes.

HIS LORDSHIP : I would like to find out what the entries in that ledger are.

MR. CARSON : Yes.

HIS LORDSHIP : Is there any account kept in it of every security and asset which the testator owned, apart from furniture and things like that?

MR. CARSON : It has an index, my Lord, to various accounts, and then the first account appears to be one headed "Interest." 30

HIS LORDSHIP : Is it merely an account of receipts and expenditures?

MR. MCCARTHY : Oh, no; the securities.

HIS LORDSHIP : Q. Does it set forth all the securities, mortgages and bonds and things like that? A. It does not cover bonds.

Q. It speaks for itself, but I want to know, was there anything that he owned in substance outside the entries in that book? A. Yes.

MR. TILLEY : Well, can the witness just illustrate by reference to a page or two what sort of book it is?

HIS LORDSHIP : Yes.

MR. TILLEY : Take any by way of illustration. 40

WITNESS : This, for instance—

MR. CARSON : Q. What are you referring to, Mr. Joseph?

HIS LORDSHIP : Referring to page 40, Elly Marks. Then below that is the account of Carl Pickard, National Stores, Windsor. Pickard is debited with \$1,200, at seven and a half per cent.

MR. TILLEY : Q. All debts owing to the testator or debts that the testator owed, or what? A. Debts owing to the testator.



Q. All of them? A. All of them; mostly on personal notes, occasionally on mortgages.

MR. CARSON: Q. And account kept of the credits as they came in?  
A. Yes, of credits.

HIS LORDSHIP: Q. Whose handwriting are most of these entries?  
A. Most of them in the testator's handwriting; the later ones are in my own.

Q. Yes, I notice the difference. A. There is quite a difference.

MR. CARSON: Q. There is one account there at the beginning, "Interest"; what is that account? A. I don't think that was kept up to date. I have  
10 never seen that used.

Q. Then there were some mortgages referred to; where were the mortgages kept? A. They were kept in the safe deposit box.

Q. By the testator? A. By the testator.

Q. That is, the Dominion Bank safe deposit box? A. I think one was in the other, in the Toronto General Trusts, if I recollect correctly; one mortgage.

Q. Which mortgage, do you recall? A. I think the Rumsey mortgage was there.

Q. Were they at any time kept in the desk, in your period of knowledge?  
20 A. No, not to my knowledge.

HIS LORDSHIP: Q. I see some pages have been torn out of this book— is there any explanation of that?—on which entries appear to have been made.  
A. Not to my knowledge, my Lord. That was the condition in which I received the book.

Q. The book is in the condition in which you received it, apart from the entries you made after and during his illness? A. Yes.

Q. You did make entries during his illness, I understand? A. Yes, my Lord.

MR. CARSON: Q. Then, I believe, in connection with taking out probate  
30 Mr. Joseph, a succession duty affidavit was filed, to which you were a party along with your wife? A. Yes.

Q. Do you remember that? A. Yes.

Q. Is that (produced) a correct copy of the affidavit? Does that affidavit correctly set out the assets of the estate? A. Yes.

Q. That will be Exhibit 7.

EXHIBIT 7. Succession duty affidavit.

Q. Mr. Joseph, when did you know, if at all, about the will that was probated first? When did you first know about the will? A. I think it was the day that he made it or immediately afterwards.

40 Q. And under what circumstances did you learn about it? A. He telephoned me that he wanted to see me at the office.

Q. On what date? A. On a Saturday.

Q. On a Saturday? A. And we proceeded to the safety deposit box in the Dominion Bank, and he showed me the will.

Q. Did he read the will to you? A. He handed it to me to read.

Q. And did you read it in his presence? A. I read it in his presence and put it in the safe deposit box.

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario.*

Defendants'  
Evidence.

No. 4.

Kenneth de Sola  
Joseph,  
Examination,  
25th June, 1931.

—continued

Q. Then had he spoken to you about the will before that? A. He had told me the evening before when he came in that he intended changing it.

Q. Intended what? A. That he intended making a new will.

Q. Yes? A. In my favour.

Q. In your favour? A. Yes.

HIS LORDSHIP: I don't think you can introduce that evidence. No evidence is admissible to explain the testator's intentions.

MR. CARSON: Well, it was more in the nature of a declaration—I think that is all, Mr. Joseph.

Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Cross-  
Examination,  
25th June, 1931.

CROSS-EXAMINED by MR. MCCARTHY:

10

Q. Mr. Joseph, the box that you referred to in the Dominion Bank was in your joint names, was it? A. Yes.

Q. When did you rent that box? A. On the day to which I have just referred, the day that he made his new will.

Q. Had you a box before then? A. Not in that bank, no.

Q. Not in that bank? A. No.

Q. Then the day he made his new will, which, I think, is the 16th of June, 1928, who made the arrangements for the box? A. He made the arrangements. I was with him, and we—I had to give my signature, of course.

Q. And that was a joint box; you paid half the rent and he paid half? A. He paid the whole rent. 20

Q. He paid the whole rent? A. But it was a joint tenancy.

Q. It was in your joint names? A. It was in our joint names.

HIS LORDSHIP: Q. Did you each have a key? A. Yes.

MR. MCCARTHY: Q. Well, had the testator the box before then? A. No.

Q. So that on the day he made his will you and he went to the Dominion Bank and a box was rented, of which you were part owner, in the sense that you had access to it? A. Yes. I think it was the day that he made his will; it was the Saturday morning. 30

Q. And that was the time that the will was shown to you and you read it? A. Yes.

Q. And the will was then put in that box? A. Yes.

Q. Now, you had known him how long before that, Mr. Joseph? A. Before that? Some eleven or twelve years.

Q. But I mean intimately? A. About—well, intimately is hard to define.

Q. I mean on the same terms that you were with him at the time of his illness; how long had you been on those terms with him? A. Probably not as intimate terms before that as after.

Q. Not as intimate terms before that as after? A. No. 40

HIS LORDSHIP: Q. "Before that"—you mean before the making of the will? A. Before the making of the will.

MR. MCCARTHY: Q. Where were the other documents kept that were transferred to that box? A. They were—the documents that were transferred to that box?

Q. Yes? A. Were mostly transferred—this is just hearsay; I mean, I didn't see them transferred. Mr. Oscar King put them in there.

Q. Yes, but I mean, were any documents transferred from the desk to that box, so far as you know—by you? A. No, not at that time.

HIS LORDSHIP: Q. At that time? A. Not till the—

Q. On that particular morning when you first got the box, was anyone there besides Mr. Lyons and yourself? A. No.

Q. And was the will the only document then put in the box that morning?

A. No, my Lord. Bonds and other securities had been placed in there before  
10 that, either that day or the day before.

MR. McCARTHY: Q. I thought you said that you and he rented the box that morning? A. Yes, we rented it that morning, but the documents had been placed there under special arrangement before that.

Q. You had nothing to do with that? A. I had nothing to do with that.

Q. But there were some documents in the box? A. Yes.

Q. When you got there? A. When I got there.

Q. Now, he was then living where? At Bathurst Street, was it? A. At  
Euclid Avenue.

Q. In 1928? A. On Bathurst Street—pardon me.

20 Q. He was then living on Bathurst Street? A. 641 Bathurst Street.

Q. And the roll top desk was at Bathurst Street? A. Yes.

Q. And you frequently visited him there, did you not? A. Yes.

Q. Every Sunday morning? A. Every Sunday morning.

Q. For how long before he moved? A. Well, it was about a year.

Q. How long before the will was made had you visited him every Sunday  
morning? A. Probably not—not very often.

Q. Now, on those occasions had you observed—had he shown you this  
left-hand top drawer? Had he opened it in your presence? A. I can't recall  
that, but it is altogether—I think he had.

30 Q. You think he had? A. I can't—

Q. And did he tell you what securities were in there? A. No.

Q. Was it not customary for him, when he came home on Fridays or  
Saturdays, to show you what he had done during the week? A. Yes.

Q. To put his money there? A. Yes.

Q. And did he not take the pass books out of that drawer and sometimes  
let you deposit the money for him? A. Sometimes; not often.

Q. And you knew that the books were kept there? A. Yes.

Q. And did he ever show you the notes which were kept there? A. Yes.

Q. And display them to you? A. He had shown me occasional notes.

40 Q. Now, had he ever shown you the Nornabell note? A. I don't recollect  
seeing it. I knew Nornabell owed him some money. I don't think I saw  
the note.

Q. You don't recollect seeing the note? A. No.

Q. The Nornabell note is referred to in this Exhibit 5, the private ledger?  
A. Yes.

Q. Then had he ever shown you the Elly Marks note? A. Yes.

Q. That was kept in the drawer, wasn't it? A. No, not in the drawer.

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Cross-  
Examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Cross-  
Examination,  
25th June, 1931.

—continued

- Q. How do you know? A. Because that was kept in the safe deposit box.
- Q. Did you ever see the note before the bank box had been opened?
- A. This was all after the bank box had been opened that he showed me these notes.
- Q. He never showed you the notes before? A. No.
- Q. You never saw any notes before? A. I don't think so.
- Q. The roll top desk was just an ordinary yellow oak roll top desk, was it not? A. Yes, sir.
- Q. Of no particular value? A. No.
- Q. As an ornament or—— A. A useful desk. 10
- Q. A useful desk, that is all. And the left-hand top drawer was the one of which you got the key at the time he moved from Bathurst Street to Euclid Avenue? A. Yes.
- Q. And you were told to keep that key in case anything ever happened to him? A. Yes.
- Q. But you didn't use that key during his lifetime, and up to his illness, did you? A. Not up to his illness.
- Q. But as soon as he was ill—and he was a very, very sick man, wasn't he? A. Yes.
- Q. And insensible when you first——A. Incapable of acting. 20
- Q. He could not express himself, could he? A. Not very sensibly.
- Q. And, as soon as that occurred, then you used the key to extract these documents from that desk? A. Yes.
- Q. From that drawer. And you transferred everything to the box of the Dominion Bank, did you? A. I transferred the documents that we have named.
- Q. Now, did you keep a list of those you transferred? A. No, I didn't make a list.
- Q. You just took the diamond pin, the three pass books, and put them in the safety deposit box? A. Yes. 30
- Q. In the Dominion Bank. And later you took the ledger and the notes?
- A. I think the ledger was taken at the same time; possibly later.
- Q. Then did you keep a list of the notes you took? A. They were in the ledger. I didn't make a list.
- Q. You didn't make a list; they were in the ledger; and you put them as they were in the box? A. In the box.
- Q. And they are there today, are they? A. Well, the ledger is here today, of course.
- Q. Yes, but the notes, I say? A. I am not quite sure whether they would actually be there; I think they are. 40
- Q. Then the Streamer note you destroyed, I think; did you? A. Apparently—I didn't recollect destroying the note, but from the statement that has come out it looks as if it had been destroyed.
- Q. The Tuck note you gave back to Dr. Tuck? A. Yes.
- Q. And the Streamer note you gave back to Mrs. Streamer—I mean Mrs. Stafford? A. Mrs. Stafford, yes.
- Q. You gave it back to her? A. Yes.

Q. My friend wants to know—when you say he could not express himself, do you mean it was physically or mentally? A. Mentally.

Q. Exhibit 5, that you have put in, all the entries made after his illness were made by you? A. Yes.

Q. And all the entries made prior to that time were made by the testator, by Mr. Lyons? A. Yes.

Q. Now, do you remember having a conversation with Mr. Phillips shortly after Mr. Lyons' death, when he asked you what the terms of the will were? A. Yes.

10 Q. And you said nothing to him about the desk, did you? A. No.

Q. Why not? A. I don't think I was familiar with the desk passing—the personal effects passing.

Q. You don't think you were familiar with the desk passing. That was the fourth clause in the will, wasn't it, Mr. Joseph? A. The personal effects were, and I knew personal effects would be of no interest to Mr. Phillips.

Q. "I bequeath my personal effects in my room, including pictures, roll "top desk and chiffonier, complete with their contents, to my niece, "Esther Phillips."

But you did not tell Mr. Phillips anything about that in your conversation?

20 A. I think he had a copy of the will, if I recollect rightly.

Q. You think he had; what makes you think that? A. I think he obtained a copy of the will from Mr. King's office.

Q. That was after the conversation with you, wasn't it? A. Either after or before; I am not sure.

Q. Then do you remember him telling you at the time that the bank books had always been kept in the desk? A. No, I don't recollect that.

Q. And do you remember his telling you that the promissory notes were always kept in the desk, and his asking you for a copy? A. No, I don't remember that.

30 Q. Then do you remember saying that you were not sure whether the Nornabell note was in the deposit box or the drawer—to Mrs. Phillips?

A. I don't remember her asking about the notes.

Q. At any rate, you kept no list of notes as you took them; you took them in a bundle, did you? A. Yes.

Q. And took them down to the bank and put them there? A. Yes.

Q. Now then, later on you discovered there were two other notes, Nornabell and Elly Marks, didn't you? A. I discovered there were two other notes?

Q. Yes. A. Discovered them—

Q. When did you find out that the Nornabell note was in the bank box?

40 Was it after his death? A. That I discovered it was in the bank box? I didn't make any inventory of them at all.

Q. I know you didn't; that is what I am saying. You simply transferred them in an envelope, didn't you? A. Yes; there were certain notes in the book, which were transferred and left intact.

Q. And you put them in an envelope? A. And transferred them down to the box. Any other notes that were down there were in the box in separate envelopes.

*In the  
Supreme Court  
of Ontario*

—  
Defendants'  
Evidence.

No. 4.  
Kenneth de Sola  
Joseph,  
Cross-  
Examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Cross-  
Examination,  
25th June, 1931.

—continued

Q. Were they? Who put them in the separate envelopes? A. They were in the—Mr. Phillips' mortgage was down there, and the other mortgages and things.

Q. The notes, I mean? A. The notes were in the safety deposit box.

Q. When did you first learn that? A. Because I had access to the box.

Q. When did you first learn? Did you go through these notes before the death? A. I was in the box every month looking over the—

Q. What? A. I was in the box every month, taking care of the coupons.

Q. There were no coupons on the notes, though? A. No, but the notes were changed from time to time. 10

Q. He looked after the collection of those notes himself, didn't he? A. The notes were mostly for three months and six months and so on; they were renewed from time to time.

Q. He looked after that himself, didn't he, according to this book?

A. Yes, absolutely.

Q. And did you know anything about these notes until after his illness?

A. Yes.

Q. How did you know? A. When a note came due he would ask me to get the old note out of the box, and get me a new note to put back in the box.

Q. Did you get the notes yourself? A. He would hand me the notes to put in the box. 20

Q. When did you put the Elly Marks note back in the box last, do you remember? A. I think that ran right along. I don't think there were any—

Q. There was no renewal as far as the Elly Marks note was concerned?

A. No.

Q. That note apparently was made in June, 1927? A. Yes.

Q. And interest was paid and a portion of the principal was paid from time to time direct to Mr.— A. I don't think principal was paid at the time. Interest was paid.

Q. You think no principal, eh? A. That is my recollection; I may be 30 wrong.

Q. Well, it would look, according to this statement I have at page 40, that it was, but I may be wrong. A. \$8,500; wasn't that the original amount?

Q. Well, it says here \$500—it may have been \$1,200, the original note, and these may be payments on account? A. I think that was subsequent to his death.

Q. There were no renewals of that note, apparently? A. No.

Q. Then take the Nornabell note; was that renewed from time to time?

A. The book will show that; I think it was.

Q. Well, that doesn't look as if that was renewed, either, Mr. Joseph; 40 payments made from time to time on account? A. That was kept—the Nornabell note was kept with deeds to Nornabell's house, and various other forms—insurance policies—all in the safe deposit box. There is no possibility of a mistake in that.

Q. There were not renewals, though? A. No, not renewals.

Q. He gave you the renewals from time to time? A. He gave me renewals of any that were renewed.

- Q. Then there was a copy of the will in the Dominion Bank box? A. Yes.
- Q. You put it there. And you went to the box the day after his illness, didn't you? A. Yes.
- Q. And the will was there for you to look at? A. It was there, yes.
- Q. Did you look at it? A. No.
- Q. You had seen it at the time he made it, in June of 1928? A. Yes.
- Q. And you say you did not remember the provision in regard to the—
- A. Personal things.
- Q. —Roll top desk? A. No.
- 10 Q. And you went there and removed these articles without ever looking at the will again? A. Yes.
- Q. And you did with them what you have told us? A. Yes.
- Q. Now, do you remember Mr. Phillips asking to go through the desk with you and make a list of its contents? A. Yes.
- Q. And you refused, I believe? A. Absolutely.
- Q. Why? A. Because I thought an examination like that should be done through my counsel. Mr. King was looking after my interests, and Mr. and Mrs. Phillips were cross-examining me that day and asking a lot of questions of a legal nature.
- 20 Q. I am speaking of a conversation on the telephone when Mr. Phillips asked permission to go through the desk and note the contents? A. I don't remember the one on the telephone. I remember a conversation in Mr. Phillips' bedroom.
- Q. But you refused to allow them to go through the desk with you at any time? A. Without consulting my solicitor.
- MR. TILLEY: After the lawsuit.
- MR. MCCARTHY: No, no, that is before.
- HIS LORDSHIP: Q. Did you consult your solicitor then? A. Yes, I spoke to him at the time.
- 30 Q. And as a result of that what happened? I don't ask you what he said, but what happened? Did you allow Mr. Phillips—did you grant his request—
- A. Well, he told me the ethical procedure was for Mr. Phillips to approach him, not to ask for anything like that to me, that it was unethical. Mr. Phillips knew—
- Q. Tell Mr. Phillips that? A. Yes.
- Q. Was anything done then? A. There was nothing further said then.
- MR. TILLEY: It was the subject of correspondence between the solicitors.
- MR. MCCARTHY: Well, it was—that is why we had to bring the action, because we were refused a list of the articles in the desk.
- 40 MR. TILLEY: No.
- MR. MCCARTHY: Oh, yes, we were. I have the correspondence here.
- MR. TILLEY: Well, put it in.
- MR. MCCARTHY: Certainly, if my friend likes.
- HIS LORDSHIP: If anything turns on that, it had better go in.
- MR. MCCARTHY: I don't know that this has any bearing on it—
- HIS LORDSHIP: I don't know that it has any bearing on it.

*In the  
Supreme Court  
of Ontario*

*Defendants'  
Evidence.*

*No. 4.  
Kenneth de Sola  
Joseph,  
Cross-  
Examination,  
25th June, 1931.*

*—continued*

*In the  
Supreme Court  
of Ontario*

Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Cross-  
Examination,  
25th June, 1931.

—continued

MR. TILLEY : My friend put the question to the witness, I don't know why; it must have some bearing.

HIS LORDSHIP : Are the parties agreed, up to a certain point, upon the contents of the desk, at the precise moment that the will was——

MR. MCCARTHY : That is all I have to ask.

HIS LORDSHIP : I was asking, are the parties agreed in any respect as to what the contents of the desk were at the time that the will was made? Is it admitted that there were certain things in the desk?

MR. TILLEY : We can't admit it.

MR. MCCARTHY : I don't know, my Lord. That is why, as I say, the 10 action was brought and discovery had, to enable us to find out the contents of the desk.

MR. TILLEY : The contents of the desk at one date is not the date his Lordship is now asking about.

HIS LORDSHIP : I am asking about at the date of the will.

MR. TILLEY : At the date of the will; and the contents of the desk after the death were different from the contents of the desk at the time he was taken ill, of course; but I don't know that this witness can help us as to the contents of the desk at the date of the will; I don't know whether he can.

Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Re-examination,  
25th June, 1931.

RE-EXAMINED by MR. TILLEY :

20

Q. Do you know what was in the drawer with regard to bank books and notes and so on at the date this will was signed? A. I can't say exactly as to the notes that were in there. The bank books were usually kept there. The pocket ledger was kept there.

HIS LORDSHIP : I think there is a pretty fair presumption that the bank books, having been there before, were still there at that time, and remained there, except when taken out temporarily, until after his illness.

MR. TILLEY : Q. Do you appreciate that now we are asking you as of the date of the will? A. Yes.

Q. Not the date of the illness or the date of the death. Do you know? 30 A. As at the date of the will, I think the bank books were kept there, and the pocket ledger.

Q. Had you ever seen them there? A. No; it is only presumption prior to that.

Q. That is to say, you are in the same position, or are you in a better position than others to—— A. Shortly after the will was made I know they were.

HIS LORDSHIP : Is there any claim here set up for the bonds?

MR. MCCARTHY : No, my Lord.

MR. TILLEY : Q. There were no bonds, were there? A. None kept in 40 the desk, no.

HIS LORDSHIP : Never in the desk?

MR. TILLEY : No.

HIS LORDSHIP : I was wondering where the bonds were before this safety deposit box was rented.



MR. TILLEY : There was another safety deposit box which your Lordship will hear of. There will be some evidence that they were in Mr. Phillips' office for a time. This witness—

Q. I don't think you know about that, do you? A. No, not first hand.

Q. It is hearsay as to you? A. Yes.

Q. Then are these (produced) the notes that you took out of the drawer and put in the safety deposit box? A. Yes.

MR. MCCARTHY : Q. Are they all the notes? A. These are not all. There were two that were returned.

10 MR. TILLEY : Q. You have already referred to two others? A. And one Streamer, that was apparently destroyed.

Q. What? A. One Streamer note that was apparently destroyed.

Q. Apparently destroyed? A. Well, according to some of the evidence that was in the examination, it was found among the papers that were thrown out.

