

45, 1934

In The Privy Council

No.

1933

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

BETWEEN:

\_\_\_\_\_

HARRY OAKES,

(DEFENDANT) *Appellant*,

— AND —

CHARLES S. FRANKLAND,

(PLAINTIFF) *Respondent*.

\_\_\_\_\_

**RECORD OF PROCEEDINGS**

\_\_\_\_\_

LAWRENCE JONES & CO.,  
LLOYD'S BUILDING, LEADENHALL STREET,  
LONDON E.C. 3.

*For the Appellant.*

BLAKE & REDDEN,  
17 VICTORIA STREET, LONDON S.W. 1.

*For the Respondent.*

\_\_\_\_\_

TORONTO  
THE HUNTER-ROSE COMPANY, LIMITED  
1933

RECORD OF PROCEEDINGS.

# In The Privy Council

No.

1933.

## ON APPEAL FROM THE COURT OF APPEAL OF THE SUPREME COURT OF ONTARIO

BETWEEN :

HARRY OAKES,

(*Defendant*) Appellant,

— and —

CHARLES S. FRANKLAND,

(*Plaintiff*) Respondent.

### RECORD OF PROCEEDINGS

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No. 1  
Amended Statement of Claim.

IN THE SUPREME COURT OF ONTARIO

BETWEEN :

CHARLES S. FRANKLAND,

—and—

HARRY OAKES,

*In the  
Supreme  
Court of  
Ontario.*  
—  
No. 1.  
Plaintiff, Amended  
Statement of  
Claim.  
4th Febru-  
ary, 1932.

Defendant.

10 1. The Plaintiff is a realtor residing and carrying on business at the Town of Fort Erie, in the County of Welland. The Defendant is a Gentleman, ordinarily residing at the City of Niagara Falls, in the said County of Welland, now residing at the City of Palm Beach, in State of Florida, U.S.A.

20 2. On the 14th day of August, 1930, the Plaintiff commenced an action in this Honourable Court against the Defendant for damages for breach of contract and for an accounting respecting the Partnership Agreement between the Plaintiff and the Defendant and for other relief, to which said action the Defendant entered an Appearance, and pleadings were delivered by the Plaintiff and Defendant's Solicitors. Said action was proceeded with until the 9th day of November, 1931, when the Plaintiff and the Defendant agreed to settle the said action on payment by the Defendant to the Plaintiff of the sum of Twenty-Five Thousand Dollars (\$25,000). Said negotiation for settlement took place between the Plaintiff's Solicitor and the Defendant's Solicitor at the City of Welland, prior to examinations for discovery, at about twelve o'clock noon, when the Defendant requested further time. Negotiations for settlement were later continued the same day and completed about 5.30 p.m. on the said 9th day of November, 1931, at the office of Messrs. Pettit & Darby, Solicitors at the City of Welland.

30 3. By the said settlement arrived at, the Plaintiff was to receive the sum of \$25,000 from the Defendant in full settlement of the said action, \$10,000 being payable direct to the Plaintiff, and \$15,000 direct to the Royal Bank of Canada at Bridgeburg, Ontario, to which Bank the Plaintiff was indebted in a large amount, for which debt the Defendant had given a written guarantee to the said Bank for the sum of \$15,000. The said \$15,000 was to be paid direct to the said Bank in fulfilment of the said guarantee thereby reducing the Plaintiff's debt to the said Bank by the said sum of \$15,000.

40 4. On or about the said 9th day of of November, 1931, at nine o'clock or thereabouts in the morning, the Defendant and his Solicitor, unknown to the Plaintiff went to the Manager of the said Royal Bank of Canada, at Bridgeburg, Ontario, and made an agreement with the said Manager whereby the Defendant should purchase all of the real estate held by the said Bank as collateral security

*In the  
Supreme  
Court of  
Ontario.*

No. 1.  
Amended  
Statement of  
Claim.  
4th Febru-  
ary, 1932.

—continued

for the Plaintiff's indebtedness to the Bank, for the sum of \$35,000 but the said \$35,000 was to include the said guarantee of \$15,000 given by the Defendant to the Bank on behalf of the Plaintiff.

5. During the negotiations and settlement by and between the Plaintiff and the Defendant, on the said 9th day of November, 1931, the Defendant did not disclose to the Plaintiff that he had made an Agreement with the Bank on the terms aforesaid, but wilfully concealed this fact from the Plaintiff and his solicitor.

5 (a) The Defendant, instead of paying the said sum of \$15,000.00 to the Bank as a payment on account of the Plaintiff, paid the said sum to the Bank as on account of the purchase price payable by the Defendant himself to the Bank under the agreement made as aforesaid for the purchase by the Defendant of the Plaintiff's real estate held by the Bank as collateral security for the Plaintiff's indebtedness.

6. Had the Plaintiff known of the Defendant's dealings with the said Bank on that day, he would not then have settled with the Defendant for the said sum of \$25,000.

7. The Plaintiff alleges, and the fact is, that the Defendant procured the said settlement with the Plaintiff of his action by fraudulent and wilful misrepresentations in that the Defendant did not disclose to the Plaintiff his dealings with the said Bank respecting the said guarantee.

8. The Plaintiff alleges, and the fact is, that the Defendant has not carried out his part of the settlement of the said action in that he has not paid the sum of \$15,000 to the Royal Bank of Canada as agreed to in the said settlement, and has not thereby reduced the Plaintiff's indebtedness to the said Bank as agreed.

9. The Plaintiff alleges, that by the deceit practiced by the Defendant that he has suffered damages and the Defendant wilfully prevented negotiations with the Bank for the proper realization of the securities held by the Bank and an extension of credit.

30

The Plaintiff therefore claims:

(1) Damages from the Defendant in such sum as this Honourable Court may deem fit.

(2) Payment by the Defendant to the Plaintiff, of the sum of \$15,000 or in the alternative,

(3) That the said settlement by and between the Plaintiff and the Defendant made on the 9th day of November, 1931, be set aside as being obtained by fraudulent and wilful misrepresentations and that Notice of Discontinuance of the said action filed in this Honourable Court be set aside, and for an Order of this Honourable Court that the said action be continued by the Plaintiff against the Defendant, and that the Release dated the said 9th day of November, 1931, between the Plaintiff and the Defendant be set aside in order to be delivered up and cancelled.

(4) And the costs of this action.

DELIVERED this 4th day of February, 1932, by Messrs. Pettit & Darby, Welland, Ontario, Solicitors for the Plaintiff.

No. 2  
Statement of Defence.

1. The Defendant admits the allegations contained in paragraph one of the plaintiff's Statement of Claim and denies all other allegations therein contained except such as are hereinafter expressly admitted.

*In the  
Supreme  
Court of  
Ontario.*

2. The Defendant admits that on the 9th day of November, 1931, an action was pending in this Honourable Court between the parties hereto.

No. 2.  
Statement of  
Defence.  
5th March,  
1932.

3. The Defendant alleges that the said action was settled in accordance with the terms of an instrument in writing and executed under seal by the parties hereto which said instrument in writing reads as follows:—

“THIS INDENTURE made the 9th day of November, A.D. 1931,  
B E T W E E N :

CHARLES S. FRANKLAND of the Town of Bridgeburg, in  
the County of Welland

—and—

HARRY OAKES of the Township of Stamford, in the County  
of Welland.

WITNESSETH that in consideration of payment of \$15,000.00, Guarantee to Royal Bank and Ten Thousand Dollars of lawful money of Canada, the said Charles S. Frankland and Harry Oakes doth and do hereby release the other, their and each of their heirs, executors, administrators and assigns and each of their estates and effects, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever which each of them now hath against the other for and by reason of any act, matter, cause or thing whatsoever up to and including the day of the date of these presents.

AND the said Charles S. Frankland for and in consideration of the above, doth hereby release Welland Securities Limited, its successors and assigns, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever which the said Charles S. Frankland now hath for or by reason of or in respect of any act, matter, cause or thing up to and including the day of the date of these presents.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 9th day of November, A.D. 1931.

SIGNED, SEALED and DELIVERED  
in the presence of  
“THOS. J. DARBY”  
“W. H. HAMILTON”

“Charles S. Frankland” (Seal)

“Harry Oakes” (Seal)

4. The Defendant denies that any misrepresentations were made by him

*In the  
Supreme  
Court of  
Ontario.*  
—  
No. 2.  
Statement of  
Defence.  
5th March,  
1932.

or on his behalf to the plaintiff or anyone on his behalf by reason of which the plaintiff executed the said instrument.

5. The defendant in fulfilment of the terms of settlement of the said action and of the said instrument in writing paid to the Royal Bank of Canada the sum of \$15,000.00 for which the Defendant was liable to the said bank as guarantor of the indebtedness of the Plaintiff to the said amount under the terms of a written guarantee dated the 4th day of August, 1927, and the said bank delivered up the guarantee aforesaid to the Defendant and discharged the Defendant from liability thereunder and the said bank credited the account of the Plaintiff with the said sum of \$15,000.00. 10

6. The Defendant paid to the Plaintiff the sum of \$10,000.00 in accordance with the terms of the instrument in writing dated 9th November, 1931, and performed all things he was bound to do thereunder.

7. The Defendant denies that any lands, the property of the Plaintiff and held by the Bank as collateral security were purchased or agreed to be purchased by the Defendant.

8. The Defendant therefore submits that this action be dismissed with costs.

DELIVERED this 5th day of March, 1932, by GRIFFITHS & COMPANY,  
200-213 Smith Building, Niagara Falls, Ontario, Solicitors for the Defendant. 20

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No. 3  
Reply and Joinder of Issue.

No. 3.  
Reply and  
Joinder of  
Issue, 12th  
March, 1932.

1. The Plaintiff denies that the Defendant performed all the things he was bound to do under the instrument in writing dated the 9th day of November, 1931.

2. The Plaintiff says in reply to paragraph 7 of the Defendant's Statement of Defence, that the lands and property of the Plaintiff held by the Royal Bank of Canada as collateral security, if not personally purchased by the Defendant, were purchased by his Agent, Welland Securities Limited, said Welland Securities Limited being a holding Corporation for the Defendant, being entirely owned and controlled by the Defendant having title in its name for the Defendant as beneficial owner of all the real estate owned by the Defendant in the County of Welland. 30

3. In further reply to paragraph 7 of the Defendant's Statement of Defence, this Defendant says that the Defendant received a deed from the Royal Bank of Canada for Lots 5, 6, 7, 8, 9, 10 and 11 on the West side of Carleton Avenue Plan 49 Township of Stamford, the consideration for the said deed being the sum of \$15,000.00.

4. The Plaintiff further says the Defendant did not pay the sum of \$15,000.00 to the Bank as agreed, but received a deed of the said lands as 40



consideration therefor contrary to the settlement made between the Plaintiff and the Defendant dated the 9th day of November, 1931.

The Plaintiff joins issue on the Defendant's Statement of Defence.

DELIVERED this 12th day of March, 1932, by MESSRS. PETTIT & DARBY, Plaintiff's Solicitors.

*In the  
Supreme  
Court of  
Ontario.*

—  
No. 3.  
Reply and  
Joinder of  
Issue, 12th  
March, 1932.

*—continued.*

## IN THE SUPREME COURT OF ONTARIO

*In the  
Supreme  
Court of  
Ontario.*

B E T W E E N :

No. 4  
Opening  
Proceedings  
at Trial and  
Application  
to Amend  
Statement of  
Claim, 25th  
May, 1932.

CHARLES S. FRANKLAND,

Plaintiff,

—and—

HARRY OAKES,

Defendant.

Tried before the Honourable Mr. Justice Kelly at the Non-Jury Sittings  
held at Welland, Ontario; commencing on Wednesday, May  
25, A.D. 1932, at 10.15 a.m.

10

G. T. WALSH, K.C., and T. J. DARBY, *for the Plaintiff.*

A. G. SLAGHT, K.C., and W. C. LaMARSH, *for the Defendant.*

MR. WALSH: I ask your Lordship's permission to amend paragraph 4  
of the Statement of Claim. Your Lordship will see that it reads:—

"On or about the said 9th day of November, 1931, at nine o'clock or  
thereabouts in the morning, the defendant and his solicitor, unknown to  
the plaintiff, went to the manager of the said Royal Bank of Canada, at  
Bridgeburg, Ontario, and made an agreement with the said manager  
whereby the defendant should purchase all of the real estate held by the  
said Bank as Collateral security for the plaintiff's indebtedness to the Bank,<sup>20</sup>  
for the sum of \$35,000.00, but the said \$35,000.00 was to include the said  
guarantee of \$15,000.00 given by the defendant to the Bank on behalf of  
the plaintiff."

I would like to add in the sixth line after the word "defendant" the words  
"or his nominee or agent, the Welland Securities Limited, owned and controlled  
by the said defendant, . . .". Then perhaps it may not be necessary in view  
of the Reply, because the same facts are set forth in the Reply and Joinder of  
Issue, second paragraph.

HIS LORDSHIP: That is to the same effect as that which you are now  
asking to insert. Have you any objection, Mr. Slaght? <sup>30</sup>

MR. SLAGHT: I do not think it makes much difference. Three months  
ago my friend made a motion to amend. I suggest that your Lordship might  
reserve the motion, and after you hear the evidence your Lordship might make  
a full disposition of the case. We want the case tried once and for all.

MR. WALSH: We are pleased to know that, Mr. Slaght.

HIS LORDSHIP: I will reserve the motion.

MR. WALSH: Has your Lordship read the Record?

HIS LORDSHIP: I have read it through hurriedly. I think I shall be able  
to absorb the evidence as you proceed.

CHARLES S. FRANKLAND, Sworn.

*In the  
Supreme  
Court of  
Ontario.*

EXAMINED BY MR. WALSH:

Q. You were the plaintiff in another action against Mr. Oakes, I believe?

A. Yes.

Q. And I believe that that action was settled? A. It was settled last November.

Q. On the 9th November, 1931, was there any examination arranged for?

A. Yes.

Q. The examination of whom? A. The examination of Mr. Oakes, Mr. Harry Oakes of Niagara Falls.

Q. That is the same defendant as in this action? A. Yes.

Q. Tell his Lordship shortly what you sued Mr. Oakes for in that action?

A. For an accounting in connection with a real estate deal that we had. In the spring of 1927 I took an agreement to purchase—

MR. SLAGHT: I object.

HIS LORDSHIP: Do you want all that?

MR. WALSH: No.

MR. SLAGHT: It is eight pages long in the pleadings.

HIS LORDSHIP: Q. You had an action against the defendant about some real estate transaction and it was settled on the 9th November, and this action is brought attacking that settlement? A. Yes, sir.

MR. SLAGHT: There were minutes of settlement.

MR. WALSH: We will get the facts out.

Q. Who were present on that examination for discovery? A. Mr. Oakes, Mr. Hamilton and Mr. Griffiths.

Q. Who is Mr. Hamilton? A. He is Secretary for the Welland Securities Limited; at least, that is the way he signs his name.

Q. Did the examination for discovery proceed? A. No; the examination did not proceed.

Q. Why? A. We came to an agreement of settlement.

Q. What offer was made that morning? A. Mr. Darby was my solicitor at the time, and they were closeted in a separate room and Mr. Darby said that Mr. Griffiths, Mr. Oakes' solicitor, offered \$15,000 in settlement, and I said I would not accept it. They had previously offered by letter to settle for a smaller amount and I would not accept it. I was suing for \$150,000. We finally agreed to settle for \$25,000, and they wanted until the next day to consider it, and I said I would not wait. They said they would settle, and that we would meet at Pettit & Darby's office at five o'clock in the afternoon to settle. Between ten o'clock and eleven o'clock in the morning we agreed to settle.

Q. For how much? A. For \$25,000.

MR. SLAGHT: That is in writing. Had you not better put it in?

MR. WALSH: The writing was not drawn at that time.

Q. That was between ten and eleven o'clock in the morning? A. Yes.

Plaintiff's  
Evidence.  
No. 5.  
Charles S.  
Frankland,  
Examination  
25th May,  
1932.

*In the  
Supreme  
Court of  
Ontario.*

*Plaintiff's  
Evidence.*

*No. 5.  
Charles S.  
Frankland,  
Examination  
25th May,  
1932.*

Q. And they wanted to defer it to the next day and you would not do that? A. No.

Q. What hour did you fix for that day? A. They said we would meet in Pettit & Darby's office at five o'clock p.m., and Mr. Oakes, Mr. Griffiths and Mr. Hamilton went away.

Q. When did you next see them? A. I next saw Mr. Griffiths and Mr. Hamilton in Pettit & Darby's office about five o'clock. Mr. Darby was out of his office at the time, and Griffiths said he could not wait, that he had to be in Niagara Falls, and he went away. He was gone about half an hour and I was still in Darby's office and he came back about six o'clock or a little after. 10

HIS LORDSHIP: Q. Who was with him? A. Mr. Hamilton; Mr. Oakes did not come back. They had an agreement of settlement drawn up in writing.

MR. WALSH: Q. Before the agreement of settlement was signed what was said? A. They agreed before the agreement was signed to pay me \$10,000 in cash—they were to pay \$25,000 in settlement, and before the agreement was signed they agreed to pay me \$10,000 and gave my solicitor a cheque for \$10,000, and Mr. Griffiths said they would pay the guarantee in the bank.

Q. How much was the guarantee in the bank? A. \$15,000 in the Royal Bank, signed by Mr. Oakes for me.

Q. The Royal Bank where? A. At Bridgeburg. 20

Q. What did Mr. Griffiths say he would do with respect to that guarantee?

A. He said Welland Securities Limited would pay the guarantee.

Q. Whose cheque was the cheque for \$10,000? A. It was from the Welland Securities Limited.

HIS LORDSHIP: Q. Did you get that? A. My solicitor got it.

MR. WALSH: Q. They are Messrs. Pettit & Darby? A. Yes.

Q. And the payment of the \$15,000 and the payment of the \$10,000 made the \$25,000? A. Yes.

Q. Tell His Lordship who the Welland Securities are who gave the cheque for \$10,000, and who were to pay the Royal Bank \$15,000? A. Well, the first 30 I knew about the Welland Securities Limited—

HIS LORDSHIP: Q. Where did you get your information? A. Directly from Mr. Oakes.

MR. WALSH: Q. That is the defendant in this action? A. Yes.

Q. What information did you get from Mr. Oakes as to the Welland Securities Limited? A. After I took the agreement to purchase this property from the Erie Beach Company, Limited, Mr. Oakes and I came to an agreement as to the partnership in the property before we took title; the title was to be taken on the 1st July, and he told me to take the title in the name of the Welland Securities Limited,—no, I am wrong: the first I knew about the Welland 40 Securities Limited, they wanted to pave the Bowen Road in Bridgeburg, and part of this property faces on the Bowen Road. They wanted to get—

HIS LORDSHIP: Q. Who are "they"? A. The municipality of Bridgeburg wanted to get the signatures of the owners of the property, so I took the petition to Mr. Oakes for him to sign because the agreement to purchase had been

assigned to Harry Oakes, and he signed the petition in the name of the Welland Securities Limited, and I said: "Who are the Welland Securities Limited?" and he said: "That is a company I have formed to handle my real estate." I said: "Who are they?" and he said "It is me." He told me that in his library at Niagara Falls, in his home.

*In the  
Supreme  
Court of  
Ontario.*

Plaintiff's  
Evidence.

No. 5.

Charles S.  
Frankland,  
Examination  
25th May,  
1932.

MR. WALSH: Q. Was there a release in the office that day, on the 9th November? A. A release?

Q. For settling the suit? A. We signed a release. The agreement of settlement was signed. Is this what you call a release?

10 Q. Yes? A. This was signed in Messrs. Pettit & Darby's office.

Q. Look over that release. You will notice that it is signed by Harry Oakes and witnessed by Mr. Hamilton, and then there is your own signature above it? A. Yes.

Q. When that was brought up to Mr. Darby's office that day how was it signed? A. By Mr. Oakes.

Q. Already signed by Mr. Oakes? A. Yes.

Q. On the 9th November? A. Yes.

Q. I also notice the consideration is left blank, and filled in in pen and ink and not typewritten? A. Yes.

20 Q. When was that filled in? A. In Pettit & Darby's office.

Q. When? A. Just as we settled, when they gave over the cheque and agreed to pay the \$15,000 into the Royal Bank.

EXHIBIT NO. 1: General release between plaintiff and defendant, dated November 9, A.D. 1931.

MR. WALSH: Your Lordship will notice in the second paragraph of Exhibit No. 1 the following language:—

30 "And the said Charles S. Frankland for and in consideration of the above, doth hereby release Welland Securities Limited, its successors and assigns, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever which the said Charles S. Frankland now hath for or by reason of or in respect of any act, matter, cause or thing up to and including the day of the date of these presents."

Q. Why were the Welland Securities Limited put in that document, Mr. Frankland? A. I do not know.

Q. Were the lands that were in the lawsuit in their name at all? A. Yes; the lands in the lawsuit were in their name.

Q. The lands in the lawsuit that you were suing for an accounting upon were in whose name? A. The Welland Securities Limited.

40 Q. And that is the company that Mr. Oakes told you he owned? A. Yes.

Q. And the release says:—

"WITNESSETH that in consideration of payment of \$15,000 Guarantee to Royal Bank and Ten Thousand Dollars of lawful money of Canada . . ."

On the 9th November, 1931, how much did you owe the Royal Bank of Canada?

A. About \$47,000.

—continued.

In the  
Supreme  
Court of  
Ontario.  
—  
Plaintiff's  
Evidence.  
No. 5.  
Charles S.  
Frankland,  
Examination  
25th May,  
1932.

Q. That was the Bridgeburg Branch? A. Yes.

Q. Can you tell his Lordship if they held any security for that money? A. Yes; they held all my real properties as collateral security; there were two pieces in the township of Stamford.

Q. There were what? A. One piece of 63 acres in the township of Stamford known as the gravel pit.

Q. What is the next? A. Seven acres on Carlton Avenue in the township of Stamford, just out of the city of Niagara Falls; it is all built up.

Q. What else? A. Quite a number of lots that I had in Bridgeburg, some on Emerick Avenue, some on the Bowen Road and some on Bowden Street 10 in the town of Bridgeburg.

Q. Did they have any other security? A. They previously had some, the fall before, 140 lots in St. Catharines, but there was a mortgage of \$3,000 against them and the mortgage came due and the bank would not pay it.

Q. On November 9, 1931, the bank held for your \$47,000 indebtedness to them these three properties? A. Yes.

Q. And whose name were they in? A. In my name.

MR. SLAGHT: That is not so.

MR. WALSH: Q. What do you say? A. They were in my name; they were mortgagees in possession. 20

HIS LORDSHIP: Q. Were all these properties standing in your name at the time? A. Yes. I had given a mortgage on them and they were mortgagees in possession.

Q. You had given a mortgage to whom? A. To the Royal Bank.

Q. You do not mean that you gave a mortgage to some other person and gave them only the equity? A. No; I gave them the mortgage.

MR. WALSH: Q. Did you hold a deed or an agreement? A. It was an agreement to purchase on the gravel pit; the title to that property was in the name of the Hydro Electric Commission, but I had it under an agreement to purchase.

Q. Had there been any default under your mortgage to the Royal Bank? 30

A. Yes.

Q. And had those properties been put up for sale? A. They had.

Q. That is under the power of sale in the mortgage? A. Yes.

Q. Had any reserve bid been put on these properties? A. There were reserve bids put on.

Q. On these three properties? A. Yes.

Q. Do you know what the reserve bids were? A. No; I could not say.

Q. Now, on the 9th November, 1931, did you know before you signed that release or had you been advised that Mr. Griffiths, the solicitor for Mr. Oakes, and Mr. Hamilton had been to the Royal Bank at Bridgeburg? A. No; I knew 40 nothing about that.

Q. Did you know when you signed that release that they had taken an option during the time they wanted a day's grace from you? A. No; if I had I would not have settled with them.

MR. WALSH: I will produce the option with the next witness, my Lord.

HIS LORDSHIP: You will produce what?

MR. WALSH: The option which was given on the 9th November by the Royal Bank.

HIS LORDSHIP: Get it soon because I want to understand the matter as we go along.

MR. WALSH: Perhaps I could put it in now.

HIS LORDSHIP: Let me see it.

MR. SLAGHT: I understand that my friend is going to call the bank manager to prove this document.

10 HIS LORDSHIP: I am not accepting it as proved so far.

MR. WALSH: I take it that my learned friend wishes me to facilitate him by calling the bank manager.

MR. SLAGHT: Now, do not be virtuous. My friend just showed me a document and said he was going to call the bank manager.

MR. WALSH: I will undertake to prove this document later.

HIS LORDSHIP: Then for the purposes of identification in the meantime it will be marked Exhibit 2.

EXHIBIT NO. 2: Option dated Bridgeburg, November 11, 1931, from Royal Bank of Canada, Bridgeburg, to Welland Securities Limited.

20 MR. WALSH: This option reads:—

“Bridgeburg, Nov. 11/31.

“In consideration of value rec'd the Royal Bank of Canada hereby grants Welland Securities Limited the exclusive right to purchase the above properties for \$35,000.00 with a good marketable title for a period of thirty days from date. All evidence of title to be supplied Welland Securities at once. “The Oakes guarantee for \$15,000.00 to Royal Bank of Canada re Frankland to be retired out of purchase price above.”

30 Then it is signed by J. R. Steele, Manager of the Royal Bank of Canada at Bridgeburg and by H. Laurence, accountant, and then on the side of the document appears:—

“For the Royal Bank of Canada, Bridgeburg, Ont. J. R. Steele, Manager, H. Laurence, Accountant.”