Q. I don't follow what you mean now. Just keep to these first. These notes are in the condition they were in at the time you took them out of the drawer, are they? A. Yes.

MR. TILLEY : Now, there are six notes.

20 HIS LORDSHIP : They had better go in as one exhibit.

MR. TILLEY : That will be Exhibit 8.

EXHIBIT 8. Six promissory notes.

MR. TILLEY : Q. These are all payable to the order of Abe Lyons, and not endorsed; none of them were endorsed by Mr. Lyons? A. No.

Q. And has anything been paid on these notes since? A. Only the last note, Hirschberg.

MR. MCCARTHY : Does this arise out of my cross-examination, as to what has been paid?

30 MR. TILLEY : I just wanted to make it clear, that is all. It doesn't matter at all.

HIS LORDSHIP : You may cross-examine on it, Mr. McCarthy, if you like.

MR. TILLEY : Q. Now then, just let us clear up about other notes. First, you say there was a note that was destroyed? A. Yes.

Q. Now, tell us what note that was, and what you mean by saying it was in that condition? A. It was a note from one Louis Streamer, at present somewhere in the States, given in 1922, I think, on which, according to the ledger, I think all but about \$75 had been paid. There was certain correspondence among the papers showing that there was no chance of collecting the balance, which was outlawed. It had all been paid years ago.

40 Q. That is, the payments that had been made were made years ago? A. Yes.

Q. So that the balance was outlawed according to law? A. Yes.

Q. And there was correspondence? A. There was correspondence, and the Plaintiff claims that that was found among the papers that I destroyed.

Q. The Plaintiff? A. He was informed by someone that it was among the papers I destroyed.

*In the  
Supreme Court  
of Ontario*

Defendants'  
Evidence.  
No. 4.

Kenneth de Sola  
Joseph,  
Re-examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*

—  
Defendants'  
Evidence.

No. 4.  
Kenneth de Sola  
Joseph,  
Re-examination,  
25th June, 1931.

—continued

Q. Do you know about it? A. I know there was such a note; I don't recollect destroying it, but apparently I must have.

Q. How much was the balance owing on it? A. \$75.

Q. Then you have referred to two other notes? A. Yes; a note from Dr. J. A. Tuck for \$300.

Q. Dr. Tuck was his medical doctor? A. Was his medical doctor. He had a bill before his death, I mean for services up to the time of his death, of \$800.

Q. So that he owed the doctor more than the doctor owed him; is that what you mean? A. Yes. 10

Q. And then the other one? A. The third note was a note from Mrs. Stafford, with whom he lived, his landlady, and he—it was a friendly loan that he had made, and, knowing his way and everything, and thinking the note belonged to me, I returned it to Mrs. Stafford.

HIS LORDSHIP: Q. What was the amount of it? A. \$188.

MR. TILLEY: Q. Believing that it was yours, you gave it to her? A. Believing it was mine and my wife's, we returned it to her.

Q. Now, was that note—were these notes that you have referred to—

HIS LORDSHIP: Before you get to that, I want to clean up the Dr. Tuck note. 20

Q. Is that deducted from his bill, or what? A. It was applied on account of his bill.

Q. So that in that sense you collected it?

MR. TILLEY: Q. You got credit for that when you paid the doctor? A. Credit for that when I paid him.

MR. MCCARTHY: The estate got credit.

MR. TILLEY: Q. The estate got credit? A. The estate got credit.

Q. And it was a note for \$300? A. A note for \$300, and his bill was eight hundred and something.

Q. Did you find the note of the landlady in the ledger? A. I think so; 30 it was in the drawer; I think it was in the ledger.

Q. Is it entered in the ledger, I mean? Is there any entry for it? A. May I look at it?

Q. Yes, yes. A. I wouldn't be positive. I don't think it was. No, there was no account.

Q. No account of that? A. No.

Q. Were the other notes entered up in the book? A. Yes.

Q. Now, there is some evidence that has already been put in from your examination as to the other contents of the chiffonier—

HIS LORDSHIP: This is all irregular, Mr. Tilley. Mr. Carson examined 40 in chief, and now you are supposed to be examining in reply, but most of it is in chief. I will let Mr. McCarthy cross-examine upon it. I think most of what you are examining on ought to have been brought out by Mr. Carson.

MR. TILLEY: I have been asking about the notes that my friend asked him about.

HIS LORDSHIP: But some of the other matter—

MR. TILLEY: I don't know of anything that—

HIS LORDSHIP: All right; go on. I am not stopping you.

MR. TILLEY: And I think under the practice I am entitled to examine at any time I desire to take it up.

HIS LORDSHIP: Oh, I am not objecting to that; it doesn't matter—one counsel I suppose can continue after another.

MR. TILLEY: Well, I think that is my right.

HIS LORDSHIP: I am not objecting to that part of it.

MR. TILLEY: Q. You were asked about the contents of the chiffonier and the—

10 MR. MCCARTHY: I didn't ask a word about it.

MR. TILLEY: On examination—I premise this by reference to the examination. I am just asking the witness whether the examination fairly discloses what the other contents of the chiffonier and the desk were, or whether there was anything you found in them that was left out when you gave your evidence on the examination? A. No, nothing essential.

Q. It is fairly described in your examination? A. Yes.

Q. Then you were asked about the deposit box, and you referred to the taking of the box at a certain date, but some arrangement that you knew nothing about had resulted in some papers being there already? A. Yes.

20 Q. At the bank? A. Yes.

Q. Did you know anything about the Dominion Bank box? A. This was the Dominion Bank.

Q. This was the Dominion Bank. Then had you anything to do with any other box there? A. No.

Q. Just that one that you had anything to do with? A. That I had access to.

Q. That you had access to? A. Yes.

Q. Had he another box there? A. He had one with the Toronto General Trusts.

30 Q. At the Toronto General Trusts he had another one, and you had no access to that at all? A. No.

Q. Until after his death? A. Until after probate, yes.

Q. Did he continue that box down to his death? A. Yes.

Q. In the Toronto General Trusts? A. Yes.

Q. Then you were asked about the diamond pin; when did you take that out of the drawer?

MR. MCCARTHY: I didn't ask him about it.

MR. TILLEY: Well, I have a note that you did.

WITNESS: I think I mentioned that I took it out.

40 MR. MCCARTHY: He mentioned it in his examination in chief.

MR. TILLEY: I just wanted to be sure.

Q. Was it taken out at the same time as the other things? A. Yes.

Q. Had he more than one diamond bar pin? A. He had other diamonds.

This was a diamond stick pin that I took out.

Q. But the will contains an express reference to a diamond pin—clause 3:

“I bequeath my jewels, including my diamond bar pin and extra  
“stone in safety deposit vault.”

*In the  
Supreme Court  
of Ontario*

—  
Defendants'  
Evidence.

No. 4.  
Kenneth de Sola  
Joseph,  
Re-examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 4.  
Kenneth de Sola  
Joseph,  
Re-examination,  
25th June, 1931.

Now, was there a diamond bar pin in the safety deposit box? A. I took it to mean the diamond pin that he wore the rest of the time. I can't recollect any diamond bar pin. There was a diamond ear ring and a loose stone.

Q. I just want to get it straightened out as to what was in the drawer. Was it a diamond bar pin? A. No.

Q. What was it? A. A diamond stick pin.

Q. A diamond stick pin? A. Yes.

Q. Was he accustomed to wearing it? A. Over the week-end generally.

—continued He didn't take it on the road with him as a rule; sometimes he would.

Q. Sometimes he was wearing it? A. Yes.

HIS LORDSHIP: Q. Was there in fact found after his death a diamond bar pin and stone in the safety deposit box in the Toronto General Trusts Corporation? A. The extra stone was found; no, not a diamond bar pin.

Q. Was there found among his effects anywhere a diamond bar pin as distinct from this stick pin, as you call it, if there is any distinction? A. No.

MR. TILLEY: Q. Then would it be right to say that there was only one pin, one diamond pin? A. Yes.

Q. And that was the one that was in this drawer when you found it? A. Yes.

Q. That is all, thank you.

HIS LORDSHIP: Are there any questions you want to ask, Mr. McCarthy?

MR. MCCARTHY: No, thank you, my Lord.

Defendants'  
Evidence.  
No. 5.  
Alfonso R.  
Kellar,  
Examination,  
25th June, 1931.

ALFONSO ROSS KELLER, Sworn. EXAMINED by MR. CARSON:

Q. Mr. Keller, you are with the Bank of Montreal, I believe? A. Yes, sir.

Q. What is your position? A. Manager of the Savings Department.

Q. At what branch? A. Main Office.

Q. Main Office? A. At the corner of Yonge and Front Streets.

Q. Did Mr. Abraham Lyons have an account in your office? A. He did.

Q. Have you got the account there? A. I have, sir.

Q. You produce his account, which appears to commence September 12, 1913, and runs through to what date? A. That runs through to the date of—

Q. There is a card system goes with it? A. Yes. September 2, 1930.

Q. Is this statement I show you now a summary of the balances in that account, at intervals of six months? A. It is.

MR. CARSON: The account I suppose we don't need, my Lord, if we show the balances.

HIS LORDSHIP: You don't want the account, do you, Mr. McCarthy?

MR. MCCARTHY: I don't know, my Lord. I haven't seen it.

HIS LORDSHIP: Well, better look at it and see. If there is any question about it, it may as well go in; perfectly safe here—the bank doesn't need to worry about it.

MR. CARSON: The statement of balances will be Exhibit 9.

HIS LORDSHIP: Why not put it all in together? The whole thing will form one exhibit.

EXHIBIT 9. Account of deceased with Bank of Montreal, Main Office, and statement of balances.

MR. CARSON: Then, my Lord, there is another account in the Bank of Montreal at St. George and Bloor, and, with Mr. McCarthy's permission, I will put in the statement showing the position of that account.

MR. MCCARTHY: You haven't got the books, have you?

MR. CARSON: Not of that. It is a very small account—only a few hundred dollars.

MR. MCCARTHY: I meant the pass books.

10 MR. CARSON: We haven't been able to locate the pass books since they were surrendered to the bank.

HIS LORDSHIP: What branch is that?

MR. CARSON: St. George and Bloor, my Lord.

EXHIBIT 10. Statement of account of deceased with Bank of Montreal, St. George and Bloor Sts. Branch.

HIS LORDSHIP: Q. That used to be the Spadina Avenue Branch, did it not? A. I am not familiar with the—

Q. At that time it must have been at Spadina Avenue. How long ago is that?

20 MR. CARSON: This letter is written May 7, 1931.

HIS LORDSHIP: But that branch has only been there since the Medical Arts Building was built. It was over at the top of Spadina Avenue before it was shifted over. How far back does that account go?

MR. CARSON: This statement goes back to May 23, 1921—October 25, 1919.

HIS LORDSHIP: There was no St. George and Bloor branch in those days at all. The old Sweeney house was on that corner then.

MR. TILLEY: I suppose it is the same branch.

30 HIS LORDSHIP: The same branch, yes. That is its present name, that is all.

MR. CARSON: That is all, thank you.

HIS LORDSHIP: Q. What has happened to the bank books themselves?  
A. The bank books are destroyed, sir.

CROSS-EXAMINED by MR. MCCARTHY:

Q. That is, the pass books? A. The pass books are destroyed, yes.

Q. When were they destroyed? A. They were destroyed when surrendered.

40 Q. Now, do the bank books, that is, the pass books, which are in use today, do they contain the same endorsement in the inside as the books that were destroyed? A. The same regulation, you mean, sir?

Q. Yes. A. Identical.

Q. Identical? A. Yes.

MR. MCCARTHY: Perhaps, my Lord, if we could have those—

HIS LORDSHIP: Doesn't the agreement cover that?

MR. MCCARTHY: I didn't know whether they were the same or not.

*In the  
Supreme Court  
of Ontario*

—  
Defendants'  
Evidence.

No. 5.  
Alfonso R.  
Kellar,  
Examination,  
25th June, 1931.

—continued

Defendants'  
Evidence.  
No. 5.  
Alfonso R.  
Kellar, Cross-  
Examination,  
25th June, 1931.

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 5.  
Alfonso R.  
Kellar, Cross-  
Examination,  
25th June, 1931.

—continued

Q. Are they the same? Would you mind looking? A. I have a specimen of a new pass book here.

HIS LORDSHIP: Put it in. It will simply be duplicating the evidence, but—

MR. MCCARTHY: Q. I was not quite sure whether these were the same. May I see those? A. One is the new and the other is the old.

Q. One is the one that was in use at the time? A. That cover is torn from a pass book which has been in use about fifteen years.

Q. And the one I have in my left hand—? A. Is an up-to-date one.

MR. MCCARTHY: May we put those in together, my Lord?

10

HIS LORDSHIP: All right.

MR. MCCARTHY: That is all I want to ask the witness.

HIS LORDSHIP: The old book is 11-A and the other one 11-B.

EXHIBIT 11. (a) Old form of Bank of Montreal pass book. (b) New form of Bank of Montreal pass book.

Defendants'  
Evidence.  
No. 5.  
Alfonso R.  
Kellar,  
Re-examination,  
25th June, 1931.

RE-EXAMINED by MR. CARSON:

Q. Is it your custom to destroy these books as they are— A. Yes, sir.

Q. Mr. Keller, do you know anything about these regulations that are in the front of these pass books, except that they are printed there? A. Nothing except what I have been taught in my experience in banking. We usually follow the practice of the regulation, although we don't adhere to it—

Q. I beg your pardon? A. I say we usually follow the practice that is set forth in the regulations, although we don't positively adhere to it, inasmuch that a pass book must always be brought in making a deposit.

HIS LORDSHIP: Q. Doesn't the rule require the production of a pass book when you are cashing a cheque? A. Yes, but they don't adhere to that.

Q. But we all know in practice that very few of them do. Some of our wives couldn't carry on our housekeeping accounts if the banks did that.

MR. CARSON: That is all.

Defendants'  
Evidence.  
No. 6.  
Francis R.  
Cochran,  
Examination,  
25th June, 1931.

FRANCIS ROBERT COCHRAN, Sworn. EXAMINED by MR. CARSON: 30

Q. Mr. Cochran, you are with the Dominion Bank? A. Dominion Bank, Bloor and Bathurst.

Q. And your position is what? A. Manager.

Q. And did Mr. Abraham Lyons have an account with your branch? A. Yes, sir.

Q. Have you got the account here? A. These are the originals. You have a certified copy, I think.

Q. We have a certified copy, and I think you said you would like to keep— A. I would like to keep the originals, yes.

MR. CARSON: Certified by Mr. Cochran; that will be Exhibit 12.

40

HIS LORDSHIP: Q. Certified copy of the whole account is there, is it? A. No, sir; from October, 1927, I think.

MR. CARSON: From June 30, 1927, my Lord, to August 19, 1930.

Q. And in addition there is a statement of the balances from December 31, 1914, to December 31, 1926? A. Yes. You see, those are continued on here. That is from the opening of the account.

MR. CARSON: And then the details are given from December, 1926, on.

EXHIBIT 12. Account of deceased with Dominion Bank, Bloor and Bathurst Sts. Branch, and statement of balances.

MR. CARSON: That is all, Mr. Cochran.

*In the  
Supreme Court  
of Ontario.*

Defendants'  
Evidence.  
No. 6.

Francis R.  
Cochran,  
Examination,  
25th June, 1931.

—continued

CROSS-EXAMINED by MR. McCARTHY:

Q. Mr. Cochran, I see on the second sheet of the original exhibit a note  
10 here, dated June 10: "Lyons ill. Pay no cheques without reference to his  
nephew, K. D. Joseph, Elgin 2431," or some other number—3029? A. Yes.  
June 10, 1930?

Q. Yes. A. Yes, that was when Mr. Joseph informed me that Mr. Lyons was ill, a couple of days before.

Q. And you made that? A. I made that notation to be sure that there was no funny work, so to speak.

Q. Interest, I see, was calculated up to the 30th of June, 1930, and the account was closed—is that August, Mr. Cochran? A. August 19. That is the amount of the principal, and the interest is \$6.75.

Q. And you are putting in a certified copy, are you? A. Yes.

Q. It contains all these notes, does it? A. Yes.

MR. TILLEY: Got the notation on it?

MR. McCARTHY: Q. Has it the notation that you just referred to, Mr. Cochran? A. On the bottom? Oh, perhaps it hasn't.

MR. TILLEY: Put it on there.

WITNESS: I had better add that to it.

MR. McCARTHY: Q. You had better add that to it; will you? A. Yes, I will add that.

Q. That is all I want to ask.

Defendants'  
Evidence.  
No. 6.

Francis R.  
Cochran, Cross-  
Examination,  
25th June, 1931.

30 OSCAR KING, Sworn. EXAMINED by MR. CARSON:

Q. Mr. King, you are a solicitor practising in the City of Toronto?

A. I am.

Q. Your firm name is King & King? A. Yes.

Q. How long have you been practising? A. Since 1911.

Q. Since 1911? A. Approximately. I think that is correct.

HIS LORDSHIP: How many years?

MR. CARSON: Since 1911.

Q. You knew the deceased, Mr. Abraham Lyons? A. Very well.

Q. How long had you known him? A. Practically since childhood. I  
40 have known him since childhood. I have known his relatives, and he has  
known my family.

Q. How long have you been acting for him in a professional capacity?

A. Well, I have been acting for his firm since practically the time I graduated.

Defendants'  
Evidence.  
No. 7.

Oscar King,  
Examination,  
25th June, 1931.

*In the  
Supreme Court  
of Ontario*  
—  
*Defendants'  
Evidence.*  
No. 7.  
*Oscar King,  
Examination,  
25th June, 1931.*

—continued

Q. That is, Lyons & Marks? A. He was very kindly disposed towards me, and I think I used to—I had his business.

Q. What was the nature of your relationship with him as to business matters? A. Well, he was never a chum of mine; I mean to say, as a personal companion.

Q. Did you see him frequently or infrequently? A. I saw him fairly frequently.

Q. About matters of business? A. Yes.

Q. Did you draw the 1928 will that is produced here? A. I did.

Q. Was that the first will of the deceased that you had to do with? A. 10  
That is the first will that I drew for him, although I knew that my partner had drawn several wills before that.

Q. Several wills? A. Yes.

Q. And have you got those wills? A. My partner, Mr. Samuel King.

Q. Have you got those wills here? A. You have them. I have them in my possession.

MR. MCCARTHY: Are former wills evidence, my Lord?

HIS LORDSHIP: I don't think they are, myself. I would like that discussed if there is any question about it.

MR. TILLEY: If my friend is not going to contend that there is an 20  
ambiguity in the will—

HIS LORDSHIP: If there is a latent ambiguity, of course, it could always be explained.

MR. TILLEY: I don't know what my friend's contention is going to be in that regard, but our contention is going to be that the will is not ambiguous, but if my friend suggests that there is any ambiguity in it, then we ought to have all the light we can on the document.

HIS LORDSHIP: It is not really so much a question of ambiguity as a question of definition; what, as a matter of fact, were the contents of the articles of furniture, desk and chiffonier, on some date? For the moment I 30  
will not say whether it was the date of the will or the date of the death—according to the proper construction. For that purpose, of course, evidence must be given to identify the objects—identify the subject matter of the will. Only yesterday I gave a judgment, recorded in this morning's paper, in which I allowed the original will to be looked at, because there had been a deletion, in order to explain something which was in the will, and which the deletion did explain. The will as drafted showed exactly what was meant, and the deletion helped to solve that problem.

MR. TILLEY: As I understand it, evidence is always admissible to identify the property, the subject matter of the will. Now, my submission is that 40  
whatever light we can get by former wills as to the thing devised or bequeathed ought to be accepted.

HIS LORDSHIP: What do you say, Mr. McCarthy?

MR. MCCARTHY: My contention, of course, is that whatever is devised by the "roll top desk complete with all its contents" is the only point that I have got to discuss. What is meant by those words? In other words, whether a chose in action passes under that description or whether it does not. What



was in the desk at the time of the will and the time of the death, I think has been made fairly clear by Mr. Joseph.

HIS LORDSHIP : That is a simple problem.

MR. McCARTHY : That is the only problem I intend to discuss.

HIS LORDSHIP : In a case of this sort, where there is no jury, one feels disinclined to exclude evidence which possibly might be relevant, because otherwise, if I am wrong, there would have to be a new trial. I do not think that the contents of an earlier will, as to the objects of a testator's bounty, any change that the new will effects in that regard, can possibly be evidence  
10 to interpret these words, because that is all it means.

MR. McCARTHY : That is all. That is my submission, my Lord.

HIS LORDSHIP : Would any real harm be done by allowing them in? I can exclude them from my consideration if I think they are not relevant. I feel rather inclined to let them in subject to your objection.

MR. McCARTHY : Very good, my Lord.

HIS LORDSHIP : I think I will do that.

MR. McCARTHY : As long as it is quite understood that it is subject to my objection.

HIS LORDSHIP : Oh, I am able to eliminate them from my consideration  
20 if I do not think they are relevant. Is there any way of identifying those?

MR. CARSON : Yes, my Lord. I was going to put them in in order of date.

HIS LORDSHIP : Can Mr. King identify them?

MR. TILLEY : Mr. Samuel King is here, if it is necessary to call him—all one office.

WITNESS : All in the office.

HIS LORDSHIP : Q. You can identify them as being found in your office?

A. Absolutely.

Q. And you know Mr. Lyons' signature? A. I know his signature.

HIS LORDSHIP : Well, I think that will be enough.