Q. Did you know at the time you made that settlement that that option had been given? A. No; I knew nothing about it.

Q. Had you been consulted about it? A. No.

Q. And I see it gives on the top the real estate acquired by foreclosure of mortgages, and sets out the following:—

	“REAL ESTATE ACQUIRED BY FORECLOSURE OF MORTGAGES	PREVIOUS MORTGAGE	SALE PRICE
40	(1) 2 lots Bowden St., Bridgeburg, Ont.	Free	\$ 1,000.
	(2) 2 lots Bowden St., Bridgeburg, Ont.	\$600.	1,000.
	(3) 17 lots Emerick Ave., Bridgeburg, Ont.	Free	6,800.

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(4)	2 lots Bowen Road, Bridgeburg, Ont.	Free	1,000.
(5)	7 acres Township of Stamford	Free	5,000.
(6)	64 acres Township of Stamford, (Gravel pit)		19,000.

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\$33,800.
600
\$33,200."

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Was Mr. Oakes on November 9, 1931, worth the amount of that guarantee?

A. Yes.

Q. He was able to pay it? A. Yes.

Q. I see the value there put on the properties by the Royal Bank. What do you say as to the value of those properties? A. The values are very low.

Q. I beg your pardon? A. The values are very low.

Q. You told his Lordship that if you had known what was done you would not have accepted the offer of \$25,000. Why not? A. Because I would not be getting anything. I intended to take the money from the settlement and go to the Royal Bank and redeem my properties from the Royal Bank and rearrange my finances, which I had told Mr. Steele previous to the settlement, not more than a week before. I said if I won my case or got my settlement I wanted to come and redeem my properties.

MR. SLAGHT: I object. That is not admissible, I submit.

20

HIS LORDSHIP: No.

WITNESS: That is what I planned on doing.

MR. WALSH: Q. And these plans could not be carried out? A. No.

Q. Give his Lordship the reasons? A. After I got the settlement, a few days after, I went into the Royal Bank and told Mr. Steele—

MR. SLAGHT: I object.

WITNESS: I went into the Royal Bank to rearrange my financing with the Royal Bank and to see if the \$15,000 had been paid into my account, and the \$15,000 had not been paid; that was on the Saturday after the settlement.

HIS LORDSHIP: Q. Can you fix the day of the month? A. I think the 9th of November was on a Monday.

MR. WALSH: The 11th November would be Armistice Day? A. Monday was the 9th; Saturday morning would be the 14th; I went in and told him—

MR. SLAGHT: My Lord, I desire to make this submission: My friend first asks the witness about his plans and then about conversations with the bank manager, and he is rambling on and giving the effect of the conversation in my friend's inimitable way after your Lordship has ruled that they are not admissible.

WITNESS: I went in to rearrange my financing.

MR. WALSH: Q. What did you ascertain?—

40

HIS LORDSHIP: You do not need to be told that that is not admissible.

MR. SLAGHT: The bank manager will tell my friend as well as the Court



the date the payment was made, which is preferable to having this witness tucking in a lot of irrelevancies.

MR. WALSH: I do not like my friend's expression "tucking in."

HIS LORDSHIP: Q. You say you went in on some day. If you can fix the date definitely, give it to us? A. Saturday, November 14, 1931.

Q. You went in to re-arrange your finances? A. Yes.

Q. And you did not succeed? A. No. I could not re-arrange them.

MR. WALSH: Q. When did you first hear of this arrangement which had been put through without your knowledge on the 9th November? A. On 10 the Saturday morning that I went into the bank.

Q. That is the first you heard of it? A. Yes. I heard the property was sold.

Q. Did you make any objection? A. I did.

Q. What do you say you have lost by reason of what has been done?

A. I have lost my properties.

MR. WALSH: I want to ask the witness generally as to the value of these properties, my Lord.

HIS LORDSHIP: If he is competent to do so he can give the best evidence he can as to the value of the properties.

20 MR. WALSH: Q. Tell his Lordship the value of these properties on the 9th November, 1931? A. The gravel pit was a good value at \$35,000; there are 63 acres of it, and the gravel pit is 85 feet deep by test.

Q. How many acres of it? A. 63 acres and a fraction, the cheapest property that has been sold right adjacent to it within the last five years runs from \$1,200. to \$2,000. an acre, and some right across the highway from it sold for \$1,200.; it is right across the highway at the top of the Stamford hill.

HIS LORDSHIP: Q. What do you value it at? A. \$35,000.

Q. How many acres? A. 63 acres; that is putting it right down as if it went under the hammer; it should sell for that.

30 Q. Referring to this list called the Option (Exhibit 2 for identification) there are six properties mentioned in it. Are you putting a value on all of them now or only on the one? A. I was valuing the gravel pit as the first piece of property.

HIS LORDSHIP: Get the values of all of them, Mr. Walsh.

WITNESS: Then the piece of property on Carlton Avenue: I got a plan out over a year ago and had it subdivided.

MR. WALSH: That would be number five, my Lord.

HIS LORDSHIP: Q. Take that list and deal with each one, if you care to do so? A. No. 1: 2 lots on Bowden Street, valued at \$1,000.

40 Q. What is your valuation? A. There was a mortgage on one of them for \$600.

Q. Just a moment, please. If you would be good enough to give the value of the land irrespective of the mortgage we will do a little calculation ourselves?

A. \$1,500. for the two lots; that is No. 1.

MR. WALSH: Q. How much for No. 1? A. \$1,500.

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Q. Then No. 2? A. The same thing: 2 lots right together, \$1,500.  
Q. And No. 3? A. 17 lots on Emerick Avenue; they are worth \$9,000,  
but they have them down at \$6,800.

Q. And No. 4? A. 2 lots on Bowen Road, worth \$1,500.

Q. And No. 5? A. 7 acres in the Township of Stamford, \$12,000 in a  
lump.

HIS LORDSHIP: And I assume that No. 6 which is referred to in the  
option as "64 acres" is the 63 and a fraction acres you have mentioned? A. Yes  
worth \$35,000.

CROSS-EXAMINATION BY MR. SLAGHT:

10

Q. What has your business been for the past five years? A. Real estate.

Q. A real estate dealer? A. Yes.

Q. You buy and sell a little bit, too, as well as selling for other people when  
you can? A. Yes.

Q. Let us see how these properties stood on the 9th November. You made  
the statement that you were the owner of all of them and that the bank had a  
mortgage, is that correct? A. Yes; all excepting the gravel pit; they had the  
agreement of sale on the gravel pit; I had assigned the agreement of sale as  
collateral security to them.

Q. I am speaking of the 9th November, 1931? A. They had it at that 20  
time, yes.

Q. But they had a deed of it at that time in the Royal Bank, had they not?

A. A deed of the gravel pit?

Q. Yes? A. I do not know; I never saw it.

Q. You swore that you had a deed? A. I did not swear I had a deed.

Q. I am telling you that you did? A. I tell you I did not. I said I had  
an agreement to purchase it.

Q. Let me remind you that your original statement was: "I owned all  
these mortgages by deed, and gave a mortgage to the bank"? A. I did not say  
"by deed"; I said they were in my name. 30

Q. Is it not a fact that the Royal Bank of Canada bought this property  
from the Hydro on the 30th April, 1931, and took a deed from the Hydro Com-  
mission to them and paid the balance over to the Hydro? A. I do not know.

Q. Look at that deed. Do you mean to say that you had not enough in-  
terest in this gravel pit to know how the title stood? A. I knew how the  
title stood when I assigned my interest to the Royal Bank as collateral security.

Q. Show that deed to his Lordship? A. (Witness complied)

HIS LORDSHIP: Q. Look at this document again, the document which  
Mr. Slaght has shown to you, and read the description and see if you can  
identify the description with reference to any of the parcels of land mentioned 40  
in Exhibit No. 2? A. (Witness perused document).

MR. SLAGHT: Q. I am instructed that that is the gravel pit. Perhaps  
the sketch will help you? A. (Witness examined document presented by Mr.  
Slaght).

HIS LORDSHIP: Q. Can you identify that with any of these parcels in Exhibit No. 2? A. (No answer).

Q. Has that document anything to do with any of the properties?

A. Yes; this is the property known as the gravel pit.

Q. The 63 and a fraction acres? A. Yes, the 64 acres.

MR. SLAGHT: While, my Lord, I have no brief for the bank in this matter, Messrs. Pettit & Darby are solicitors for the Royal Bank.

MR. WALSH: This deal was put through not by the Royal Bank but put through by this defendant.

10 MR. SLAGHT: Q. Tell me if this was the real position about the gravel pit: You had had some kind of an agreement with some man, whose name I have forgotten, who in turn had some kind of an agreement with the Hydro Commission for some time previous to April, 1931? A. Yes.

Q. Who was the middle man who had an agreement or option with the Hydro Commission? A. Ferris and Murray, two men.

Q. And you had some agreement in turn with Ferris and Murray?

A. I bought their agreement.

Q. And the Hydro Commission were the owners of the property? A. Yes.

20 Q. And Ferris and Murray had an option from them? A. It was not an option but an agreement to purchase.

Q. Very well, an agreement to purchase. And you had taken over theirs and you were to pay the Hydro Commission the balance on the gravel pit?

A. I had kept up my payments right along.

Q. And you had taken over theirs and you were to pay the Hydro Commission the balance on the gravel pit? A. As the agreement called for.

Q. And you found you were not able to do that and you turned it over to the bank and the bank paid the Hydro Commission and the bank took a deed?

A. No, you are wrong. I owed the bank some money and had to turn it over as collateral security.

30 Q. All right. And the bank did not let the deed go to you but took the deed in their own name as collateral security so that they could sell it any time they wanted to, by being the deeded owners? A. They have to account to me for my interest in it.

Q. Oh, yes; but that is the reason that was done. You started off by having us think that you were in fine shape financially, whereas as far back as April, 1931, the only way the bank would advance enough to pay the Hydro Commission was to have the Hydro Commission deed it direct to them.

A. I did not have the Hydro Commission deed it direct to them.

HIS LORDSHIP: Or if they did? A. Yes, I assigned it to them.

40 MR. SLAGHT: Q. I will job the other five parcels in that you are complaining about.

HIS LORDSHIP: Q. Somebody suggested that this got into the bank directly from the Hydro Commission for the bank to hold as security for your indebtedness? A. Yes; my interest in it.

Q. You owed the bank at that time? A. Yes.

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HIS LORDSHIP: There is no doubt that the bank was not the absolute owner, according to that evidence.

MR. SLAGHT: I quite agree. They took a deed, and when they sold they would have to credit him with the proceeds.

MR. WALSH: There is no contention that they were the absolute owner.

MR. SLAGHT: Q. The other five properties were pledged in that way?

A. Yes.

Q. And under the mortgage which you made to the bank they had the right to sell them under power of sale if you did not pay up your indebtedness?

A. Yes.

HIS LORDSHIP: Is this an admitted deed?

MR. SLAGHT: I think so.

HIS LORDSHIP: Any objection to that deed going in, Mr. Walsh?

MR. WALSH: I have never seen it.

HIS LORDSHIP: It is the deed that has been talked about.

MR. WALSH: I have no objection to it going in, my Lord.

EXHIBIT NO. 3: Deed of land from The Hydro Electric Power Commission of Ontario to The Royal Bank of Canada, dated April 30, A.D. 1931, with blueprint of plan attached.

MR. SLAGHT: Q. Then I show you an assignment of agreement dated 20 August 6, 1929, from yourself to the Royal Bank. Is that your signature?

A. Yes.

Q. And this is the assignment of agreement under which you turned over the Murray agreement on the gravel pit that you had bought to the bank?

A. Yes.

EXHIBIT NO. 4: Assignment of Agreement from plaintiff to the Royal Bank of Canada, dated August 6, 1929.

Q. Then you were quite a borrower from the bank when you came along to the month of March, 1929? A. Yes.

Q. You owed them between \$40,000 and \$50,000? A. I do not know 30 just how much.

Q. At all events, on the 27th March, 1929, you gave the bank a mortgage. Is that your signature on the mortgage from yourself and your wife to the Royal Bank? A. Yes.

Q. And in that you mortgaged the other properties we have been talking about? A. Yes.

Q. And it recites in part:—

“Whereas the Mortgagor is indebted and has become liable to the Mortgagee for moneys heretofore advanced by the Mortgagee to the said Mortgagor, and the Mortgagee is desirous of obtaining further security as col- 40 lateral to said indebtedness, and it has been agreed that this Mortgage should be given for that purpose;” and then you mortgage the property?

A. Yes.

EXHIBIT NO. 5: Mortgage from Charles S. Frankland and Lenna Frankland to the Royal Bank of Canada, dated March 27, 1929, registered as No. 5185.

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Q. After that things went from bad to worse and the bank were pressing you, and finally they told you they would have to offer the properties and try to sell them? A. No.

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HIS LORDSHIP: Put the first part of that question first.

MR. SLAGHT: Yes.

Q. Did your account with the bank improve or get worse? A. It did not  
10 improve any.

Q. Accounts do not stand still when there is interest eating them up. It was getting worse in the sense that you were getting further into the bank as a debtor? A. I had other securities with the bank besides these.

Q. I am not asking about those. You were getting a little more indebted to the bank all the time? A. Yes.

Q. Do you mean to say you did not know that the bank were offering your properties for sale under the power of sale? A. I knew they were trying to sell some of them; I knew they were trying to sell the gravel pit.

Q. And you knew because you were served with notices of intention to  
20 exercise the power of sale? A. No; I had never received any such notice that I remember.

Q. That you remember. At all events, you knew when they were advertised for sale? A. I knew when they were advertised for sale at the time of the mortgage sale.

Q. That is what I am talking about. And did you go to the mortgage sale? A. I did.

Q. And did you bid? A. No.

Q. Did you have anybody else bid? A. No.

Q. Then that was over with and you knew, of course, as a real estate man,  
30 that they had a right to sell after that by private sale as mortgagees? A. If they wanted to I knew they could.

Q. And after the mortgage sale proceedings and no buyer, and you a real estate man, if there was all this margin in your property why didn't you hustle around and get a buyer yourself for the bank? A. I did not want to sell it; I did not want that property sold because it would not realize what it was worth.

Q. In the sense that you could not find buyers for a gravel pit? It is not everybody who wants a gravel pit?

A. A lot of people do.

Q. During the three years you had a string on it why didn't you sell it and  
40 make a little money on it? A. I did sell the gravel pit once.

Q. You must have picked a poor buyer? A. For \$35,000.

Q. How much? A. No, \$32,500 I think it was.

Q. But it was not real money? The man could not buy it? A. I got some money out of it and the company abandoned it afterwards; they got quarrelling amongst themselves, that is the only reason.

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Q. I take it that the reason you did not hustle around and try to get a buyer who would clean you up with the bank was that you did not want it sold but you wanted to force the bank to hold your property, and the interest piling up in your account, and you deliberately refrained from getting them a buyer? Is that the situation? A. No. I will tell you the situation.

Q. But did you try to get a buyer? A. No.

HIS LORDSHIP: I understood the witness to say he sold it.

WITNESS: I sold the gravel pit prior to giving the assignment to the Royal Bank, and had to take it back at a previous date.

HIS LORDSHIP: Q. Prior to the mortgage sale? A. Yes, prior to 10 assigning it to the Royal Bank.

MR. SLAGHT: Q. Is there any other reason you want to add for his Lordship's benefit than the one you did, why you didn't try to get buyers, namely, that you wanted to keep the property and not to sell it? A. Yes.

Q. What was the other reason? A. Because I had money tied up in the property which is included in the previous action with Mr. Oakes, and I was trying to get a settlement with Mr. Oakes, which would give me money enough to redeem my property; I did not want it sold.

Q. But the bank was pressing you and telling you you would have to get the money or they would sell? A. They wanted to sell it, yes. 20

Q. And at no time after the bank were pressing and after the mortgage sale proceedings did you take any buyer to the bank in order to help the bank in any way to find a buyer? A. Yes, once,—no, not after the bank took it over.

Q. After it became known to you that your properties had been offered at public auction and no buyer would come you did nothing to help the bank to get a buyer? A. Yes; once I brought some men from Buffalo and tried to sell it to them.

HIS LORDSHIP: Q. Was that after the mortgage sale? A. Yes; I did once bring some men from Buffalo.

MR. SLAGHT: Q. And that fell down? A. It was for \$50,000. 30

Q. Except for the once that you brought the men from Buffalo do you stick to what you said before, namely, that you did not try to get the bank any buyers because you did not want to sell? A. Yes; unless I could get a big price for it.

HIS LORDSHIP: Q. Were the Buffalo men brought to the property? A. Yes; I had them taken all over the property and they were all ready to put in their money.

Q. That is not what I am going to ask you. I want to know if you brought them to the bank? A. I brought them both to the bank and to the property.

Q. Why didn't that go through? A. One of the parties that was putting 40 in a third of the money had some financial trouble come up in his own business, and he had to take the money to put in his own business that he was going to put into this, and the other two together did not have enough money to swing it.

MR. SLAGHT: Q. During the period that the bank were pressing you and wanted to sell, I take it that the only effort you made was in connection with the

Buffalo men, and that you know of no other offer during that whole period from anybody to buy these properties for any price? A. Oh, yes; I know a few parties who were negotiating with the bank.

Q. Is that from what they told you or did you go with them? A. One man at Niagara Falls—the price put on was \$185,000,—absurd!

Q. I just want to know if you went into the bank with anybody or tried to get another buyer? A. Those were the only ones.

Q. And you and Mr. Oakes had a falling out and you brought a lawsuit against him? A. I did not have any falling out or any words with Mr. Oakes.

10 Q. You started with lawyers in court? A. Yes, because I could not get a settlement with him.

Q. And he could not get a settlement with you? A. He could get a settlement at any time with me, on the level.

Q. You and he were into the Courts and your lawyers got together on the 9th November to see if they could settle for you? A. Yes.

Q. And Mr. Oakes in the morning was there but he was not there in the afternoon? A. No.

HIS LORDSHIP: Q. Can you tell me approximately the time of the attempted mortgage sale by the bank? A. No; I do not know the date.

20 MR. SLAGHT: We will get that date, my Lord.

Q. Tell me this: In the morning conference Mr. Darby, the lawyer acting for you in this case, and Mr. Griffiths acting for Mr. Oakes, went in to a side room and talked there? A. I do not know why Mr. Darby went out of the room.

Q. Did you participate in the talk about the settlement in the morning?

A. No.

Q. That was left to Mr. Darby? A. Yes.

Q. And in the afternoon Mr. Oakes made it known to you that he had all his arrangements made to take his family to Florida the next day, and he left for Florida the next morning? A. I knew nothing about that; I did not know  
30 he was going to Florida.

Q. Did not you know he indicated that if he was to be examined he wanted to be examined that day because he had plans made to go to Florida the next morning?

A. Not to my knowledge; I had been trying to get Mr. Oakes up for an examination for a year.

Q. Did you see Mr. Oakes any more in connection with this transaction?

A. No.

Q. And in the afternoon when you came back who were present? A. Mr. Griffiths and Mr. Hamilton.

40 Q. Did you participate in the talk in the afternoon? A. Yes.

Q. And you have told us all that happened in the afternoon, as far as you can remember? A. Yes.

Q. Then there was produced a document which became the settlement, which you signed up and which they got Mr. Oakes to sign apparently in advance before they brought him there, in case it should go through? A. Yes, in blank.

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Q. Tell me whose writing in ink that is in Exhibit 1? I am told it is Mr. Darby's? A. So far as I know.

Q. I show you another copy of Exhibit 1, another original. Is that your signature? A. Yes.

Q. And Mr. Oakes' signature is on that? A. Yes.

Q. And who is the witness here "Thomas G. Darby"? A. That is Mr. Darby's signature.

Q. And the words "Payment of \$15,000.00 Guarantee to Royal Bank and Ten Thousand . . ." are written in on both copies of that settlement? A. Yes.

Q. And are these your initials out here initialling the written words after 10 they were put in? A. Yes.

MR. SLAGHT: I will put in this document as Exhibit No. 6, my Lord.

EXHIBIT NO. 6: General release between plaintiff and defendant, dated 9th November, A.D. 1931.

Q. So that you knew what you were doing under this document? A. I knew I was settling for \$25,000; that is all.

Q. And the payment of the \$15,000 guarantee to the Royal Bank was to take care of \$15,000 of it? A. Yes.

Q. And \$10,000 to you? A. Yes.

Q. \$25,000? A. Yes. 20

Q. We did not hear very much about it, but at the time this was signed Mr. Oakes had already signed a guarantee to the Royal Bank on your behalf to the extent of \$15,000? A. Some years ago previous to that.

Q. And that was to help you finance and borrow money from the bank?

A. It was to help me to get money from the bank for the Erie Beach Company Limited.

Q. You need not talk so loudly about it. You could not have got the money if Mr. Oakes had not endorsed at the bank for you to the extent of \$15,000?

A. I put a lot of my own money in.

Q. Mr. Oakes for your accommodation endorsed at the bank for \$15,000? 30

A. For his own convenience.

HIS LORDSHIP: Q. Were you not a party to the deal? A. Yes.

Q. The land deal? A. Yes.

Q. And the \$15,000 guarantee to the bank by Oakes, was that to help your end of the transaction? A. No; it was in connection with the work of development; he was to finance the undertaking and I was to look after the development and market the property; he was to get his money back and then we were to split the profits afterwards.

Q. So you had a half interest in the earning part? A. Yes; and he was to finance it; I was putting my work up against his financing. 40

MR. SLAGHT: He says that. There was no written agreement to that effect.

Q. At this time Mr. Oakes was to the extent of \$15,000 a guarantor of the \$47,000 you owed the bank? A. Yes.

Q. He was stuck on it to the extent of \$15,000? A. Yes.



Q. And that existed during the period you were trying to sell the properties? A. Yes; but this money was advanced to me to spend on this other property.

Q. But if the bank had required Mr. Oakes to pay it he would have had to pay it? A. Yes.

Q. And you have said he was good for it? A. Yes.

Q. When he gave you the cheque for \$10,000 did you take the cheque across the line? A. It is none of your business what I did with it.

Q. I understand that you carried that \$10,000 over the New York State  
10 as soon as you got your hands on it?

A. You understand entirely wrong.

Q. Did you take it across the line?

A. No, I did not; you are entirely mistaken.

Q. You are swearing that you did not deposit it in the United States? I do not mean the actual cheque, but the proceeds of the cheque?

A. I am swearing I did not, either the proceeds or the cheque.

Q. And Mr. Oakes was to pay the bank \$15,000 and you expected to get credit for the loan from the bank?

A. Certainly; that was a consideration of the settlement.

20 Q. Produce your account from the bank and let us see how you stand with the bank to-day, because I may tell you that I am instructed that Mr. Oakes through his solicitor had paid the bank \$15,000, and \$20,000 more was paid by Welland Securities Limited when they acquired the properties, and that you were credited by the bank with the \$15,000 that Mr. Oakes paid for you, and I want your account.

HIS LORDSHIP: Do you mean this \$15,000?

MR. SLAGHT: Yes, my Lord.

MR. WALSH: Which was apparently to go to relieve Mr. Oakes from his obligation on the guarantee.

30 MR. SLAGHT: Yes; it did two things; the man got \$10,000 cash and Mr. Oakes, so as to reduce this man's obligation to the bank, agreed to pay the bank \$15,000 and release his own obligation to the bank.

MR. WALSH: As a matter of fact, they gave us credit for \$35,000 instead of \$50,000. There is the fraud carefully planned.

MR. SLAGHT: My friend has become accustomed to bandying the word "fraud" around.

Q. When you told us a moment ago that you did not understand what that payment of \$15,000 meant . . . A. I did not say that.

40 Q. You knew if Mr. Oakes carried out his contract with you on top of the \$10,000 he gave you if he paid the bank \$15,000 he was entitled to get his own guarantee back and the bank would credit you with \$15,000 on your debt?

A. Yes; absolutely.

Q. I understand that Mr. Steele, the bank manager, told you later on that Mr. Oakes had caused \$15,000 to be paid to the bank and that the bank had given you credit for it?

*In the  
Supreme  
Court of  
Ontario.*

Plaintiff's  
Evidence.

No. 5.

Charles S.  
Frankland  
Cross-Ex-  
amination,  
25th May,  
1932.

—continued.

*In the  
Supreme  
Court of  
Ontario.*

*Plaintiff's  
Evidence.  
No. 5.  
Charles S.  
Frankland  
Cross-Ex-  
amination,  
25th May,  
1932.*

*—continued.*

MR. WALSH: Pardon me. Mr. Oakes bought a property for that amount.  
HIS LORDSHIP: He is asking as to the fact according to this man's knowledge.

MR. SLAGHT: Q. I understand that Mr. Steele, the bank manager, told you later on that Mr. Oakes had caused \$15,000 to be paid to the bank and that the bank had given you credit for it?

A. No; he told me that he had caused \$35,000 to be paid to the bank.

Q. Where did you have your first interview with Mr. Steele the bank manager when he told you about moneys being paid in? A. In his office.

Q. Who were present? A. Steele and myself.

10

Q. On what date? A. I do not remember the date.

Q. My suggestion is that Mr. Steele, the bank manager, made it clear to you that that \$15,000 of the money Mr. Oakes had paid to him had been applied in reduction of your debt and that he had given Mr. Oakes' solicitor the guarantee back? A. He never informed me to that effect.

Q. Produce to me any statement of your account from the bank so that we can look at it? A. I have not had a statement from the bank for a year.

Q. Do not you keep a bank book showing your debits and credits?

A. I have not been doing any banking business with the bank for a year or more; I have had no account in the Royal Bank only as an overdraft.

20

Q. We are all unfortunate some time as to that. I am speaking about your bank account? A. I said I have no statement of my bank account.