30 MR. McCARTHY : How will these be marked?

HIS LORDSHIP : Well, better put them in in succession according to their dates.

MR. McCARTHY : Will they be exhibits in the regular order?

HIS LORDSHIP : I think so. I am admitting them as pieces of paper on which certain writings are found, that is all.

MR. CARSON : The first one is dated the 5th of December, 1902.

Q. Do you identify that, Mr. King? A. Yes.

EXHIBIT 13. Will of December 5, 1902.

HIS LORDSHIP : He can speak comprehensively as to them all.

40 MR. CARSON : Q. The second one is a copy dated the 25th of December, 1908; it has the endorsement : "Original will forwarded Abe Lyons, February 5, 1913"? A. Yes.

MR. McCARTHY : Does he know whether he signed that?

WITNESS : That was in his file. I can't say as to the signature or writing on the back.

MR. McCARTHY : This is not even signed.

MR. CARSON : I don't care about that, Mr. McCarthy.

*In the  
Supreme Court  
of Ontario*

—  
Defendants'  
Evidence.

No. 7.  
Oscar King,  
Examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 7.  
Oscar King,  
Examination,  
25th June, 1931.

—continued

HIS LORDSHIP : Better strike that out.

MR. TILLEY : We will call Mr. Samuel King, if necessary.

HIS LORDSHIP : Put it in as being found in the office. That will be Exhibit 14.

EXHIBIT 14. Copy of will of December 25, 1908.

MR. CARSON : Q. The next one is the signature Abe Lyons, 13th of July, 1918? A. I am a witness to that will myself.

EXHIBIT 15. Will of July 13, 1918.

Q. The next one is 14th of September, 1921? A. Yes.

EXHIBIT 16. Will of September 14, 1921. 10

Q. The next is 19th August, 1922.

EXHIBIT 17. Will of August 19, 1922.

Q. The next is 18th July, 1925.

EXHIBIT 18. Will of July 18, 1925.

WITNESS : That will is—the others were all drawn by Mr. Samuel King, my partner. The last will did not come from our office, my Lord.

MR. CARSON : Well, I am going to ask you to describe that.

MR. MCCARTHY : Of course, I have never seen these. They were not produced on discovery or—

MR. CARSON : The last three wills were produced. It is just to complete 20 all the wills that we have here. I don't think anything turns on the others, the ones prior to 1921.

Q. Under what circumstances did you come to draw this last will? First, how did you get the 1925 will, Mr. King? A. May I see the 1925 will?

Q. Yes. (Hands Exhibit 18 to the witness.) A. Is that the one drawn by Mr. Phillips? If I may give my evidence from the beginning—

Q. Yes? A. What may be described out of a blue sky, in June, 1928, I received this letter—

MR. MCCARTHY : Well, is that evidence?

HIS LORDSHIP : I don't think that is evidence. You received a letter. 30

WITNESS : From Mr. Abe Lyons. It leads up to how I got possession of the will, my Lord, that is all.

MR. TILLEY : Q. In consequence of getting a letter you did something; what was it?

MR. CARSON : Q. What did you do as a result of getting the letter? A. I proceeded to Mr. Nathan Phillips' office and handed him an authority.

Q. And handed him which? A. An authority, which was included in the letter, directing him to hand over to me all the deceased's papers, bonds, and his will.

Q. And did you get those from Mr. Phillips? A. I went to Mr. Phillips' 40 office, handed him the authority, and he promptly handed over a large bundle of papers, which I took back to my office.

Q. A large bundle of papers. Will you tell us what you received from him? A. I was just going to tell you. I took them back to my own office and listed them. The list of the papers which I received—

MR. MCCARTHY : Does your Lordship think this is evidence?

WITNESS : The will was one of the papers.

HIS LORDSHIP : The will was among the papers.

WITNESS : The will and bonds——

MR. CARSON : Q. Is that the list that you made? A. That is the list.

HIS LORDSHIP : There is a list there. It may throw some light on what went into the safety deposit box.

WITNESS : These are the documents that did go into the safety deposit box. I took these papers, and, in view of the nature of their contents, after listing them I took them over to the Dominion Bank and asked the gentleman in charge of the safety deposit box if he would permit me to leave these papers——

10 HIS LORDSHIP : Q. The Dominion Bank—which one? A. The one at the corner of Yonge and King Street.

Q. That is the main office? A. The main office. Asked him if he would permit me to leave these, to let me have a box until the end of the week, when Mr. Lyons, I expected, would return. and I left these papers in the safety deposit box.

MR. CARSON : Q. And are the papers and documents and securities correctly set out in the list that has been produced? A. Yes.

HIS LORDSHIP : I think that list might go in.

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

20 HIS LORDSHIP : For what it is worth. We are dealing with the time just about the making of the will, so that it may be of importance. It will be subject to your objection.

EXHIBIT 19. List of documents, etc., made up by Mr. O. King.

MR. CARSON : Q. Then you say you arranged for the box, and then when did you see Mr. Lyons? A. I first heard from Mr. Lyons on Friday, June 15.

MR. MCCARTHY : Q. What year was this? A. 1928.

MR. CARSON : Q. And what took place? A. About five o'clock in the afternoon——

30 HIS LORDSHIP : Q. You first heard from him—you mean after his return? A. The letter I received from him apparently came from Stratford, where he was on the road, travelling for his firm.

MR. CARSON : Q. You were going on to describe what—— A. And he telephoned me on Friday about five o'clock in the afternoon, stating that he had just arrived in town and that the reason he asked me to obtain the papers from Mr. Phillips——

MR. MCCARTHY : Now, that is surely not evidence.

HIS LORDSHIP : I don't think what his reasons were is material.

WITNESS : I am sorry. I was reading from a memorandum I made.

40 HIS LORDSHIP : Well, his reasons don't matter.

MR. CARSON : Q. Is there anything that comes from that memorandum that is appropriate to what we are considering? A. No.

HIS LORDSHIP : Q. In consequence of this telephone message, what happened? A. He came into my office on the following morning, on Saturday, the 16th. I took him over——

MR. MCCARTHY : Q. I thought you said he came in on Friday, June 15? A. No, he telephoned.

*In the  
Supreme Court  
of Ontario*

—  
Defendants'  
Evidence.

No. 7.  
Oscar King,  
Examination,  
25th June, 1931.

—continued

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 7.  
Oscar King,  
Examination,  
25th June, 1931.

—continued

Q. Oh, he telephoned? A. He telephoned. He came into the office as the result of a conversation on Saturday morning, June 16th. I took him over to the vault. I wished him to——

HIS LORDSHIP: Q. That is the Dominion Bank? A. That is the Dominion Bank. I wished him to check over the documents, which he would not do, but he took the will and we brought it over to my office—that is, the will Exhibit 18.

MR. CARSON: Q. Then what took place? A. I read the will over first in full, because it was the first time I had seen it; although it had been among the papers I had not read it. May I say what he stated? 10

HIS LORDSHIP: I don't think you can.

MR. CARSON: There are some pencil or ink amendments on there; I was going to ask him to describe how they come to be on there.

HIS LORDSHIP: Well, they are on this document.

MR. CARSON: Q. I think there is some writing on that document. Whose handwriting do you find those amendments in? A. He wanted certain deletions in the will made, and we spoke about the will for some time. There were certain aspects of it that I wished to discuss with him, and then I said—after we had discussed the matter at some length, I said: "Abe, you better——"

MR. MCCARTHY: Is that—— 20

HIS LORDSHIP: I don't think that is evidence.

WITNESS: As a result of our discussion he changed the will, as appears here. The changes in this will are in his handwriting, except on the third line of paragraph 17, where I changed——

HIS LORDSHIP: Q. Now you are speaking of the pencil memoranda or whatever they are on Exhibit 18? A. Yes, my Lord.

MR. CARSON: Q. Then are there any differences in the 1928 will and that will as amended by—— A. Yes, sir.

Q. What are the changes? A. Mr. Kenneth Joseph was made residuary legatee, together with his wife, share and share alike. At that time I did not know Mr. Joseph—— 30

Q. That is an instruction you got apart from what appears on the document Exhibit 18? A. Yes. There was also a section added about any person being left out of the will who objected to its contents. Well, he wanted that in, but I——

Q. You did not know Mr. Joseph, you say, at this time? A. To be candid with you, I had seen him once. I called on Mr. Lyons once——

MR. TILLEY: Q. Well, you had seen him once? A. Just seen him once, that is all. I didn't know him.

MR. CARSON: Q. At some time later Mr. Lyons brought him in and introduced him? A. After the will was drawn. I had spoken to Mr. Lyons a number of times, wanting to know who this man Kenneth Joseph was, in whom he placed so much confidence, and in the spring, I think, of 1930, on a Saturday morning, he brought Mr. Joseph in, introduced him to me, and said, "This is the young man who is to look after things if anything happens to me." I remember it distinctly, because that was the first time I had met Mr. Joseph. 40

MR. TILLEY: That is all.

CROSS-EXAMINED by MR. McCARTHY :

Q. I notice that the draft, that is, the will of July 1925, which you say was altered by some lines in his handwriting, is not the same as the one that you drew? A. I say that, yes, sir.

Q. Is not the same? A. Yes, I mentioned that.

Q. You changed it, did you? A. It was changed after. When I came to dictating the will I had his whole idea then as to what he wanted—

Q. I thought that was all done on the same day? A. It was, yes, sir.

Q. This pencil memorandum was done on the same day? A. Yes, sir.

10 Q. And this reads, "I give unto my niece, Pauline Joseph, wife of Kenneth Joseph"? A. Quite true.

Q. But then when you came to dictate it you gave it to Pauline Joseph and her husband, Kenneth Joseph? A. At his instructions, quite true.

Q. And the list which you put in contains a complete list of everything you got, does it? A. Yes, sir.

Q. You checked it over yourself? A. It was checked over. It was dictated and—I am prepared to swear it is a complete list.

Q. Nothing was omitted of any kind? A. No.

20 Q. And you checked it yourself? A. I think I checked it myself, Mr. McCarthy, but I know it was dictated from the actual documents as I had them on the desk.

Q. And no document was omitted that you got from Mr. Phillips?  
A. No.

Q. That is all.

SAMUEL KING, Sworn. EXAMINED by MR. CARSON :

Q. Mr. King, you are the partner of Mr. Oscar King, the last witness?  
A. I am.

30 Q. He produced certain wills from your office; would you have a look at them and see if you can identify them? A. I have looked over them, and if these are the ones of the dates mentioned, those are wills that were drawn in our office.

Q. One of the documents is a copy; is that a copy of the will that you drew for Mr. Lyons at that time? A. Yes.

Q. And that was executed by him? A. That was executed by him.

Q. That is all, Mr. King.

(Witness retires.)

MR. TILLEY : That is the case, my Lord.

HIS LORDSHIP : Any reply?

40 MR. McCARTHY : I am embarrassed, because of these other wills that have been put in. If your Lordship pays any attention to them I may have to—

HIS LORDSHIP : Have you looked at them yourself?

MR. McCARTHY : No, I have never seen them till just this moment. The first three do not appear to me to have any bearing on it at all.

HIS LORDSHIP : Is there anything in any of the other wills which at all resembles this particular clause in the will now in question which is giving rise to this action?

*In the  
Supreme Court  
of Ontario*  
—  
Defendants'  
Evidence.  
No. 7.  
Oscar King,  
Cross-  
Examination,  
25th June, 1931.

Defendants'  
Evidence.  
No. 8.  
Samuel King,  
Examination,  
25th June, 1931.

No. 9.  
Discussion,  
25th June, 1931.

*In the  
Supreme Court  
of Ontario*

No. 9.  
Discussion,  
25th June, 1931.

—continued

MR. MCCARTHY: Yes, my Lord. A similar clause first appears, I think it is in the will of 1921.

HIS LORDSHIP: Well, I am just in the same position with regard to them as I am in regard to this.

MR. MCCARTHY: The will of 1921 says:

“I give the balance of my personal effects, including roll top desk  
“and chiffonier and their contents to my sister, Esther Fogler.”

Then in the will of August, 1922—

HIS LORDSHIP: Where does that appear? Before any residuary gift?

MR. TILLEY: In the same location. 10

MR. MCCARTHY: Yes, my Lord, it appears in the same location.

MR. TILLEY: Geographically the same.

MR. MCCARTHY: He first revokes his other wills, then directs his funeral expenses to be paid; then:

“I give my diamonds to my niece, Gladys Fogler, and my gold watch  
“and chain to my nephew, Sigmund Lyons.

“I give the balance of my personal effects, including roll top desk  
“and chiffonier and their contents to my sister, Esther Fogler.”

Then in the will of August, 1922, appearing geographically in the same place, he gives— 20

“3. To give my jewels, including my diamond bar and pin and extra  
“stone in safety deposit vault at Toronto General Trusts Co. to my niece,  
“Mrs. Leah Singer, wife of Israel Singer.

“4. To give my other personal effects in my room, including my  
“desk and chiffonier and their contents to Mrs. Mae McLachlan, of the  
“City of Toronto, if my place of residence at the time of my death should  
“be in her home.”

Then in the will of 1925 he bequeaths his jewels, “including my diamond bar pin and extra stone in safety deposit vault” to his niece, Leah Singer.

Then: 30

“I bequeath my personal effects in my room, including pictures,  
“roll top desk and chiffonier, complete with their contents, to my niece,  
“Esther Phillips, wife of Nathan Phillips.”

And that one is repeated in the last will.

HIS LORDSHIP: Have they any bearing upon this case beyond this, that it seems to me this may be important, and I want to consider it. I don't know how any evidence can be introduced to help the matter; if admissible at all—and as to that I have some doubt—they might serve to show that, having regard to the people to whom the things were given, to the fact that the contents at one time might have been quite different from what they would be at another time, that the range of things given was extremely limited —but an aspect of this which I presume will be discussed is, all that is really given are the personal effects. The words which are added, including pictures and so on, and their contents, may not extend the meaning of that at all. The gift of all the personal effects in my room, I presume, hardly includes a chose in action. I mean, that is just my opinion, looking at the thing offhand. 40

MR. McCARTHY : I think those words alone without the others would not include a chose in action.

HIS LORDSHIP : Goods and chattels, and not incorporeal things like debts, mortgages and things like that. That is a matter of argument. I can't see that those other wills really illuminate the situation very much, but, looking at them there, it is hard to believe, for example, that he would have given thousands of dollars' worth of securities to his boarding-house keeper.

MR. TILLEY : No, if he happened to be living there at the time of his death; but if my friend has any evidence that he wants to put in, should he  
10 put it in ?

HIS LORDSHIP : I think if there is any evidence he should put it in, but I suggest that you have been taken by surprise by the introduction of these wills. Three of them, I understand, were mentioned in the affidavit on production.

MR. McCARTHY : Yes, the last three.

MR. TILLEY : The only three that are material. The other three do not—

HIS LORDSHIP : Well, do you want any time to consider that ?

MR. McCARTHY : No, no, I—

HIS LORDSHIP : I can't direct how you shall shape your case. If you  
20 want to give any evidence, do so.

MR. McCARTHY : Well, the only evidence that I would give would be—I don't know that it affects those wills particularly, either. Of course, one will was drawn by Mr. Phillips and was subsequently handed over to Mr. King on Mr. Lyons' instructions, together with certain securities.

HIS LORDSHIP : Isn't it all a matter of argument? First, whether they are admissible, as to which I have some doubt—

MR. McCARTHY : Yes.

HIS LORDSHIP : I mean, admissible as in any sense determining the meaning of the words. And, secondly, if admissible, how is one to interpret  
30 them? I mean, what bearing have they upon this?

MR. McCARTHY : The only possible bearing is the one your Lordship suggests. We don't know what was in the roll top desk at the time of the gift to Mrs. McLachlan, for instance, nor do we know what was in it at the time—

HIS LORDSHIP : I don't want to anticipate, Mr. McCarthy. You have to make up your mind as to whether you will call any evidence or not.

MR. McCARTHY : Oh, quite so, my Lord. The only thing I want is, not knowing what the situation was at those particular times, I want an opportunity of talking to Mr. Phillips about it.

HIS LORDSHIP : That is all right—before deciding whether you will  
40 call evidence or not.

MR. McCARTHY : Yes.

HIS LORDSHIP : Could you do that in a few minutes ?

MR. McCARTHY : Oh, yes, my Lord; I think so.

HIS LORDSHIP : That is all right, then. I want to say this : it so happens that we are having a conference at two o'clock which might last for about half an hour, so that when we adjourn we will adjourn till 2.30. I will sit till half-past one if we could finish the case by that time rather than have to come back.

*In the  
Supreme Court  
of Ontario*  
—  
No. 9.  
Discussion,  
25th June, 1931.  
—continued

MR. McCARTHY: (After speaking to Mr. Phillips) I do not think, my Lord, there is anything that I can add with evidence.

HIS LORDSHIP: I rather felt that that must be so. Then there is no reply?

MR. McCARTHY: No, my Lord.

HIS LORDSHIP: Then argument. I will hear you first, Mr. McCarthy.

(Argument Commenced)

(Adjourned at 12.55 p.m. until 2.30 p.m.)

10

(On resuming at 2.30 p.m.):

(Argument Concluded)

JUDGMENT RESERVED

Certified,

R. N. DICKSON, C.S.R.,

*Official Reporter, S.C.O.*

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No. 10

20

**Reasons for Judgment of Orde, J. A.**

No. 10.  
Reasons for  
Judgment of  
Orde, J. A.,  
18th September,  
1931.

D. L. McCARTHY, K.C., *for the Plaintiff.*

W. N. TILLEY, K.C., and C. F. H. CARSON, *for the Defendants.*

(Action tried before Mr. Justice Orde, without a Jury, at Toronto, 25th June, 1931.)

ORDE, J. A. The Plaintiff is a niece of the late Abe Lyons, a merchant, who died domiciled in Toronto on the 26th July, 1930, leaving a will bearing date the 16th June, 1928. The Defendant, Pauline Joseph, is also a niece of Lyons, and the Defendant, Kenneth de Sola Joseph, is her husband. The Defendants are the duly appointed executors.

30

By the will, Lyons, after revoking all former wills and directing payment of his debts and personal and testamentary expenses, bequeathed his gold watch and chain to a nephew and his jewels, including his "diamond bar pin and extra stone in safety deposit vault at Toronto General Trusts Corporation" to a niece. Then follows the specific legacy to the Plaintiff which gives rise to this action, namely —

"4. I bequeath my personal effects in my room, including pictures, roll top desk and chiffonier complete with their contents, to my niece, Esther Phillips, wife of Nathan Phillips."

Then follows a direction for the disposal of his interest in the business, which he had carried on in partnership with a nephew, and a number of pecuniary legacies to various relatives, among them one of \$15,000 to the Defendant,

40



Pauline Joseph, one of \$5,000 to the Plaintiff, and \$500 to each of the children of the Plaintiff and of Pauline Joseph living at his death, and also a legacy to his landlady. After providing for the erection of a stone over his grave, he gives the residue of his estate to his niece, Pauline Joseph, and her husband, Kenneth Joseph (the two Defendants), in equal shares, and appoints them the Executors and Trustees of his will.

The statement of claim alleges that the roll top desk bequeathed to the Plaintiff by the 4th paragraph of the will "was the usual repository for the savings bank receipt books, constituting receipts for moneys deposited by the said Abe Lyons with the Bank of Montreal and the Dominion Bank, and also the promissory notes and mortgages owned by or belonging to the said Abe Lyons and that the Defendant, Kenneth de Sola Joseph, with the approbation of the Defendant, Pauline Joseph, a few days prior to the death of the said Abe Lyons, and after the life of the latter had been given up by his physician and knowing the contents of the will hereinbefore referred to, surreptitiously removed from the said roll top desk, three savings bank receipt books, constituting receipts for over \$30,000 deposited by the deceased with the Bank of Montreal and the Dominion Bank, and all the promissory notes and mortgages owned by the deceased, and some cash, and the said Defendants, since the death of the deceased, have withdrawn from the banks the money represented by the said savings bank receipt books."

The Plaintiff also alleges that the Defendant, Kenneth de Sola Joseph, wrongfully destroyed a great number of papers in the said roll top desk and chiffonier; and further that she is entitled to the savings bank receipt books and the moneys in the banks represented thereby, and all promissory notes, mortgages and cash removed by the Defendants from the roll top desk.

The Plaintiff claims an account of all things so removed and of the Defendants' dealings therewith, a declaration that she is entitled to the savings bank receipt books and the money represented thereby, and the promissory notes, mortgages and cash so removed, and other incidental relief.

The Defendants specifically deny certain of the Plaintiff's allegations and in effect deny that the Plaintiff is entitled to the bank books, moneys, promissory notes, etc. already mentioned. They say they have delivered to her all her share of the estate under the terms of the will except the \$5,000 bequeathed to her, which they are ready and willing to pay to her in due course.

At the date of his will, Lyons was living alone in a boarding house on Bathurst Street, Toronto, occupying one room only. Some time afterwards he moved to another boarding house on Euclid Avenue, Toronto, where he occupied one room only. He was living in the Euclid Avenue house when he became ill on the 8th June, 1930. He was then taken to a hospital and remained there until his death on the 29th July, 1930.

At the date of his will there were in his room at Bathurst Street belonging to him a roll top desk and a chiffonier. These, together with any other belongings of his in that room, were later removed to the Euclid Avenue room.

No question was raised during the trial as to what the testator meant by the words "my room." It must be assumed that when he made his will he meant the room he was then occupying. It might not follow that in every case

*In the  
Supreme Court  
of Ontario*

No. 10.  
Reasons for  
Judgment of  
Orde, J. A.,  
18th September,  
1931.

—continued

the words "my room" would necessarily apply to a different room altogether merely because the testator happened to be living in it at his death. The declaration in 26 of The Wills Act, R.S.O. 1927, 149, that a will shall speak as if executed immediately before the death of the testator applies to the estate itself, and not ordinarily to some place in which some part of the estate may be found.

In the present case no real difficulty arises on that account, because it is admitted that the roll top desk and the chiffonier which were in his room when the will was made were in the room at Euclid Avenue when he died, so that it is really immaterial whether the words "my room" apply to either of the rooms or both. These two articles of furniture clearly passed to the plaintiff. 10

The difficulty here is to decide what the testator meant by the words "complete with their contents." Did he intend to include under the disposition "contents" choses in action, such as promissory notes and moneys deposited in banks? In considering that question it is, of course, necessary to consider the meaning of the words "my personal effects in my room" and the word "including" as well as the whole will.

According to the evidence of the Defendant, Kenneth Joseph, Lyons usually kept his bank books, certain promissory notes, his personal ledger and some correspondence in one of the drawers in the roll top desk, and this drawer was usually locked. In other drawers there were a few personal articles of no great value. In the chiffonier there were articles of clothing, cigarettes, a bottle or two of liquor, and sometimes odd samples from his business office. 20

At the time of the move from Bathurst Street to Euclid Avenue the deceased gave Kenneth Joseph his keys and told him to have a duplicate made of the key to the drawer of the desk in which the bank books etc. were usually kept. This was to enable Joseph to remove the valuables from the desk, as it had to be dismantled during the move, and also, according to Joseph, that he might have a key in case anything should happen to the deceased.

After the move the things were replaced in the desk. That remained their usual repository until the date of the deceased's illness, except, of course, when taken to the banks for the purpose of having deposits and other entries made therein. 30

When Lyons was removed to the hospital on the 8th June, 1930, Kenneth Joseph removed the bank deposit books, the ledger and the notes and placed them in Lyons' safety deposit box in the Dominion Bank. His reason for doing this was that money was coming in, interest on mortgages, notes, etc., and, as Lyons had completely lost his memory, someone had to look after his affairs. Lyons was unable to give any instructions and Joseph did this at the request of Lyons' partner and his solicitor. 40

The things which are the subject of the dispute in this action were therefore not in the desk when Lyons died on the 26th July, 1930, and one point pressed by the defence is that that fact itself excluded from them the gift.

This point can be disposed of in a few words. Where articles are usually kept in a certain place and are described in a legacy as so located, their removal for some temporary or special purpose just before the testator's death does

not remove them from the ambit of the gift, and especially when they were not removed by the testator himself. For example, a gift of all the furniture in the testator's house would surely include a chair which had been sent to a cabinet-maker to be repaired. And so, in *Re Craven Crewdson v. Craven* (1908) 99 L.T.R. 390, Swinfen, Eady, J. held that a gift of pictures in a house included those "notionally there—that is, those that had only been removed for a temporary purpose," but did not include pictures that had been stored because there was not room for them in the house.

*In the  
Supreme Court  
of Ontario*  
—  
No. 10.  
Reasons for  
Judgment of  
Orde, J. A.,  
18th September,  
1931.

—continued

10 A great many authorities were cited for and against the contention that the gift of the contents of the desk in the present case covered not only things which might ordinarily be called "personal effects," but securities such as promissory notes and mortgages, and the choses in action represented by the savings bank deposit books and by the personal ledger.

So much depends in each case upon the character of the will and its language as a whole that decisions in cases where both the language of the will and the circumstances in which it was made are different, are not really very helpful. In fact, if too much reliance is placed upon them they tend to obscure one's judgment.

20 Many cases as to what would constitute a valid *donatio mortis causa* were given to me. I do not find them of much assistance because it has always been a fundamental element in determining what may or may not be a valid *donatio mortis causa* that the gift may be created by the delivery of something which is symbolical of the control over the thing given, as, for example, the key of the safety deposit box or a desk or a trunk, or even of a bankers' deposit receipt or banker's pass book, but I think it will be found, even in cases of *donationes mortis causa* that there must be something more than the mere handing over of the symbol (which of itself would indicate merely the desire of the dying person that it be in safe-keeping), some language or other act, to establish an intention to give the thing or the chose in action which the donee 30 claims to have been the subject of the gift.

The case upon which Mr. McCarthy chiefly relied was *re Robson, Robson v. Hamilton* (1891) 2 Ch. 559. There the testator gave to his nephew his "old mahogany desk with the contents thereof." The desk contained, at the testator's death, bank notes, silver coins, a banker's deposit receipt, several promissory notes and a cheque, all payable to the testator, and also the key of a tin box containing securities (the box itself not being in the desk). Chitty, J. held that the legacy covered not only the desk but all the things that I have enumerated, except that the presence of the key in the desk did not carry with it the contents of the tin box.

40 Now if the testator here had simply given the desk with its contents without other language tending to explain or qualify the gift, I should be inclined to hold that the legacy included securities, such as mortgages and promissory notes contained in the desk, but not the moneys in the bank or the debts of persons owing money to the testator merely because they happened to be recorded in the banker's pass or deposit book or in a ledger. There is in my judgment a wide gulf between mere books of account or record and instruments which themselves embody obligations and which constitute in

themselves the very foundation of the owner's rights, such as promissory notes or mortgages, or perhaps even that type of security created by a banker's deposit receipt, which contains the bank's promise to repay the moneys deposited. Instruments of these latter types are themselves securities. A legacy of all the testator's mortgages or promissory notes would undoubtedly vest in the legatee the right to the indebtedness represented thereby and to enforce them, and if necessary for that purpose to compel the executor to complete the legatee's title by formally assigning the mortgages or endorsing the promissory notes.

But a legacy of a bank book or of a ledger cannot of itself do more than 10 pass the ownership in the things themselves. They are not securities. They do not ordinarily embody any obligation to pay money or any cause of action. The cause of action against the bank or the debtor whose names are found in the ledger must be found elsewhere. The bank books might afford evidence, the ledger none at all.

This is, of course, not to say that in a will the context might not indicate that an explicit gift of the testator's bank book, in order to give real effect to the gift and to avoid an intestacy, was intended to carry with it the moneys in the bank, and the gift might then be so construed.

In the present case, I am of the opinion that the whole clause is controlled 20 by the words "my personal effects in my room" and that only things falling within that description passed to the Plaintiff. It is argued that the word "including" must be construed as meaning "as well as" or "and in addition." This would be so, I think, if the things expressly mentioned as included would not have passed under the general words. Here the only things expressly mentioned are "pictures, roll top desk and chiffonier." They would probably have passed under the term "personal effects," but it seems clear to me that the testator added the phrase "including", etc., for more abundant caution, and in order to make it clear that he intended by those words to include the pictures, the desk and the chiffonier and any other like things contained 30 in the last two articles.

The whole context and character of the will is opposed to the Plaintiff's contention that the testator could really have intended that merely because certain securities and his bank books were usually kept in the desk, the choses in action represented thereby should pass. It is inconceivable that he would have meant to give so large a sum as \$30,000 in the bank to any beneficiary by this roundabout method.

Where it is contended that a piece of property consisting of a chose in action has been bequeathed, not by any express gift thereof or by any words which must necessarily include it, but by language which would not ordinarily 40 be used to describe it, there must be something either in the will itself or in the surrounding circumstances to convince the Court that the testator must have intended, by the language used, to bequeath the chose in action. It cannot be contended that the word "contents" as used here is so sweeping that it must cover all the choses in action represented not only by what may be designated as securities, but also mere evidence of choses in action such as bank pass books. If that were so, then it would follow that an express gift

of all the testator's money in the bank, appearing elsewhere in the will, would be repugnant and the question would arise as to which would prevail. But could it possibly be held, if in an earlier part of the present will the testator had given his moneys in the banks, or even all his promissory notes, to some other legatee, the gift in question would be repugnant.

Reading this will as a whole, and taking into consideration all the circumstances, is there anything in the will to justify the conclusion that the gift of the contents of the desk was intended to include choses in action? Not only is there the limitation of the contents to personal effects as already pointed out, but the whole tenor of the will is repugnant to the inference that the testator could possibly have intended to dispose of an appreciably large part of his estate in this way. In my opinion the words "personal effects in my room," were intended to mean only things of a personal character such as furniture, clothing, jewellery, etc., which could have a local situs and not assets of an intangible nature like choses in action.

The Defendants put in evidence, subject to the Plaintiff's objection as to their admissibility, some earlier wills of the testator containing a clause exactly similar to that in question here, in one case the gift being to his landlady. And it was argued that the testator could hardly have intended to have given her the moneys in the bank. I do not think it necessary to consider whether or not an earlier will might not, in certain cases, be admissible to explain some latent ambiguity in the testator's last will. The argument, based upon the unlikelihood of a man's giving a large sum to his landlady, is rather a tenuous one. Much might depend upon the landlady. I have not, in the present case, allowed the earlier wills to affect my judgment and have come to my conclusions as if I had excluded them as evidence.

The action must be dismissed, but I think, in the circumstances, without costs.

30

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No. 11

Judgment of Orde, J. A.

IN THE SUPREME COURT OF ONTARIO

THE HON. MR. JUSTICE ORDE | Friday, the 18th day of September,  
| 1931.

40 BETWEEN :

ESTHER PHILLIPS,

*Plaintiff,*

—AND—

KENNETH DE SOLA JOSEPH and PAULINE JOSEPH, Executor and  
Executrix of the last will and testament of Abe Lyons, deceased,  
*Defendants.*

*In the  
Supreme Court  
of Ontario*

No. 10.  
Reasons for  
Judgment of  
Orde, J. A.,  
18th September,  
1931.

—continued

No. 11.  
Judgment of  
Orde, J. A.,  
18th September,  
1931.

*In the  
Supreme Court  
of Ontario*

No. 11.  
Judgment of  
Orde, J. A.,  
18th September,  
1931.

—continued

1. THIS action coming on for trial on the 25th day of June, 1931, at the sittings of this Court holden at the City of Toronto for trial of actions without a jury, in the presence of counsel for all parties, upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid, and this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment.

2. THIS COURT DOETH ORDER AND ADJUDGE that this action be and the same is hereby dismissed without costs.

JUDGMENT signed this 16th day of February, 1932.

“E. HARLEY,”

*Senior Registrar, S.C.O.*

10

Entered J. B. 47 Page 488.

February 16, 1932.

V. C.

No. 12.  
Notice of  
Appeal,  
30th September,  
1931.

## No. 12

### Notice of Appeal

TAKE NOTICE that the Plaintiff appeals to the Court of Appeal for Ontario from the judgment pronounced by the Honourable Justice Orde on the 18th day of September, 1931, and asks that the judgment may be revised and that judgment should be entered awarding the Plaintiff the relief 20 claimed in the Statement of Claim upon the following grounds :

1. The said judgment is contrary to the law and evidence and the weight of evidence.

2. The learned Trial Judge did not give effect to the expressed intention of the testator.

3. The roll top desk was the usual repository of the savings bank receipt books of the deceased and promissory notes payable to him, and the said roll top desk did contain amongst other things, the deceased's savings bank receipt books and certain promissory notes.

4. The gift to the Plaintiff of the “roll top desk and chiffonier complete 30 with their contents” carries with it the said savings bank receipt books of the deceased and the moneys represented thereby, and the said promissory notes.

5. And upon other grounds sufficient in law to support this appeal.

DATED at Toronto this 30th day of September, 1931.

D. L. McCARTHY, K.C.,

320 Bay Street, Toronto.

Solicitor for the Plaintiff.

To :  
The above-named Defendants  
and to King & King, their  
Solicitors.

40

## No. 13

## Reasons for Judgment of the Court of Appeal for Ontario.

D. L. McCARTHY, K.C., *for the Plaintiff (Appellant).*  
 C. F. H. CARSON, *for the Defendants (Respondents).*

*In the  
 Supreme Court  
 of Ontario*

No. 13.  
 Reasons for  
 Judgment of  
 the Court of  
 Appeal for  
 Ontario,  
 Mulock, C.J.O.,  
 3rd October,  
 1932.

MULOCK, C. J. O. : This is an appeal from the judgment of Orde, J. A. The question is : What passed to the Plaintiff under the fourth paragraph of the last will of Abe Lyons, deceased ?

The will is as follows :

"I hereby revoke all former wills and other testamentary dispositions  
 10 at any time heretofore made by me and declare this to be and contain my last will and testament.

"1. I direct that all my just debts, funeral and testamentary expenses be paid by my executor hereinafter named as soon as conveniently may be after my decease.

"2. I bequeath my gold watch and chain to my nephew, Sigmund Lyons.

"3. I bequeath my jewels, including my diamond bar pin and extra stone in safety deposit vault at Toronto General Trusts Corporation to my niece, Leah Singer, wife of Israel Singer.

"4. I bequeath my personal effects in my room, including pictures, roll  
 20 top desk and chiffonier, complete with their contents, to my niece, Esther Phillips, wife of Nathan Phillips."

By his fifth paragraph he declares what disposition is to be made of his interest in the business, which has been carried on in partnership with his nephew, Harry Marks, while in the next nine paragraphs he makes certain pecuniary bequests.

By the fifteenth paragraph he directs his executors to erect a suitable stone over his grave. The remainder of the will is as follows :

"16. All the rest and residue of my estate and effects of every kind and nature wheresoever situate, not otherwise disposed of by this my will, I give,  
 30 devise and bequeath unto my niece, Pauline Joseph, and her husband, Kenneth Joseph, in equal shares absolutely.

"17. Should any beneficiary under this my will take any step or steps to contest the validity of this will, I direct my executor to cancel any bequest made to such beneficiary and the bequest to such beneficiary shall form part of the residue of my estate.

"20. I nominate and appoint Kenneth Joseph, of the City of Toronto, the husband of my said niece, Pauline Joseph, and my said niece, Pauline Joseph, to be the executor and executrix and trustees of this my will."

The learned Trial Judge held that the bequest of "pictures, roll top desk  
 40 and chiffonier complete with their contents" to the Plaintiff was controlled by the preceding words "my personal effects in my room," and that only things falling within that description passed to the Plaintiff.

*In the  
Supreme Court  
of Ontario*

No. 13.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock, C.J.O.,  
3rd October,  
1932.

—continued

The testator at the time of his death occupied a room in the house of his landlady, and in that room he had a roll top desk and a chiffonier. Under the roll top of the desk were two drawers, one at the right hand and the other at the left. In the left hand drawer it had been his practice to keep his securities such as promissory notes, saving bank books and mortgages. He kept this drawer locked and also the roll top desk, which served the purpose of a safe in respect of his securities.

When attacked by the illness of which he died, there were locked up in that left hand drawer a savings bank book of the Dominion Bank, showing to his credit \$2,715.41, and two savings bank books of the Bank of Montreal, showing to his credit the sums of \$27,603.64 and \$256.57, and certain promissory notes for moneys owing to him. The Defendant had a duplicate key of this drawer which he says was given to him by the testator. He swore that when the testator gave him this key of the drawer, he said: "I want you to have a copy of the key in case of anything happening to me." When taken ill, the testator became mentally insensible and so continued until his death, and while in such condition the Defendant, Kenneth Joseph, removed all the valuables from the left hand drawer and deposited them in the testator's safety box in the Dominion Bank. 10

The testator was mentally incapable of authorizing the Defendant to so remove such valuables, and the Defendant had no right to remove them.

On the appeal the Defendants' counsel contended that the entrusting of the key by the testator to the Defendant, Kenneth Joseph, authorized him to remove the valuables and thus to defeat any right of the Plaintiff to them.

According to Kenneth Joseph, the testator wished him to have the key of the drawer simply "in case of anything happening to me." His being thus entrusted with the key of the drawer fell far short of authorizing him to remove the valuables from the room and thereby to defeat the gift, if any, of them to the Plaintiff, whereby they would fall into the residue which was bequeathed to the Defendant and his wife. At this time the Defendant, Kenneth Joseph, was aware of the nature of the testator's will. 30

I am of the opinion that the valuables in question were illegally removed from the testator's room, and must be deemed to have been in it at the time of the testator's death.

Numerous cases were cited to show the meaning of the words "personal effects" in other wills, but I do not find them helpful in determining the intention of the testator in this case. I think the testator's words clearly indicate his intention and that it cannot be defeated by interpretations placed upon the language of other testators unless in the very words now under consideration. The language of the testator in giving to the Plaintiff "the roll top desk and chiffonier complete with their contents," is, I think, but another way of saying "all their contents whether or not they are personal effects in my room." 40

If the testator was of opinion that the contents of the roll top desk would pass as personal effects in his room, to the Plaintiff, it was unnecessary for him to make special reference to them but his having done so, the fair inference is that, whether or not they would pass as personal effects, his intention was



that the contents were to pass to the Plaintiff in addition to what was given by the preceding words.

In, *In re Robson, Robson vs. Hamilton* (1891) 2Ch.559, the head note states :

“A testator gave his desk ‘with the contents thereof’ to his nephew . . . the desk contained bank notes and coin, a banker’s deposit receipt, a cheque to the order of the testator, but unindorsed, divers promissory notes payable to the testator or order, also unindorsed, a promissory note payable on demand, and the key of a tin box in which some securities were kept.”

The residuary legatees contended that the choses in action did not pass. Held, that by the desk and its “contents” the testator intended to pass all that was found therein at the time of his death, and that the words used were sufficient to pass all the choses in action, including those which were negotiable only after endorsements by the executors.

Per Chitty, J. :

“The only question I have to decide is whether the choses in action found in the desk passed to the Plaintiff under the gift of the desk and its contents. There is no question on the authorities that have been referred to that, as a general rule, a gift in a will of goods and chattels in a house will not pass choses in action; that proposition is rightly admitted by the Plaintiff’s counsel, but I have to decide whether those authorities have any application to the case before me, or have such an application as to require me to decide that choses in action will not pass under this gift. The testator had, besides this desk, a tin box in which he kept some securities. Now, by way of illustration of this case, I will suppose that the testator had given that tin box ‘with the things found therein at the time of my death.’ It appears to me in that case the intention of the testator would be so plain that the Court would say that choses in action of the class found in the mahogany desk were intended to pass, and therefore would pass, because in all these cases, when the Court, from the language of the testator, can see an intention that the things should pass, it gives effect to such intention. Beyond that, the Court is not required to consider the matter, and it is needless for me to observe that the construction that may have rightly been put on other words in other wills would not necessarily, at the present day, govern the construction of the particular will before the Court.

“I am of opinion that by this gift of the mahogany desk, with the contents thereof, the testator did intend to give whatever was found therein at the time of his death. If the security box had been given with the contents thereof, it would have been absurd, to my mind, to take out all the valuable things which were found therein and to say in substance that an empty box with any chattel put there by the testator, a lead pencil or the like, was all that was intended to pass. I think that ‘with the contents thereof’ does not mean the pens and ink and paper, and is not confined to mere chattels within the chattel. There is a distinction between a gift of chattels in a house and a gift of the contents of a desk; a desk being the kind of thing in which men do usually keep valuable things.”

*In the  
Supreme Court  
of Ontario*

No. 13.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock, C.J.O.,  
3rd October,  
1932.

—continued

*In the  
Supreme Court  
of Ontario*

No. 13.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock, C.J.O.,  
3rd October,  
1932.

—continued

The word "including," as used by the testator, in my opinion, means something in addition to what was included in the preceding words, "personal effects in my room." The weight of authorities, I think, show that the word "including" is ordinarily construed as an enlargement of what has preceded it; Dilworth *vs.* Commissioner of Stamps 1899, A. C. 99, Vol. 16, A. & E. Encyc. of Law, 146, *re* Duncombe, (1902) 3 O.L.R. 510, *re* Mahaffey (1922), 52 O.L.R. 369, in words and phrases judicially defined, Vol. 4 (1904), 3500. "Including" is not a word of limitation. Rather is it a word of enlargement, and in ordinary signification implies that something else has been given beyond the general language which precedes it. There is nothing in the will saying that the word "including" was used in a restrictive sense. 10

I am of opinion that the expressed intention of the testator was to give to the Plaintiff all the contents of the roll top desk.

The left hand drawer in the roll top desk was the testator's customary place of security for his savings bank books and promissory notes, and his words, in giving to the Plaintiff the desk complete with its contents, was just another way of saying that he gave her the bank books and notes, and I think his words must be interpreted as if he had named the bank books and notes as objects of his gift to her.

I now proceed to discuss the question whether the Plaintiff is entitled 20 to the moneys represented by the pass books and promissory notes. Defendants' counsel argued that the language of the bequests to the Plaintiff described merely a chose in action, that a mere right to bring an action had no locality; that what was given to her is limited to "personal effects in my room," and that such right having no locality, did not pass. The answer to this argument has already been given. The gift of the contents of the roll top desk was of something in addition to that of the "personal effects in my room."

Defendants' counsel further contended that the bank books were mere evidence of indebtedness, but such is not the case. They are more than ac- 30 knowledgments of the receipts of money. Each expresses the terms upon which the money is held, and constitutes a contract between the testator and the bank. The Dominion Bank pass book is in the identical language of the pass book mentioned in the judgment of Meredith, C. J. O., in *Kendrick vs. Dominion Bank* (1920), 48, O.L.R. 539.