Q. And you went further and said you had no bank account. Now, you have a bank account to-day with the Royal Bank of Canada? A. I am not depositing any money in the Royal Bank.

Q. Have you a bank account in the Royal Bank and do you keep a bank book? Most men do? A. My bank book was closed out some time ago, a year or more ago; I still have my bank book.

Q. Where is it? A. My solicitor has it, I think.

Q. Your story is that you have no statement whatever from the Royal Bank showing whether or not you got credit for the \$15,000. A. I have not a thing showing I got credit for a penny in connection with it.

HIS LORDSHIP: Q. Did you ever ask them for a statement? A. No.

MR. SLAGHT: Q. You owe the bank now? A. Yes.

Q. So you are not cleaned up yet. Can you tell me how much you owe?

A. No.

Q. Perhaps you do not care how much? A. Yes, I do.

Q. You have had no statement. Did you ever go in to see whether Mr. Oakes paid the \$15,000 as he agreed to do? I am going to show you a receipt from the bank where the bank acknowledged the money to be credited on your debt? A. I have not seen it.

Q. Why should Mr. Steele conceal that from you? A. I do not know.

Q. Mr. Steele is a reputable man?

A. He told me he got \$35,000 and credited it to my account.

Q. And he told you that Mr. Oakes had paid the \$15,000 as he agreed to do and it was credited to you? A. No; he did not tell me any such thing.

HIS LORDSHIP: Q. When the property was sold did you get any mortgage statement from the bank showing how your affairs were with the bank?

A. No; I have no mortgage statement.

Q. No statement from the bank as mortgagees selling the property, showing how your mortgage account stood apart from the deposit account?

A. I have no deposit account.

Q. I know that you said so. Keep your mind on the mortgage account?

A. No; I have no statement from them in connection with the mortgage account.

10 MR. SLAGHT: Q. If you intended in good faith to protect these properties, tell me how much of the \$10,000 you got from Oakes you took in to pay to the Royal Bank on account? A. I didn't pay them any.

Q. That would have been a good way to have kept you sweet with the bank?

A. (No answer)

Q. And also to preserve your properties? A. I went in to do that thing.

Q. It is easy to let money go to a bank? A. Yes.

Q. But you never paid them \$1. of the \$10,000?

A. I walked in with it in my pocket to do that.

20 my properties and I said I would wait until I saw how the cat jumped.

Q. On what date did you get the cheque?

A. My solicitor got it on the 9th November.

Q. Would you care to tell me what you did with it?

A. My solicitor cashed it.

Q. In bills? A. Yes.

Q. What did you do with the bills? That was a big roll, \$10,000 in bills?

A. Does it concern you what I do with my own money?

Q. If you would rather not tell why you cashed a \$10,000 cheque in bills and rather not tell what you did with it, I will not ask you?

30 A. I kept the money.

Q. I suggest to you, however, that you had no thought or intention of letting that money go into the Royal Bank at all, and that is why you got it put into big bills?

A. You are wrong. I walked into the bank with \$10,000.

Q. Am I correctly instructed that you have been up on judgment summons as a judgment debtor during the past two years? A. Yes.

Q. How many times? A. I do not know.

Q. Several times up on judgment summons as a judgment debtor?

A. Yes.

40 Q. You got \$10,000. What size were the bills?

A. I do not know exactly; they would run different sizes.

Q. And you got the bills on November 10, did you not?

A. Yes, the next day.

MR. WALSH: Put in the cheque, Mr. Slaght.

HIS LORDSHIP: Q. When you went into the bank to see about financing did you tell Mr. Steele or any other person in the bank why you were there?

*In the  
Supreme  
Court of  
Ontario.*

*Plaintiff's  
Evidence.  
No. 5.  
Charles S.  
Frankland  
Cross-Ex-  
amination,  
25th May,  
1932.*

*—continued.*

*In the  
Supreme  
Court of  
Ontario.*  
—  
Plaintiff's  
Evidence.  
No. 5.  
Charles S.  
Frankland  
Cross-Ex-  
amination,  
25th May,  
1932.

—continued.

A. Yes. I told Mr. Steele what I came for. I told him I had made a settlement with Mr. Oakes and had come in and wanted to give them some money and rearrange my finances to release my properties, and he said: "I cannot do anything with your properties because I sold them to the Welland Securities Limited and Harry Oakes."

MR. SLAGHT: Q. What date are you swearing that conversation took place on? A. Saturday morning, November 14.

Q. Because Mr. Steele had not sold them at that time, so I want you to exercise more care again? A. He told me he had sold the properties.

Q. I suggest to you that you were told by Mr. Steele that Mr. Oakes had paid \$15,000 as he had agreed with you to do in reduction of your indebtedness and that the bank had given you credit for it?

A. He told me he had received \$35,000 from the sale of my property.

HIS LORDSHIP: Q. Did he tell you the other thing? A. No.

Q. I mean what Mr. Slaght suggests? A. No; he did not.

MR. SLAGHT: Q. Why have you not taken the trouble to ask the bank for a statement if you are sincere in this action, because it would have saved a lot of trouble? A. He told me he had sold my property when I went in there and I told him that I would wait to see how the cat jumped.

Q. Do you suggest that while you owed the bank money they did not have the right to sell your property?

A. I know they had a right.

Q. Are you complaining against the bank that they are fraudulent? Mr. Walsh is throwing that word around?

A. I am complaining that the guarantee to be paid as part of my settlement with Mr. Oakes was used to buy a property which the bank was holding as collateral security for me; the money has been used two ways, used to settle with me and used to buy my property.

Q. If it was used to settle with you, that is all Mr. Oakes cares about.

MR. WALSH: It was attempted to be used to settle with us.

30

MR. SLAGHT: It is a little unusual to straighten out your client when you do not like his evidence.

MR. WALSH: It was attempted to be done, my Lord.

HIS LORDSHIP: You must allow the Court to interpret the language.

MR. SLAGHT: Q. Do you complain against the bank for any conduct of theirs in this matter? A. No; I have no complaint about the bank yet for any conduct.

Q. You complain that Mr. Oakes had not the right if he wanted to, or that Welland Securities had not the right if they wanted to, to buy these properties from the bank? A. (No answer)

40

Q. Because you will make some new law for us . . .

A. It depends on how they buy it.

Q. You do concede that they had the right to buy it?

A. At a straight sale, yes.

MR. WALSH: That is a matter for his Lordship to decide.

## RE-EXAMINATION BY MR. WALSH:

Q. Tell his Lordship what price the bank was holding this gravel pit at just before the 9th November, 1931?

A. I knew of two different prices they put on it; they quoted a price to a man in Niagara Falls of \$185,000.

HIS LORDSHIP: Q. Were you present? A. No; but Mr. Steele told me he quoted this price of \$185,000, and John Purcell (?) of Stephenville told me that Mr. Steele offered him the gravel pit for \$20,000 and Mr. Purcell was seriously considering buying it when this other thing came up, when these 10 people bought it.

MR. WALSH: Now let me have the cheque for \$10,000.

It is a cheque dated Niagara Falls, Ontario, November 9, 1931, payable to the order of W. H. Hamilton, \$10,000, and is signed by Welland Securities Limited, F. W. Griffiths, President, and L. M. Marks, Secretary, drawn on the Royal Bank of Canada at Niagara Falls, Ontario, and endorsed: "Pay to the order of Pettit & Darby, W. H. Hamilton," and further endorsed: "Pettit & Darby per Thomas J. Darby," and stamped on the back: "The Royal Bank of Canada, Teller, November 10, 1931, Bridgeburg, Ont." and marked "Paid" and certified on November 9, 1931.

20 EXHIBIT NO. 7: Welland Securities Limited cheque No. 560 dated Niagara Falls, Ontario, November 9, 1931, drawn on the Royal Bank of Canada for \$10,000 in favour of W. H. Hamilton; signed by F. W. Griffiths and L. M. Marks.

Q. Who is W. H. Hamilton? A. He is sitting over there.

Q. But who was he? A. He was acting as agent along with Griffiths and Oakes.

Q. By whom is Mr. Hamilton employed? A. Welland Securities Limited, I understand; it seems to be kind of hard to know who anybody is employed by.

30 Q. My learned friend asked you about the payment of \$15,000 to the Royal Bank. After the settlement was made was there anything said by Mr. Griffiths to you about the payment of the money to the Royal Bank? A. In Mr. Darby's office. Mr. Darby asked him, when they gave the cheque for \$10,000, for the \$15,000, saying he would undertake to pay it over to the bank and Mr. Griffiths said: "No, I will pay the \$15,000 into the Royal Bank and I will know it is paid."

MR. SLAGHT: There is a document which I should have had the witness identify, my Lord.

40 Q. On the same day that the settlement was signed your solicitors Messrs. Pettit & Darby with your authority signed this Consent to the Dismissal of the action and counterclaim without costs? A. Yes.

MR. SLAGHT: That should be before the Court. It is dated November 9, 1931.

EXHIBIT NO. 8: Consent to dismissal of action and counterclaim between plaintiff and defendant, dated November 9, 1931.

*In the  
Supreme  
Court of  
Ontario.*

Plaintiff's  
Evidence.  
No. 5.

Charles S.  
Frankland  
Re-examination,  
25th  
May, 1932.

Plaintiff's  
Evidence.

No. 5.  
Charles S.  
Frankland  
Re-Cross-ex-  
amination,  
25th May,  
1932.

*In the  
Supreme  
Court of  
Ontario.*

*Plaintiff's  
Evidence.*

*No. 5.  
Charles S.  
Frankland  
Re-Cross-ex-  
amination,  
25th May,  
1932.*

*—continued.*

HIS LORDSHIP: Q. After the mortgage sale did you make any payments to the bank on the mortgage? A. After the mortgage sale?

Q. I do not mean the sale on the 9th or 10th November last, but after the bank put up the property for sale under the mortgage did you make any payment to the bank? A. No; my money was tied up.

Q. I am not asking you if your money was tied up. You did not make any payments to the bank, and I suppose that means to any person representing the bank, after the time they put up the property for sale under the mortgage?

A. No.

Q. And the interest was running on at that time? A. Yes.

10

Q. Did you know at that time what the amount of the indebtedness was with the bank? A. Yes, \$60,000 odd.

HIS LORDSHIP: I would like to get the date of that sale.

MR. SLAGHT: I have just got it.

Q. You said you saw a bill of the mortgage sale and I am instructed that this is a bill of the mortgage sale which shows it was to be held at the law offices of Messrs. Pettit & Darby, Briggs Building, Jarvis Street, Bridgeburg, on Tuesday, November 12, 1929. Is that correct? A. I do not know; it was some time in 1929.

Q. And your present solicitors, Messrs. Pettit & Darby, were solicitors for the bank in conducting this mortgage sale? A. Yes; they were not my solicitors at that time.

Q. No; they were solicitors for the bank at that time? A. I do not know whether that is in reference to my property or not.

Q. Let us have no doubt about it. It is handed to me as such. Just check up the descriptions there? A. Yes; that has reference to my property.

EXHIBIT NO. 9: Advertisement of mortgage sale of plaintiff's property, dated October 8, 1929.

Witness withdrew.

*Plaintiff's  
Evidence.  
No. 6.  
Introducing  
Exhibits,  
25th May,  
1932.*

MR. WALSH: I desire to put in three deeds which cover the point raised by my friend Mr. Slaght with regard to the payment of the guarantee. I put in first the deed of the 23rd November, 1931, from The Royal Bank of Canada to Harry Oakes. That is within the thirty day option. It is registered on the 4th January, 1932, as No. 21099 for the township of Stamford. It recites the mortgage, default, service of notices, auction sale and no sufficient bid, and that the land is sold for the consideration of \$15,000 now paid to the grantor by the grantee.

Then I wish to read the Affidavit under the Land Transfer Tax Act, taken by William Herbert Waugh, Barrister and Solicitor for the grantee, who says he has knowledge of the facts and that the money paid in cash for this property was \$15,000. It is sworn before Mr. W. C. LaMarsh on the 4th January, 1932.

MR. WALSH: We will have to put in a certified copy of that, my Lord.

HIS LORDSHIP: Exhibit No. 10 is the original?

MR. WALSH: Yes, my Lord.

EXHIBIT NO. 10: Conveyance under Power of Sale from The Royal Bank of Canada to Harry Oakes, dated November 23, 1931, and registered as No. 21099, township of Stamford.

HIS LORDSHIP: What property is covered by Exhibit 10?

MR. WALSH: Lots 5 to 11 inclusive, Carlton Avenue.

MR. SLAGHT: The seven lots or seven acres which have been given for a Park down here.

MR. WALSH: It is parcel No. 5 on the Royal Bank document, \$15,000.

10 HIS LORDSHIP: Is that the document called the Option?

MR. WALSH: Yes.

The second document I desire to file is also an original deed dated November 23, 1931, from The Royal Bank of Canada to Welland Securities Limited, and it recites about a mortgage and says "Consideration of one dollar and other valuable consideration," and describes the lots in the village of Bridgeburg, which would be parcels Nos. 1, 2, 3 and 4 on Exhibit No. 2. The registration number of that document is No. 2, under date January 4, 1932. The affidavit under the Land Transfer Tax Act is taken by Mr. William Herbert Waugh, and he says that the consideration, the moneys paid in cash, amounting to \$2,400., and that

20 that is the total consideration.

EXHIBIT NO. 11: Conveyance under Power of Sale from The Royal Bank of Canada to Welland Securities Limited, dated November 23, 1931 and registered as No. 2, town of Fort Erie.

The third document I desire to file is a deed dated November 23, 1931, from The Royal Bank of Canada to Welland Securities Limited, of property in the township of Stamford, the last item in the list given in Exhibit 2, namely, the gravel pit. The consideration is "One dollar and other valuable consideration" and the affidavit under the Land Transfer Tax Act is taken by William Herbert Waugh, solicitor for the grantee, and he says the money is paid and

30 that the total consideration is \$17,600. If your Lordship adds those up they come exactly to the sum of \$35,000; that is, the consideration for that land was \$35,000, as sworn to by Mr. Waugh.

EXHIBIT NO. 12: Deed of land without dower from The Royal Bank of Canada to Welland Securities Limited, dated November 23, A.D. 1931, and registered as No. 21098, township of Stamford.

MR. WALSH: Then I wish to put in a letter dated November 16, 1931, from Messrs. Pettit & Darby to Messrs. Griffiths & Martin, Barristers, Niagara Falls. Shall I put the correspondence in as one exhibit?

HIS LORDSHIP: Yes, if the letters can be grouped.

40 MR. WALSH: The reply is dated November 18, 1931, from Messrs. Griffiths & Martin to Messrs. Pettit & Darby. The next letter is from Messrs. Pettit & Darby to Messrs. Griffiths & Martin, dated November 19, 1931, and the next appears to be a letter dated January 14, 1932, from Messrs. Pettit & Darby to Harry Oakes, Esq., and a copy of that letter to Messrs. Griffiths & Martin under date January 14, 1932:—

*In the  
Supreme  
Court of  
Ontario.*

Plaintiff's  
Evidence.  
No. 6.  
Introducing  
Exhibits,  
25th May,  
1932.

—continued.

In the  
Supreme  
Court of  
Ontario.  
—  
Plaintiff's  
Evidence.  
No. 6.  
Introducing  
Exhibits,  
25th May,  
1932.

—continued.

EXHIBIT NO. 13: (a) Letter dated November 16, 1931, from Messrs. Pettit & Darby to Messrs. Griffiths & Martin.

(b) Letter dated November 18, 1931, from Messrs. Griffiths & Martin to Messrs. Pettit & Darby.

(c) Letter dated November 19, 1931, from Messrs. Pettit & Darby to Messrs. Griffiths & Martin.

(d) Letter dated January 14, 1932, from Messrs. Pettit & Darby to Harry Oakes, Esq.

(e) Letter dated January 14, 1932, from Messrs. Pettit & Darby to Messrs. Griffiths & Company enclosing copy of letter dated January 14, 1932, addressed 10 to Harry Oakes, Esq.

“November 16, 1931.

“Messrs. Griffiths & Martin,

“ Barristers, etc.,

“ Niagara Falls, Ont.

“Dear Sirs: *Re Frankland vs. Oakes:*

“ Following up our settlement of this matter for \$25,000.00, to be paid  
“Frankland, \$10,000.00 cash and \$15,000.00 which the Defendant was to pay  
“the Royal Bank of Canada, Bridgeburg, in full satisfaction of the Plaintiff's  
“debt to the Bank guaranteed by the Defendant, we would be pleased if you 20  
“would forward us some sort of release or receipt by the Bank concerning  
“this \$15,000.00 item, as we wish to place the same in our files. Mr. Oakes,  
“of course, we presume would be entitled to the original receipt, so if you  
“would kindly send us a copy of the same that would be sufficient. We will,  
“upon receipt of this, consider that we have finished with the matter.

“ “Yours very truly,

PETTIT & DARBY,

Per B.

“TJD/VSB.”

“November 18, 1931. 30

“Messrs. Pettit & Darby,

“ Barrister, &c.,

“ Welland, Ontario.

“Dear Sirs:

“ *Frankland vs. Oakes.*

“ We have your letter of the 16th instant.

“ Negotiations are under way for the releasing of the guarantee by the  
“Bank and upon their completion we will send you a copy of the receipt we  
“hold as requested.

Yours faithfully,

“FWG:JSM.

(Sgd.) F. W. Griffiths.” 40



“Messrs. Griffiths & Martin,  
 “ Barristers, etc.,  
 “ Niagara Falls, Ont.

“November 19th, 1931.  
 Att. Mr. Griffiths

*In the  
 Supreme  
 Court of  
 Ontario.*

“Dear Sir: *Re Frankland vs. Oakes*

Plaintiff's  
 Evidence.  
 No. 6.

“ We have your letter of the 18th instant herein.  
 “ We don't understand anything about the negotiations for the Release of  
 “the guarantee as Mr. Frankland's settlement with Mr. Oakes was that  
 “\$15,000.00 shall be paid to the Bank for the Release of the guarantee and  
 “Mr. Frankland's indebtedness to the Bank reduced by that very amount.

Introducing  
 Exhibits,  
 25th May,  
 1932.

—continued.

10 “ You will naturally understand that Mr. Frankland is anxious to obtain  
 “a receipt as to this \$15,000.00 to be applied on his indebtedness.

“ Yours very truly,

“ PETTIT & DARBY,  
 “ Per B.

“TJD/VSB.”

“January 14, 1932.

“Harry Oakes, Esq.,  
 “ 151 Barton Avenue,  
 “ Palm Beach, Florida, U.S.A.

20 “Dear Sir: *Re Frankland vs. Oakes:*

“ We have instructions from Mr. C. S. Frankland of Bridgeburg to make  
 “a claim against you for damages in connection with the settlement between  
 “you of the Supreme Court action.

“ By the terms of the said settlement Mr. Frankland says you were to pay  
 “the sum of \$15,000.00 to The Royal Bank of Canada, being the amount of  
 “your guarantee, without recourse to him, thereby reducing his debt to the  
 “Bank by the said sum of \$15,000.00. Mr. Frankland instructs us that this  
 “has not been done.

30 “ Our instructions are to issue a Writ against you for damages, but without  
 “prejudice Mr. Frankland is prepared to accept the sum of \$15,000.00 in  
 “full settlement of his claim. Please let us hear from you in this matter.

“ Yours very truly,

“ PETTIT AND DARBY,  
 “ Per R.

“TJD:R

“ (Copy for Griffiths & Co., Barristers, etc., Niagara Falls)”

"January 14, 1932

In the  
Supreme  
Court of  
Ontario.

Plaintiff's  
Evidence.  
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Introducing  
Exhibits,  
25th May,  
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—continued.

"Messrs. Griffiths &amp; Co.,

" Barristers, etc.,

" NIAGARA FALLS, Ontario.

"Dear Sirs: *Re Frankland vs. Oakes:*

" We enclose herewith copy of letter we have this day written to Mr.

" Harry Oakes, for your attention.

" Yours very truly,

PETTIT AND DARBY,

Per R.

"ENCL.

"TJD:R."

10

MR. WALSH: Now I would like to have the cheque for the payment of the land and the guarantee. Mr. Oakes gave a cheque for \$15,000 for the purchase of that property.

MR. SLAGHT: I will make them accessible to you when the bank manager is in the box.

MR. WALSH: My friend has the sister cheque dated November 8, 1931.

MR. SLAGHT: I may have a whole family of them, but you will have to prove them if I ask you to do so. I will have them before the Court at the proper time when the bank manager is in the box, or someone who can prove the cheque, because I want to ask questions about it. 20

HIS LORDSHIP: Is the cheque denied by the defendant.

MR. SLAGHT: No, it is not denied.

MR. WALSH: Then Mr. Slaght should hand it over to me.

HIS LORDSHIP: I think the plaintiff is entitled to call for it if it is in existence unless it is denied as not being genuine.

MR. SLAGHT: The cheque has to be proven by somebody unless we consent to it being put in.

HIS LORDSHIP: I suppose the purpose is to see who is going to call the manager of the bank? 30

MR. SLAGHT: Yes, my friend has already said he is going to call him.

HIS LORDSHIP: I would be very astute not to give more weight to his evidence as against you, as contrasted with the person who calls him, if that is the only reason for not handing over the cheque.

MR. WALSH: Then I will call the bank manager.

Plaintiff's  
Evidence.

No. 7.

Joseph R.  
Steele Ex-  
amination,  
25th May,  
1932.

JOSEPH R. STEELE, Sworn.

EXAMINED BY MR. WALSH:

Q. What is your business? A. Manager of the Royal Bank of Canada.

Q. Where at? A. Fort Erie North.

Q. Where were you last November? A. At Bridgeburg. Bridgeburg was amalgamated with Fort Erie at the first of the year. 40

Q. It is a union town now? A. Yes.

Q. And on November 9, 1931, it was called the Bridgeburg Branch of which you were the manager? A. Yes.

Q. And that is the branch in which Frankland the plaintiff had this indebtedness to you? A. Yes.

Q. Tell his Lordship if you were in your office on the 9th November, 1931?

A. Yes.

Q. Did you have any callers that day? A. Yes.

Q. Who did you have? A. Mr. Griffiths and Mr. Hamilton.

Q. Who is Mr. Hamilton? A. I cannot tell you except that he was associated with Mr. Griffiths; I do not know apart from that.

Q. He came in with Mr. Griffiths? A. Yes, at any time I have seen Mr. Hamilton.

Q. At what hour in the morning? A. Some time before dinner possibly about 11 o'clock.

Q. What business were they in to see you about? A. To get an option.

Q. On what? A. On Frankland's properties.

Q. Did they ask you for it? A. We had discussed about the sale of the properties to them on a previous occasion.

HIS LORDSHIP: Q. You had what? A. I had discussed with them on a previous occasion concerning the sale of the properties.

MR. WALSH: Q. With whom? A. Mr. Griffiths and Mr. Hamilton.

Q. For whom did Mr. Griffiths say he was acting? A. I do not remember.

Q. Was Mr. Oakes' name mentioned? A. Oh, yes, quite; I believe the reason I talked with Mr. Griffiths and Mr. Hamilton in the beginning was that I was trying to get Mr. Oakes to pay his guarantee; I was talking with Mr. Griffiths and Mr. Hamilton about it being paid.

Q. And they came in to buy up the properties? A. No. I believe the suggestion came from me in the beginning, that they buy these properties.

Q. When was that? A. Some time in October, several weeks previously.

Q. Did you know there was a lawsuit on them between Frankland and Oakes? A. Yes, I expected there was.

Q. And you suggested to Mr. Griffiths that he buy these properties?

A. Yes; I made the offer.

Q. When? A. In October. I made the offer that we would release Mr. Oakes' guarantee and turn over everything we had taken from Frankland for \$35,000.; I made that proposition myself.

Q. On what date? A. Some time in October. I may have talked about it previously but I wrote Mr. Griffiths on the 18th (sic) October, if I remember rightly.

Q. Mr. Oakes is a very good client of the Royal Bank, is he not? A. I believe so.

Q. It is a matter of knowledge, is it not? A. Not necessarily, because I have been unfortunate in not having the branch where Mr. Oakes did his business.

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HIS LORDSHIP: Q. What took place on the 18th October? A. On that date I had a conversation with Mr. Griffiths and Mr. Hamilton, and that night I wrote them and put in writing the proposition I had made to them that day.

MR. WALSH: Q. What do you say the proposition was that you made that day? A. That I turn over to them the list of properties you have there, and I told them that I was prepared to recommend to the Bank that we sell those properties and release Mr. Oakes' guarantee on the basis of \$35,000 for the properties.

Q. What did Mr. Griffiths say at that time? A. He asked me to write 10 to him; that letter to Mr. Griffiths was in response to his request to put it in writing.

Q. What did he say? A. I do not remember.

Q. He wanted it in writing? A. Yes.

Q. Did he say he was going to see Mr. Oakes about it? A. Not that I remember.

Q. On whose behalf was he doing this? A. As far as I know, the Welland Securities and Mr. Oakes.

Q. Who are the Welland Securities Limited? A. You will have to ask somebody else than me; I cannot definitely say who they are; I have never seen 20 a statement.

Q. Are they not customers of the Royal Bank? A. Not of my branch.

Q. The Niagara Falls Branch? A. Yes, I believe so.

Q. And you gave that letter in October? A. October 18, from memory.

Q. How long did you give them the right of purchase for? A. As long as they wanted. If I could have found a purchaser in the meantime I would not have been guided by that letter.

Q. What happened on November 9? A. Mr. Griffiths and Mr. Hamilton came to me and asked me if I was willing to give them a thirty day option based on the proposition I made in my letter, and I said "Yes"; and it was writ- 30 ten on the bottom of the statement.