In that case the Appellate Court held that the language of the pass book was more than a mere acknowledgment of the bank's indebtedness, and in that it set forth the terms upon which the deposits were made and withdraw- able and upon which the bank would be liable for interest thereon, a contract was created which was the subject of a good *donatio mortis causa*.

The pass books of the Bank of Montreal also contain rules regulating 40 the manner of making deposits and withdrawals, requiring the production of the pass book when money is withdrawn and its surrender when the account is closed. They also state that the bank reserves the right to refuse payment on all withdrawal forms unless accompanied by the pass book; that all with- drawsals should be made on the receipt forms provided for that purpose by the bank. That money cannot be withdrawn until the expiry of three working days, and that interest will be allowed as the bank may from time to time

establish, and will be credited in the usual course. That on death of depositor the amount at credit of the deceased will be paid to his legal representatives, upon production of proper legal authority, and that the bank reserves the right to demand seven days' notice of withdrawals.

In, *In re Dillon, Duffin vs. Duffin* (1890) 44 Ch. D. 76, a testator who had a banker's deposit note for £580 handed the document to a relation shortly before his death and the question was whether this deposit was capable of being the subject of a good *donatio mortis causa*. Cotton, L. J., at page 82, says :

10 "The case of *Duffield vs. Elwes*, 1 Bli N.S. 497 shows that there may be a good *donatio mortis causa* of an instrument which does not pass by delivery, and that the executors of the donor are trustees for the donee for the purpose of giving effect to the gift. The case of *Moore vs. Darton*, 4 DeG. & Sm. 517, is very instructive as to the class of instruments which are subjects of *donatio mortis causa*. There a document was executed when a deposit of money was made. The mere fact of the deposit would create a debt, but the document, beside acknowledging the receipt of the money, expressed the terms upon which it was held, and showed what the contract between the parties was. It was held that the delivery of that document was a good *donatio mortis causa* of the money deposited, and so, in my opinion, was a delivery of the deposit  
20 note in the present case." The delivery gives no legal titles to the donee, nor did the delivery of the security in *Duffield vs. Elwes*; but the House of Lords there laid it down that the Executors were trustees for the donee and must do what was necessary to perfect the transfer.

Lindley, L. J., and Lopes, L. J., agreed with Cotton, L. J., that the deposit note might be the subject of a *donatio mortis causa*.

The language of that deposit note was as follows :

"Received from Mr. James Dillon five hundred and eighty pounds for the London and Westminster Bank.

30 "(Signed) A. T.,  
Pro Manager."

"This deposit receipt is not transferable. The amount is repayable on demand, but will bear no interest unless it remains undisturbed for one month. The rate of interest is subject to alteration, of which notice will be given by advertisement in the *Times* newspaper. When the money is withdrawn or the interest paid, the depositor must sign the cheque on the back hereof, first affixing a penny stamp. If part only is withdrawn, a new receipt will be given for the balance."

On the back of the note was a form of cheque.

40 In *Brown vs. Toronto General Trusts Company* (1901) 32 O.R. 319, the question was whether deposited money represented by entries in a numbered pass book, which stipulated that "no deposit will be paid unless upon production of the pass book," was a good subject of a *donatio mortis causa*, and *Boyd, C.*, held that it was.

In, *In re Weston, Bartholomew vs. Menzies* (1902) 1 Ch. 680, *Byrne, J.*, says :  
"Ever since the decision of the Court in, *In re Dillon*, it is well established that a banker's deposit receipt in a form showing the terms of the contract and being more than acknowledgment for the receipt of money is good subject

In the  
Supreme Court  
of Ontario

—  
No. 13.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock, C.J.O.,  
3rd October,  
1932.

—continued

In the  
Supreme Court  
of Ontario

No. 13.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock, C.J.O.,  
3rd October,  
1932.

—continued

of a *donatio mortis causa* . . . In the present case the question arises in reference to a post office savings bank deposit book, and in considering whether or not this is a good subject of a *donatio mortis causa* the test appears to be whether or not the document, besides acknowledging receipt of the money, expresses the terms on which it is held and shows what the contract between the parties is.”

Here the bank books and promissory notes in question were capable of being subjects of a good *donatio mortis causa*, and by like reasoning a good testamentary gift, and I am of opinion that under the fourth paragraph of the testator's will the Plaintiff became entitled to the moneys and notes in question, and that this appeal should be allowed with costs. 10

Masten, J. A.,  
Grant, J. A.,

MASTEN, J. A., agreed with Mulock, C.J.O.

GRANT, J. A.: In this appeal, I concur without any hesitation in the reasoning and conclusions of my Lord the Chief Justice, save in respect of one item, as to which I entertain a considerable degree of doubt. That is, in respect of the savings bank deposits. I agree readily that the removal of the pass books by Joseph was highly improper and that they are to be considered as though being still, at the time of the death, in the desk where placed and usually kept by the testator, which desk with its contents was bequeathed to the Plaintiff.

But my doubt is as to the soundness of the opinion that the language 20 of para. 4 of the will (quoted by my Lord) should properly be construed as bestowing upon the beneficiary therein named, monies lying in savings banks, with respect to which the bank pass books were in the “roll top desk.”

Were it not that I am bound by, or feel constrained to follow the decisions in our own Courts and in the English Courts, which are cited by my Lord, or are followed in the cases cited, I would be disposed to hold the contrary. The pass books appear to me to be little more than statements of account between the parties. Knowing, as we do, that savings bank cheques are issued daily and delivered to their payees and by them deposited in or otherwise passed 30 through their own banks, without the original drawer's pass books being used or presented, and that the balance appearing in the pass book may be very much greater than the actual balance in the account, I am unable to concur in the view that a savings bank pass book, is, as has been held, in substance and effect, equivalent to a deposit receipt.

The latter has been considered by eminent authority to “possess all the qualities of a negotiable promissory note.” (*vide Richer vs. Voyer* (1873) L.R. 5 P.C. 461, at 476-7) and, in my opinion, the ordinary savings bank pass book falls a long way short of doing so. Personally, I would hesitate to hold that the mere production of such a pass book would afford even prima proof 40 of the existence of an indebtedness by the bank for the amount of the credit balance appearing therein. However, the decisions above referred to are so numerous and of so great weight that I feel we ought to follow them, and I do so with reluctance and concur in my Lord's conclusion regarding the bank deposits also.

Order of the Court of Appeal for Ontario.  
IN THE SUPREME COURT OF ONTARIO

In the  
Supreme Court  
of Ontario

No. 14.  
Order of The  
Court of Appeal  
for Ontario,  
3rd October,  
1932.

THE RIGHT HONOURABLE THE CHIEF JUSTICE  
OF ONTARIO  
THE HONOURABLE MR. JUSTICE MASTEN  
THE HONOURABLE MR. JUSTICE GRANT } Tuesday, the 3rd day of  
October, 1932.

BETWEEN :

ESTHER PHILLIPS,

*Plaintiff,*

10

—AND—

KENNETH DE SOLA JOSEPH and PAULINE JOSEPH, Executor and  
Executrix of the last will and testament of Abe Lyons, deceased,  
*Defendants.*

(SEAL)

O.S. 3.3.33.

UPON MOTION made unto this Court on the 27th and 28th days of April,  
1932, by counsel on behalf of the Plaintiff by way of appeal from the judgment  
pronounced by the Honourable Mr. Justice Orde, dated the 19th day of Sep-  
20 tember, 1931, herein, in the presence of counsel for all parties, and upon hearing  
read the pleadings, the evidence adduced at the trial, the judgment aforesaid,  
and upon hearing what was alleged by counsel aforesaid, and judgment upon  
the motion having been reserved until this day.

1. THIS COURT DOTH ORDER that this appeal be and the same is hereby  
allowed, and that the said judgment be varied, and as varied be as follows :

(1) THIS COURT DOTH DECLARE that the bequest to the Plaintiff  
contained in paragraph number 4 of the last will and testament of Abe  
Lyons, deceased, included the bank pass books of the said Abe Lyons for  
moneys deposited by the said Abe Lyons in the Bank of Montreal amount-  
30 ing to \$27,860.21, and in the Dominion Bank amounting to \$2,715.41,  
and also included the moneys represented thereby amounting in all to  
\$30,575.62, and also the promissory notes described in paragraph 4 in  
the Statement of Defence herein, and doth order and adjudge the same  
accordingly.

(2) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that  
in the event of the parties hereto failing to agree as to the amount payable  
under the declaration aforesaid, that it be referred to the Master of this  
Court to determine such amount, subject to the provisions of paragraph  
(3) hereof, and that the Defendants do pay to the Plaintiff out of the  
40 estate of the said Abe Lyons the amount so found due by the Master.

(3) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that  
the Master on such reference shall determine what deductions, if any,

*In the  
Supreme Court  
of Ontario*

No. 14.  
Order of The  
Court of Appeal  
for Ontario,  
3rd October,  
1932.

—continued

should be made for Succession Duties payable in respect of the bequest referred to in paragraph 1 hereof; the amount of interest, if any, to which the Plaintiff is entitled in respect of such bequest; and the liability, if any, of the Defendants as executors of the estate of the said Abe Lyons to the Plaintiff in respect of any of the promissory notes included in said bequest which are not now in the possession of the Defendants as such executors or under their control.

(4) AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that there be no costs of this action to any party thereto.

2. AND THIS COURT DOTH FURTHER ORDER that the Defendants do pay 10 to the Plaintiff out of the estate of the said Abe Lyons the costs of this appeal forthwith after taxation thereof.

“D’ARCY HINDS,”

*Registrar, S.C.O.*

Entered O.B. 131, pages 404 and 5,  
March 4, 1933. “V.C.”

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No. 15

**Order of Middleton, J. A.**

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE MIDDLETON |  
IN CHAMBERS: |

Wednesday, the 14th day 20  
of June, 1933.

BETWEEN :

ESTHER PHILLIPS,

*Plaintiff,*

—AND—

KENNETH DE SOLA JOSEPH and PAULINE JOSEPH, Executor and  
Executrix of the last will and testament of Abe Lyons, deceased,

*Defendants.*

1. UPON the application of counsel for the Defendants in the presence of counsel for the Plaintiff, upon hearing read the judgment of the Court of Appeal for Ontario pronounced herein on the 3rd day of October, 1932, the reasons for said judgment, the affidavit of Samuel King filed and the Bond of the Western Assurance Company, dated the 10th day of March, 1933, filed, and upon hearing what was alleged by counsel aforesaid and it appearing that the Defendants have, under the provisions of the Privy Council Appeals Act, R.S.O. 1927, Chapter 86, a right to appeal to His Majesty in His Privy Council.

2. IT IS ORDERED that the said Bond be and the same is hereby approved as good and sufficient security that the Defendants herein will effectually

prosecute their appeal to His Majesty in His Privy Council from the said judgment of the Court of Appeal for Ontario and will pay such costs and damages as may be awarded in case the said judgment is confirmed.

3. AND IT IS FURTHER ORDERED that an appeal by the said Defendants herein to His Majesty in His Privy Council from the said judgment of the Court of Appeal for Ontario be and the same is hereby admitted.

4. AND IT IS FURTHER ORDERED that execution shall be stayed in the original cause pending the final disposition of said appeal to His Majesty in His Privy Council.

10 5. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the said appeal.

“D’ARCY HINDS,”

*Registrar, S.C.O.*

Entered O.B. 134, page 193.

June 15, 1933. “H.F.”

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*In the  
Supreme Court  
of Ontario*

—  
No. 15.  
Order of  
Middleton, J. A.,  
14th June, 1933.

—continued

*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 13.  
Will of Abe  
Lyons, dated  
5th December,  
1902.

## PART II.—EXHIBITS

### Exhibit 13.

(Defendants' Exhibit)

#### Will of Abe Lyons Dated 5th December, 1902

I, Abe Lyons, of the City of Toronto in the County of York, Merchant, declare this to be my last will and testament hereby revoking all former wills and testamentary dispositions at any time heretofore made by me.

I devise all my estate of whatsoever kind and nature unto my executors hereinafter named upon the following trusts.

1st. To pay all my funeral and testamentary expenses. 10

2nd. To pay all my just debts.

3rd. To pay the residue of my estate to my sister, Esther Fogler, wife of Solomon Fogler of the City of Toronto, Jeweller.

If my executors are of the opinion that my partner Harry Marks is in a position to continue the business at present carried on under the name of Lyons & Marks or of any other business in which I may be associated with him and others, they are at liberty to continue my interest in the said business as long as it appears to them in their discretion advantageous so to do, but in any event they shall give my surviving partner or partners the privilege of paying off my interest in any business in which I am engaged within a year 20 from the date of my decease.

In case my said sister should predecease me I direct that her children shall receive share and share alike the benefits which their mother would have received under this my will.

I appoint my brother Jacob and my brother-in-law Solomon Fogler, executors and trustees of this my will.

DATED at Toronto the 5th day of December, 1902.

SIGNED, PUBLISHED AND DECLARED by the said testator as and for his last will and testament in presence of us present at the same time who, at his request, in his presence and in presence of each other have hereunto subscribed our names as witnesses. "Abe Lyons" 30

"Samuel King,"

Barrister-at-Law, Toronto.

"Effie Lane"

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### Exhibit 14.

(Defendants' Exhibit)

#### Will of Abe Lyons Dated 25th September, 1908

I, Abe Lyons, of the City of Toronto, in the County of York, Merchant, 40 declare this to be my last will and testament hereby revoking all former wills and testamentary dispositions at any time heretofore made by me.

Exhibits.  
Ex. 14.  
Will of Abe  
Lyons, dated  
25th September,  
1908.



I devise all my estate of whatsoever kind and nature unto my executors hereinafter named upon the following trusts.

1. To pay all my funeral and testamentary expenses.
2. To pay all my just debts.
3. To pay the residue of my estate to my sister, Esther Fogler, wife of Solomon Fogler of the City of Toronto, Jeweller.

If my executors are of the opinion that my partner Harry Marks is in a position to continue the business at present carried on under the name of Lyons & Marks or of any other business in which I may be associated with  
 10 him and others, they are at liberty to continue my interest in the said business as long as it appears to them in their discretion advantageous so to do, but in any event they shall give my surviving partner or partners the privilege of paying off my interest in any business in which I am engaged within a year from the date of my decease.

In case my said sister should predecease me I direct that her children shall receive share and share alike the benefits which their mother would have received under this my will.

I appoint my brother-in-law, Solomon Fogler, my nephew Bernard Fogler and my said sister Esther Fogler executors of this my will.

20 DATED at Toronto this 25th day of September, 1908.

SIGNED, PUBLISHED AND DECLARED by the said testator as and for his last will and testament in presence of us present at the same time who, at his request, in his presence and in presence of each other have hereunto subscribed our names as witnesses.

**Exhibit 15.**

(Defendants' Exhibit)

30

**Will of Abe Lyons Dated 13th July, 1918**

I, Abe Lyons, of the City of Toronto in the County of York, Merchant, declare this to be my last will and testament hereby revoking all former wills and testamentary dispositions at any time heretofore made by me.

I devise all my estate of whatsoever kind and nature unto my executors hereinafter named upon the following trusts.

1. To pay all my funeral and testamentary expenses.
2. To pay all my just debts.
3. To give my diamonds to my niece Gladys Fogler and my gold watch and chain to my nephew Bernard Fogler.
- 40 4. To pay the income from the residue of my estate to my sister Esther Fogler, of the City of Toronto, widow, during her life time for her sole use and benefit.
5. On and after the death of my said sister Esther Fogler, to divide the

*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 14.  
Will of Abe  
Lyons, dated  
25th September,  
1908.

—continued

Exhibits.  
Ex. 15.  
Will of Abe  
Lyons, dated  
13th July, 1918.

In the  
Supreme Court  
of Ontario

Exhibits.  
Ex. 15.  
Will of Abe  
Lyons, dated  
13th July, 1918.

—continued

residue of my estate into twelve equal shares, four of such shares to be given to my niece Lillian, wife of Victor Miller, four of such shares to be given to my niece Gladys Fogler, and one of such shares to be given to each of my four nephews, Bernard Fogler, Arthur Fogler, Lionel Fogler and Harry Fogler. Should any of my said nieces or nephews predecease me the share of such niece or nephew predeceasing me shall go to her or his children and in the event of such deceased niece or nephew leaving no children the share of such deceased niece or nephew shall be divided share and share alike among the surviving children of my sister, Esther Fogler.

I hereby authorize my executors to dispose of all my interest in the business of Lyons & Marks or of any other business in which I may be interested and in the event of my being in partnership with my nephew Harry Marks at the time of my death I authorize my executors to dispose of my interest in the business now being carried on by me or any other business which may hereafter be carried on by me in co-partnership with the said Harry Marks to my nephew Bernard Fogler on such terms as my executors may deem advisable both as to credit and length of time within which same is to be paid. This provision, however, is subject to my nephew Bernard Fogler entering into co-partnership with my nephew Harry Marks. In the event of my nephew Bernard Fogler being indisposed to acquire my interest in the business my executors are authorized to sell the same to Harry Marks on such terms and conditions as they deem reasonable both as to credit and otherwise. In the event of the sale of my interest in the business to either the said Bernard Fogler or Harry Marks the same may be sold without security.

I appoint my nephew Bernard Fogler, Victor Miller, husband of my niece Lillian, and my sister Esther Fogler executors of this my will.

DATED at Toronto this 13th day of July, 1918.

SIGNED, PUBLISHED AND DECLARED by the said testator as and for his last will and testament in presence of us both present at the same time who, at his request, in his presence and in presence of each other have hereunto subscribed our names as witnesses.

“Abe Lyons” 30

“Samuel King”  
“Oscar King”

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### Exhibit 16.

(Defendants' Exhibit)

### Will of Abe Lyons Dated 14th September, 1921

This is the last will and testament of me, Abraham Lyons, of the City of Toronto in the County of York, Merchant.

I hereby revoke all former wills and other testamentary dispositions by me at any time heretofore made and declare this to be and contain my last will and testament.

Exhibits.  
Ex. 16.  
Will of Abe  
Lyons, dated  
14th September,  
1921.

40

I direct my executor and trustee hereinafter named to pay all my just debts, funeral and testamentary expenses as soon as conveniently may be after my decease.

I give my diamonds to my niece, Gladys Fogler, and my gold watch and chain to my nephew Sigmund Lyons.

I give the balance of my personal effects, including roll top desk and chiffonier and their contents to my sister, Esther Fogler.

I give, devise and bequeath all the rest and residue of my estate of every kind and nature unto my executor and trustee hereinafter named in trust  
10 as follows :

1. To dispose of my interest in the business now being carried on by me or any other business which may hereafter be carried on by me in co-partnership with my nephew Harry Marks to my said nephew Harry Marks for the sum of twenty thousand dollars whereof the sum of ten thousand dollars, without interest, is to be paid my executor by my said nephew within one year after my decease and the balance of ten thousand dollars, without interest, within two years after my decease, for the payment of which moneys my executor is to require no security. Upon my said nephew entering into an  
20 obligation to pay these moneys within one month after my decease my executor shall transfer all my interest of every kind and nature in the said co-partnership to my said nephew.

2. To pay to my niece Pauline Lyons of Chicago, grandchild of Henry Lyons, the sum of five hundred dollars.

3. As soon as convenient after my decease to pay off any mortgage encumbrance on the home then owned by my sister Esther Fogler.

4. To pay the income from the balance of my estate to my said sister Esther Fogler quarterly so long as she shall live.

5. After the death of my said sister, Esther Fogler, I direct that the residue of my estate shall be divided as follows :

30 (a) Five thousand dollars to my nephew Arthur Fogler.

(b) All the remainder of my estate shall be divided between my two nieces, Lillian and Gladys, share and share alike. Should either of my said nieces predecease my said sister Esther Fogler I direct that the portion that they would have taken under this my will may be by them disposed of in such way as they may in their discretion by deed or will appoint and in default of appointment then the child or children of my said nieces shall take their parent's share, share and share alike.

I NOMINATE, CONSTITUTE AND APPOINT The Trust & Guarantee Company Limited to be the executor and trustee of this my will.

40 IN WITNESS WHEREOF I have hereunto set my hand this 14th day of September, 1921.

SIGNED by the said Abraham Lyons as his will in  
our joint presence and by us as witnesses in his  
presence and in presence of each other.

"Samuel King"

"Eva O. Reid"

"Abe Lyons"

*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 16.  
Will of Abe  
Lyons, dated  
14th September,  
1921.

—continued

**Exhibit 17.**

(Defendants' Exhibit)

*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 17.  
Will of Abe  
Lyons, dated  
19th August,  
1922.

**Will of Abe Lyons Dated 19th August, 1922**

This is the last will and testament of me, Abraham Lyons, of the City of Toronto, in the County of York, Merchant.

I hereby revoke all former wills and other testamentary dispositions at any time heretofore made by me and declare this to be and contain my last will and testament.

I give, devise and bequeath all my estate of whatsoever kind and nature unto my executor hereinafter named upon the following trusts. 10

1. To pay my debts, funeral and testamentary expenses as soon as conveniently may be after my decease.

2. To give my gold watch and chain to my nephew Sigmund Lyons.

3. To give my jewels including my diamond bar and pin and extra stone in safety deposit vault at Toronto General Trusts Co. to my niece Mrs. Leah Singer, wife of Israel Singer.

4. To give my other personal effects in my room including my desk and chiffonier and their contents to Mrs. Mae McLachlan of the City of Toronto, if my place of residence at the time of my death should be in her home.

5. To dispose of my interest in the business now being carried on by me or any other business which may hereafter be carried on by me in co-partnership with my nephew Harry Marks to my said nephew Harry Marks for the sum of twenty thousand dollars whereof the sum of ten thousand dollars, without interest, is to be paid to my executor by my said nephew within one year after my decease and the balance of ten thousand dollars without interest within two years after my decease, for the payment of which money my executor is to require no security. Upon my said nephew within one month after my decease entering into an obligation to pay these moneys my executor shall transfer all my interest of every kind and nature in the said co-partnership to my said nephew. 20

6. To pay to my grandniece Pauline Lyons of Chicago, granddaughter of my deceased brother Henry, the sum of five hundred dollars. To pay to each of my grandnieces Dorothy Marks and Miriam Marks, daughters of my nephew and partner Harry Marks, the sum of five hundred dollars. To pay to my grandniece Ruth Singer the sum of five hundred dollars. 30

7. To set aside the sum of ten thousand dollars, the income of which shall be paid quarterly to my niece Lillian Miller, wife of Victor Alexander Miller, during her lifetime, and upon the death of my said niece the said ten thousand dollars shall be paid to her child or children as she may by deed or will appoint and in default of such appointment the said ten thousand dollars shall be divided among her children share and share alike upon her youngest child attaining the age of twenty-one years. 40

8. To set aside the sum of ten thousand dollars, the income of which shall be paid quarterly to my niece Gladys Sutin, wife of Barney Sutin, during her lifetime, and upon the death of my said niece the said ten thousand dollars

shall be paid to her child or children as she may by deed or will appoint and in default of such appointment the said ten thousand dollars shall be divided among her children share and share alike upon her youngest child attaining the age of twenty-one years.

9. To set aside the sum of twenty thousand dollars, the income of which shall be paid quarterly to my sister Esther Fogler during her lifetime and on and after the death of my said sister the income from the said twenty thousand dollars shall be paid to my said nieces Lillian Miller and Gladys Sutin share and share alike. On and after the death of either of my said nieces Lillian Miller  
 10 and Gladys Sutin ten thousand dollars of the said twenty thousand dollars shall be paid to the child or children of such deceased niece as she may by deed or will appoint and in default of appointment then to her child or children share and share alike upon the youngest child attaining the age of twenty-one years.

10. Within four weeks after my decease to pay to Mrs. Mae McLachlan with whom I have made my home for some years the sum of two thousand dollars and within one month after my decease to pay the sum of five hundred dollars each to Evelyn and Robert, children of the said Mrs. Mae McLachlan.

11. To erect a stone over my grave at a cost not exceeding three hundred  
 20 dollars.

12. I direct that any residue of my estate after providing for all the hereinbefore mentioned bequests shall be divided into two equal parts, the income from one such part to be paid to my said niece Lillian Miller during her lifetime and upon and after her death such part shall be paid to her child or children as she may by deed or will appoint and in default of such appointment then to her child or children share and share alike upon the youngest child attaining the age of twenty-one years. The income from the other such part to be paid to my said niece Gladys Sutin during her lifetime and upon  
 30 and after her death such part shall be paid to her child or children as she may by deed or will appoint and in default of such appointment then to her child or children share and share alike upon the youngest child attaining the age of twenty-one years.

I direct that such insurance on my life as is not payable to preferred beneficiaries shall be included in and form part of my estate.

I nominate, constitute and appoint the Trusts & Guarantee Company Limited to be the executor and trustee of this my will.

DATED at Toronto this 19th day of August, 1922.

40 SIGNED, PUBLISHED AND DECLARED by the said Abraham Lyons as and for his last will and testament in presence of us both present at the same time who at his request, in his presence and in presence of each other, have hereunto subscribed our names as witnesses.

“Muriel S. Lancaster”

“Effie Lane”

“Abe Lyons”

*In the  
 Supreme Court  
 of Ontario*

—  
 Exhibits.  
 Ex. 17.  
 Will of Abe  
 Lyons, dated  
 19th August,  
 1922.

—continued

**Exhibit 18.**

(Defendants' Exhibit)

*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 18.  
Will of Abe  
Lyons, dated  
18th July, 1925.

**Will of Abe Lyons Dated 18th July, 1925**

This is the last will and testament of me Abe Lyons, of the City of Toronto, in the County of York, Merchant.

I hereby revoke all former wills and other testamentary dispositions at any time heretofore made by me and declare this to be and contain my last will and testament.

1. I direct that all my just debts, funeral and testamentary expenses be paid by my executor hereinafter named as soon as conveniently may be after my decease. 10

2. I bequeath my gold watch and chain to my nephew, Sigmund Lyons.

3. I bequeath my jewels, including my diamond bar pin and extra stone in safety deposit vault at Toronto General Trusts Corporation to my niece Leah Singer, wife of Israel Singer.

4. I bequeath my personal effects in my room, including pictures, roll top desk and chiffonier complete with their contents to my niece Esther Phillips, wife of Nathan Phillips.

5. I direct my executor hereinafter named to dispose of my interest in the business now being carried on by me or any other business which may hereafter be carried on by me in co-partnership with my nephew Harry Marks to my said nephew for the sum of twenty thousand dollars, whereof the sum of ten thousand dollars without interest is to be paid to my executor by my said nephew within one year after my decease and the balance of ten thousand dollars without interest within two years after my decease for the payment of which money my executor is to require no security. Upon my said nephew within one month after my decease entering into an obligation to pay these monies my executor shall, save as hereinafter mentioned, transfer all my interest of every kind and nature in the said co-partnership to my said nephew. It is distinctly understood that any monies owing to me by the said business at the time of my decease, whether in respect of monies loaned by me to the said business, or in respect of monies payable to me by the business to make my drawings equal to the drawings of the said Harry Marks, or otherwise, shall not be included in the said purchase price, but the said monies so owing shall be paid to my executor and form part of my estate. 20

6. I bequeath to my grandniece, Pauline Lyons, formerly of Chicago but now of Lincoln, Nebraska, granddaughter of my deceased brother Henry, the sum of five hundred dollars.

7. I bequeath to my grandniece Ruth Singer, daughter of my niece Leah Singer, five hundred dollars. 30

8. I bequeath to my niece Pauline Joseph, wife of Kenneth Joseph, fifteen thousand dollars. In the event of the said Pauline Joseph predeceasing me I direct that her surviving children shall be entitled to the said sum hereby bequeathed to her in equal shares. 40

9. I bequeath to my niece Esther Phillips, wife of Nathan Phillips, ~~fifteen~~ five thousand dollars.
10. I bequeath to each of the children of Esther Phillips and Pauline Joseph living at the time of my death the sum of five hundred dollars.
11. I bequeath to my sister Esther Fogler, one thousand dollars.
12. I bequeath to my niece Gladys Sutin, wife of Barney Sutin, five hundred dollars.
13. I bequeath to my niece Lillian, wife of Victor Miller, five hundred dollars.
- 10 14. I bequeath to my landlady, Mrs. McLachlan, the sum of five hundred dollars, if I am residing with her at the time of my death. In the event of the said Mrs. McLachlan predeceasing me, and I am residing with her daughter, Evelyn McLachlan, at the time of my death, I direct my trustee hereinafter named to pay the sum of five hundred dollars to the said Evelyn McLachlan.
15. I direct my executor hereinafter named to erect a suitable stone over my grave.
16. All the rest and residue of my estate and effects, of every nature and kind whatsoever, not otherwise disposed of by this my will, I give, devise and bequeath unto my niece ~~Esther Phillips~~ Pauline Joseph, wife of ~~Nathan Phillips~~ Kenneth Joseph, absolutely.
- 20 17. In the event of my said niece ~~Esther Phillips~~ Pauline Joseph predeceasing me, I give, devise and bequeath unto the surviving trustee of this my will, ~~the devise and bequests hereinbefore made to the said Esther Phillips by paragraphs 4, 9 and 16 hereof~~ *the entire residue of my estate Pauline Joseph* upon trust to convert into money such part thereof as shall not consist of money, and to invest the same and the ready money, and to pay the corpus and income to the surviving children of the said ~~Esther Phillips~~ Pauline Joseph in such proportions and at such times as my said trustee in his sole and uncontrollable discretion during his lifetime or by his last will and testament
- 30 shall deem advisable.
18. Should any beneficiary under this my will take any step or steps to contest the validity of my will, I direct my executor to cancel any bequests made to such beneficiary and the bequest to such beneficiary shall form part of the residue of my estate.
19. I direct that such insurance on my life as is not payable to my preferred beneficiaries shall be included in and form part of my estate.
20. I nominate and appoint ~~Nathan Phillips~~ Kenneth Joseph & Pauline Joseph, of the City of Toronto, the husband of my said niece ~~Esther Phillips~~ Pauline Joseph & his wife, to be the executor and trustee of this my will.
- 40 ~~In the event of the death, refusal to act or incapability of the said Nathan Phillips then I nominate and appoint my said niece Esther Phillips to be the executrix and trustee of this my will.~~

*In the  
Supreme Court  
of Ontario*

—  
Exhibits.  
Ex. 18.  
Will of Abe  
Lyons, dated  
18th July, 1925.

—continued

*Words deleted  
or in  
italics show  
changes made  
at time of  
instructing  
solicitor to draw  
last will.*

—See Record,  
page 40, l. 22.

In the  
Supreme Court  
of Ontario

IN WITNESS WHEREOF I have hereunto set my hand this 18th day of  
July, 1925.

Exhibits.  
Ex. 18.  
Will of Abe  
Lyons, dated  
18th July, 1925.

—continued

SIGNED, PUBLISHED AND DECLARED by the above  
named Abe Lyons, testator, as and for his last  
will and testament, in the presence of us both  
present at the same time, and who at his request  
and in his presence have hereunto subscribed  
our names as witnesses.

“Abe Lyons”

“Wm. David McPherson,”

Toronto.

“Margaret D. Gray”

10

Exhibits.  
Ex. 19.  
List of  
securities and  
documents  
received by Mr.  
Oscar King from  
Mr. Nathan  
Phillips,  
14th June, 1928.

### Exhibit 19.

(Defendants Exhibits)

#### List of Securities and Documents Received by Mr. Oscar King from Mr. Nathan Phillips

DOCUMENTS RECEIVED FROM NATHAN PHILLIPS BELONGING TO MR. ABE LYONS  
ON THE 14TH DAY OF JUNE, 1928

City of Ottawa 6% debentures due July 1, 1940, each for \$100. including coupon No. 16, namely, Nos. 076, 402, 399, 400, 401, 265, 160, 126, 105, 104, 091, 078, 077.....	\$ 1,300	
City of Ottawa 6% debentures due July 1, 1941, each for \$100. with coupon No. 16 attached, Nos. 171, 435, 098, 099, 111, 112, 113, 114, 097, 082, 096, 084, 083, 085.....	1,400	20
City of Ottawa 6% debentures due July 1, 1944, each for \$100. with coupon No. 16 attached, Nos. 096, 137, 097, 098, 138.....	500	
City of Ottawa 6% debentures due July 1, 1943, each for \$100. with coupon No. 16 attached, Nos. 505, 128, 127, 506 and 111.....	500	
City of Ottawa 6% debentures due July 1, 1942, with coupon No. 16, each for \$100., Nos. 183, 120, 121, 104, 184.....	500	
City of Ottawa 6% debentures due July 1, 1939, with coupon No. 16, each for \$100., Nos. 117, 368, 147, 084, 118, 116, 149.....	700	30
City of Ottawa 6% debentures due Dec. 31st, 1935, \$1,000., with coupon No. 17 attached, No. 078.....	1,000	
Guaranteed investment receipt of Toronto General Trusts Corporation, No. A-1193, for \$500 repayable May 3, 1924.....	500	
City of Toronto 4½% debentures due June 1st, 1937, for \$1,000. each, with coupon No. 7 attached, Nos. S-74840, S-74839, S-74838, S-74837, S-74836, S-74835, S-74834, S-74833, S-74830, S-74829.....	10,000	
City of Toronto 5% debenture due Dec. 1st, 1941, for \$1,000., with coupon No. 10 attached, No. S-57477.....	1,000	
City of Toronto 5% debentures due April 1, 1934, for \$1,000 each, with coupon No. 111 attached, Nos. S-50443 and S-50442.....	2,000	40



	City of Toronto 5% debentures due April 1, 1940, with coupon No. 11 attached thereto, for \$1,000 each, Nos. S-50550, S-50551, S-50542.	3,000	<i>In the Supreme Court of Ontario</i> — Exhibits. Ex. 19. List of securities and documents received by Mr. Oscar King from Mr. Nathan Phillips, 14th June, 1928. —continued
	Dominion of Canada 5½% bonds due Nov. 1st, 1932, for \$1,000, Series RX-E36598 with coupon No. 12 attached.	1,000	
	Dominion of Canada War Loan due Nov. 1st, 1933, for \$50, with coupon No. 20 attached, Series T No. H-075078.	50	
	Dominion of Canada War Loan due Nov. 1st, 1933, 5½% No. A-007842 with coupon No. 20 attached, for \$100.	100	
10	Dominion of Canada 5½% bonds due Nov. 1, 1934, with coupon No. 18 attached, for \$100 each, Nos. A-388106, A-396922 and A-396921.	300	
	Dominion of Canada 5½% bonds due Nov. 1st, 1933, for \$500 each, with coupon No. 20 attached, Nos. B-030283, B-030282, B-030281.	1,500	
	Dominion of Canada 5½% bond due Nov. 1, 1933, with coupons No. 20 attached, for \$1,000 each, Nos. E-421231, E-178549, E-178550, E-178551, E-178552.	5,000	
	Dominion of Canada 5½% bonds due 1st November, 1932, for \$100 each, with coupons No. 12 attached, Nos. A-29478, A-29477, A-29476, A-29475.	400	
20	Dominion of Canada 5% bonds due 15th October, 1943, for \$100 each, with coupons No. 10 attached thereto, Nos. TA-049906, TA-049907, TA-049908, TA-049909, TA-049910.	500	
	Dominion of Canada 5% bonds due Oct. 15, 1943, for \$1,000 each, with coupons No. 10 attached, Nos. TE-084392, TE-084393, TE-084394, TE-084395, TE-084396.	5,000	
	Dominion of Canada 5% bonds due March 1st, 1937, with coupon No. 23 attached, for \$1,000 each, Nos. E-08802, E-08803, E-08804, E-33013, E-33014, E-33015, E-33016.	7,000	
30	Dominion of Canada 5% bonds due March 1st, 1937, for \$500 each, with coupon No. 23 attached, Nos. B-04989 and B-14349.	1,000	
	Province of Ontario 5% debentures due Oct. 15, 1948, for \$1,000 each, with coupon No. 10 attached, Nos. A-F39912, A-F39913.	2,000	
	Canada Permanent Mortgage Corporation debentures due Feb. 1st, 1933, for \$1,000 each, with ten coupons attached, Nos. L-9837, L-9838, L-9839, L-9840 and L-9841.	5,000	
		\$51,250	

We also received the following documents :

1. Mortgage, Nornabell to Cochrane, No. 17429 W.A.
- 40 2. Deed, Nornabell to Abe Lyons, dated Jan. 24, 1927.
3. Agreement, Nornabell and Lyons, dated ..... day of December, 1921.
4. Agreement, Nornabell and Lyons, dated Jan. 24, 1927.
5. Policy on James L. C. Nornabell for \$5,000 in the Metropolitan Life, No. 2303667.
6. Agreement in duplicate, Nornabell and Lyons, dated May 5, 1927.
7. Will of Abe Lyons, dated the 18th day of July, 1925.

*In the  
Supreme Court  
of Ontario*

—  
Exhibits.  
Ex. 19.  
List of  
securities and  
documents  
received by Mr.  
Oscar King from  
Mr. Nathan  
Phillips,  
14th June, 1928.

—continued

8. Demand note from Elly Marks to Abe Lyons, dated July 4th, 1925, for \$8,500.

9. Policy No. 11578689 in the Phoenix Assurance Company on the property of W. F. Rumsey, 385 Sunnyside Ave., for \$2,500.

And the following papers regarding mortgage held on property of Nathan Phillips :

Policy No. 7964737 in the Scottish Union and National for \$5,000.

Mortgage, Burnett to Donald, No. 10137 W.D.

Assignment of Mortgage, Donald to Lyons, 27516 W.D.

Extension agreement, Lyons & Phillips, dated 5th January, 1925.

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### Part Exhibit 1.

(Plaintiff's Exhibit)

#### Last Will of Abe Lyons

Exhibits.  
Part Ex. 1.  
Last Will of  
Abe Lyons,  
16th June, 1928.

This is the last will and testament of me, Abe Lyons, of the City of Toronto, in the County of York, Merchant.

I hereby revoke all former wills and other testamentary dispositions at any time heretofore made by me and declare this to be and contain my last will and testament.

1. I direct that all my just debts, funeral and testamentary expenses be paid by my executor hereinafter named as soon as conveniently may be after my decease. 20

2. I bequeath my gold watch and chain to my nephew, Sigmund Lyons.

3. I bequeath my jewels, including my diamond bar pin and extra stone in safety deposit vault at Toronto General Trusts Corporation, to my niece Leah Singer, wife of Israel Singer.

4. I bequeath my personal effects in my room, including pictures, roll top desk and chiffonier complete with their contents to my niece Esther Phillips, wife of Nathan Phillips.

5. I direct my executors hereinafter named to dispose of my interest in the business now being carried on by me or any other business which may hereafter be carried on by me in co-partnership with my nephew Harry Marks to my said nephew for the sum of twenty thousand dollars, whereof the sum of ten thousand dollars without interest is to be paid to my executor by my said nephew within one year after my decease and the balance of ten thousand dollars without interest within two years after my decease for the payment of which money my executor is to require no security. Upon my said nephew within one month after my decease entering into an obligation to pay these monies my executor shall, save as hereinafter mentioned, transfer all my interest of every kind and nature in the said co-partnership to my said nephew. It is distinctly understood that any monies owing to me by the said business at the time of my decease, whether in respect of monies loaned by me to the said business or in respect of monies payable to me by the business to make my drawings equal to the drawings of the said Harry Marks or otherwise, 30 40

shall not be included in the said purchase price, but the said monies so owing shall be paid to my executor and form part of my estate.

6. I bequeath to my grandniece Pauline Lyons, formerly of Chicago, but now of Lincoln, Nebraska, granddaughter of my deceased brother Henry, the sum of five hundred dollars.

7. I bequeath to my grandniece Ruth Singer, daughter of my niece Leah Singer, five hundred dollars.

8. I bequeath to my niece Pauline Joseph, wife of Kenneth Joseph, fifteen thousand dollars. In the event of the said Pauline Joseph predeceasing me I direct that her surviving children shall be entitled to the said sum hereby bequeathed to her in equal shares.

9. I bequeath to my niece Esther Phillips, wife of Nathan Phillips, five thousand dollars.

10. I bequeath to each of the children of Esther Phillips and Pauline Joseph living at the time of my death the sum of five hundred dollars.

11. I bequeath to my sister Esther Fogler, one thousand dollars.

12. I bequeath to my niece Gladys Sutin, wife of Barney Sutin, five hundred dollars.

13. I bequeath to my niece Lillian Miller, wife of Victor Miller, five hundred dollars.

14. I bequeath to my landlady, Mrs. McLachlan, the sum of five hundred dollars, if I am residing with her at the time of my death. In the event of the said Mrs. McLachlan predeceasing me and I am residing with her daughter, Evelyn McLachlan, at the time of my death, I direct my trustees hereinafter named to pay the sum of five hundred dollars to the said Evelyn McLachlan.

15. I direct my executors hereinafter named to erect a suitable stone over my grave.

16. All the rest and residue of my estate and effects of every kind and nature and wheresoever situate not otherwise disposed of by this my will I give, devise and bequeath unto my niece Pauline Joseph and her husband, Kenneth Joseph, in equal shares absolutely.

17. Should any beneficiary under this my will take any step or steps to contest the validity of this my will, I direct my executors to cancel any bequest made to such beneficiary and the bequest to such beneficiary shall form part of the residue of my estate.

I nominate and appoint Kenneth Joseph, of the City of Toronto, the husband of my said niece Pauline Joseph, and my said niece Pauline Joseph to be the executor and executrix and trustees of this my will.

In witness whereof I have hereunto set my hand this sixteenth day of June, 1928.

SIGNED by the said Abe Lyons as his will in our joint presence and by us as witnesses in his presence and in presence of each other.

“Eva O. Reid”

“Oscar H. King”

“Jos. E. Thompson”

“Abe Lyons”

*In the  
Supreme Court  
of Ontario*  
—  
Exhibits.  
Part Ex. 1.  
Last Will of  
Abe Lyons,  
16th June, 1928.

—continued

**Exhibit 2.**

(Plaintiff's Exhibit)

*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 2.

Pass Book in  
The Dominion  
Bank, Corner  
Bloor &  
Bathurst Sts.,  
Toronto,  
20th January,  
1930, to 31st  
July, 1930.

**Pass Book in the Dominion Bank, Corner Bloor and Bathurst Streets,  
Toronto**

**SAFETY DEPOSIT BOXES**

Why wait until you lose some important papers or other valuables before  
you rent a Safety Deposit Box?

Our rentals are moderate and the protection is worth many times the cost.

**THE DOMINION BANK**

**DRAFTS & REMITTANCES**

10

When you are forwarding money buy your remittances from us.

We sell Drafts, Money Orders and Telegraphic and Cable Remittances  
at lowest possible rates.