HIS LORDSHIP: Q. With reference to your saying something about writing to Mr. Griffiths following the interview on the 18th October, look at Exhibit No. 2? A. (Witness complied).

Q. Does the typewriting on that document mean anything to you?

A. Yes; that is a copy of the statement of these properties that I enclosed with my letter.

MR. SLAGHT: I think the letter he wrote to Mr. Griffiths should go in as an exhibit, my Lord.

HIS LORDSHIP: I wanted to see what he was talking about on the 18th 40 October.

Q. Part of Exhibit No. 2 is in typewriting showing a total sale price of \$33,200. Does that mean anything to you? A. No. I will tell you what that price was—

Q. Never mind. What was it you said to Mr. Griffiths on the 18th October? A. That we would release all the properties Frankland had to do with for \$35,000. and would release his guarantee of \$15,000.

Q. You were not offering \$33,200? A. No; that is just a list of prices that I put on those properties in reporting on a bad and doubtful debt to my head office two years previously; those are prices we hoped to get, not that we expected to get.

MR. WALSH: Q. You did not tell Mr. Frankland anything about writing that letter to Mr. Griffiths? A. No.

10 Q. He knew nothing about it? A. No; I didn't think we needed to bother with him. I thought we had a perfect right to sell the property.

Q. You only held it as collateral security? A. Oh, yes; everybody understood that.

Q. Who wrote the handwriting at the bottom of Exhibit 2? A. Mr. Griffiths, I think.

Q. The handwriting on Exhibit 2 appears underneath the list of properties and is dated November 11, 1931. Whose handwriting is that? A. Mr. Griffiths.

Q. What date was he in there on? A. On the 9th November.

20 Q. November 11 is Armistice Day and a bank holiday? A. Yes.

Q. And November 9 was the date? A. Yes.

Q. No doubt about that? A. None whatever.

HIS LORDSHIP: Q. Is that the date on which this was written and signed? A. Yes; I did not notice it was dated the 11th. My assistant did not call my attention to it until after he went away. It did not make any difference to me because we were giving a thirty-day option.

Q. But the date was the 9th of the month? A. Yes.

30 Q. And did you know at that time that he had been up making an offer of settlement of \$25,000? A. No; I did not think Frankland would ever get to a settlement.

Q. Tell his Lordship what Mr. Griffiths said, if anything, as to Mr. Frankland knowing about this? A. Yes, unfortunately there was something said. Mr. Griffiths said: "Do you have to tell Frankland about this?" and I said "No."

Q. What did he say? A. He said: "Don't tell Frankland about the option," and I think I answered: "I don't think it is necessary; he has never given any attention to the sale of the properties, and I would like to do the best I can with them."

40 Q. Mr. Griffiths said to you: "Don't tell Frankland" what? A. He asked me if it was all right not to tell Frankland for a little while.

Q. Did not he tell you not to tell Frankland? A. I cannot repeat the conversation word for word.

Q. But that is your recollection of it anyway? A. Yes, along that line.

Q. Along that line? A. Yes, that was it. Mr. Griffiths, for some rea-

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son or another, did not want me to discuss it with Frankland for a day or two.

Q. "For a day or two"? A. For a little while.

Q. Who did the typewriting on Exhibit 2? A. That is merely a copy from the bank's files; it is a copy of my letter of October 18; it is a paper taken from our correspondence file.

Q. Did Mr. Griffiths have that top part in his possession when he got it?

A. I do not remember whether it was taken out of my file or from his letter.

HIS LORDSHIP: The handwriting is under the typewriting.

MR. WALSH. Q. From October 19 Mr. Griffiths had the list of those properties with the values set out? 10

HIS LORDSHIP: The witness says he wrote Griffiths following the interview of October 18, when Griffiths asked him to put something in writing, and that he sent him that material in substance, if not exactly.

Q. Is that what you said? A. Yes, quite.

Q. Who was the one who mentioned the thirty-day option? A. Mr. Griffiths.

Q. Was that option exercised? Did he accept the option? A. Yes.

Q. Have you the letter accepting the option? A. Yes; it is dated the 19th November.

MR. WALSH: Q. This is a letter from Welland Securities Limited 20 dated November 19, 1931, signed by F. W. Griffiths, K.C., President, and addressed to you:—

"Dear Sir:

" Welland Securities Limited hereby accepts the option granted by the "Royal Bank of Canada dated November 11th, 1931, for the purchase of the "properties therein referred to for the price of \$35,000.

" The option calls for the supplying to the Welland Securities Limited of "all evidence on title but up to date we have received nothing. It is also part "of the acceptance that the guarantee by Mr. Harry Oakes for \$15,000 to "the Royal Bank of Canada in connection with Charles Frankland is to be 30 "retired out of the purchase price above.

" Please supply us with your title papers and draft deed at the earliest "moment as we are prepared to close upon procuring a good marketable "title for the lands.

" It will be necessary to have two deeds, one deed for the 7 acres in Stam- "ford and the other deed covering the other property. The consideration "for the Stamford seven acres will be \$15,000 to be deeded to Harry Oakes.

" We trust you will be able to let us have these draft deeds at once."

EXHIBIT NO. 14: Letter dated November 19, 1931, from F. W. Griffiths, K.C., to J. R. Steele. 40

Q. Did you get a cheque for the purchase price of the lands? A. Yes.

MR. WALSH: This cheque is dated December 31, 1931, payable to the order of the Royal Bank of Canada, Bridgeburg, \$32,134.77, signed "Welland

Securities Limited, F. W. Griffiths, President and L. M. Marks, Secretary." It is endorsed "For the Royal Bank of Canada, Fort Erie North, Ontario," and was paid on January 6th, 1932.

EXHIBIT NO. 15: Welland Securities Limited cheque No. 624 dated December 31, 1931, in favour of the Royal Bank of Canada, Bridgeburg, for \$32,134.77.

Q. I take it that that \$32,134.77 is the purchase price of the lands less the adjustments? A. Yes, the unpaid taxes.

Q. Less the adjustments? A. Yes.

10 MR. WALSH: On the inside of the cheque the following appears:—  
"Particulars as per cheque:

" Dec. 31: Payment in full for lands covered by option dated November  
"11, 1931, to Welland Securities Limited accepted by Welland Securities Lim-  
"ited, Nov. 19, 1931 ..... \$32,134.77."

Q. Mr. Oakes is a wealthy man, is he not? A. I believe so.

Q. And well able to pay his guarantee of \$15,000? A. There never was any doubt about it.

HIS LORDSHIP: What has his ability to pay to do with the legal question whether he is bound to pay?

20 MR. WALSH: I would just like to know, anyway, my Lord.

MR. SLAGHT: We are all agreed about that.

MR. WALSH: As long as we are.

Q. Mr. Slaght mentioned to my client about Mr. Oakes paying this \$15,000 in payment of the guarantee. Have you got Mr. Oakes' cheque in payment of that guarantee? A. No, I would not have that. If he gave me a cheque it would be back in his own bank now.

Q. You have not got the cheque? A. No; we received it in the \$35,000; that is our understanding.

30 Q. He had an option for thirty days to buy this land for \$35,000? A. Now look, don't misunderstand it. He had an option to buy the land and his guarantee for \$35,000.

HIS LORDSHIP: Why get into an argument with the witness as to the legal effect of these documents?

MR. WALSH: Q. Did you acquaint Mr. Frankland with the fact that you had sold the land for that amount? A. Yes.

Q. When? A. Saturday about noon, on the 14th November.

Q. What happened? A. Well, he was not very pleased.

Q. I suppose you didn't blame him, either? A. Oh, yes; I thought I had made a very fair deal, but we had a few words; I remember that.

40 Q. He was not pleased? A. Undoubtedly he was not; it is sure that he was not.

Q. And you reported this to head office? A. I reported it on the 9th November.

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Q. Have you that report there? A. I can give you a copy of my letter.

MR. SLAGHT: How is that admissible?

MR. WALSH: I want to get corroboration of the affidavit on land values.

MR. SLAGHT: Then get it in the right way.

MR. WALSH: Q. Did not you report to your head office that that was a fair price for the sale of these lands? A. I did.

MR. SLAGHT: Whether or not, it would not be evidence against Mr. Oakes.

HIS LORDSHIP: As between the bank and the owner of the equity of redemption it might be important as to whether the bank had made a sale of 10 the properties in a proper manner.

MR. SLAGHT: Quite so. If the action should be brought against anybody it should be the bank, but my friend knows that interchange between the manager and the head office could not possibly be evidence against Mr. Oakes.

HIS LORDSHIP: Mr. Steele has already said he thought it was a good offer that he had obtained for the properties, and naturally I suppose he would report that to the head office.

MR. WALSH. Q. What view did the head office take? A. I got a letter of acknowledgment from Mr. Rae.

MR. SLAGHT: If my friend wants to make a mistrial of this case he can 20 persist in asking such questions.

HIS LORDSHIP: That might be evidence in an action between the owner of the equity of redemption and the bank as to whether the bank had made a proper sale. If merely the question of value is involved, I am not concerned with this evidence.

MR. WALSH: Whether we have a cause of action against the bank or not, when Mr. Griffiths knew this and went down and got a thirty-day option, that was something he had no right to do.

MR. SLAGHT: He had a perfect right to do that.

MR. WALSH: We will see about that.

HIS LORDSHIP: All that evidence is in, Mr. Walsh.

30

MR. WALSH: Q. Did Mr. Griffiths pay you \$15,000 in payment of that guarantee? A. He paid me \$35,000 for the properties and the guarantee in accordance with the agreement he originally made with me; there was no separate payment.

Q. What did you credit Frankland's account with? A. I credited the collateral account of Frankland under directions from head office, and they made the distribution to a special collateral account; it went to Frankland's credit the day we credited it.

Q. Mr. Slaght has been talking a lot about a deed being in the name of 40 the Royal Bank, and so forth, but so far as the Royal Bank is concerned it was Frankland's properties they were holding as collateral security for his indebtedness? A. Yes.

Q. Then when this sum of \$32,000 odd came into the Royal Bank what credit did Frankland get on his indebtedness? A. The exact amount of that



cheque including all the payment of taxes—about \$3,000 unpaid taxes that we had to deduct from the cheque—he got credit for \$35,000 less the taxes.

Q. In other words you gave Frankland credit for the exact amount that you received from the Welland Securities Limited? A. Yes.

Q. And it was through the system you have now described that Mr. Oakes' guarantee was returned? A. Yes.

Q. To whom did you return the Oakes' guarantee? A. To Mr. Griffiths, as his solicitor.

Q. Did you write a letter with it? A. No. I took a receipt from him  
10 for it and I made in that receipt a statement of the fact that we had credited Mr. Frankland for the amount.

Q. And you handed the guarantee back? A. Some time subsequently. It is not a practice of our bank to give a guarantee back unless specially requested, and then we only give them back if we get a receipt for them, so that we know where our records have gone.

Q. You had some other collateral security in addition to this? A. Frankland's?

Q. Yes, had you not some of Mr. Houck's? A. No; that was a note of Houck's which I discounted for Frankland, and it is really a liability of Frank-  
20 land's yet. That was not collateral security.

#### CROSS-EXAMINATION BY MR. SLAGHT:

Q. You had had a previous talk with Griffiths and you wrote him a letter which you thought was dated October 18. I have a letter here and the date is  
October 8? A. Possibly that is right.

Q. Is that the letter you spoke of to Mr. Walsh and pinned on to the back of it the list of the properties? A. Yes.

Q. And the stamp of the firm of Griffiths & Martin appears on it, dated October 9, 1931? A. Yes; this is undoubtedly the letter.

MR. SLAGHT: This letter reads:—

30 "Dear Sir:

We are enclosing herewith list of properties acquired from C. S. Frankland by foreclosure of mortgage held by us as security. We have not a list of unpaid taxes. These can be obtained in a few days. As suggested to you to-day we would recommend that the bank accept \$35,000 for the properties including the release of the guarantee signed by Harry Oakes."

EXHIBIT NO. 16: Letter dated October 8, 1931, from J. R. Steele, Manager of Bridgeburg Branch of the Royal Bank of Canada to Mr. F. W. Griffiths, enclosing list of properties acquired from C. S. Frankland by foreclosure.

Q. Was there ever any negotiation between you and Mr. Griffiths in this  
40 matter that was not double-barrelled, that is, negotiations to the effect that they were to procure, in whatever sum was paid, the release of Mr. Oakes' guarantee? A. Yes; that was always understood; there is no doubt about that.

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Q. Then there are attached to this letter some other prices? A. Mr. Griffiths in our conversation will remember my saying: "There, they are as I reported them as a bad and doubtful debt on a previous date." We never discussed the value of each piece at all.

Q. We have now the date before the Court that your solicitors offered them for sale under the mortgage as November in the year 1929? A. Yes; in the fall of 1929.

Q. Then we heard from Frankland as to how things drifted and drifted from that date, and you were still carrying these properties as collateral two years later in November, 1931? A. Yes. 10

Q. Or October, 1931? A. Yes.

Q. And during that time Frankland apparently had not paid the taxes because by deducting the cheque of \$32,134.77 from the \$35,000 I see that the taxes had got behind to the extent of \$2,865.23 at the time you sold? A. That is about the amount.

Q. Let me ask you, as Mr. Walsh did, about Frankland's account. The account of Frankland was an account of between \$40,000 and \$50,000 that he owed to you? A. Yes, including that trade paper; anything that a man's name is on; it is our practice, when we take a mortgage as collateral, to include the full total, and we included the note of Mr. Houck. 20

Q. He said about \$47,000? A. That includes the indebtedness of Mr. Houck.

Q. And out of that \$47,000 you had a guarantee by Mr. Oakes of \$15,000? A. Yes.

Q. And that \$15,000 guarantee of Mr. Oakes was perfectly good? A. I never doubted it.

Q. So that if included in the cheque of \$32,000 odd, the adjustments making it a round sum of \$35,000, you were handing back and releasing that guarantee, how much were you, as a banker, releasing so far as handing the guarantee over is concerned? A. \$15,000. 30

Q. And you told Mr. Walsh that the payment of \$15,000 by Mr. Oakes on his guarantee was included in the \$35,000? A. Undoubtedly.

HIS LORDSHIP: All that meant was that that much security was being released?

MR. SLAGHT: Yes.

Q. And it meant that you were getting \$20,000 for the property? A. We were netting \$20,000.

MR. WALSH: I object.

HIS LORDSHIP: Oh, no. Argue that later.

MR. SLAGHT: Q. The properties had not sold at the mortgage sale, as you have told us? A. No; we did not get a bid. 40

Q. And if you had not sold the properties at all, and had compelled Mr. Oakes to pay his guarantee to the bank of \$15,000, you would have received the \$15,000? A. Yes, undoubtedly.

Q. So that you were not in any doubt about that? A. Not a bit.

Q. And upon payment of that amount it was placed to the credit of Frankland? A. Yes.

Q. And for no other purpose? A. No other purpose.

Q. What do you say as to whether or not at that time, having regard to the market and offers to sell, the \$20,000 on top of the payment of \$15,000 was or was not, in your opinion, a fair price for the property?

HIS LORDSHIP: I checked Mr. Walsh in that regard. That is touching the position as between mortgagee and mortgagor.

MR. SLAGHT: Q. Was the guarantee of Mr. Oakes returned to him? 10 A. Yes.

Q. Is this the original guarantee? A. Yes.

EXHIBIT NO. 17: The Royal Bank of Canada guarantee of C. S. Frankland's account, signed by Harry Oakes, dated August 4, 1927.

Q. And is this the memorandum which covers the transaction as it occurred? A. Yes, when I delivered the guarantee.

Q. Does this memorandum cover the transaction as it occurred between you and Mr. Griffiths? A. Yes.

MR. SLAGHT: It is dated Fort Erie North, Ontario, February 10, 1932, and reads as follows:

20 "Received from The Royal Bank of Canada (their Form 54) guarantee dated August 4th, 1927, signed by Mr. Harry Oakes, guaranteeing advances to Mr. Charles S. Frankland to the amount of \$15,000.00, full settlement of the liabilities of Mr. Oakes to the Royal Bank of Canada in this connection having been made on December 31st, 1931, to the amount of \$15,000.00 and the amount of the settlement credited to the account of Charles S. Frankland."

(Sgd.) "Harry Oakes by F. W. Griffiths his solicitor.  
"For the Royal Bank of Canada,  
Fort Erie North, Ont.

30

(Sgd.) "J. R. Steele,"  
"Manager."

EXHIBIT NO. 18: Receipt acknowledging guarantee returned to Mr. H. Oakes, dated February 10, 1932.

Q. Is that the transaction as it went through at the time? A. Yes.

Q. When Mr. Frankland was in on the 14th or whatever date it was in November did you tell him of the transaction as you were carrying it out?

A. Undoubtedly.

Q. Which was what? A. That Mr. Oakes was to get the properties for \$35,000 and get his guarantee back.

40 Q. So that Mr. Frankland understood that, or you told him that at that time? A. Yes, at that time.

Q. Did he ever serve any notice in writing on the bank? I do not know, after all, that I have anything to do with his complaint to the bank, but did he

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ever make any written notice to the bank against carrying out that transaction? A. Not to my knowledge; not to me.

HIS LORDSHIP: The correspondence showing his attitude has been put in.

MR. SLAGHT: Q. So far as the bank is concerned, you know of no correspondence from him to the bank in that regard? A. No.

Q. Have you the voucher given to him at the time the guarantee was turned over? A. No, I have not.

Q. Then, as your voucher shows, the \$15,000 paid on behalf of Mr. Oakes was credited to Mr. Frankland? A. Yes, the whole thing was credited; we 10 did not make two bites at the cherry at all.

Q. Then Frankland is, as he said, still indebted to the bank? A. Yes.

HIS LORDSHIP: Q. The balance is still unpaid? A. Yes.

MR. SLAGHT: Q. Did Frankland ever offer to pay you the \$10,000 or any part of it that he got from Mr. Oakes? A. I have no recollection of that.

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RE-EXAMINATION BY MR. WALSH:

Q. Who dictated the receipt dated February 10, 1932, (Exhibit 18)? A. I did.

Q. You dictated that? A. Between the two of us.

Q. He was there at the time and helped you? A. Yes, just the two of us; 20 Mr. Hamilton may have been there with him, I have forgotten; it was dictated to my stenographer.

Q. That was after the second action was commenced, was it not? A. I do not know.

Q. The statement of claim is dated February 4, 1932? A. (No answer)

HIS LORDSHIP: I am glad you mentioned that, because I do not see the date when the action was commenced on the record.

MR. WALSH: The action was started on the 4th February, 1932, my Lord.

Q. And that receipt is dated February 10, 1932? A. Yes; whatever date 30 is shown on it.

Q. Mr. Frankland certainly made an oral complaint to you? A. Yes; he was most emphatic that he thought I had sold his properties too cheap; he was most emphatic about that.

Q. And he objected to your applying the purchase price of that property on the guarantee? A. I do not know; I did not pay much attention to Mr. Frankland's objections.

Q. But he said that? A. No doubt he did. He said lots. I cannot say all he said now.

MR. SLAGHT: May I have your Lordship's permission to ask about some- 40 thing I should have asked about before?

HIS LORDSHIP: Yes.

MR. SLAGHT: My friend put in the correspondence that passed between

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the parties as Exhibit 13, and there is a letter of November 19, 1931, from Welland Securities Limited to you? A. You have a copy of it.

Q. But you have the original? A. Yes. That is my copy that is there now.

Q. This yellow copy? A. No. Here it is.

Q. Oh, it is in as Exhibit 14? A. Yes.

Q. And it speaks of deeding the Stamford seven acres to Mr. Oakes—

MR. WALSH: Consideration, \$15,000.

10 MR. SLAGHT: Q. You received that instruction from Welland Securities Limited to deed those seven acres to Mr. Oakes? A. Yes.

Q. Are those the seven acres which have been turned over to Stamford for a playground? A. I could not say; I never knew personally to whom the property was deeded; our solicitors handled it altogether.

HIS LORDSHIP: Q. The receipt dated February 10, 1932, which has been filed as Exhibit 18, is signed: "Harry Oakes by F. W. Griffiths his solicitor," and you signed for the Royal Bank? A. Yes, sir.

Q. Where was that document signed? A. In my office.

Q. Who were present? A. Mr. Griffiths, and I think Mr. Hamilton, and myself.

20 MR. SLAGHT: Q. You have not had anything to do with Mr. Oakes personally in the matter? A. I never had any business to do with him at any time.

Witness withdrew.

Whereupon the Court adjourned at 1.00 o'clock p.m., until 2.15 o'clock p.m.

On resuming at 2.15 o'clock p.m.

MR. WALSH: I desire to read from the examination for discovery of the defendant Harry Oakes, commencing at question No. 1:—

30 "1. Q. Mr. Oakes, you are the defendant in this action? A. Yes."

"2. Q. You were the defendant in a former action, brought by Mr. Frankland against you in this court? A. Yes."

"3. Q. That action was settled between you? A. Yes."

"5. Q. On the 9th day of November, 1931, the day this release was signed? A. Yes."

"6. Q. You had been up for Examination for Discovery that morning at the Court House in Welland, but it was adjourned pending settlement between Mr. Griffiths, your solicitor and ourselves? A. Yes."

"7. Q. This settlement was effected later in the day sometime? A. Yes."

"11. Q. I show you a release dated November 9th, 1931, is that your signature? A. Yes, that is my signature. (Release marked Exhibit 1)."

40 "13. Q. Exhibit 1 calls for the payment of \$15,000 Guarantee to the Royal Bank of Canada and \$10,000 of lawful money of Canada. To whom

*In the  
Supreme  
Court of  
Ontario.*

Plaintiff's  
Evidence.  
No. 7.

Joseph R.  
Steele Re-  
Cross-Ex-  
amination,  
25th May,  
1932.

—continued.

Plaintiff's  
Evidence.

No. 8.

Harry Oakes  
Examination for  
Discovery,  
25th May,  
1932. read

*In the  
Supreme  
Court of  
Ontario.*  
—  
Plaintiff's  
Evidence.  
No. 8.  
Harry Oakes  
Examination for  
Discovery,  
25th May,  
1932. read

—continued.

did you pay the \$10,000? A. Frankland or Pettit and Darby. Paid by my agent."

"14. Q. Who was your agent? A. Mr. Griffiths."

"15. Q. Who signed the cheque? A. I did, I presume, I cannot tell you."

"16. Q. Have you the cheque? Mr. Griffiths produced cheque of Welland Securities Limited, payable to the order of Pettit and Darby, cashed by Pettit and Darby."

"17. Q. You instructed Mr. Griffiths to have that cheque issued? A. Yes."

MR. SLAGHT: I think my friend should put in question 18 and the answer thereto.

MR. WALSH: No; I was not asking that. He can go into the witness box as to that.

HIS LORDSHIP: I do not think the plaintiff is bound to put it in unless he wants to do so.

MR. SLAGHT: I think the practice is that at my request this may be put in.

HIS LORDSHIP: At your request they may go in if they are explanatory.

MR. WALSH: And I submit that question 18 and the answer thereto are not explanatory.

MR. SLAGHT: My friend asked earlier questions as to the terms of the settlement.

HIS LORDSHIP: I will not ask the plaintiff to put that in. You may put it in later. I do not see that it qualifies the other question.

MR. SLAGHT: Not the immediately preceding question, but an earlier one that he put in with regard to the settlement, and this has a direct bearing on the settlement.

HIS LORDSHIP: Oh, no. Proceed, Mr. Walsh.

MR. WALSH: Then:—

"28. Q. It is a question of fact. Will you answer that question? Was Welland Securities an agent of yours to carry out this transaction?" 30

A. I do not know. Mr. Griffiths is my agent to carry it out. My solicitor or my agent, if he took that method, that is quite all right."

"36. Q. Did Welland Securities act as agent in any connection whatsoever with the settlement between Mr. Frankland and yourself? A. Yes."

"37. Q. They acted as your agent? A. Yes. Not the Welland Securities, my solicitor used them as an agent."

"45. Q. Did you receive a deed for certain property in the Township of Stamford, formerly owned by Mr. Frankland? A. I don't know."

"47. Q. You don't know whether you received a deed for that property or 40 not? A. I would have to look it up."

"48. Q. What was the consideration for that deed? A. \$15,000."

- “78. Q. You know now that you received a deed from the Royal Bank of Canada for the consideration of \$15,000 for certain lots in the Township of Stamford? A. Yes.” *In the Supreme Court of Ontario.*
- “79. Q. Can you tell me, do you know whether the consideration of \$15,000 what that was for? A. What consideration of \$15,000?” Plaintiff's Evidence.
- “80. Q. The \$15,000 mentioned in the deed from the Royal Bank of Canada to you? A. For the property.” No. 8. Harry Oakes
- “81. Q. Did you pay the Royal Bank of Canada \$15,000 for the land mentioned in that deed? A. My agent, I understand from my agent, I cannot be sure, I had nothing to do with this case.” Examination for Discovery, 25th May, 1932. read
- “82. Q. Did you pay that consideration in cash? A. Cheque, Welland Securities paid it.” —continued.
- “83. Q. Did the Guarantee held by the Bank have anything to do with that deed to you? A. I don't know.”
- “84. Q. Will you ask your solicitor? A. No.”
- “85. Q. What date did you negotiate or your agents negotiate with the Royal Bank of Canada for the Release of that Guarantee? A. I don't know.”
- “86. Q. Will you ask your solicitor? A. I shall not.”
- MR. WALSH: That is the plaintiff's case, my Lord.