**TRAVELLERS' CHEQUES**

Travellers' Cheques and Letters of Credit are the safest methods of  
carrying funds when travelling. They may be purchased at any Branch of  
this Bank and are honoured everywhere.

**THE DOMINION BANK**

*Established 1871*

**SAVINGS DEPARTMENT**

20

Cor. Bloor & Bathurst Sts., Toronto Branch

Account No. B7512

**THE DOMINION BANK**

Savings Department

**REGULATIONS**

Depositors with the bank shall, on the occasion of making their first  
deposit, declare their name, residence and occupation. The strictest secrecy  
is observed as to the names of depositors and the amount of their deposits.

All deposits must be made at the Teller's wicket.

30

Depositors will be furnished with Pass Book, in which each deposit shall  
be entered and confirmed by the initials of the Ledger Keeper of the Bank.  
Strict attention to this regulation is necessary to form a proper voucher for  
the deposit.

Interest allowed on deposits at the current rate upon the minimum  
monthly balances, and the interest accrued shall be carried to the credit of  
the account of each depositor on the 30th of June and the 31st of December  
of each year; but in case of the withdrawal of the deposit, interest accrued  
thereon shall be paid.

Fifteen days' notice of withdrawal will be required if necessary.

40

In case of the death of a depositor the claimant of the deposit shall be required to furnish satisfactory legal evidence of the title thereto.

The Pass Book must be produced whenever any business is transacted, and should be exhibited to the Savings Ledger Keeper, once at least in every year for the purpose of being examined.

Please notify the Bank of any change of address.

This book must bear the signature of the Manager.

"F. R. Cochran," Manager.

Cor. Bloor & Bathurst Sts., Toronto.

10 No. B7512

### THE DOMINION BANK

#### SAVINGS DEPARTMENT

Date 1930	Particu- lars	Initials	Dr.	Cr.	Balance
Jan. 20	Forw'd	B		2522.96	2522.96
24		B		10.	
27		B		10.	2542.96
20 Feb. 3		B		10.	2552.96
10		B		10.	2562.96
Mar. 3		B		10.	2572.96
17		F		47.	2619.96
24		B		10.	
Apr. 14		B		10.	2649.96
22		B		10.	
May 5		M		10.	2659.96
19		M		10.	2669.96
30 June 30, 1930	Interest			38.70	2708.66
July 31	Interest			6.75	2715.41

CANCELLED

It has been a pleasure to serve you and we hope that you will favour us by re-opening your account in the near future.

THE  
DOMINION BANK  
maintains its own offices  
in  
LONDON, ENGLAND  
at 3 King William St.  
and in  
NEW YORK, U.S.A.  
at 49 Wall St.

At both these offices courteous officials will welcome and assist our Canadian customers.

In the  
Supreme Court  
of Ontario

Exhibits.  
Ex. 2.

Pass Book in  
The Dominion  
Bank, Corner  
Bloor &  
Bathurst Sts.,  
Toronto,  
20th January,  
1930, to 31st  
July, 1930.

—continued

**Exhibit 10.**

(Defendant's Exhibit)

*In the  
Supreme Court  
of Ontario*Exhibits.  
Ex. 10.  
Statement of  
Account of Abe  
Lyons in Bank  
of Montreal, St.  
George and  
Bloor Sts.,  
Toronto,  
25th October,  
1919, to 19th  
August, 1930.**Statement of Account of Abe Lyons in Bank of Montreal, St. George  
and Bloor Streets, Toronto****A. LYONS**

In Account with

**BANK OF MONTREAL, St. George & Bloor**

Dr.			Cr.		
Date	Particulars	Amount	Date	Particulars	Amount
May 23, 1921		200.	Oct. 25, 1919		100. 10
May 10, 1922		5.	31		2.75
Jan. 21, 1929		1,000.	Dec. 1		5.00
Aug. 19, 1930	Trans. Tor. Br.	254.67	31	Interest	.55
			Jan. 5, 1920		5.00
			26		13.85
			Feb. 7		78.75
			23		110.00
			Mar. 9		87.50
			13		5.00
			22		4.40 20
			May 5		8.10
			June 30	Interest	4.49
			Oct. 11		50.00
			Dec. 31	Interest	6.62
			Jan. 5, 1921		10.00
			17		10.00
			Apr. 1		10.00
			June 7		200.00
			30	Interest	6.45
			Aug. 10		10.00 30
			Dec. 31	Interest	6.60
			Jan. 5, 1922		10.00
			16		10.00
			June 30	Interest	8.23
			Oct. 31	"	5.58
			Apr. 30, 1923	Interest	8.44
			June 18		10.
			Oct. 31	Interest	8.68
			Feb. 9, '24	Nornabell	25.
			15	"	25. 40

			22	"	25.	<i>In the Supreme Court of Ontario</i> — Exhibits. Ex. 10. Statement of Abe Lyons in Bank of Montreal, St. George and Bloor Sts., Toronto, 25th October, 1919, to 19th August, 1930.  —continued
			29	"	25.	
			Mar. 7	"	25.	
			15	"	25.	
			21	"	25.	
			28	"	25.	
			Apr. 4	"	25.	
			11	"	25.	
10			25		50.	
			30	Interest	9.60	
			May 2		25.	
			9		25.	
			12		10.	
			16		25.	
			Oct. 31	Interest	14.62	
			Apr. 30, '25		15.00	
			May 4		13.75	
			11		10.00	
20			Oct. 31	Interest	15.50	
			Jan. 13, '26		10.00	
			Apr. 30	Interest	15.87	
			May 3		13.75	
			Oct. 31	Interest	16.36	
			Jan. 17, '27		10.00	
			Apr. 30	Interest	16.74	
			May 7		13.75	
			Sept. 19		5.00	
			Oct. 31	Interest	16.96	
30			Nov. 8		10.00	
			Apr. 23, 1928		10.00	
			30	Interest	17.69	
			Oct. 31	"	18.15	
			Jan. 23, 1929		10.	
			Apr. 30	Interest	8.52	
			Oct. 31	"	3.70	
			Apr. 30, 1930	Interest	3.72	
					<hr/>	
					1,459.67	
					<hr/>	
					1,459.67	

In the  
Supreme Court  
of Ontario

**Part Exhibit 12.**

(Defendant's Exhibit)

Exhibits.  
Part Ex. 12.  
Statement of  
Account of Abe  
Lyons in  
Dominion Bank,  
Bloor &  
Bathurst Sts.,  
Toronto,  
30th June,  
1927, to 19th  
August, 1930.

**Statement of Account of Abe Lyons in Dominion Bank, Bloor and  
Bathurst Streets, Toronto**

Account No. 7512

Name *Abe Lyons*  
Address *585 Euclid Ave.*  
Signature *on card* Occupation *Lyons-Marks—Merchants*  
makes 3 dots under signature

Aug. 15-30. Letters of Administration granted to Kenneth de Sola Joseph<sup>10</sup>  
and Pauline Lyons Joseph. Copy filed No. 446.

Date 1927	Particulars	Debit	Credit	Balance
June 30	Bal.		1634.87	1634.87
July 9			10 —	
23			10 —	
—			5 —	
25			10 —	
30			5 —	
Oct. 17			10 —	
Nov. 8			10 —	20
Dec. 12			10 —	
19			20 —	
22	Int. Dec. 31/27		25.10	1749.97
Jan. 3/28		15.00		1734.97
30			48 —	
Feb. 6			10 —	
Mar. 12			10 —	
	Int. June/28		27.10	
July 9			10 —	30
28			12 —	
Aug. 25			12 —	
Sept. 15			13 —	
29			10 —	
Dec. 3			25 —	
10			5 —	1927.07
17			12.32	
22			5 —	



		Int. Dec./28	28.10		<i>In the Supreme Court of Ontario</i> — Exhibits. Part Ex. 12. Statement of Account of Abe Lyons in Dominion Bank, Bloor & Bathurst Sts., Toronto, 30th June, 1927, to 19th August, 1930.  —continued
	31		10 —		
	Jan. 3/29		8.75		
	14		10 —		
	28		10 —		
	Feb. 8		5 —		
	11		10 —		
	18		10 —		
	25		15 —		
10	Mar. 4		10 —		
	11		12 —	2073.24	
	Mar. 25		10.00		
	Apr. 2		18 —		
	8		10 —		
	15		10 —		
	—		10 —		
	May 6		15.52		
	13		10 —		
	27		10 —		
20	June 4		10 —		
	17		10 —		
		Int. June/29	31 —	2217.76	
	July 2		10 —		
	5		10 —		
	12		17.75		
	Aug. 3		10 —		
	11		10 —		
	30		10 —		
	Sept. 28		13 —		
30	Oct. 4		8.75		
	7		10 —		
	14		10 —		
	21		10 —		
	29		10 —		
	Nov. 4		22.50		
	25		10 —		
	—		10 —		
	Dec. 2		10 —		
	9		10 —		
40	16		10 —		
	26		10 —		
		Int. Dec./29	34.45	2464.21	
	30		10 —		
	Jan. 4/30		18.75		
	13		10 —		
	20		20 —		
	24		10 —	2532.96	

<i>In the Supreme Court of Ontario</i> — Exhibits. Part Ex. 12. Statement of Account of Abe Lyons in Dominion Bank, Bloor & Bathurst Sts., Toronto, 30th June, 1927, to 19th August, 1930.  —continued	27			10 —	
	Feb. 3			10 —	
	10			10 —	
	Mar. 3			10 —	
	17			47 —	
	24			10 —	
	Apr. 14			10 —	
	22			10 —	
	May 5			10 —	
	19			10 —	10
	Int. June/30		38.70	2708.66	
Aug. 19		2708.66			
		<u>2708.66</u>	<u>2708.66</u>		

June 10/30—Lyons ill—pay no cheques without reference to mgr.  
—Nephew—K. D. Joseph, El. 2431 or Ll. 3029.

**Part Exhibit 12.**

(Defendants' Exhibit)

**Statement of Balances at Intervals of One Year in Dominion Bank,  
Bloor and Bathurst Streets, Toronto**

Account No. B 7512

*In the  
Supreme Court  
of Ontario*  
—  
Exhibits.  
Part Ex. 12.  
Statement of  
Balances at  
Intervals of 1  
Year in  
Dominion Bank,  
Bloor &  
Bathurst Sts.,  
Toronto,  
31st December,  
1914, to 31st  
December, 1926.

Name Abe Lyons  
Address 585 Euclid Ave.  
Signature on card Occupation Lyons-Marks—  
Opened Oct. 31/14 Merchants

Date 1914	Particulars	Balance	
Dec. 31	Balance	344.07	30
" 31/15		307.13	
" 31/16		318.58	
" 31/17		325.33	
" 31/18		346.23	
" 31/19		376.83	
" 31/20		513.38	
" 31/21		621.68	
" 31/22		563.93	
" 31/23		708.46	
" 31/24		962.44	40
" 31/25		1179.62	
" 31/26		1536.47	

Part Exhibit 9.

(Defendant's Exhibit)

Account of Abe Lyons with The Bank of Montreal, Main Office, Toronto

The following specimen pages are reproduced from the account.

In the  
Supreme Court  
of Ontario

Exhibits,  
Part Ex. 9.  
Account of Abe  
Lyons with the  
Bank of  
Montreal Main  
Office, Toronto,  
12th September,  
1913, to 2nd  
September, 1930.

Refuse all cheques that are not signed with or the three  
dots after signature  
Sheet No. 1 Account No. 17305

NAME Abe Lyons  
OCCUPATION Lyons and Marks  
ADDRESS Yonge Street

SPECIMEN SIGNATURE  
Abe Lyons

Date 1913	Particulars	Principal			Balance	Time	Interest	
		Dr.	Check Mark or Initials	Cr.			Dr.	Cr.
Sept 12	b		/	12				
20	b		/	250	14 50.			
Oct 1	Carroll St		/	227 52	242 02.			
4	b Journal		/	15	257 02.			
14		16 18	/		240 84.	1		60
18	a		/	58 80	299 64.			
23		7 9	/		298 94.			
27	b	4 50	/		294 44.			
Nov 11	b		/	10	304 44.			
15		10	/		294 44.			
18	b		/	15	309 47.			
12		29 45	/		279 99.			
13	b		/	10	289 99.			
18		2	/		287 99.			
22	b		/	4	291 99.			
24		3	/	3	294 99.			
		6 30	/		291 99.			
		10 0	/		285 69.			
Dec 27	b		/	100	185 69.	1		46
30			/	15	285 69.			
8		10	/		301 69.			
		18 13	/		291 69.			
			/	473 82				106

In the  
Supreme Court  
of Ontario

Exhibits.  
Part Ex. 9.  
Account of Abe  
Lyons with the  
Bank of  
Montreal Main  
Office, Toronto,  
12th September,  
1918, to 2nd  
September, 1930.

—continued

(Back of Sheet No. 6)

Do not pay any cheques without three days notice after sig:

Account No. 17305

Sheet No. \_\_\_\_\_

NAME Abe Lyons

SPECIMEN SIGNATURE

OCCUPATION Lyons and Marks

ADDRESS George St.

Date 1915	Particulars	Principal			Balance	Time	Interest	
		Dr.	Check Mark or Initials	Cr.			Dr.	Cr.
June 5	Trans		/	841051				
12			/	5	841521			
14			/		82051			
14			/		79851			
14			/		80551			
14	INTEREST TO 30th JUNE 1915		/	7123	81123			
26			/	15	81674			
29			/		83174			
July 2			/		83054			
3			/		82754			
3			/		82480			
8			/		82180			
9			/	15	83680			
15			/		83480			
17			/	5	83980			
19			/		83570			
24			/		83270			
24			/		82995			
24			/		72995			
27			/		72670			
31			/	20	74670			
31			/	30	76670			
31			/		76776			
		18098		94674				

199  
1128  
211

182

In the  
Supreme Court  
of Ontario

Exhibits.  
Part Ex. 9.  
Account of Abe  
Lyons with the  
Bank of  
Montreal Main  
Office, Toronto,  
12th September,  
1913, to 2nd  
September, 1930.

—continued

Sheet No. 11

Account No. 17305

NAME

Abe Lyons

SPECIMEN SIGNATURE

OCCUPATION

46 Lyons & Marks

ADDRESS

38 Humber St

Date	Particulars	Principal			Balance	Time	Interest	
		Dr.	Check Mark or Initials	Cr.			Dr.	Cr.
1917	Forward		/	65396	65396			
Jan 20	C.		/	6	65406			
23	C. <i>Admission</i>		/	15	65421			
24	C. <i>Admission</i>	3657	/		66131			
27	lv.		/	15	66961			
31	C.	50	/		67461			
Feb 3	C.	25	/	25	64461			
8	C.	25	/	71496	61961			
10	b.	50	/		56961			
17	b.		/	116	68561			
24	b.	579	/		67982			
24	b.		/	20	69982			
24	b.		/	37	73682			
24	Sundries.		/	592	74182			
28	C.	514	/		73682			
28	C.	2230	/		71452			
Mar 2	b.	150	/		56452			
3	b.		/	30	59452			
1	C.	176	/		519277			
1	C.	4	/		58877			
1	C.	50	/		53877			
		58419	/	92296				

S. R. HART & CO., TORONTO, LOOSE LEAF PATTERN T CARD

In the  
Supreme Court  
of Ontario

Exhibits.  
Part Ex. 9.  
Account of Abe  
Lyons with the  
Bank of  
Montreal Main  
Office, Toronto,  
12th September,  
1913, to 2nd  
September, 1930.

—continued

SHEET No. 54

ACCOUNT No. 17305

NAME

Abe Lyons.

Specimen Signature of

OCCUPATION

Lyons & Marks.

SIG.

Abe Lyons

ADDRESS

28 Yonge Str. - (Business address)

FORM 217

In future send all correspondence to 641 Bathurst Str. (Letter Nov 14/25)

DATE	PARTICULARS	PRINCIPAL		BALANCE	TIME	INTEREST	
		DR.	CHECK MARK OR INITIALS			CR.	DR.
1925							
Oct 31	Fwd.		/	5876 <sup>5</sup> / <sub>10</sub>			
Nov 3		278	/				
7			/	272 <sup>75</sup>			
10	fb. repance		/	503			
11		10	/				
14	Cert.	63 <sup>55</sup>	/				
14			/	107			
		500	/				
14	Running	503	/				
17		40	/				
19		10	/				
21			/	105			
21		60	/				
24		730	/				
26		200	/				
26		28 <sup>50</sup>	/				
		10 <sup>43</sup>	/				
		14 <sup>35</sup>	/				
28			/	72			
Dec 1		5	/	693 <sup>71</sup>			
5			/	192			
12			/	245			
15		4	/				
		1444 <sup>53</sup>		7373 <sup>25</sup>			2730

In the  
Supreme Court  
of Ontario

Exhibits.  
Part Ex. 9.  
Account of Abe  
Lyons with the  
Bank of  
Montreal Main  
Office, Toronto,  
12th September,  
1913, to 2nd  
September, 1930.

—continued

*Give no information about this acct.*

SHEET NO. *62*.....

ACCOUNT NO. *17305*.....

NAME *Abe Lyons*  
OCCUPATION *Lyons & Marks*  
ADDRESS *641 Bathurst St*

SIGNATURE

FORM 217-60224

DATE	PARTICULARS	PRINCIPAL			BALANCE	TIME	INTEREST	
		DR.	CHECK MARK OR INITIALS	CR.			DR.	CR.
<i>March 14<sup>27</sup></i>	<i>Towd</i>		/	<i>787575</i>				<i>104541</i>
<i>22</i>		<i>271</i>	/		<i>787298</i>			
<i>26</i>		<i>1203</i>	/		<i>786095</i>			<i>Vouchers OK</i>
<i>31</i>		<i>25</i>	/		<i>773595</i>			
<i>Apr 2</i>			/	<i>285</i>	<i>802095</i>			
<i>2</i>		<i>1100</i>	/		<i>692095</i>			
<i>5</i>		<i>14</i>	/		<i>690695</i>			
<i>6</i>		<i>650</i>	/		<i>690045</i>			<i>xxxx 19<sup>25</sup></i>
<i>9</i>			/	<i>92</i>	<i>699245</i>			
<i>11</i>		<i>2750</i>	/		<i>696495</i>			
<i>14</i>		<i>5323</i>	/		<i>691172</i>			
<i>16</i>			/	<i>8075</i>	<i>699247</i>			
<i>"</i>			/	<i>25</i>	<i>701747</i>			
<i>20</i>		<i>5</i>	/		<i>701247</i>			
<i>21</i>		<i>1600</i>	/		<i>699647</i>			
<i>22</i>		<i>450</i>	/		<i>699197</i>			
<i>23</i>			/	<i>34950</i>	<i>734147</i>			
<i>26</i>		<i>650</i>	/		<i>733497</i>			<i>12179</i>
<b>APR. 30/27 INT.</b>		<i>127323</i>	/	<i>812179</i>	<i>725676</i>			
<i>30</i>			/	<i>22263</i>	<i>757939</i>			
<i>30</i>			/	<i>20</i>	<i>779939</i>			
<i>May 2</i>		<i>500</i>	/		<i>729939</i>			
		<i>177303</i>	/	<i>907242</i>				

In the  
Supreme Court  
of Ontario

Exhibits.  
Part Ex. 9.  
Account of Abe  
Lyons with the  
Bank of  
Montreal Main  
Office, Toronto,  
12th September,  
1913, to 2nd  
September, 1930.

—continued

Card No. 9

512

Name Abe Lyons

Address 585 Euclid Ave.

Occupation Lyons & Marks

Old No. 17305

	DATE	WITHDRAWAL	DEPOSIT	BALANCE	TRAN. ACCOUNT No.	INTEREST
1	APR-2-30			+25,644.43	512	27072
2	APR-5-30		** 312.75	+25,957.18	#E 512	
3	APR-5-30		** 125.00	+26,082.18	#E 512	
4	APR-5-30	** *25.00		+26,057.18	#A 512	
5	APR-5-30	** 200.00		+25,857.18	#E 512	
6	APR-9-30	** *8.50		+25,848.68	#E 512	
7	APR10-30	** *52.65		+25,795.99	#E 512	
8	APR11-30	** *15.00		+25,780.99	#E 2579	
9	APR12-30		** 218.00	+25,998.99	#E 512	
10	APR12-30	** 100.00		+25,898.99	#E 512	
11	APR14-30	** 188.00		+25,710.99	#E 512	
12	APR15-30	** *15.00		+25,695.99	#E 512	

Signing  
Authorities

13	APR16-30	** *43.63		+25,652.36	#E / 512	6413-
14	APR19-30		** 180.00	+25,832.36	#E 512	
15	APR19-30		** 187.50	+26,019.86	#E 512	
16	APR24-30	** *2.50		+26,017.36	#E 512	33485
17	APR25-30	** *64.50		+25,952.86	#C 512	
18	APR25-30		** *54.00	+26,006.86	#A 512	
19	APRIL 30/30 INT.		33485	2634171		
20		** *6.23			#D	
21	APR28-30	** *4.00		+26,331.48	#C 512	
22		<del>** *243.22</del>			#A	
23	APR29-30	** 243.22		+26,088.26	#A 512	CERTIFIED
24	APR30-30	** *7.50		+26,080.76	#A 512	

Signature

Signature



**Part Exhibit 9.**

(Defendant's Exhibit)

**Statement of Balances at Intervals of Six Months in Bank of Montreal,  
Main Office, Toronto****SAVINGS ACCOUNT**

	Date	Balance
	June 30, 1917	\$ 619.35
	Dec. 31, 1917	635.47
	June 30, 1918	573.80
10	Dec. 31, 1918	333.94
	June 30, 1919	384.85
	Dec. 31, 1919	322.79
	June 30, 1920	652.45
	Dec. 31, 1920	942.40
	June 30, 1921	692.53
	Dec. 31, 1921	461.78
	June 30, 1922	756.89
	Dec. 31, 1922	1,251.50
	June 30, 1923	950.71
20	Dec. 31, 1923	2,892.11
	June 30, 1924	2,532.36
	Dec. 31, 1924	8,003.58
	June 30, 1925	4,001.63
	Dec. 31, 1925	6,449.71
	June 30, 1926	6,397.51
	Dec. 31, 1926	9,694.24
	June 30, 1927	7,071.43
	Dec. 31, 1927	9,144.61
	June 30, 1928	11,773.46
30	Dec. 31, 1928	12,884.95
	June 30, 1929	16,987.93
	Dec. 31, 1929	20,097.57
	June 30, 1930	27,170.62

**ESTATE**

Dec. 31, 1930	23,535.09
May 2, 1931	1,554.72

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*In the  
Supreme Court  
of Ontario*Exhibits.  
Part Ex. 9.  
Statement of  
Balances at  
Intervals of 6  
Months in Bank  
of Montreal  
Main Office  
Account,  
30th June,  
1917, to 2nd  
May, 1931.