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DEFENCE

- MR. SLAGHT: I submit, my Lord, that there must be a non-suit in this case and that there is no evidence on which to support the relief sought by the plaintiff in any of the three forms— Defence. No. 9. Motion for Non-Suit, 25th May, 1932.
- HIS LORDSHIP: I am very strongly of opinion that you cannot have a non-suit. I think you are paying too much attention to the agreement with the bank and not enough attention to the other agreement.
- MR. SLAGHT: I make the application for non-suit, my Lord.
- HIS LORDSHIP: It is noted.
- MR. SLAGHT: I rely so strongly upon the legal position and the lack of any rights whatever against my client that I have no evidence to offer to the Court. Defendant's Evidence. No. 10. (No Evidence called) 25th May, 1932.
- HIS LORDSHIP: No evidence to call?
- MR. SLAGHT: No, none to call, my Lord.
- Argument.  
Judgment Reserved.

Certified to be Correct,

SYDNEY W. BROWN,  
Official Reporter, S.C.O.

No. 11  
Reasons for Judgment of Kelly, J.

*In the  
Supreme  
Court of  
Ontario.*  
—  
No. 11.  
Reasons for  
Judgment,  
Kelly, J.,  
8th August,  
1932.

At the beginning of November, 1931, an action by Plaintiff herein against Defendant for damages for breach of contract and for an accounting under a partnership agreement was pending. Long prior to that time Plaintiff had become largely indebted to the Royal Bank of Canada, which indebtedness he secured by a mortgage of March 27th, 1929, upon several parcels of land. It was further secured by a guarantee by the Defendant to the Bank for \$15,000. The mortgage having become in arrears the Bank took sale proceedings thereon and in November, 1929, offered the mortgaged properties for sale by public auction. The sale, however, was abortive, and at the beginning of November, 1931, the Bank was still holding the properties as such security. Defendant's examination for discovery in the said breach of contract action was fixed for November 9th, 1931. This brought about on that day negotiations for settlement which, after proposals and counter proposals, resulted in Plaintiff offering to accept from Defendant \$25,000 in settlement if paid on that day. At these negotiations Defendant and his solicitor, Mr. Griffiths, and one Hamilton, associated with the latter, were present. The agreement was not carried out immediately, but later in the day Griffiths accompanied by Hamilton went to the office of the Plaintiff's solicitor having with him an agreement (Exhibit 1) already drawn except as to the amount of the consideration and already signed by the Defendant. The amount of the consideration was then inserted in these words: "Payment of \$15,000 Guarantee to Royal Bank and ten thousand" these being immediately followed by the words "dollars of lawful money of Canada" &c., and as so completed Plaintiff executed the document. The parties thereto released each other as therein set forth, and Plaintiff also in general terms released Welland Securities Limited. Defendant was not present when this document was completed and executed. My recollection of the evidence is that during the day he had gone on a trip to the south; nor was he present at subsequent happenings which have become of importance in this action. 10

In his examination for discovery defendant stated that Griffiths was his agent: and that he instructed him to have the cheque issued which went in payment of the settlement, and he also gave these answers:— 30

"Q. Was Welland Securities an agent of yours to carry out this transaction?

"A. I did not know. Mr. Griffiths is my agent to carry it out. My solicitor or my agent; if he took that method that is quite right."

"Q. Did Welland Securities act as agent in any connection whatsoever with the settlement between Mr. Frankland and yourself? A. Yes."

"Q. They acted as your agent? A. Yes. Not the Welland Securities, my solicitor used them as an agent." 40

It is also in evidence that defendant was largely and chiefly interested in Welland Securities Limited and that Griffiths was at the time the president thereof.



At the time of the settlement on 9th November, 1931, plaintiff was still expecting to be able to redeem his properties from the Royal Bank. To that end reduction of his indebtedness by the \$15,000 which defendant agreed to pay to the Royal Bank in payment of his guarantee would be of material assistance to him. Griffiths was familiar with the situation between plaintiff and the Bank and must in that way have been aware of the importance to plaintiff of having the \$15,000 applied in reduction of his indebtedness. That being so, what further took place on November 9th, 1931, and afterwards is this:

*In the  
Supreme  
Court of  
Ontario.*

No. 11.  
Reasons for  
Judgment,  
Kelly, J.,  
8th August,  
1932.

In the forenoon of November 9th Griffiths and Hamilton went to the Royal Bank and procured from it, through its local manager, Mr. Steele, an exclusive option to Welland Securities Limited to purchase plaintiff's properties for \$35,000 within thirty days. It has not been satisfactorily explained why this option, which was drawn by Griffiths, is dated November 11th. Mr. Steele's evidence is that early in October he had discussed with Griffiths and Hamilton the proposal that they or defendant buy these properties, and told them he was prepared to recommend to the Bank selling the properties and releasing defendant's guarantee on the basis of a \$35,000 payment; and that Griffiths asked that it be put in writing; which was done. Having procured the option on November 9th, Griffiths later in the day, as I have said, completed the agreement for settlement on defendant's behalf with plaintiff. It was not until some days later, when he learned of it from Mr. Steele, that plaintiff became aware of Griffiths having procured the option. Mr. Steele says that when the option was being procured on November 9th Griffiths said to him:—"Do you have to tell Frankland about this?" And on his answering in the negative, Griffiths said "Don't tell Frankland about the option." Mr. Steele added in his evidence that Griffiths asked him if it was all right not to tell Frankland for a little while and that he (Griffiths) for some reason or another did not want him to discuss it with Frankland for a day or two—for a little while. That plaintiff did not contemplate the settlement being carried out in the manner in which defendant did carry it out is plain from his own evidence and that of Mr. Steele who has told of his annoyance when he learned of it on November 14th.

—continued.

On November 9th, Welland Securities Limited issued its cheque for \$10,000.00 to Hamilton who endorsed it to defendant's solicitors; and on the same day the solicitors for the parties to the action signed a consent to dismissal of it and of the counterclaim, without costs. On November 19th plaintiff's solicitors wrote to defendant's solicitors pointing out that plaintiff's settlement with defendant was that \$15,000 should be paid to the Bank for the release of the guarantee and plaintiff's indebtedness to be reduced accordingly.

On the same day Welland Securities Limited, by Griffiths its president, wrote to Mr. Steele that Welland Securities Limited accepted the option, adding that it would be necessary to have two deeds "one deed for the 7 acres in Stamford and the other deed covering the other property. The consideration for the Stamford seven acres will be \$15,000 to be deeded to Harry Oakes."

By deed of the 23rd November, 1931, the Royal Bank, for the expressed consideration of \$15,000 conveyed to the defendant part of the lands, and on

*In the  
Supreme  
Court of  
Ontario.*

No. 11.  
Reasons for  
Judgment,  
Kelly, J.,  
8th August,  
1932.

—continued.

the same date it conveyed other parts of the lands to Welland Securities Limited. Welland Securities Limited issued its cheque dated December 31st, 1931, to the Bank for \$32,134.77 stated to be in payment for the lands covered by the option, the cheque being signed by the president, F. W. Griffiths. It is manifest that so far as these transactions were concerned defendant and Welland Securities Limited were the same party.

Plaintiff's present action is for damages; and payment by defendant of \$15,000; or, in the alternative, that the settlement be set aside as having been obtained by fraudulent and wilful misrepresentation; and that plaintiff be permitted to proceed with that action; and that the release he signed as of November 9th., 1931, be delivered up to be cancelled. By amendment he pleads that defendant instead of paying the \$15,000 as a payment on account of the plaintiff paid it to the Bank on account of the purchase price payable by defendant to the Bank under his agreement to purchase the lands held by the Bank as collateral security for plaintiff's indebtedness. 10

At the trial it was contended for plaintiff that he was entitled to recover either (1) for fraudulent misrepresentation, or (2) on the ground that the settlement was that defendant should pay \$15,000 to the bank which would have the effect of not only releasing defendant's guarantee but also reducing his (plaintiff's) indebtedness to the Bank and that, instead of doing so, defendant used that part of the money to purchase from the Bank plaintiff's lands. My opinion is that if plaintiff is entitled to succeed it is preferably on this latter ground. 20

For the defendant it was contended that at most there was mere silence on his part or that of his solicitor and agent, and that in such circumstances that did not constitute misrepresentation, nor was it equivalent or contributory thereto,—that such silence did not amount to concealment or suppression of the truth, and therefore no duty rested upon them to divulge that the option had been obtained. There is, however, this other aspect of the case that Griffiths was well aware what plaintiff's purpose and intentions were, and that he knew that payment of the \$15,000 to the Bank would not only release defendant's guarantee but would also improve plaintiff's financial position with the Bank by reducing to that extent the encumbrance which it held against his properties, and thus be of material assistance to him in redeeming these properties from the Bank; and he was aware, too, that plaintiff, who in the negotiations for settlement on the very day the option was procured was insisting on receiving more than \$25,000, would not have been a party to the settlement unless the \$15,000 payment was so made as to assist him in redeeming the property. Carrying out the settlement as Griffiths carried it out, though reducing plaintiff's indebtedness to the Bank, made it impossible for plaintiff to redeem. Griffiths was a most active agent on defendant's behalf and was fully aware of the whole situation. 40 He was unwilling to let plaintiff or his solicitor take the \$15,000 to the Bank,—and for the obvious reason that if that were done plaintiff would have become aware of the option and thus the scheme would have been frustrated and the settlement would not have been made, or in any event would have been endangered. It was important to him that plaintiff must not know of the option;

Mr. Steele's evidence shows his anxiety that his plan, put into execution on that day, must be kept secret from plaintiff. In these circumstances he was well aware of the necessity, from his standpoint, of maintaining secrecy. As I have already intimated the position taken by the defence is that none of these circumstances, nor all of them together, amounted to the fraud and wilful misrepresentation alleged by the plaintiff, but at most amounted to mere silence which does not constitute, and is not equivalent or contributory to, misrepresentation, alleged by the plaintiff, but at most amounted to mere silence which does not constitute, and is not equivalent or contributory to, misrepresentation

10 and therefore there was no duty upon defendant of disclosure. But assuming that it is not a case of misrepresentation in the strict sense and application of the word, it should not be overlooked that it has been stated on high authority that while silence which does not make what is stated false, or tacit acquiescence in the self-deception of another, if nothing is said or done either to create or foster the delusion, draws with it no legal liability; nevertheless courts have been extremely alert to discern and detect anything in the history of a transaction, however slight on the part of the representor, which may enable them, consistently with legal principle, to say that there is some evidence of a misrepresentation.

20 When all relevant and admissible evidence has been considered it cannot be said that the construction which can be put upon the settlement agreement is inconsistent with what plaintiff contends in respect of it, and particularly is that so when it is kept in mind that defendant's agent was well aware of what plaintiff meant by the settlement. It was not a case of mere silence, the agent's conduct and activities in the matter savouring of deceit to plaintiff's detriment, in that, contrary to what he knew was the settlement which plaintiff intended to make and was making, he made it impossible for him to redeem his property.

30 At the trial no explanation was offered by defendant's agent of his anxiety at that critical time to keep secret from plaintiff the option from the Bank, though he was present in Court, and as a solicitor must have realized the importance of offering some explanation. If it should be said that he was under no obligation to explain, that he realized the necessity, or in any event the advisability, of doing so is evident from the fact that a short time after the close of the trial a party associated with him sought to offer for him an explanation to me, out of Court and not in the presence of plaintiff or any one representing him,—a course which this agent as a solicitor and an officer of the Court knew or should have known could only be regarded as improper.

40 Plaintiff should have judgment for \$15,000 and interest from 9th November, 1931, and for such damages as he has sustained by reason of his having been deprived, as aforesaid, of his right to redeem his said properties,—the amount of such damages to be ascertained by the Local Master at Welland to whom the matter is referred for that purpose. Costs of the action to plaintiff. Further directions and further costs reserved until after the Master's report.

*In the  
Supreme  
Court of  
Ontario.*

—  
No. 11.  
Reasons for  
Judgment,  
Kelly, J.,  
8th August,  
1932.

—continued.

IN THE SUPREME COURT OF ONTARIO

*In the  
Supreme  
Court of  
Ontario.*

The Honourable Mr. Justice Kelly

Monday the 8th day of August, 1932.

No. 12.  
Formal  
Judgment of  
Kelly, J.,  
8th August,  
1932.

B E T W E E N :

CHARLES S. FRANKLAND,

Plaintiff.

—and—

HARRY OAKES,

Defendant. 10

1. This action coming on for trial on the 25th day of May, 1932, before this Court, at the Sittings holden at Welland for trials 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, 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 DOTH ORDER AND ADJUDGE that the Plaintiff recover from the Defendant the sum of FIFTEEN THOUSAND DOLLARS (\$15,000) together with interest thereon at the rate of Five per cent. (5%) per annum from the 9th day of November, 1931. 20

3. THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant do pay to the Plaintiff his costs of this action forthwith after taxation thereof.

4. THIS COURT DOTH FURTHER ORDER AND ADJUDGE THAT it be referred to the Local Master at Welland to enquire and state what damages the Plaintiff has sustained by reason of the Plaintiff having been deprived of his right to redeem his property by the Defendant.

5. AND THIS COURT DOTH RESERVE further directions and the question of further costs until after the said Local Master shall have made his report. 30

JUDGMENT signed the 19th day of August, 1932.

J. E. COHOE, Local Registrar

(Seal)

Entered Aug. 20th, 1932,  
J. B. Folio 642. J.E.C.

No. 13  
Notice of Appeal to the Court of Appeal for Ontario  
IN THE SUPREME COURT OF ONTARIO

*In the  
Supreme  
Court of  
Ontario.*

B E T W E E N :

CHARLES S. FRANKLAND,

—and—

HARRY OAKES,

Plaintiff,  
19th August,  
1932.

Defendant.

NOTICE OF APPEAL TO THE COURT OF APPEAL FOR ONTARIO

10

TAKE NOTICE that the Defendant appeals to the Court of Appeal for Ontario from the judgment pronounced by the Honourable Mr. Justice Kelly on the 8th day of August, A.D. 1932, and asks that the said judgment may be revised and that judgment should be entered dismissing the Plaintiff's claim with costs upon the following grounds:

1. That the judgment is against the evidence and the weight of evidence.

2. That the learned trial judge erred in

30 (a) Holding that payment of \$15,000 (part of the monies paid by Welland Securities Limited to the Bank) was paid on account of the purchase price of lands and not in retirement of the Defendant's guarantee as provided by the terms of settlement.

(b) Holding that the Defendant's agent Griffiths was aware of the Plaintiff's position with respect to the Bank and as to the Plaintiff's purpose and intentions.

(c) Holding that a duty was cast upon the defendant to disclose to the Plaintiff the Defendant's dealing with the Bank with respect to the purchase of lands.

(d) Holding that such non-disclosure was the equivalent of misrepresentation or deceit.

DATED the 19th day of August A.D. 1932.

40

GRIFFITHS AND COMPANY, NIAGARA FALLS, ONTARIO.  
Solicitors for the Defendant.

REASONS FOR JUDGMENT OF MULOCK, C.J.O.

No. 14.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock,  
C.J.O.,  
9th January,  
1933.

W. N. TILLEY, K.C. and A. G. SLAGHT, K.C., *for (defendant) Appellant.*  
T. J. DARBY, *for the (Plaintiff) Respondent.*

This is an appeal by the Defendant from the judgment of Kelly, J., in favour of the Plaintiff for \$15,000 with interest from the 9th November, 1931, and for damages because of the Defendant having wrongfully deprived the Plaintiff of the right to redeem certain lands mortgaged by him to the Royal Bank of Canada as collateral security for moneys owing by the Plaintiff to the 10 Bank. The cause of action arose as follows:

The Defendant had given to the Bank his written guarantee to be answerable to it to the extent of \$15,000 of the Plaintiff's indebtedness.

The Plaintiff and Defendant were engaged in partnership in various land transactions and disputes having arisen between them the Plaintiff brought an action against the Defendant for an account and on the 9th of November, 1931, the action was settled on terms set forth in a written agreement between the parties, the operative words of which were as follows:—"In consideration of payment of \$15,000 guarantee to Royal Bank and \$10,000 of lawful money of Canada the said Charles S. Frankland and Harry Oakes doth and do hereby 20 release the other . . . for all sums of money, accounts, contracts and agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever which each of them now hath against the other for and by reason of any act, matter, cause or thing whatsoever up to and including the day of the date of these presents. And the said Charles S. Frankland for and in consideration of the above doth hereby release Welland Securities Limited . . . from all sums, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever which the said Charles S. Frankland now hath for or by reason of or in respect of any act, matter, cause or thing up to and including the day of the date of these presents."

By this agreement the defendant became bound to pay \$15,000 to the Bank 30 on account of the plaintiff's indebtedness, and he contends that he paid it in the following manner, that he purchased from the Bank certain properties of the plaintiff held by the Bank by way of collateral security for the plaintiff's indebtedness, that he paid to the Bank \$35,000 for the said properties and for surrender to him of the said guarantee. In substance his contention is that \$20,000, part of the \$35,000 was the purchase price of the properties, and that the balance was applied in payment of the \$15,000 in question, whereupon the Bank surrendered the guarantee to him.

The plaintiff's contention is that the purchase price of the said lands was 40 \$35,000 and that the \$15,000 in dispute remains wholly unpaid. Thus the solution of the question between the parties depends upon what was the price at

which the Bank sold to the defendant the plaintiff's mortgaged lands, and this is to be determined from the evidence of Mr. Steele and the documentary evidence, no other evidence on the point having been put in at the trial.

The circumstances in respect of the purchase are as follows: On the 8th of October, 1931, Mr. Griffiths, solicitor for the defendant, called upon Mr. Steele the local manager of the bank when the question of the bank selling the said mortgaged lands to the defendant was discussed and Mr. Steele at the trial swore that he told Mr. Griffiths that he was prepared to recommend the bank to sell the properties and release Mr. Oakes' guarantee "on the basis of \$35,000 for the 10 properties." When asked "What was it you said to Mr. Griffiths on the 8th of October?" he answered "that we would release all the properties Frankland had to do with for \$35,000 and would release his guarantee of \$15,000."

Mr. Griffiths requested Mr. Steele to put the proposition in writing and stated that he would see Mr. Oakes about it. In response to such request Mr. Steele on the 8th of October, 1931, wrote Mr. Griffiths as follows:

"We are enclosing herewith list of properties acquired from S. S. Frankland by foreclosure of mortgage held by us as security. We have not a list of unpaid taxes. These can be obtained in a few days. As suggested to you to-day we would recommend that the bank accept \$35,000 for the properties including 20 the release of the guarantee signed by Harry Oakes." The list enclosed was worded as follows:

"C. S. Frankland, Real Estate acquired by foreclosure of mortgage.

	Sale Price
1. 2 Lots Bowden Street, Bridgeburg .....	\$ 1,000.00
2. 2 Lots Bowden Street, Bridgeburg (\$600 incumbrance)....	1,000.00
3. 17 Lots Emerick Avenue, Bridgeburg .....	6,800.00
4. 2 Lots Bowden Road, Bridgeburg .....	1,000.00
5. 7 Acres Township of Stamford .....	5,000.00
6. 64 Acres Township of Stamford (Gravel pit) .....	19,000.00
	\$34,000.00

30

Mr. Steele was in error in saying that the bank had acquired the lands by foreclosure. The bank had endeavoured to sell them under the power of sale, but the sale proved abortive and they still remained subject to the plaintiff's right of redemption. The plaintiff was still indebted to the bank and the bank continued to hold the lands as mortgagee until it sold them to the defendant as hereinafter mentioned.

On the morning of the 9th day of November, 1931, prior to the making of the said agreement of that date and without the knowledge of the plaintiff the defendant obtained from the bank an option to purchase the said lands for 40 \$35,000 "the Oakes guarantee for \$15,000 to the Royal Bank of Canada re Frankland account to be retired out of the purchase price above." For some unexplained reason this option was dated the 11th day of November, 1931.

*In the  
Supreme  
Court of  
Ontario.*

No. 14.

Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock,  
C.J.O.,  
9th January,  
1933.

—continued.

*In the  
Supreme  
Court of  
Ontario.*

No. 14.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Mulock,  
C.J.O.,  
9th January,  
1933.

—continued.

Mr. Steele swore that on the morning of the 9th of November, 1931, Mr. Griffiths together with Mr. Hamilton called upon him and asked him if he was willing to give them a 30 days "option based on the proposition I made in my letter and I said yes," and the option was thereupon written by Mr. Griffiths on the bottom of a statement which was a typewritten copy of the list of properties and sale prices which accompanied Mr. Steele's letter of the 8th of October, 1931, to Mr. Griffiths and Mr. Griffiths wrote on the bottom thereof the following option which Mr. Steele for the bank executed:

"Bridgeburg, November 11, 31.

"In consideration of value received the Royal Bank of Canada hereby grants 10  
Welland Securities Limited the exclusive right to purchase the above properties for \$35,000 with a good marketable title for a period of 30 days from date. All evidence of title to be supplied Welland Securities Limited at once. The Oakes guarantee for \$15,000 to Royal Bank of Canada re Frankland account to be retired out of the purchase price above.

The Royal Bank  
J. R. Steele."

The Welland Securities Company was acting for the defendant and it was stated by counsel during the argument that the Welland Securities Company was to be treated as representing Mr. Oakes in the transaction. 20

This option was accepted by the Welland Securities Limited by written acceptance bearing date the 19th day of November, 1931, worded as follows:

"Mr. J. R. Steele,  
Royal Bank of Canada,  
Bridgeburg, Ontario.

Dear Sir,—Welland Securities Limited hereby accepts the option granted by the Royal Bank of Canada dated November 11th, 1931, for the purchase of properties therein referred to for the price of \$35,000."

"The option calls for the supplying to the Welland Securities Limited of all evidence on title but up to date we have received nothing. It is also part of 30  
the acceptance that the guarantee by Mr. Harry Oakes for \$15,000 to the Royal Bank of Canada in connection with Charles Frankland is to be retired out of the purchase price above. Please supply us with your title papers and draft deed at the earliest moment as we are prepared to close upon securing a good marketable title for the land. It will be necessary to have two deeds, one for the 7 acres in Stamford and the other deed covering the other party. The consideration for the Stamford 7 acres will be \$15,000 to be deeded to Harry Oakes. We trust you will be able to let us have these draft deeds at once.

Yours very truly,  
Welland Securities Limited." 40

The amount of certain arrears of taxes on the property was deducted from



the purchase price leaving \$32,134.70 to be paid in cash and that sum was paid to the bank by cheque of the Welland Securities Limited bearing date the 31st day of December, 1931.

*In the  
Supreme  
Court of  
Ontario.*

Signed—Welland Securities Limited,  
J. W. Griffiths, Pres.  
L. M. Marks, Secy.

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1933.

and on the back in typewriting are the following words:

1931

Particulars as per cheque.

Dec. 31, Payment in full for lands covered by option dated Nov. 11, 1931, to  
10 Welland Securities, Limited accepted by Welland Securities Limited, Nov. 19, 1931.  
32,134.77

—continued.

The purchase of the lands was carried out by three separate deeds of different parcels each dated the 23rd of November, 1931, from the Royal Bank, one thereof to the Welland Securities Co. Ltd. "in consideration of \$1.00 and other valuable consideration", another to the Welland Securities Limited "in consideration of \$1.00 and other valuable consideration"; and the third to Harry Oakes "in consideration of \$15,000".

In connection with each of the deeds William Herbert Waugh, practising solicitor, made the affidavit called for by the Land Transfer Tax Act swearing:

- 20 (1) I am solicitor for the grantee named in the within transfer;
- (2) I have personal knowledge of the facts stated in this affidavit;
- (3) The true amount of the moneys in cash and the value of any property or security included in the consideration above is as follows:

As to the first mentioned deed he swore that the consideration was \$24,000	
As to the second.....	17,600
As to the third.....	15,000

The three sums thus making up the \$35,600, the excess of \$600 being in respect of a mortgage for \$600 against one of the properties.

30 The documentary evidence above set forth and the sworn testimony of Mr. Steele show beyond any doubt that the price paid by the defendant for the purchase of the properties was \$35,000, and that the \$15,000 is wholly unpaid. The fact that the defendant was released by the bank from his liability under the guarantee does not release the defendant from his obligation to pay the \$15,000. The defendant agreed to pay to the bank for the plaintiff's benefit \$15,000, payment of which the defendant had guaranteed, and by the agreement of the 9th of November, 1931, the defendant became debtor to the plaintiff to the extent of \$15,000, he still remaining liable as guarantor to the Bank in respect thereof.

40 I therefore agree with the learned trial Judge that the defendant is indebted to the plaintiff in the said sum of \$15,000 with interest from the 9th November, 1931.

I am unable to agree with the view of the learned trial Judge that the plaintiff is entitled to damages because of the purchase by the defendant of the plaintiff's mortgaged lands. The defendant had an unqualified right to purchase the same, and the judgment should be varied accordingly.

The plaintiff is entitled to his costs of this appeal.

## Reasons for Judgment of Middleton, J.A.

*In the  
Supreme  
Court of  
Ontario.*

No. 14.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Middleton,  
J.A., 9th  
January,  
1933.

An appeal by the Defendant from the judgment of the Honourable Mr. Justice Kelly bearing date the 9th August, 1932, awarding the Plaintiff \$15,000 with interest from the 9th November, 1931, and costs, and referring it to the Local Master at Welland to inquire and state what damages the plaintiff has sustained by reason of having been deprived of his right to redeem his property by the defendant, and reserving further directions and costs until the report is made.

The plaintiff and defendant had been engaged in numerous business ventures and transactions, but before the matters giving rise to this action they had quarrelled and were dealing at arms length. An action had been brought by the plaintiff against the defendant with respect to these earlier transactions in which large claims were put forward. Negotiations took place looking to a settlement of these outstanding differences.

It is also important to bear in mind that the defendant had at an earlier date become surety to the extent of \$15,000 for the plaintiff to the Royal Bank of Canada in respect of his indebtedness to that bank which amounted to upwards of \$42,000. The Royal Bank also held as security for the plaintiff's indebtedness property of somewhat uncertain value but which as shown upon a list prepared by the bank was worth \$35,000.

The negotiations resulted in an offer by the defendant, to pay to or for the plaintiff \$25,000 in a settlement of the outstanding claims which forms the subject matter of the action. Of this \$25,000, \$15,000 was to be paid to the Royal Bank in such way as to free the defendant from his liability in respect of his surety and \$10,000 was to be paid direct to the plaintiff. This Offer was accepted and a document bearing date 9th November, 1931, was executed for the purpose of carrying out the transaction. In this document there is reference to Welland Securities Limited, and its name appears in the further transaction about to be related, but it was admitted by counsel for the defendant that it is to be regarded as an alter ego of the defendant and its separate existence need not be discussed or considered. The \$10,000 has been paid to the plaintiff and has been retained by him. The sole question arises with reference to the \$15,000 which was to be paid to the bank.

Without disclosing what was being done to the plaintiff the defendant entered into and carried on negotiations with the Royal Bank contemporaneously with the negotiations leading up to the settlement. An exclusive option had been obtained from the bank to purchase the plaintiffs securities held by it for the price of \$35,000, "the Oakes guarantee for \$15,000 to the Royal Bank of Canada re Frankland to be retired out of the purchase price above." This option was taken in the name of Welland Securities Limited. After the settlement with the plaintiff had been reduced to writing and consent had been given to the dismissal of the pending action, the option was taken up. The consideration inserted in the various conveyances totalled \$35,000 and affidavits were

made by the defendant's solicitor swearing that the true consideration was the payment of this sum in cash.

On Frankland learning that his securities had been sold to Oakes at this price, that the bank had credited his account with this sum, that the bank had released Oakes from his liability upon his guarantee but that no \$15,000 had been paid to the bank as distinct from this purchase price, he threatened action against Oakes to recover payment of the \$15,000, taking the position that Oakes was bound under the settlement that had been made to pay the \$15,000 to his, Frankland's, credit in the bank and that he was not entitled to regard any part of the money which was paid for the purchase of the securities as discharging his obligations under the settlement agreement. Oakes' answer to this claim is the allegation that the true transaction between himself and the bank was the payment of the \$15,000 in discharge of his liability as surety and that the purchase of the securities was in reality a purchase for \$20,000, for he admits that the one payment of \$15,000 cannot operate to discharge two separate liabilities.

This action then followed. The learned trial Judge has taken an extremely adverse view of the defendant's conduct which he regards as tricky and bordering upon the fraudulent. The conduct undoubtedly was tricky, but I do not think it should be condemned as fraudulent for there was no fiduciary relationship between the parties. The Judge then goes beyond what was asked by the plaintiff and gives him judgment not only for the \$15,000 and interest, but for the damages sustained by reason of his having been deprived of his right to redeem his properties.

I have found the case exceedingly difficult of solution. Everything I think depends upon the effect of the purchase agreement. Under the settlement there could be no doubt of the situation. Oakes was to pay the \$15,000 to the bank. This was to be so paid as to discharge his liability without creating any corresponding liability on the part of the plaintiff to indemnify him. This was his obligation at the time he made the contract with the bank for the purchase of the securities. I think his rights must be determined as though he had done that which he contracted to do and had paid this money to the bank at that time. His guarantee would then have ceased to exist and he would have been entitled to a release. He then chose through his dummy company to purchase these securities for the \$35,000 and stipulated for the release of his guarantee. Had he done that which he contracted with the plaintiff to do the guarantee would have then been a worthless document and its release would have been a factor of no financial moment in the purchase transaction.

Mr. Tilley approaches the matter from a different view point. He looks at it rather from the standpoint of the bank. So far as the bank is concerned Oakes' guarantee was as good as the wheat. The bargain by which it was surrendered and the properties transferred for \$35,000 was in reality a realization of \$20,000 upon the securities. In this he is supported by the evidence of the bank manager. I doubt very much whether this evidence is admissible, but it fails to convince me that this is a true view point. It fails to emphasize the fact

*In the  
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Court of  
Ontario.*

No. 14.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Middleton,  
J.A., 9th  
January,  
1933.

—continued.

*In the  
Supreme  
Court of  
Ontario.*

No. 14.  
Reasons for  
Judgment of  
the Court of  
Appeal for  
Ontario,  
Middleton,  
J.A., 9th  
January,  
1933.

—continued.

that whatever the trouble in which Mr. Oakes now finds himself it arises from his voluntarily entering into the transaction with the bank and attempting to use his liability on the guarantee to Mr. Frankland's prejudice after he had undertaken to assume and pay the guaranteed sum as his own debt.

The judgment appealed from should be varied by striking out the 4th and 5th paragraphs and save as to this the appeal shall be dismissed with costs.

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Reasons for Judgment of Masten, J.A.

No. 14.  
Reasons for  
Judgment of  
Court of Ap-  
peal, Masten,  
J.A., 9th  
January,  
1933.

This is an appeal by the defendant from the judgment of Kelly, J., dated the 9th of August, 1932, whereby he awards to the plaintiff \$15,000 with interest from the 9th of November, 1931, and costs, and directs a reference to the Local Master at Welland to inquire and state what damages the plaintiff has sustained by having been deprived of his right to redeem the lands in question and reserving further directions and costs.

In the various proceedings which took place, on November 9th, 1931, and subsequently and in the documents filed in evidence, reference appears to Welland Securities, Limited, but, as pointed out by my brother Middleton, it was admitted by counsel for the defendant that that company is to be regarded as an alter ego of the defendant and its separate existence need not be discussed or considered.

On the 9th of November, 1931, the respondent was indebted to the Royal Bank through its branch at Bridgeburg in amounts aggregating about \$60,000 (see evidence of Frankland, page 26, line 12.) The bank held as collateral security a guarantee whereby the appellant Oakes had on the 4th August, 1927, become surety to the extent of \$15,000 for Frankland's account with the bank. In addition the bank held as security Frankland's interest in three parcels of land (1) village lots in Bridgeburg, (2) seven acres on Carlton Avenue Township of Stamford in or adjoining Niagara Falls, Ontario, (3) a gravel pit in the Township of Stamford containing some 63.13 acres.

The mortgage to the bank having become in arrears the bank took sale proceedings thereon and in November, 1929, offered the mortgaged properties for sale at public auction. The sale however was abortive and at the beginning of November, 1931, the bank was still holding the properties as such security.

On November 9th the bank gave Welland Securities Limited an option to buy the lands above mentioned which option was accepted and taken up and the lands conveyed on or about the 19th of November.

Prior to 1931 the plaintiff and defendant had been engaged in business together as partners. The agreement of partnership is not in evidence, nor are the details of its terms of importance in the present action. Differences had arisen between the two partners and Frankland had sued Oakes claiming an accounting of the partnership affairs and a balance due him of \$150,000. That

action had been pending for some months and on November 9th, 1931, a settlement was reached, the action was withdrawn and a general mutual release was signed by Frankland and Oakes in the terms following:—

*In the  
Supreme  
Court of  
Ontario.*

“THIS INDENTURE made the 9th, day of November, A.D. 1931.

B E T W E E N :

CHARLES S. FRANKLAND of the Town of Bridgeburg, in  
the County of Welland

—and—

HARRY OAKES of the Township of Stamford, in the County  
of Welland

No. 14.  
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Appeal for  
Ontario,  
Masten, J.A.,  
9th January,  
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—continued.

10

WITNESSETH that in consideration of the payment of \$15,000 Guarantee to the Royal Bank and Ten Thousand Dollars of lawful money of Canada, the said Charles S. Frankland and Harry Oakes doth and do hereby release the other, their and each of their heirs, executors, administrators and assigns and each of their estates and effects, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever which each of them now hath against the other for and by reason of any act, matter, cause or thing whatsoever up to and including the day of the date of these presents.

20

AND the said Charles S. Frankland for and in consideration of the above, doth hereby release Welland Securities Limited, its successors and assigns, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever which the said Charles S. Frankland now hath for or by reason of or in respect of any act, matter, cause or thing up to and including the day of the date of these presents.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 9th day of November, A.D. 1931.

SIGNED, SEALED AND DELIVERED

30

in the presence of  
“W. H. Hamilton”

“Charles S. Frankland” (Seal)  
“Harry Oakes” (Seal)

The negotiations leading up to the above agreement began between ten and eleven o'clock in the morning of November 9th, 1931, and after discussion were adjourned until five o'clock in the afternoon of that same day. Shortly after the morning session and adjournment Mr. Griffiths, the only accredited solicitor and agent for Oakes, went to the Royal Bank and secured from the manager an option good for thirty days in the words following:

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Court of  
Ontario.*  
—  
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—continued.

"REAL ESTATE ACQUIRED BY FORECLOSURE OF MORTGAGES		PREVIOUS MORTGAGES	SALE PRICE
(1)	2 lots Bowden St., Bridgeburg, Ont.	Free	\$ 1,000
(2)	2 lots Bowden St., Bridgeburg, Ont.	\$600	1,000
(3)	17 lots Emerick Ave., Bridgeburg, Ont.	Free	6,800
(4)	2 lots Bowen Road, Bridgeburg, Ont.	Free	1,000
(5)	7 acres Township of Stamford	Free	5,000
(6)	64 acres Township of Stamford (Gravel Pit)		19,000
			\$33,800
			600 10
			\$33,200

Bridgeburg, Nov. 11/31.

In consideration of value rec'd the Royal Bank of Canada hereby grants Welland Securities Limited the exclusive right to purchase the above properties for \$35,000.00 with a good marketable title for a period of thirty days from date. All evidence of title to be supplied Welland Securities at once. The Oakes guarantee for \$15,000.00 to Royal Bank of Canada re Frankland to be retired out of purchase price above.

For

THE ROYAL BANK OF CANADA  
Bridgeburg, Ont.  
"J. R. Steele"

20

Manager

"H. Lawrence"

Acct.

For

THE ROYAL BANK OF CANADA  
Bridgeburg, Ont.,  
"J. R. Steele"

Manager

30

"H. Lawrence"

Acct.

The evidence of Mr. Steele, the local manager of the bank in Bridgeburg regarding this interview is significant. At pg. 33, lines 28 to 38, the witness says:

“Q. And did you know at that time that he Oakes had been up making an offer of settlement of \$25,000?”

“A. No; I did not think Frankland would ever get a settlement.

“Q. Tell his Lordship what Mr. Griffiths said, if anything, as to Mr. Frankland knowing about this.

“A. Yes, unfortunately there was something said. Mr. Griffiths said: “Do you have to tell Frankland about this?” and I said “No.”

“Q. What did he say?

10 “A. He said “Don’t tell Frankland about the option,” and I think I answered: “I don’t think it is necessary: he has never given any attention to the sale of the properties, and I would like to do the best I can with them.”

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Court of  
Ontario.*

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—continued.

At five o’clock on the 9th of November, 1931, Griffiths and Hamilton, representing Oakes and the Welland Securities, met the respondent and his solicitor. Griffiths then produced a prepared typewritten general release in the terms quoted above and which had already been signed by Oakes who was not present. No mention was made by Griffiths of the option on Frankland’s lands which he had that morning procured from the bank and the respondent signed the general release in ignorance of the option then held in the name of Welland Securities  
20 Limited and received a cheque for \$10,000. At the same time a consent to the dismissal of the pending action and counterclaim was signed by the solicitors and delivered.

On the 14th of November the solicitor of Frankland interviewed the bank for the purpose of ascertaining whether Oakes had fulfilled his agreement to pay \$15,000 to the credit of Frankland’s account in discharge of his (Oakes) guarantee to the bank and was then informed that such payment had not then been made. Also the solicitor was informed for the first time of the existing option above recited and strong disapprobation was expressed by him.

30 On November 19th the offer or option above recited was accepted by Griffiths for Oakes.

Thereafter by deed dated 23rd November, 1931, the seven acres on Carlton Avenue, Stamford, were conveyed to Oakes by the bank. The affidavit attached to that deed is made by William H. Waugh, Barrister, a partner of Griffiths and reads as follows:

“AFFIDAVIT LAND TRANSFER ACT  
IN THE MATTER OF THE LAND TRANSFER ACT.

40 PROVINCE OF ONTARIO  
COUNTY OF WELLAND  
TO WIT:

I, William Herbert Waugh, of the City of Niagara Falls in the County of Welland, Province of Ontario, Barrister, for the Grantee named in the within transfer, make oath and say:

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Court of  
Ontario.*

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1933.

—continued.

1. I am the Solicitor for the Grantee named in the within transfer.
2. I have a personal knowledge of the facts stated in this affidavit.
3. The true amount of the moneys in cash and the value of any property or security included in the consideration is as follows:
 

(a) Moneys paid in cash	\$15,000.00
(b) Property Transferred in exchange:	
Equity value .....	nil.
Encumbrances .....	nil.
(c) Securities transferred to the value of .....	nil
(d) Balance of existing encumbrances with interest owing at date of transfer .....	10 nil
(e) Monies secured by mortgage under this transaction .....	nil
(f) Liens, legacies, annuities and maintenance charges to which transfer is subject .....	nil
Total consideration .....	\$15,000.00

SWORN before me at the City  
of Niagara Falls, in the County  
of Welland, this 4th day of  
January, A.D. 1932.

(Sgd.) W. H. WAUGH

(Sgd.) W. C. LAMARSH.  
A Commissioner, etc.

20

On the same date for the expressed consideration of "one dollar and other valuable consideration" the Royal Bank conveys to Welland Securities Limited the Bridgeburg lots.

By a third conveyance dated on the same day the Royal Bank conveys to Welland Securities Limited the gravel pit in Stamford containing 64.13 acres, and the affidavit attached to the said deed reads as follows:

**"IN THE MATTER OF THE LAND TRANSFER ACT.  
AFFIDAVIT LAND TRANSFER TAX ACT.**

PROVINCE OF ONTARIO  
  
COUNTY OF WELLAND  
  
TO WIT:

I, William Herbert Waugh of the City<sup>30</sup>  
of Niagara Falls in the County of Wel-  
land, Solicitor for the grantee named in  
the within (or annexed) transfer, make  
oath and say:

1. I am solicitor for the Grantee named in the within or annexed transfer.
2. I have a personal knowledge of the facts stated in this affidavit.
3. The true amount of the monies in cash and the value of any property or security included in the consideration is as follows:
 

(a) Monies paid in cash .....	\$17,600.00
-------------------------------	-------------



(b) Property transferred in exchange to the equity value of.....	nil	<i>In the Supreme Court of Ontario. — No. 14. Reasons for Judgment of the Court of Appeal for Ontario, Masten, J.A., 9th January, 1933.</i>
(c) Securities transferred to the value of.....	nil	
(d) Balances of existing encumbrances with interest owing at date of transfer.....	nil	
(e) Monies secured by mortgage under this transaction.....	nil	
(f) Liens, annuities and maintenance charges to which transfer is subject.....	nil	
Total consideration.....	\$17,600.00	

—continued.

10 SWORN before me at the City of  
Niagara Falls, in the County of  
Welland, this 4th day of Janu-  
ary, A.D. 1932.

“W. C. LaMARSH,”  
A Commissioner, etc.

“W. H. WAUGH”

On the 31st day of December, 1931, a cheque was given to the Royal Bank  
closing the purchase. It reads as follows:  
“(2c. Rev. Stamp) No. 624

WELLAND SECURITIES LIMITED  
NIAGARA FALLS, ONT.

20 PAY to the Order of  
ROYAL BANK OF CANADA BRIDGEBURG \$32,134.77  
Thirty Two Thousand One Hundred Thirty Four and  $\frac{77}{100}$  Dollars

WELLAND SECURITIES LIMITED  
“F. W. GRIFFITHS” Pres.  
“L. M. Marks,” Secty.

To THE ROYAL BANK OF CANADA  
NIAGARA FALLS, ONT.

30 Make all endorsements on this side. No further acknowledgment required.  
Do not mutilate.

For  
THE ROYAL BANK OF CANADA  
Fort Erie North, Ont.

“W. C. PATON” Manager

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—continued.

Pay to the order of any Bank or Banker  
THE ROYAL BANK OF CANADA  
Fort Erie North, Ont.  
(The Royal Bank of Canada)  
Fort Erie North, Ont.  
Teller, Jan. 6, 1932

Particulars as per cheque.

1931

Dec. 31—Payment in full for lands covered by option dated Nov. 11, 1931,  
to Welland Securities Limited, accepted by Welland Securities Limited Nov. 19th, 1931. \$32,134.77

### PAID

In this present action the plaintiff admits that the sum of \$10,000 above mentioned was paid to him, but he makes no offer to repay it. It appears also from the evidence that the parcel of land consisting of seven acres in or adjoining Niagara Falls, Ontario, has been conveyed away by Oakes. These circumstances and the fact that the Royal Bank is not a party to this action preclude any judgment setting aside or rescinding the transaction between the plaintiff, the defendant and the Royal Bank which were begun on November 9th and completed on November 19th. 20

But without setting aside the transaction the plaintiff makes two claims. First that the defendant Oakes has failed in making "payment of \$15,000 guarantee to the Royal Bank" as stipulated by the agreement above recited, all the moneys paid by him having been appropriated by him to the purchase of lands.

Second, the plaintiff claims that he was induced to sign the partnership settlement and general release above recited by the wrongful concealment from him by his partner Oakes, or rather by Oakes' agent, of a fact known to the latter but of which he, Frankland, was ignorant, namely, that during the course of the negotiations for settlement then pending Oakes had acquired through Welland Securities Limited, and was then the holder from the bank of an irrevocable option good for thirty days to purchase all the collateral securities held by the bank including the lands above mentioned: that he, Frankland, was thereby precluded from redeeming them, and that he has in consequence been damnified and he claims damages. See paragraphs 5 and 6 of the statement of claim and the first claim for relief. The learned trial judge has maintained both of these claims. 30

With respect to the plaintiff's claim of \$15,000 for breach of agreement I agree with the conclusion of my brother Middleton: also with his reasons, but desire to add one or two observations in further support of that conclusion.

Mr. Tilley's able argument convinces me that what the appellant Oakes intended to pay was \$10,000 to the plaintiff (respondent), and \$35,000 to the bank in purchase and discharge of all the collateral securities held by it in connection with Frankland's account, applicable \$15,000 in discharge of the guarantee and 40

\$20,000 as purchase price of the lands. Unfortunately for Oakes the manner in which the transaction was carried out by his authorized and accredited agent has, in my opinion, exposed him to a more extended liability.

In the cheque given to the bank on behalf of Oakes when taking up the option the recitals expressly appropriate the whole sum to the purchase of the lands, and the affidavits of Oakes' solicitor to the deeds from the bank confirm this appropriation as directed exclusively to the purchase price of the lands.

For this reason as well as for the reasons stated by my brother Middleton I would affirm the judgment of Kelly, J. awarding \$15,000 and interest to the plaintiff.

The provision in the judgment *a quo* directing a reference to the Local Master at Welland to inquire and state what damages the plaintiff has sustained by having been deprived of his right to redeem his lands held by the bank as collateral, presents more difficulty.

But after careful consideration I have reached the conclusion that it also must be maintained, not as an action of deceit but on the ground of actionable non-disclosure. I proceed to state my reasons for this conclusion.

It is plain that the three parcels of land purchased by the defendant Oakes from the Royal Bank were not partnership assets. They were the individual property of the plaintiff Frankland, pledged by him to the Royal Bank as security for his personal indebtedness to the bank. None the less I am of opinion that under the circumstances here existing the non-disclosure by Oakes of the option procured by him was a breach of the duty which as a partner he owed to Frankland when settling their partnership differences. For observe the chain of connection. Frankland and Oakes had been partners. Their partnership affairs had not been wound up. Frankland was suing Oakes claiming an accounting of the partnership affairs and alleging a balance of \$150,000 due to him. The action had been pending for some months when the parties entered upon negotiations for settlement.

In the negotiations then pending it was proposed and Frankland knew that he was to receive personally \$10,000 in cash and that \$15,000 was to be paid to the bank by Oakes in discharge of his guarantee but without recourse therefor to Frankland. What Frankland did not know was that the discharge of Oakes' guarantee was coupled with the right to Oakes to acquire Frankland's lands held by the bank as collateral security. But before concluding the negotiations of settlement it was essential to Frankland to know that since the morning meeting Oakes had secured from the bank an option on his lands which would preclude him from redeeming them and to know that the redemption by Oakes of his guarantee was tied up with the option which had been accorded him to buy these lands. In other words Frankland's action in the pending negotiations was dependent on the ultimate resultant effect which it would have on Frankland's position with the bank and the right of Frankland to redeem his collateral securities. This knowledge was a determining factor in the negotiations for settlement of the partnership differences, and thus there was imported into the

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negotiations for settlement of the partnership affairs the whole situation (including the option) as it then existed among all three parties concerned, first, Frankland, second, Oakes, and third the bank.

While the lands in question formed no part of the partnership assets yet the opportunity to redeem them was imported into the negotiations for settlement, and as between Oakes and Frankland, as partners settling their affairs, there existed a duty of full disclosure by Oakes to Frankland of the option which Griffiths had secretly procured from the bank during the pending negotiations for settlement.

—continued.

That view is supported by numerous and weighty authority to which I will now refer. Section 28 of our Partnership Act, R.S.O. 1927, cap. 170 provides as follows:

“Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representative.”

In Pollock’s Digest of the Law of Partnership, 12 Ed. page 94, Article 28 reads as follows:

“Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.” citing Law v. Law [1905] 1 Ch. 130. In that case Cozens Hardy Lord Justice, delivering the judgment of the Court at page 157 said:

“Now it is clear law that, in a transaction between co-partners for the sale by one to the other of a share in the partnership business, there is a duty resting upon the purchaser who knows, and is aware that he knows, more about the partnership accounts than the vendor, to put the vendor in possession of all material facts with reference to the partnership assets, and not to conceal what he alone knows: and that, unless such information has been furnished, the sale is voidable and may be set aside: see Maddeford v. Austwick 1 Sim. 89.”

The view so expressed is affirmed in Lindley on Partnership at page 389 where it is said:

“The utmost good faith is due from every member of a partnership towards every other member; and if any dispute arise between partners touching any transaction by which one seeks to benefit himself at the expense of the firm, he will be required to show, not only that he has law on his side, but that his conduct will bear to be tried by the highest standard of honour. Thus, if one partner knows more about the state of the partnership accounts than another, and, concealing what he knows, enters into an agreement with that other, relative to some matter as to which a knowledge of the state of the accounts is material, such agreement will not be allowed to stand.”

This obligation to perfect fairness and good faith, is, moreover, not confined to persons who actually are partners. It extends to persons negotiating for a partnership, but between whom no partnership as yet exists; and also to persons who have dissolved partnership but who have not completely wound up and settled the partnership affairs: and most especially

is good faith required to be observed when one partner is endeavouring to get rid of another, or to buy him out."

It is further to be observed that the document signed by Oakes which Griffiths brought forward at five o'clock on the 9th of November and induced Frankland to sign was not a mere settlement of the partnership action, but was a general mutual release between Oakes and Frankland of all claims of whatever nature. In the case of such a document it is clear that full disclosure was due from Griffiths to Frankland.

In *Spencer Bower on Actionable Non-Disclosure* at paragraph 132 the following passage occurs:—

20 "132. A release or waiver may either be of a particular defined right or claim, or it may be expressed in general terms so as to purport to surrender all claims of every sort or kind in relation to a certain subject-matter. In the former case, the party obtaining the release or waiver, must disclose during the negotiation all such matters affecting the specified right or claim as are within his knowledge, and of which, to his knowledge, the other party is ignorant. In the latter case, his duty of disclosure is much wider: the party in whose favour the general release or waiver is made must divulge to the other party any particular right of the class purporting to be released or waived which he knows, but the other party does not know, to be enforceable against himself by that other,—every right, in fact, the renunciation of which, as being literally within the general terms, he intends afterwards to assert and rely upon, but which the other party does not know that he possesses, and does not believe, therefore, to be included in such general terms, or to be the subject of the release or waiver. This rule has been rigidly applied not only to releases, strictly so called, but to 'catching conditions of sale', and 'tricky' waiver clauses in prospectuses of companies."

30 The cases on which the above statement is founded are there cited by the learned author and upon a perusal of them they appear to me to support the view expressed by him. Therefore even apart from the rule requiring full disclosure between partners the general release which Griffiths put forward and secured demanded full disclosure to Frankland of the option. In consequence of such non-disclosure I think that the general release evidenced by the document signed by both parties on November 9th, 1931, does not preclude the respondent from enforcing his claim to \$15,000 damages for breach of appellant's contract to pay that sum to the Bank on respondent's account; nor in my opinion is plaintiff precluded from asserting a claim for such damages as he may have sustained from the non-disclosure during the negotiations for settlement of the option 40 which his partner had acquired from the Bank. I agree with my brother Middleton that an action of deceit does not lie, but I am also clear that the breach of duty by the appellant gives to the respondent a right of action for damages.

In the case of *In re Leeds and Hanly Theatres, of Varieties Limited* [1902] 2 Ch. 809, the liquidator of that company asserted a liability on the part of its promoters to contribute to its assets compensation for their misfeasance in failing to disclose to persons who were invited to take shares in the company that

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—continued.

they were the real vendors to the company of the theatres which it was acquiring.