**Exhibit 7.**

(Defendant's Exhibit)

In the  
Supreme Court  
of Ontario

Exhibits.  
Ex. 7.  
Schedule "A"  
Referred to in  
Succession Duty  
Affidavit of  
Kenneth de Sola  
Joseph and  
Pauline Lyons  
Joseph,  
11th August,  
1930.

**Schedule "A" Referred to in Succession Duty Affidavit of Kenneth de Sola Joseph and Pauline Lyons Joseph**

THE SUCCESSION DUTY ACT (Ontario)

In the Surrogate Court of the County of York,  
In the Matter of the Estate of Abe Lyons,  
late of the City of Toronto in the County  
of York, Merchant.

deceased,

Give short description of each parcel or lot with dimensions for purposes of identification	Fair market value of property, exclusive of liens and encumbrances	
	\$	c.
None		
TOTAL.....	None	

10

MONEYS SECURED BY MORTGAGE

NAME OF MORTGAGOR	SHORT DESCRIPTION OF LAND	Other Particulars, including date, principal, payments on account, rate of interest, and date from which interest has been accruing to date of death.	PRINCIPAL	INTEREST	TOTAL
W. F. Rumsey	Pts. lots 2 & 3 Plan 1269, being 385 Sunnyside Ave.	Due Aug. 18, 1929. Int. 7% payable 18th Feb. & Aug.	\$ c. 3500.00	\$ c. 100.69	\$ c. 3600.69
Annie Bell	Easterly 25' lot 263 Plan M-76, Mimico, 106 Symonson Ave., Mimico.	Due Dec. 20, 1931. Int. 6% quarterly 20th of Mar., June, Sept. & Dec. \$25.00 on account principal quarterly.	875.00	6.04	881.04
Jeremiah Richards	Pts. lots 6 & 7 Plan 466, being 32 Sullivan St., Toronto	Due May 1, 1934. Int. 6% on 1st May & November. Privilege of paying \$150 on acct. principal on any gale date.	1700.00	24.31	1724.31
Nathan Phillips	26 Lauder Ave.		6500.00	27.78	6527.78
TOTAL.....			12575.00	158.82	12733.82

20

30

## BOOK DEBTS AND PROMISSORY NOTES, ETC.

NAME OF DEBTOR OR PAYOR	ADDRESS (City, Town or Province)	Particulars, including date due, principal, payments on account, rate of interest, and date from which interest has been accruing to date of death.	PRINCIPAL	INTEREST	TOTAL
			\$ c.	\$ c.	\$ c.
10 E. Marks	Toronto		8500.00		8500.00
P. Zavits	Toronto	Note is for \$1500; probable value \$750.	750.00		750.00
J. Hirschberg	Toronto		110.00		110.00
C. L. C. Nornabell	Toronto		5000.00		5000.00
J. A. Tuck	Toronto		300.00		300.00
R. H. Pickard	Toronto	Note is for \$1000; probable value \$500.	500.00		500.00
TOTAL.....			15160.00		15160.00

In the  
Supreme Court  
of Ontario

Exhibits.  
Ex. 7.  
Schedule "A"  
Referred to in  
Succession Duty  
Affidavit of  
Kenneth de Solz  
Joseph and  
Pauline Lyons  
Joseph,  
11th August,  
1930.

—continued

SECURITIES FOR MONEY, INCLUDING LIFE INSURANCE AND CASH ON HAND  
AND IN BANK  
(See NOTE below)

NAME OF COMPANY OR OTHERWISE	Head Office of Company or Residence of Persons (whether in Ontario or elsewhere)	Other Particulars as above and where registered if owned by a Non-resident	PRINCIPAL	INTEREST	TOTAL
			\$ c.	\$ c.	\$ c.
		Dominion of Canada Bond, 5½%, due 1932.....	1416.10		
		Dominion of Canada Bond, 5½%, due 1933.....	7102.90		
		Dominion of Canada Bond, 5½%, due 1934.....	306.60		8,825.60
30		Interest on above for 87 days.....		111.45	111.45
		Dominion of Canada Bond, 5%, due 1937.....	8340.00	162.19	8502.19
		Dominion of Canada Bond, 5%, due 1943.....	5623.75		5623.75
		Interest on above for 102 days.....		76.85	76.85
		Province of Ontario bond, 5%, due 1948.....	2035.00		2035.00
		Interest on above for 102 days.....		27.94	27.94
		City of Toronto Bonds, 5%, 1934.....	1990.00		
		City of Toronto Bonds, 5%, 1940-41.....	4000.00		5990.00
		Interest on above.....		87.81	87.81
		City of Toronto Bonds, 4½%, 1937.....	9700.00		9700.00
		Interest on above for 56 days.....		69.04	69.04
		City of Ottawa Bonds, 5%, due 1935.....	1037.50		
		City of Ottawa Bonds, 6%, due 1940.....	2120.00		
		City of Ottawa Bonds, 6%, due 1941.....	1487.50		
		City of Ottawa Bonds, 6%, due 1942.....	532.50		
40		City of Ottawa Bonds, 6%, due 1943.....	535.00		
		City of Ottawa Bonds, 6%, due 1944.....	537.50		6250.00
		Interest on above for 26 days.....		25.21	25.21
		Canada Permanent, 4¾%, due 1933.....	4850.00		4850.00
		Interest on above for 176 days.....		114.52	114.52
		Toronto General Trusts, 5%, due 1934.....	490.00		490.00
		Interest on above for 85 days.....		5.82	5.82
		Toronto General Trusts, 5¼%, due 1933.....	1083.50		1083.50
		Interest on above for 26 days.....		4.11	4.11
		Bank of Montreal, Head Office deposit, including interest to July 26th.....	27603.64		27603.64
		Bank of Montreal, Bloor & St. George deposit, including interest to July 26th.....	256.57		256.57
		Dominion Bank, Bloor & Bathurst Sts. deposit, including interest to July 26th.....	2715.41		2715.41
		Moneys owing by Lyons & Marks.....	560.00		560.00
		Policy in Equitable Life Assurance Society, No. 2131421, partnership policy for \$10,000, included in item of \$20,000.00 paid by deceased partner for deceased interest in partnership of Lyons & Marks, pursuant to partnership agreement.			
		Policy in Commercial Travellers' Association of Canada, payable to Esther Fogler.....			1,000.00
TOTAL.....			85323.47	684.94	86008.41

## BANK STOCKS AND OTHER STOCKS

In the  
Supreme Court  
of Ontario

Exhibits.  
Ex. 7.  
Schedule "A"  
Referred to in  
Succession Duty  
Affidavit of  
Kenneth de Sola  
Joseph and  
Pauline Lyons  
Joseph,  
11th August,  
1930.

NO. OF SHARES	FULL NAME OF COMPANY	HEAD OFFICE Ontario or elsewhere	KIND OF STOCK Common or Preferred	AMOUNT PAID-UP	PAR VALUE	FAIR MARKET VALUE
5	Honey Dew		Preferred	\$ c.	\$ c.	\$ c. 282.50
50	Lindsay Light Co.					75.00
			TOTAL.....			357.50

## MISCELLANEOUS ASSETS NOT HEREINBEFORE MENTIONED, IF ANY

FAIR MARKET  
VALUE

10

—continued

Give full particulars here

Household Goods and Furniture.....	25.00
Pictures, Plate and Jewelry.....	590.00
Stock-in-Trade of Business or Industrial Concern.....	
Goodwill of Business or Industrial Concern.....	
Farm Implements.....	
Farm Produce of all Kinds.....	
Horses.....	
Horned Cattle.....	
Sheep and Swine.....	
Any other Property Value of deceased's interest in partnership of Lyons & Marks, according to partnership agreement.....	20000.00
TOTAL.....	20615.00

20

NOTE.—State fully if bonds, debentures, and other securities, owned by a foreign decedent, are in his possession elsewhere than in Ontario, and are actually listed on a register out of Ontario where a transfer can be made without any act being required at the head office in Ontario.

## SUMMARY

	Principal or Market Value	INTEREST	TOTAL
Real Estate.....	\$ c.	\$ c.	\$ c.
Moneys Secured by Mortgage.....	12575.00	158.82	12733.82
Book Debts and Promissory Notes.....	15160.00		15160.00
Securities for money including Life Insurance and Cash in Bank and on hand.....			86008.41
Bank Stocks and other Stocks.....	357.50		357.50
Miscellaneous Assets not hereinbefore mentioned (if any).....			20615.00
TOTAL.....			134874.73

30

This is Schedule "A" referred to in the affidavit of value and relationship of  
Kenneth de Sola Joseph and Pauline Lyons Joseph.  
SEVERALLY SWORN before me on the 11th day of August, A.D. 1930.

40

A Commissioner, etc., or a Notary Public, etc.

**Part Exhibit 1.**

(Plaintiff's Exhibit)

**Letters Probate of the Last Will of Abe Lyons**

CANADA :

PROVINCE OF ONTARIO.

IN HIS MAJESTY'S SURROGATE COURT OF THE COUNTY OF YORK

No. 65039.

*In the  
Supreme Court  
of Ontario**Exhibits.  
Part Ex. 1.  
Letters Probate  
of the Last Will  
of Abe Lyons,  
14th August,  
1930.*

BE IT KNOWN that on the fourteenth day of August, in the year of our Lord one thousand nine hundred and thirty, the Last Will and Testament of Abe Lyons, late of the City of Toronto, in the County of York, Merchant, deceased, who died on or about the twenty-sixth day of July in the year of our Lord one thousand nine hundred and thirty at Toronto, in the County of York, and who at the time of his death had a fixed place of abode at the City of Toronto, in the said County of York, was proved and registered in the said Surrogate Court, a true copy of which said Last Will and Testament is hereunder written and that the administration of all and singular the property of the said deceased and in any way concerning his will was granted by the aforesaid Court to Kenneth de Sola Joseph of the City of Toronto, in the County of York, Underwriter, and Pauline Lyons Joseph, of the City of Toronto, in the County of York, Married Woman, the Executors named in the said will they having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in his will so far as they are thereunto bound by law and by distributing the residue (if any) of the property according to law, and to exhibit under oath a true and perfect inventory of all and singular the said property and to render a just and true account of their Executorship whenever thereunto lawfully required.

Witness his Honour John Tytler, Judge of the said Surrogate Court at the City of Toronto, in the County of York, the day and year first above written.

By the Court

(Seal)

Joseph E. Thompson,  
*Registrar.*

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*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 3.  
Defendants'  
Affidavit on  
Production,  
3rd December,  
1930.

**Exhibit 3.**

(Plaintiff's Exhibit)

**Defendants' Affidavit on Production**

**IN THE SUPREME COURT OF ONTARIO**

**BETWEEN :**

**ESTHER PHILLIPS,**

*Plaintiff,*

—AND—

**KENNETH DE SOLA JOSEPH and PAULINE JOSEPH, Executor and  
Executrix of the last will and testament of Abe Lyons, deceased,** 10  
*Defendants.*

We, Pauline Joseph and Kenneth de Sola Joseph, both of the City of Toronto, in the County of York, the above-named defendants, make oath and say as follows —

1. We have in our possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

2. We object to produce the said documents set forth in the second part of the said First Schedule hereto.

3. That—

20

4. We have had, but have not now in our possession or power the documents relating to the matters in question in this suit set forth in the Second Schedule hereto.

5. The last mentioned documents were last in my possession or power on or about the dates mentioned in the said schedule.

6. That the last mentioned documents were disposed of as set out in the said schedule.

7. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power or in the possession, custody or power of my solicitors or agents, solicitor or agent or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document or any other document whatsoever, relating to the matters in question in this action or any of them or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said First and Second Schedules hereto and the pleadings and other proceedings in the action. 30

SEVERALLY SWORN by the above-named Pauline Joseph and Kenneth de Sola Joseph before me at the City of Toronto, in the County of York, this third day of December, 1930. 40

“Pauline L. Joseph”  
“Kenneth D. Joseph”

“A. Singer,”  
A Commissioner &c.

## THE FIRST SCHEDULE HERETO

The First Part thereof; shewing documents in my possession which I do not object to produce.

1. Note, dated February 1st, 1923, made by one R. H. Coleman, payable to Abe Lyons, due eleven months after date, for \$450.
2. Note, dated October 1st, 1927, made by one H. R. Somers, payable to Abe Lyons, on demand, for \$1,000.
3. Note, dated December 1st, 1919, made by H. B. Fogler, payable to Abe Lyons, six months after date, for \$1,500.
- 10 4. Note, dated February 25th, 1921, made by H. B. Fogler, payable to Abe Lyons, on July 1st, 1921, for \$1,000.
5. Note, dated June 1st, 1920, made by H. B. Fogler, payable to Abe Lyons, six months after date, for \$1,500.
6. Note, dated April 5th, 1930, made by J. Hirschberg, payable to Abe Lyons, four months after date, for \$200, upon which there was due \$110 at the time of death.
7. Personal ledger of deceased Abe Lyons.
8. Bank book of Dominion Bank, Bloor and Bathurst Street (cancelled).
9. Letter, Louis Streamer to Abe Lyons, dated March 7th, 1923.
- 20 10. Letter, Bank of Montreal, Toronto, to Abe Lyons, dated July 3rd, 1923.
11. Letter, Stevenson, Carpenter & Co. to Abe Lyons, dated October 27th, 1923.
12. Letter, Stevenson, Carpenter & Co. to Abe Lyons, dated December 13th, 1923.
13. Letter, Stevenson, Carpenter & Co. to Abe Lyons, dated December 27th, 1923.
14. Letter, Stevenson, Carpenter & Co. to Abe Lyons, dated January 10th, 1924.
15. Letter, Stevenson, Carpenter & Co. to Abe Lyons, dated January 29th, 1924.
- 30 16. Letter, Stevenson, Carpenter & Co. to Abe Lyons, dated February 16th, 1924.
17. Letter, P. C. Zavitz to Abe Lyons, dated October 12th, 1928.
18. Letter, Abe Lyons to P. C. Zavitz, dated March 15th, 1930.
19. Copy of letter, Kenneth Joseph to P. Zavitz, dated June 25th, 1930.
20. Letter, P. C. Zavitz to Kenneth Joseph, June 28th, 1930.
21. Copy of letter, Kenneth Joseph to P. C. Zavitz, July 7th, 1930.
22. Letter, P. C. Zavitz to Kenneth Joseph, July 11th, 1930.
23. Copy of letter, Kenneth Joseph to P. Zavitz, July 12th, 1930.
- 40 24. Letter, Plaintiff's solicitor to Defendants' solicitors, dated August 21st, 1930.
25. Letter, Plaintiff's solicitor to Defendants, dated August 21st, 1930.
26. Copy of letter, Defendants' solicitors to Plaintiff's solicitor, dated August 22nd, 1930.
27. Letter, Plaintiff's solicitor to Defendants' solicitors, August 26th, 1930.

*In the  
Supreme Court  
of Ontario*

—  
Exhibits.  
Ex. 3.  
Defendants'  
Affidavit on  
Production,  
3rd December,  
1930.

—continued

*In the  
Supreme Court  
of Ontario*

—  
Exhibits.  
Ex. 3.  
Defendants'  
Affidavit on  
Production,  
3rd December,  
1930.

—continued

28. Copy of letter, Defendants' solicitors to Plaintiff's solicitor, August 26th, 1930.
29. Letter, Plaintiff's solicitor to Defendants' solicitors, August 27th, 1930.
30. Copy of letter, Defendants' solicitors to Plaintiff's solicitor, August 27th, 1930.
31. Letter, Plaintiff's solicitor to Defendants' solicitors, dated September 10th, 1930.
32. Copy of letter, Defendants' solicitors to Plaintiff's solicitor, dated September 10th, 1930.
33. Letter, Plaintiff's solicitor to Defendants' solicitors, dated September 10th, 1930.
34. Will of the late Abe Lyons, dated 19th August, 1922.
35. Will of the late Abe Lyons, dated 18th July, 1925.

The Second Part, shewing documents in my possession which I object to produce.

None.

#### THE SECOND SCHEDULE HERETO

Shewing documents which I have had, but have not now in my possession or power.

1. Bank books of Bank of Montreal, Yonge and Front and Bloor and St. George, which were returned to the Banks. 20
2. Note of Mrs. Natalia Strafford for \$188, which was returned to her.
3. Note to Dr. J. A. Tuck, which was returned to him.
4. All original letters, copies only of which are produced in the first part of the First Schedule hereto, which were sent by mail to the parties to whom they are directed on or about the dates thereof.

*In the  
Supreme Court  
of Ontario*

—  
Exhibits.  
Ex. 4.  
Admission,  
25th April, 1931.

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#### Exhibit 4.

(Plaintiff's Exhibit)

#### Admission

30

#### IN THE SUPREME COURT OF ONTARIO

BETWEEN :

ESTHER PHILLIPS,

*Plaintiff,*

—AND—

KENNETH DE SOLA JOSEPH and PAULINE JOSEPH, Executor and  
Executrix of the last will and testament of Abe Lyons, deceased,

*Defendants.*

#### ADMISSION

40

Reserving all rights as to the relevance and admissibility as evidence of the rules hereinafter referred to, we hereby admit that the savings bank



receipt books issued by the Bank of Montreal to Abe Lyons for moneys deposited by the said Abe Lyons in the said Bank at its Yonge and Front and Bloor and St. George Branches, Toronto, and referred to in the examination for discovery of Kenneth de Sola Joseph contained the following terms:

*In the  
Supreme Court  
of Ontario*  
—  
Exhibits.  
Ex. 4.  
Admission,  
25th April, 1931.

#### RULES RESPECTING ACCOUNTS

—continued

1. Depositors, when making their first deposit, will be furnished with a Pass Book and must declare their name, residence and occupation and leave a specimen of their signature. They must notify the Bank of any subsequent change of address.

10 2. All deposits must be made with the Teller, and such deposits must be entered and initialled in Customer's Pass Book by the Ledger Keeper. Strict attention to this is necessary to constitute a proper receipt.

3. Pass Book should be presented when money is withdrawn and surrendered when account is closed. The Bank reserves the right to refuse payment on all withdrawal forms unless accompanied by Pass Book, and should be notified immediately if Pass Book is lost, stolen or destroyed.

20 4. All withdrawals should be made on the receipt forms provided for that purpose by the Bank, and the Bank reserves the right to refuse payment of withdrawal orders on any other form. Money deposited cannot be withdrawn until three clear working days have passed. Funds represented by cheques, drafts, etc., deposited cannot be withdrawn until sufficient time has elapsed to enable the Bank to receive advice of payment.

5. Interest will be allowed at such rate as the Bank may from time to time establish, and will be credited in usual course. Depositors are requested to present their Pass Books on all occasions when either making deposits or withdrawals. The current rate of interest can at all times be ascertained at the Bank.

6. Depositors are particularly requested to present their Pass Books to the Ledger Keeper at least twice a year for verification.

30 7. On the death of a depositor the amount at the credit of the deceased will be paid to his or her legal representative upon production of the proper legal authority.

8. The Bank reserves the right to demand seven days' notice of withdrawal.

Dated at Toronto this 25th day of April, 1931.

.....  
*Solicitors for Plaintiff,*

.....  
*Solicitors for Defendants.*

---

*In the  
Supreme Court  
of Ontario*

Exhibits.  
Ex. 8.  
Six Promissory  
Notes, Various  
Dates.

**Exhibit 8.**

(Defendant's Exhibit)

**6 Promissory Notes**

The following is a summary of the six promissory notes contained in this Exhibit.

Dated December 1st, 1919, H. B. Fogler to Abe Lyons (payable 6 months after date).....	1500.00
June 1st, 1920, H. B. Fogler to Abe Lyons (payable 6 months after date).....	1500.00
February 25th, 1921, H. B. Fogler to Abe Lyons (payable on July 1st).....	1000.00
February 1st, 1923, R. H. Coleman to Abe Lyons (payable 11 months after date).....	450.00
October 1st, 1927, F. G. R. Somers to Abe Lyons (payable on demand).....	1000.00
April 5th, 1930, J. H. Hirschberg to Abe Lyons (payable 4 months after date).....	200.00

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