In giving judgment in that case Vaughan Williams says at page 825:

“There being then this breach of duty, the next question is whether under these circumstances the Theatres Company are now entitled to a remedy as against the company which thus acted in relation to the promotion. In my judgment, they are entitled to a remedy, but I think it is a remedy in the nature of damages. To put it in a short common law form, I am not sure that the Theatres Company, can in reference to this breach of fiduciary duty by their promoters, maintain an action in the nature of an action for money had and received. I think the safer way of putting it is to say that their remedy is in damages. The authorities are not all perfectly conclusive that there is no remedy by way of an account of profits, but I prefer to say that, whether there is such a remedy or not, I am clear that there is a remedy in the shape of damages.”

This principle was adopted and applied in our own Courts in the case of *Crawford v. Bathurst*, 37 O.L.R. 611 at 629, and 42 O.L.R. 256 at 269. And in *Rumford v. Heaton* (1922) 52 O.L.R. at page 61, it was held that the plaintiff was entitled to get damages though rescission was not possible or not desired, citing *Hickens v. Congrave* (1831), 4 Sim. 420, especially at pp. 427-8; *Gluckstein v. Barnes* [1900] A.C. 240; *In re Leeds and Hanly Theatres of Varieties Limited* [1902] 2 Ch. 809.

“The appellant set up that a claim for rescission was the only claim which the plaintiffs could assert, and that such a claim is fully met by the voluntary offer of the defendant Hinton, before action brought, to take over the land at \$29,000. Such an offer might be a good answer to a claim for rescission, but here there is no claim for rescission. It is, in fact, refused by the plaintiffs—and the claim is for a recovery of \$15,000 without any rescission.”

I have felt grave doubt as to whether the evidence adduced by the respondent on the question of damages suffered by him on this claim goes far enough to warrant the reference directed by the trial judge but as has often been said “To doubt is to affirm.”

The damages to be ascertained by the Master should be based on the loss sustained by the plaintiff in consequence of his being led to settle the former action on the terms agreed while in ignorance of the option then held by the defendant. It may be that his damages will turn out to be nominal and the reference granted should be at his own risk as to costs.

Before parting with the case I desire to add one observation. It was suggested in argument that it was a pure and innocent slip of the pen when the option in question was dated “11 Nov. 1931” but the circumstance lends itself to the suspicion that an attempt was being made to make the record of events appear as if a complete settlement and mutual release was completed on November 9th and the option subsequently obtained on November 11th.

## Reasons for Judgment of Fisher, J.A.

There were two transactions, first, the settlement of the partnership action and the guarantee, and second, the sale by the bank to Oakes, or the Welland Securities of certain lands, for \$35,000.

The whole difficulty has arisen by the unauthorized inclusion in the option of the second transaction of these words:

"The Oakes' guarantee for \$15,000 to Royal Bank of Canada, re Frankland, to be retired out of purchase price above."

Frankland was not consulted by either Griffiths or the manager of the bank and without Frankland's consent they had no authority to include in the option anything that had to do with the guarantee. If the manager of the bank did not know that the guarantee had already been provided for, it is certain Griffiths did and this inclusion of the guarantee in the option, was in plain language, what might be termed a gross breach of faith.

The second transaction subject to the adjustments, about which there is no conflict, was carried out, but the first was not and I concur with the reasons and conclusions of the other members of the Court that the plaintiff is entitled, and as found by the trial Judge, to judgment for \$15,000.

I can see no reason for directing a reference and the disposition of this appeal, as made by my brother Middleton, meets with my approval.

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## Reasons for Judgment of Grant, J.A.

In this appeal I agree in the conclusion reached by my brother Middleton, whose opinion I have been privileged to read. I am unable to see that any fiduciary relationship existed between the two parties with respect to the properties held by the Bank as collateral security to Frankland's personal indebtedness, and upon this point I am unable (with great respect) to agree with my brother Masten. The guaranty by Oakes to the Bank was not (in so far as the evidence discloses) in any way connected with, nor was it even an outcome of the partnership between them. Had Oakes not imported into the terms of settlement of the partnership action, a provision for his own protection, that \$15,000 of the consideration should be devoted to a certain purpose, there would have been no possible connection between the two transactions.

The mere fact that a partnership in respect of other matters, had existed between the two, could not, in law, (however it might have been looked upon in ethics) have invalidated or affected the purchase from the Bank by Oakes, of securities held by it as collateral to Frankland's personal indebtedness. There is no fiduciary relationship between the surety and the principal debtor, which precludes the former from protecting himself by purchasing from the creditor his collateral securities. This would be so even if the partnership were continuing.

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Then, if any such fiduciary relationship were brought into existence, it must have resulted from the mere fact that part of the money being paid on settlement of all partnership disputes was being paid to Frankland's credit in a certain manner. But surely that can not be so. The partnership was ended by the settlement between the parties. The only continuing obligation resting upon Oakes was to pay the \$15,000 for a certain purpose in relief of Frankland. Frankland's chief complaint here is that Oakes did not pay the money in fulfilment of the contract of settlement, and he demands that such payment be made as agreed; in other words he affirms the settlement, by which the partnership relation was terminated. The obligation to make the payment arises out of the settlement and is subsequent thereto. This is a contractual obligation and as such is enforceable, but it does not involve any duty of a fiduciary character. Frankland is entitled to have the settlement carried out and therefore to have the \$15,000 paid in fulfilment thereof if this has not been done, and in the latter case, he would be entitled to interest on the amount as well.

It is further to be observed that Frankland knew of the option held by Oakes some time before it was taken up, and could have prevented a sale by the Bank by redeeming his securities. The option was not a contract binding upon the Bank, being given without consideration and not under seal. He was not deprived of his right to redeem by Oakes' failure to pay the \$15,000 for the purpose stated in the settlement, but by Oakes buying the securities from the Bank, which Oakes had a legal right to do, and the doing of which, therefore, could not give rise to any cause of action.

As already stated, I agree that the plaintiff is entitled to recover the \$15,000.00. According to the true spirit and intendment of the settlement agreement, the \$15,000.00 was to be paid for his benefit and relief, to the Bank, and by that amount his securities would be the more readily redeemable. The only benefit to be derived by Oakes from such payment, as contemplated by the agreement, was the discharge of his guaranty to the Bank. The payment could not be utilized to perform the double duty of paying off the guaranty and at the same time of forming part of the purchase price for properties of Frankland which were held by the bank as collateral to the debt, a part of which the \$15,000 was to pay. It is but fair to Mr. Tilley to state that he frankly assented to this. In face of the explicit language of the various writings, namely, the option, the cheque given in exercise thereof, the various deeds and the affidavits thereto annexed, I think it is not open to the defendant (appellant) to contend that the consideration for the sale of the properties to him was not \$35,000.00. Even if the release of the guaranty were considered by Oakes and the Bank as being represented by the \$15,000.00 (and the documentary evidence is overwhelmingly against such a view) yet I am inclined to the opinion that the provision in the option "the Oakes guarantee for \$15,000.00 . . . to be retired out of purchase price above" (i.e., \$35,000 as therein stated) is so contrary to the true spirit of the settlement agreement as not to be acceptable as a fulfilment of its terms as to payment. I agree with Middleton, J.A., as to the disposition to be made of the appeal.



No. 15  
 Formal Judgment of the Court of Appeal for Ontario

IN THE SUPREME COURT OF ONTARIO  
 COURT OF APPEAL

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The Right Honourable, the Chief Justice of Ontario  
 The Honourable Mr. Justice Middleton  
 The Honourable Mr. Justice Masten  
 The Honourable Mr. Justice Fisher  
 B E T W E E N :

Monday the 9th day of  
 January, A.D. 1933

10

CHARLES S. FRANKLAND,

Plaintiff,

—and—

HARRY OAKES,

Defendant.

(Court Seal)  
 AS. 27.2.33.

1. Upon Motion made unto this Court, constituted as above mentioned, along with the Honourable Mr. Justice Grant, since deceased, on the 17th and 18th days of October, 1932, by Counsel on behalf of the De-  
 20 fendant, by way of Appeal from the Judgment pronounced by the Honourable Mr. Justice Kelly on the 8th day of August, 1932, herein, in the presence of Counsel for all parties, and upon hearing read the pleadings, the evidence adduced at the trial, and the Judgment aforesaid, and upon hearing what was alleged by Counsel aforesaid, and Judgment having been reserved until this day.

2. THIS COURT DOTH ORDER that this Appeal be and the same is hereby dismissed, but that the said Judgment be varied, and that the Judgment of the Court as varied be as follows:

30 “(1) This action coming on for trial on the 25th day of May, 1932, before this Court, at the Sittings holden at Welland for trials 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, 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 DOTH ORDER AND ADJUDGE that the Plaintiff recover from the Defendant the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00), together with interest thereon at the rate of five per cent. (5%) per annum from the 9th day of November, 1931.

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“(3) THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendant do pay to the Plaintiff his costs of this action forthwith after taxation thereof.”

3. AND THIS COURT DOTH FURTHER ORDER that the Defendant do pay to the Plaintiff his costs of this Appeal forthwith after taxation thereof.

D’Arcy Hinds,  
Registrar.

Entered O.B. 132, page 44,  
February 27, 1933 V.C.

—continued.

No. 16  
Order of  
Middleton,  
J.A., 6th  
March, 1933.

No. 16  
Order of Middleton, J. A.

10

IN THE SUPREME COURT OF ONTARIO

THE HONOURABLE MR. JUSTICE  
MIDDLETON IN CHAMBERS  
BETWEEN :

MONDAY THE 6TH DAY  
OF MARCH, 1933.

CHARLES S. FRANKLAND,

Plaintiff,

—and—

HARRY OAKES,

Defendant. 20

UPON THE APPLICATION of Counsel for the Defendant in the presence of counsel for the Plaintiff, upon hearing read the Judgment of the Court of Appeal for Ontario pronounced herein on the 9th day of January, 1933, the reasons for the said Judgment, the Affidavit of Robert Irvin Ferguson filed, the certificate of the Accountant of the Supreme Court of Ontario that the Defendant has paid into Court the sum of Two Thousand Dollars (\$2,000.00) as security for costs on this appeal, and it appearing that the Defendant has, under the provisions of the Privy Council Appeal Act, R.S.O. 1927, Chapter 86, a right to appeal to His Majesty in His Privy Council; AND UPON hearing what was alleged by counsel aforesaid,

1. IT IS ORDERED that the sum of Two Thousand Dollars (\$2,000.00) paid into Court, as appears by the certificate of the Accountant of this Court, be and the same is hereby approved as good and sufficient security that the Defendant herein will effectually prosecute his appeal against the Plaintiff 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. 30

2. AND IT IS FURTHER ORDERED that an appeal by the Defendant herein against the Plaintiff to His Majesty in his Privy Council, from the said Judgment be and the same is hereby admitted. 40

3. AND IT IS FURTHER ORDERED that the costs of this application be costs in the appeal.

Entered O.B. 132, Pages 83 & 4,  
March 6, 1933, H.F.

D'Arcy Hinds,  
Registrar.

*In the  
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—continued.

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## RECORD OF PROCEEDINGS

Exhibits.  
Ex. 17.  
Guarantee,  
Harry Oakes  
to Royal  
Bank of  
Canada, 4th  
August,  
1927.

### PART II—EXHIBITS

#### Exhibit 17.

(Defendant's Exhibit.)

#### Guarantee, Harry Oakes to The Royal Bank of Canada

TO THE ROYAL BANK OF CANADA,

IN CONSIDERATION of The Royal Bank of Canada agreeing or continuing to deal with C. S. FRANKLAND herein referred to as "the Customer," in the way of its business as a Bank, the undersigned hereby jointly and severally guarantee payment to the Bank of the liabilities which the Customer has incurred or is under or may incur or be under to the Bank, whether arising from dealings between the Bank and the Customer or from other dealings by which the Bank may become in any manner whatsoever creditor of the Customer; including in such liabilities all interest, computed with quarterly, or other rests according to the Bank's usual custom, charges for commission and other expenses, and all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of any such liabilities including all costs and charges as between solicitor and client which the Bank may incur or pay in connection with the Customer's account (the joint and several liability of the undersigned hereunder being limited to the sum of FIFTEEN THOUSAND DOLLARS, with interest at the rate of seven per cent. per annum from the date of demand for payment of the same). 10

AND the undersigned agree that the Bank may refuse credit, grant extensions, take and give up securities, accept compositions, grant releases and discharges, value security in bankruptcy or winding-up proceedings, and otherwise deal with the Customer and with other parties and securities as the Bank may see fit, and may apply all moneys received from the Customer or others, or from any securities upon such part of the Customer's indebtedness as it may think best, the whole without prejudice to or in any way limiting or lessening the liability of the undersigned under this guarantee. 20

AND this guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money 30

for the time being due to the Bank, and all dividends, compositions, proceeds of security valued, and payments received by the Bank from the Customer or any other person or estate shall be applied as payments in gross without any right on the part of the undersigned to claim in reduction of the liability under this guarantee the benefit of any such dividends, compositions, proceeds or payments or any securities held by the Bank, and this guarantee shall apply to and secure any ultimate balance due to the Bank, and the Bank shall not be bound to exhaust its recourse against the Customer or other parties or the securities it may hold before being entitled to payment from the undersigned of the amount

10 hereby guaranteed.

AND this shall be a continuing guarantee and shall cover all the liabilities which the Customer may incur or come under until the undersigned, or the executors or administrators of the undersigned shall have given the Bank notice in writing to make no further advances on the security of this guarantee.

AND it is agreed that this guarantee shall not be affected by the death of the undersigned or any of them or any change or changes in the name of the Customer or any change or changes in the membership of the Customer's firm by death or by the retirement of one or more of the partners, or by the introduction of one or more other partners or otherwise, or by any change in the objects, capital stock or constitution of the Customer, and the said Bank shall

20 not be concerned to see or enquire into the powers of the Customer or any of its directors, or other agents, acting or purporting to act on its behalf, and moneys, advances, renewals or credits, in fact borrowed or obtained from said Bank in professed exercise of such powers shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding that such borrowing or obtaining of moneys, advances, renewals or credits shall be in excess of the powers of the Customer or of its directors or other agents aforesaid, or be in any way irregular, defective or informal.

AND this guarantee is in addition to and not in substitution for any other guarantee which may have been given in connection with the liability of the Customer, unless such guarantee shall have been surrendered on delivery of this

30 instrument.

ANY account settled or stated by or between the Bank and its Customer or admitted by the Customer may be adduced by the Bank and received as conclusive evidence against the undersigned of the balance or amount thereby appearing due from the Customer to the Bank, and shall not be disputed or questioned by the undersigned.

Demand of payment hereunder may be made by mailing a notice to the undersigned or his or their representatives (without the necessity of naming them) addressed to the last known place of abode or business or postal address of the undersigned.

AND this guarantee shall be operative and binding upon every person signing the same, notwithstanding the non-execution thereof by any other proposed guarantor or guarantors, and it is hereby agreed that the delivery of this in-

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Ex. 17.  
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Canada, 4th  
August,  
1927.

—continued.

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Ex. 17.  
Guarantee,  
Harry Oakes  
to Royal  
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—continued.

strument to the Bank by any bearer thereof shall operate as an absolute unconditional delivery, and this guarantee shall thereupon take immediate effect.

AND the undersigned expressly waive and renounce any benefits of discussion and division.

AND this instrument covers all agreements between the parties hereto relative to this guarantee, and none of the parties shall be bound by any representation or promise made by any person relative to this guarantee which is not embodied herein.

Niagara Falls this 4th day of August, A.D. 1927.

WITNESS:

J. R. STEELE  
I. H. ALLETT

}

HARRY OAKES (Seal)

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Exhibits.  
Ex. 5.  
Mortgage,  
Charles S.  
Frankland to  
Royal Bank  
of Canada,  
27th March,  
1929.

Exhibit 5.

(Defendant's Exhibit.)

Mortgage, Charles S. Frankland to The Royal Bank of Canada

THIS INDENTURE made (in duplicate) the Twenty-seventh day of March, One Thousand Nine Hundred and Twenty-nine. IN PURSUANCE OF

THE SHORT FORMS OF MORTGAGES ACT.  
B E T W E E N :

CHARLES S. FRANKLAND of the Town of Bridgeburg in  
the County of Welland (hereinafter called the Mortgagor)  
of the First Part,

20

—and—

THE ROYAL BANK OF CANADA (hereinafter called the  
Mortgagee)  
of the Second Part.

—and—

LENNA FRANKLAND of the said Town of Bridgeburg wife  
of the Mortgagor,  
of the Third Part.

WHEREAS the Mortgagor is indebted and has become liable to the Mortgagee for moneys heretofore advanced by the Mortgagee to the said Mortgagor, and the Mortgagee is desirous of obtaining further security as collateral to said indebtedness, and it has been agreed that this Mortgage should be given for that purpose;

AND WHEREAS the said indebtedness is hereby declared to include all past incurred liability of the Mortgagor to the Mortgagee, whether direct or indirect or whether due or accruing due;

NOW THIS INDENTURE WITNESSETH that in consideration of said indebtedness and of one dollar, of lawful money of Canada, heretofore paid by

the said Mortgagee to the said Mortgagor (the receipt whereof is hereby acknowledged) and in consideration of the premises the said Mortgagor DOTH GRANT AND MORTGAGE unto the said Mortgagee its successors and assigns forever; ALL AND SINGULAR those certain parcels or tract of land and premises, situate, lying and being FIRSTLY in the Town of Bridgeburg, County of Welland and being composed of (a) Lots No's. 12, 13, 14 and 15 on the north side of Bowden St. according to registered Plan No. 29 for the said Town of Bridgeburg. (b) Lots No's. 48, 50, 51, 52, 53, 54, 55, 57, 58, 59 and 61 on the North Side of Emerick Avenue and Lots 15, 16, 17, 18, 19, 20, 23, 24, 28, 29 on the South Side Emerick Avenue, all according to registered Plan No. 28 for the said Town (formerly Village) of Bridgeburg. (c) Lots No's. 47 and 48 on the South Side of the Bowen Rd. as shown on Plan No. 25 made by Geo. Ross, P.L.S., for Frederick Seisser and filed in the Registry office for the County of Welland on the 27th of May, 1905, for the said Town of Bridgeburg.

SECONDLY in the Township of Stamford in the County of Welland and being composed of Lots No's. 5, 6, 7, 8, 9, 10, and 11 on the West side of Carlton Ave. according to registered Plan No. 49 for the said Township of Stamford.

PROVIDED this Mortgage to be void on payment of the said indebtedness when due and all interest thereon and any and all other indebtedness and liability which may be then existing by way of renewal of or substitution for the indebtedness and liability hereby secured against or any part thereof, and that the Mortgagor will pay all such indebtedness and liability to the Mortgagee and Taxes and performance of Statute Labor.

THE said Mortgagor Covenants with the said Mortgagee That the Mortgagor will pay the Mortgage money and interest and observe the above proviso.

THAT the Mortgagor has a good title in fee simple to the said lands AND that he has the right to convey the said lands to the said Mortgagee.

AND that in default the Mortgagee shall have a quiet possession of the said lands free from all incumbrances.

AND that the said Mortgagor will execute such further assurances of the said lands as may be requisite.

AND that the said Mortgagor has done no act to encumber the said lands.

AND that the said Mortgagor will insure the Buildings on the said lands to the amount of their full insurable value.

AND the said Mortgagor doth RELEASE to the said Mortgagee all his claims upon the said lands subject to the said proviso.

PROVIDED that the said Mortgagee on default of payment for one month, may, on giving one month's notice, enter on and lease or sell the said lands.

PROVIDED that the Mortgagee may distrain for arrears of interest.

PROVIDED that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable PROVIDED that until default of payment the Mortgagor shall have quiet possession of the said lands.

IT IS AGREED by and between the parties hereto that any moneys deposited or paid to the credit of the Mortgagor's current account in the Bank of the Mortgagee shall not be deemed a payment on account of the indebtedness

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—  
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Mortgage,  
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Royal Bank  
of Canada,  
27th March,  
1929.

—continued.

*In the  
Supreme  
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Exhibits.

Ex. 5.  
Mortgage,  
Charles S.  
Frankland to  
Royal Bank  
of Canada,  
27th March,  
1929.

—continued.

or liability aforesaid unless the deposits or payments are expressly appropriated by the Mortgagee in or towards payment of same, and said deposits or payments, if no appropriation thereof is made by the Mortgagee shall be treated as current account for the use of the Mortgagor and subject to withdrawal by cheque or otherwise by him AND it is further agreed that when this Mortgage becomes due as aforesaid the total indebtedness or liability secured or intended to be secured shall not exceed the sum of \$59,343.00 and such amount less any payments thereon and appropriated by the Mortgagee in the meantime shall, when payment of this Mortgage is demanded, be and represent the indebtedness and liability for which this Mortgage stands as collateral security. 10

Payment of the interest by the Mortgagor in respect of his indebtedness to the Mortgagee shall be deemed satisfaction of the interest due hereunder.

PROVIDED AND IT IS HEREBY AGREED that any act done or omitted to be done by any of the parties hereto regarding any other securities held by the Mortgagee for said indebtedness shall not in any way affect or prejudice this Mortgage or the rights or remedies of the Mortgagee hereunder, and this Mortgage shall remain and be in force until satisfaction thereof is made by payment as aforesaid, as if no other security was held by the said Mortgagee.

PROVIDED AND IT IS AGREED by the parties hereto that the word "Mortgagor" in the foregoing Mortgage, importing the singular number, shall 20 include more parties or persons than one, and females as well as males, and if more than one Mortgagor shall create a several and joint liability, on the covenants herein contained on the part of the Mortgagor.

AND the party of the third part hereby bars her dower in the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED In the presence of T. H. Gilchrist	}	Charles S. Frankland (Seal) Lenna Frankland (Seal)
---	---	---

Ex. 4.  
Assignment  
of Agree-  
ment to Pur-  
chase Lands,  
Charles S.  
Frankland  
to Royal  
Bank of Can-  
ada, 6th  
August,  
1929.

Exhibit 4.  
(Defendant's Exhibit.)

30

Assignment of Agreement to Purchase Lands, Charles S. Frankland to The  
Royal Bank of Canada

THIS INDENTURE made the sixth day of August, 1929.

B E T W E E N :

CHARLES S. FRANKLAND, of the Town of Bridgeburg, in the  
County of Welland, formerly of the Village of Ridgeway, in the  
said County of Welland, Real Estate Agent, hereinafter called,  
the Party of the First Part,

—and—

THE ROYAL BANK OF CANADA, hereinafter called 40  
the Party of the Second Part.



WHEREAS, the Party of the First Part by Agreement dated the 30th day of April, 1928, agreed to purchase the lands therein and hereinafter mentioned from one James L. Murray of the City of Niagara Falls, in the County of Welland, Contractor, at the price and upon the terms therein mentioned.

AND WHEREAS, the said Party hereto of the First Part is desirous of assigning the said Agreement and his interest in the said lands thereunder to the Party hereto of the Second Part.

NOW THIS INDENTURE WITNESSETH that in consideration of One Dollar, now paid by the Party hereto of the Second Part to the Party hereto of the First Part, the receipt whereof is hereby acknowledged, the Party hereto of the First Part DOES HEREBY GRANT, BARGAIN, SELL, TRANSFER and SET OVER unto the Party of the Second Part, its successors and assigns forever, the said Agreement and all the estate, right, title, interest, claim and demand whatsoever of the said Party hereto of the First Part, of, in and to the same and the lands therein mentioned, namely, ALL AND SINGULAR, that certain parcel or tract of land and premises being in the Township of Stamford in the County of Welland and Province of Ontario, containing by admeasurement an area of 64.13 acres, more or less, being part of Lots No. 16 and No. 25 in said Township, the limits of the said tract of land being described as follows:

20 BEGINNING at a stone monument at the south westerly angle of said lot No. 25; THENCE south 89 degrees and 28 minutes east 652 feet; THENCE north 89 degrees and 57 minutes east 1,146 feet and 3 tenths of a foot to the point of commencement of the herein described tract of land; THENCE north 89 degrees and 57 minutes east 160 feet and 4 tenths of a foot; THENCE south 89 degrees and 4 minutes east 1,343 feet and 1 tenth of a foot to the westerly limit of St. Davids Road; THENCE north 24 minutes east along said westerly limit of St. Davids Road 780 feet; THENCE north 60 degrees and 8 minutes west 70 feet and two tenths of a foot to a point in the southerly limit of Beaver Dams Road; THENCE along the last mentioned limit of the following courses north 75 degrees and 44 minutes west 490 feet and 1 tenth of a foot; north 75 degrees and 27 minutes west 231 feet and 1 tenth of a foot; north 70 degrees and 56 minutes west 243 feet and 4 tenths of a foot; north 69 degrees and 24 minutes west 830 feet and 4 tenths of a foot; north 80 degrees and 38 minutes west 200 feet; north 81 degrees and 52 minutes west 100 feet; north 84 degrees and 46 minutes west 100 feet; north 89 degrees and 25 minutes west 100 feet; south 89 degrees and 35 minutes west 100 feet; south 85 degrees and 25 minutes west 100 feet; south 75 degrees and 59 minutes west 100 feet; south 72 degrees and 17 minutes west 471 feet; THENCE south 53 degrees and 36 minutes east 2,148 feet and 5 tenths of a foot to the point of commencement.

40 TO HAVE AND TO HOLD the same and every benefit that may be derived under and from the said Agreement and the said lands, unto and to the use of the said Party hereto of the Second Part, its successors and assigns forever. SUBJECT NEVERTHELESS to the reservations, limitations, provisos and conditions expressed in the original grant from the Crown, and subject also to the

*In the  
Supreme  
Court of  
Ontario.*

—  
Exhibits.  
Ex. 4.  
Assignment  
of Agree-  
ment to Pur-  
chase Lands,  
Charles S.  
Frankland  
to Royal  
Bank of  
Canada, 6th  
August,  
1929.

—continued.

*In the  
Supreme  
Court of  
Ontario.*

Exhibits  
Ex. 4.

Assignment  
of Agree-  
ment to Pur-  
chase Lands,  
Charles S.  
Frankland to  
Royal Bank  
of Canada,  
6th August,  
1929.

*-continued.*

terms of the said hereinbefore described in part recited agreement and the cove-  
nants and conditions therein contained.

AND the party of the first part covenants with the Party of the Second  
Part that he has done no act to encumber the said lands and has done no act and  
has been guilty of no omission or laches whereby the said agreement has become  
in part or entirely in any wise impaired or invalid.

AND the said Party hereto of the First Part hereby releases to the said  
Party hereto of the Second Part, its successors and assigns, all his claims  
against the said lands.

It is understood between the Parties hereto that this Assignment of Agree- 10  
ment is given for the purpose of securing the indebtedness heretofore incurred  
by one Assignor to the Assignee.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands  
and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:  
As to execution by Charles S. Frankland.  
Gladys Althouse

} Charles S. Frankland (Seal)

**Exhibit 9.**

(Defendant's Exhibit.)

**Mortgage Sale Advertisement**

20

Ex. 9.  
Mortgage  
Sale Adver-  
tisement 8th  
October,  
1929.

**MORTGAGE SALE**

Under and by virtue of the powers of sale contained in a certain Mortgage,  
which will be produced at the time of sale, there will be offered for sale by Public  
Auction at the Law Office of MESSRS. PETTIT & DARBY, Briggs Building,  
Jarvis St., Bridgeburg, on TUESDAY, NOV. 12, 1929, at the hour of 2 p.m., the  
following property:

All and singular those certain parcels or tract of land and premises, situate,  
lying and being first in the town of Bridgeburg, County of Welland, and being  
composed of (A) Lots Nos. 12, 13, 14 and 15 on the North side of Bowden St. 30  
according to registered plan No. 29 for the said Town of Bridgeburg. (B) Lots  
Nos. 48, 50, 51, 52, 53, 54, 55, 57, 58, 59 and 61 on the North side of Emerick  
Avenue and Lots 15, 16, 17, 18, 19, 20, 23, 24, 28, 29 on the South side of  
Emerick Avenue, all according to registered Plan No. 28 for the said Town  
(formerly Village) of Bridgeburg. (C) Lots Nos. 47 and 48 on the South side  
of the Bowen Rd. as shown on Plan No. 25 made by Geo. Ross, P.L.S., for Fred-  
erick Seisser and filed in the Registry Office for the County of Welland on the  
27th day of May, 1905, for the said Town of Bridgeburg.

SECONDLY: In the Township of Stamford in the County of Welland and  
being composed of Lots Nos. 5, 6, 7, 8, 9, 10, 11, on the West side of Carlton Ave., 40  
according to registered Plan No. 49 for the said Township of Stamford.

The said lands are all vacant parcels, for ideal building situations and investment.

The said lands will be sold subject to a reserve bid.

*In the  
Supreme  
Court of  
Ontario.*

Terms of sale:—Twenty per cent of the purchase price to be paid on the day of sale and the balance within 30 days, with interest at seven per cent per annum. The other terms and conditions of sale shall be the standing conditions of the Supreme Court of Ontario.

Exhibits.  
Ex. 9.  
Mortgage  
Sale Adver-  
tisement,  
8th October,  
1929.

For further particulars apply to the undersigned.

Auctioneer:

10 BENJ. REINHARDT, ESQ.,  
Ridgeway, Ontario.

MESSRS. PETTIT & DARBY,  
Welland, Ontario.  
Solicitors for the Mortgagee (Vendor)

—continued.

DATED THIS 8TH DAY OF OCTOBER, 1929.

**Part Exhibit 3.**  
(Defendant's Exhibit.)

Deed, Hydro-Electric Power Commission of Ontario to The Royal Bank of Canada.

THIS INDENTURE made (in triplicate) the Thirtieth day of April, A.D. 1931, in pursuance of the Short Forms of Conveyances Act:

B E T W E E N :

20 THE HYDRO-ELECTRIC POWER COMMISSION OF  
ONTARIO hereinafter called "the Grantor"

of the First Part,

—and—

THE ROYAL BANK OF CANADA, hereinafter called  
"the Grantee"

of the Second Part.

WHEREAS by Agreement for sale of land dated the 1st day of February, A.D. 1926, the Grantor agreed to sell the lands and premises hereinafter described to Thomas E. Ferris and James J. Murray:

30 AND WHEREAS the said Agreement was assigned by said Thomas E. Ferris and James J. Murray to one Charles S. Frankland, and by him further assigned to the Grantee, the said Grantee has paid the purchase money as in said Agreement provided and has requested a conveyance to it of the said lands pursuant thereto:

Exhibits.  
Part Ex. 3.  
Deed, Hydro-  
Electric  
Power Com-  
mission of  
Ontario to  
the Royal  
Bank of Can-  
ada, 30th  
April, 1931.

*In the  
Supreme  
Court of  
Ontario.*

Exhibits.  
Part Ex. 3.  
Deed, Hydro-  
Electric  
Power Com-  
mission of  
Ontario to  
the Royal  
Bank of Can-  
ada, 30th  
April, 1931.

—continued.

NOW WITNESSETH that in consideration of the premises and of the said sum of Ten Thousand Dollars of lawful money of Canada, now theretofore paid to the said Grantor by the said Grantee (the receipt whereof is hereby by it acknowledged), it the said Grantor doth grant unto the said Grantee in fee simple ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Stamford, in the County of Welland and Province of Ontario containing by admeasurement an area of 64.13 acres more or less being part of Lots No. 16 and No. 25 in said Township and as shown edged in yellow on the plan hereto attached the limits of the said tract of land being described as follows:

10

BEGINNING at a stone monument at the south westerly angle of said Lot No. 25; THENCE south 89 degrees and 28 minutes east 652 feet; THENCE north 89 degrees and 57 minutes east 1,146 feet and 3 tenths of a foot to the point of commencement of the herein described tract of land; THENCE north 89 degrees and 57 minutes east 160 feet and 4 tenths of a foot; THENCE south 89 degrees and 4 minutes east 1,343 feet and 1 tenth of a foot to the westerly limit of St. Davids Road; THENCE north 24 minutes east along said westerly limit of St. Davids Road 780 feet; THENCE north 60 degrees and 8 minutes west 70 feet and 2 tenths of a foot to a point in the southerly limit of Beaver Dams Road. THENCE along the last mentioned limit on the following 20 courses: north 75 degrees and 44 minutes west 490 feet and 1 tenth of a foot; north 75 degrees and 27 minutes west 231 feet and 1 tenth of a foot; north 70 degrees and 56 minutes west 243 feet and 4 tenths of a foot; north 69 degrees and 24 minutes west 830 feet and 7 tenths of a foot; north 77 degrees and 38 minutes west 236 feet and 4 tenths of a foot; north 80 degrees and 38 minutes west 200 feet; north 81 degrees and 52 minutes west 100 feet; north 84 degrees and 46 minutes west 100 feet; north 89 degrees and 25 minutes west 100 feet; south 89 degrees and 35 minutes west 100 feet; south 85 degrees and 25 minutes west 100 feet; south 75 degrees and 59 minutes west 100 feet; south 72 degrees and 17 minutes west 471 feet; THENCE south 53 degrees and 36 30 minutes east 2,148 feet and 5 tenths of a foot to the point of commencement.

TO HAVE AND TO HOLD unto the said Grantee its heirs and assigns to and for their sole and only use forever.

SUBJECT NEVERTHELESS to the reservations, limitations, provisoes and conditions expressed in the Original Grant thereof from the Crown.

AND SUBJECT to the provisions of Clause 10 of the said Agreement for sale of said land to Thomas A. Ferris and James T. Murray above mentioned, which said Agreement was registered on the 10th day of November, 1927, as number 16458 Book 4 for Township of Stamford.

THE said Grantor COVENANTS with the said Grantee that they have the 40 right to convey the said lands to the said Grantee notwithstanding any act of the said Grantor.

AND that the said Grantee shall have quiet possession of the said lands, free from all encumbrances.

AND the said Grantor COVENANTS with the said Grantee that they will execute such further assurances of the said lands as may be requisite.

AND the said Grantor COVENANTS with the said Grantee that they have done no act to encumber the said lands.

AND the said Grantor RELEASES to the said Grantee ALL CLAIMS upon the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

10

SIGNED, SEALED and DELIVERED

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO  
J. R. COOKE  
Acting Chairman  
W. W. POPE  
Secretary  
(Corporate Seal Hydro-Electric Power Commission of Ontario)

*In the Supreme Court of Ontario.*

Exhibits Part Ex. 3. Deed, Hydro-Electric Power Commission of Ontario to the Royal Bank of Canada, 30th April, 1931.

*—continued.*

I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the County of Welland, in Book 6 for the Twp. of Stamford at 11:25 o'clock a.m. of the 20 day of May, 1931, 20 Number 20768.

"E. E. FRASER"

Registrar.

Part Exhibit 3.

(Defendant's Exhibit).

Plan attached to above deed.

(NOT PRINTED)

Part Ex. 3. Plan attached to above deed. 25th January, 1926. (Not printed)

Part Exhibit 16.

(Defendant's Exhibit).

Letter, Royal Bank of Canada to F. W. Griffiths

THE ROYAL BANK OF CANADA

Part Ex. 16. Letter, Royal Bank of Canada to F. W. Griffiths, 8th October, 1931.

30

Bridgeburg, Ont.

Oct. 8, 1931.

Mr. F. W. Griffiths, Barrister,  
Niagara Falls, Ont.  
Dear Sir:

We are enclosing herewith list of properties acquired from C. S. Frankland by foreclosure of mortgage held by us as security. We have not a list of unpaid

*In the  
Supreme  
Court of  
Ontario.*

taxes. These can be obtained in a few days. As suggested to you to-day we would recommend that the bank accept \$35,000 for the properties including the release of the guarantee signed by Harry Oakes.

**Exhibits.**  
Part Ex. 16.  
Letter, Royal  
Bank of  
Canada to  
F. W. Grif-  
fiths, 8th  
October,  
1931.

Yours truly,

**J. R. STEELE**  
Manager.

**Part Exhibit 16.**

(Defendant's Exhibit.)

**Enclosure Referred to In Above Letter.**

—continued.

Part Ex. 16.  
Enclosure re-  
ferred to in  
above letter,  
8th October,  
1931.

**C. S. FRANKLAND**

Real Estate Acquired by  
Foreclosure of Mortgage

	Previous Mortgage	Sale Price	10
1. 2 lots Bowden St., Bridgeburg	Free	\$ 1,000	
2. 2 lots Bowden St., Bridgeburg	\$600	1,000	
3. 17 lots Emerick Ave., Bridgeburg	Free	6,800	
4. 2 lots Bowen Road, Bridgeburg	Free	1,000	
5. 7 acres Township of Stamford	Free	5,000	
6. 64 acres Township of Stamford (Gravel Pit)		19,000	
	————— \$600	————— 34,000	

**Exhibit 8.**

(Defendant's Exhibit.)

20

**Consent to the Dismissal of Action and Counter-Claim Between  
Charles S. Frankland, Plaintiff, and Harry Oakes, Defendant.**

**IN THE SUPREME COURT OF CANADA**

Ex. 8.  
Consent to  
Dismissal of  
Action Be-  
tween  
Charles S.  
Frankland,  
Plaintiff, and  
Harry Oakes,  
Defendant,  
9th Novem-  
ber, 1931.

**B E T W E E N :**

**CHARLES S. FRANKLAND,**

**Plaintiff,**

—and—

**HARRY OAKES,**

**Defendant. 30**

We hereby consent to the dismissal of this action and counterclaim without costs.

DATED at Welland in the County of Welland, this 9th day of November, A.D. 1931.

PETTIT & DARBY

Plaintiff's Solicitors.

GRIFFITHS & CO.

Defendant's Solicitors.

*In the Supreme Court of Ontario.*

Exhibits Ex. 8. Consent to Dismissal of Action Between Charles S. Frankland, Plaintiff, and Harry Oakes, Defendant, 9th November, 1931.

*—continued.*

Exhibit 6 Release, Charles S. Frankland to Harry Oakes and Release, Harry Oakes to Charles S. Frankland, 9th November, 1931.

**Exhibit 6.**  
(Defendant's Exhibit.)

10 Release, Charles S. Frankland to Harry Oakes and Release Harry Oakes to Charles S. Frankland.

THIS INDENTURE made the 9th day of November, A.D. 1931.

B E T W E E N :

CHARLES S. FRANKLAND, of the Town of Bridgeburg, in the County of Welland

—and—

HARRY OAKES of the Township of Stamford, in the County of Welland.

WITNESSETH that in consideration of payment of \$15,000 Guarantee to Royal Bank and Ten Thousand Dollars of lawful money of Canada, the said Charles S. Frankland and Harry Oakes doth and do hereby release the other, their and each of their heirs, executors, administrators and assigns and each of their estates and effects, from all sums of money, accounts, contracts, agreements covenants, bonds, actions, proceedings, claims and demands whatsoever which each of them now hath against the other for and by reason of any act, matter, cause or thing whatsoever up to and including the day of the date of these presents.

C. S. F. Words underlined to indicate handwriting.

AND the said Charles S. Frankland for and in consideration of the above, doth hereby release Welland Securities Limited, its successors and assigns, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims, and demands whatsoever which the said Charles S. Frankland now hath for or by reason of or in respect of any act, matter, cause or thing up to and including the day of the date of these presents.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 9th day of November, A.D. 1931.

SIGNED, SEALED and DELIVERED }  
in the presence of } CHARLES S. FRANKLAND (Seal)  
THOS. J. DARBY } HARRY OAKES (Seal)  
W. H. HAMILTON

*In the  
Supreme  
Court of  
Ontario.*

Exhibits.

Ex. 1

Release,  
Charles S.  
Frankland to  
Harry  
Oakes, and  
Release,  
Harry Oakes  
to Charles S.  
Frankland.  
9th Novem-  
ber, 1931.  
(Not  
Printed)

**Exhibit 1.**

(Plaintiff's Exhibit.)

**Release, Charles S. Frankland to Harry Oakes and release Harry Oakes to Charles S. Frankland.**

**COPY OF EXHIBIT 6—NOT PRINTED**

**Exhibit 7.**

(Plaintiff's Exhibit.)

**Cheque, Welland Securities Limited to W. H. Hamilton for \$10,000.**

Ex. 7.

Cheque,  
Welland  
Securities,  
Limited to  
W. H. Ham-  
ilton.  
\$10,000 9th  
November,  
1931.

2c Stamp

No. 560 10

**WELLAND SECURITIES LIMITED**

Niagara Falls, Ont., November 9, 1931

**PAY TO THE ORDER OF W. H. HAMILTON ..... \$10,000.00**  
00

Ten thousand and ..... 100 Dollars

**WELLAND SECURITIES LIMITED**

**TO THE ROYAL BANK OF CANADA F. W. GRIFFITHS Pres.**  
**NIAGARA FALLS, ONT.**

(Certified Nov. 9, 1931,  
The Royal Bank of Canada,  
Niagara Falls, Ont.)

**P. M. MARKS Secty.**  
**THE ROYAL BANK OF CANADA**

**PAID**

20

Nov. 12, 1931,  
Niagara Falls, Ont.

**ENDORSEMENTS ON CHEQUE**

Pay to the order of Pettit and Darby  
"W. H. HAMILTON"

(The Royal Bank of Canada,  
Nov. 10/31,  
Bridgeburg, Ont.)

"PETTIT & DARBY"  
per "THOS. J. DARBY"



**Exhibit 2.**  
(Plaintiff's Exhibit.)

**Option, Royal Bank of Canada to Welland Securities Limited.**

REAL ESTATE ACQUIRED BY FORECLOSURE OF MORTGAGES		PREVIOUS MORTGAGE	SALE PRICE	<i>In the Supreme Court of Ontario.</i>  Exhibits. Ex. 2. Option Royal Bank of Canada to Welland Se- curities Limited, 11th Novem- ber, 1931.
(1)	2 lots Bowden St., Bridgeburg, Ont.	Free	\$ 1,000.	
(2)	2 lots Bowden St., Bridgeburg, Ont.	\$600	1,000.	
(3)	17 lots Emerick Ave., Bridgeburg, Ont.	Free	6,800.	
(4)	2 lots Bowen Road, Bridgeburg, Ont.	Free	1,000.	
10 (5)	7 acres Township of Stamford	Free	5,000.	
(6)	64 acres Township of Stamford (Gravel Pit)		19,000.	
			<hr/>	
			\$33,800.	
			600.	
			<hr/>	
			\$33,200.	
			<hr/>	

Bridgeburg, Nov. 11/31.

In consideration of value rec'd the Royal Bank of Canada hereby grants Welland Securities Limited the exclusive right to purchase the above properties for \$35,000.00 with a good marketable title for a period of thirty days from date. All evidence of title to be supplied Welland Securities at once. The Oakes guarantee for \$15,000.00 to Royal Bank of Canada or Frankland to be retired out of purchase price above.

For THE ROYAL BANK OF CANADA  
BRIDGEBURG, ONT.

For THE ROYAL BANK OF CANADA  
BRIDGEBURG, ONT.

J. R. Steele  
Manager

J. R. Steele  
Manager

H. Lawrence  
Acct.

H. Lawrence  
Acct.

30

**Part Exhibit 13(a)**  
(Plaintiff's Exhibit.)

Letter, Pettit & Darby to Griffiths & Martin.

November 16th, 1931.

Messrs. Griffiths & Martin,  
Dear Sir:

*Re Frankland vs. Oakes*

Following up our settlement of this matter for \$25,000.00, to be paid Frankland, \$10,000.00 cash and \$15,000.00 which the Defendant was to pay the

*Part Ex-  
hibit 13(A).  
Letter, Pet-  
tit & Darby  
to Griffiths  
& Martin,  
16th Novem-  
ber, 1931.*

*In the  
Supreme  
Court of  
Ontario.*

Exhibits.

Part Ex-  
hibit 13(A)  
Letter, Pet-  
tit & Darby  
to Griffiths  
& Martin,  
16th Novem-  
ber, 1931.

Royal Bank of Canada, Bridgeburg, in full satisfaction of the Plaintiff's debt to the Bank guaranteed by the Defendant, we would be pleased if you would forward us some sort of release or receipt by the Bank concerning this \$15,000.00 item, as we wish to place the same in our files. Mr. Oakes, of course, we presume would be entitled to the original receipt, so if you would kindly send us a copy of the same that would be sufficient. We will, upon receipt of this, consider that we have finished with the matter.

Yours very truly,  
PETTIT & DARBY

—continued.

Part Ex-  
hibit 13(B).  
Letter, F. W.  
Griffiths to  
Pettit &  
Darby, 18th  
November,  
1931.

Part Exhibit 13(b).  
(Plaintiff's Exhibit.)

10

Letter, F. W. Griffiths to Pettit & Darby.

November 18th, 1931

Messrs. Pettit & Darby,  
Welland, Ontario.

Dear Sirs:

*Frankland vs. Oakes*

We have your letter of the 16th instant.

Negotiations are under way for the releasing of the guarantee by the Bank and upon their completion we will send you a copy of the receipt we hold as requested.

20

Yours faithfully,  
F. W. GRIFFITHS

Part Ex-  
hibit 13(C).  
Letter, Pet-  
tit & Darby  
to Griffiths &  
Martin, 19th  
November,  
1931.

Part Exhibit 13(c)  
(Plaintiff's Exhibit.)

Letter, Pettit & Darby to Griffiths & Martin.

November 19th, 1931.

Messrs. Griffiths & Martin,

Dear Sir:

*Att. Mr. Griffiths                      Re Frankland vs. Oakes*

We have your letter of the 18th instant herein.

30

We don't understand anything about the negotiations for the Release of the guarantee as Mr. Frankland's settlement with Mr. Oakes was that \$15,000.00 shall be paid to the Bank for the release of the guarantee and Mr. Frankland's indebtedness to the Bank reduced by that very amount.

You will naturally understand that Mr. Frankland is anxious to obtain a receipt as to this \$15,000.00 to be applied on his indebtedness.

Yours very truly,  
PETTIT & DARBY.

**Exhibit 14.**

(Plaintiff's Exhibit.)

Letter, Welland Securities Limited to J. R. Steele, Royal Bank of Canada.

November 19th, 1931.

Mr. J. R. Steele,  
Royal Bank of Canada,  
Bridgeburg, Ontario.

Dear Sir:

Welland Securities Limited hereby accepts the option granted by the Royal  
10 Bank of Canada dated November 11th, 1931, for the purchase of the properties  
therein referred to for the price of \$35,000.

The option calls for the supplying to the Welland Securities Limited of all  
evidence on title but up to date we have received nothing. It is also part of the  
acceptance that the guarantee by Mr. Harry Oakes for \$15,000.00 to the Royal  
Bank of Canada in connection with Charles Frankland, is to be retired out of the  
purchase price above.

Please supply us with your title papers and draft deed at the earliest  
moment as we are prepared to close upon procuring a good marketable title for  
the lands.

20 It will be necessary to have two deeds, one deed for the 7 acres in Stamford  
and the other deed covering the other property. The consideration for the  
Stamford seven acres will be \$15,000.00 to be deeded to Harry Oakes.

We trust you will be able to let us have these draft deeds at once.

Yours very truly,

WELLAND SECURITIES LIMITED,  
F. W. GRIFFITHS  
F. W. Griffiths, K.C., President.

**Exhibit 10.**

(Plaintiff's Exhibit.)

Grant Under Power of Sale, Royal Bank of Canada to Harry Oakes.

30 THIS INDENTURE made the twenty-third day of November, 1931, in pur-  
suance of the short forms of Conveyances Act.

B E T W E E N :

THE ROYAL BANK OF CANADA, having its head office or  
chief place of business in the City of Montreal, in the Province  
of Quebec, hereinafter called the GRANTOR OF THE FIRST  
PART, and  
HARRY OAKES, of the City of Niagara Falls, in the County  
of Welland, Gentleman, hereinafter called the GRANTEE OF  
THE SECOND PART.

*In the  
Supreme  
Court of  
Ontario.*

Exhibits.

Ex. 14.

Letter, Wel-  
land Se-  
curities Lim-  
ited to J. R.  
Steele, Royal  
Bank of  
Canada, 19th  
November,  
1931.

Ex. 10.

Grant under  
Power of  
Sale, Royal  
Bank of  
Canada to  
Harry Oakes,  
23rd Novem-  
ber, 1931.

*In the  
Supreme  
Court of  
Ontario.*

*Exhibits.*

*Ex. 10.  
Grant under  
Power of  
Sale, Royal  
Bank of  
Canada to  
Harry Oakes,  
23rd Novem-  
ber, 1931.*

*—continued.*

WHEREAS, by a Mortgage dated the 27th day of March, 1929, and registered on the 13th day of April, 1929, as number 5185 for the Town of Bridgeburg, and also as Number 19333 for the Township of Stamford, made between Charles S. Frankland, of the first part, and The Royal Bank of Canada of the second part, and Lenna Frankland, the wife of the said Charles S. Frankland for the purpose of barring her dower, of the third part, the said Charles S. Frankland did grant and mortgage the lands hereinafter particularly described, among other lands, unto the Royal Bank of Canada, its successors and assigns, for securing payment of \$59,343.00 and interest as therein mentioned;

AND WHEREAS, the said Mortgage was expressed to be made in pursu-<sup>10</sup>ance of the short forms of Mortgages Act, and contains the following proviso: "Provided that the said Mortgagees on default of payment for one month may, on giving one month's notice, enter on and lease or sell the said lands."

AND WHEREAS, default has been made in payment pursuant to the said proviso, and notice of the intention to sell the said lands has been duly given to the said Charles S. Frankland and to all persons appearing to have any interest in or claim upon the said lands;

AND WHEREAS, the said lands, after being duly advertised for sale, were offered for sale at public auction on Tuesday, the 12th day of November, 1929, at the law office of Messrs. Pettit & Darby, Brigg's Building, Jarvis Street,<sup>20</sup> Bridgeburg, by Benjamin Reinhardt, Esquire, Auctioneer;

AND WHEREAS, at the said auction sale no sufficient bid was made for the said lands and default has continued.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Fifteen Thousand (\$15,000.) Dollars, now paid to the Grantor (the receipt whereof is hereby by it acknowledged) the Grantor doth grant unto the Grantee, in fee simple, all and singular those certain parcels or tracts of lands and premises situate, lying and being in the Township of Stamford, in the County of Welland, and being composed of Lots Numbers 5, 6, 7, 8, 9, 10 and 11 on the West side of Carlton Avenue, according to registered Plan Number 49 for<sup>30</sup> the said Township.

TO HOLD unto and to the use of the Grantee, his heirs and assigns. And the Grantor covenants with the Grantee that it has done no act to encumber the said lands. And the Grantor releases to the Grantee all its claims upon the said lands.

IN WITNESS WHEREOF the Grantor has hereunto affixed its corporate seal attested by its proper officers in that behalf.

FOR THE ROYAL BANK OF CANADA

WITNESS AS TO EXECUTION BY  
THE ROYAL BANK OF CANADA

H. S. Holt (Seal)  
President.

S. G. Dobson,  
Asst. General Manager

40

T. C. Armstrong

*Part Ex. 10.  
Affidavit un-  
der Land  
Transfer Tax  
Act.  
4th January,  
1932.*

**AFFIDAVIT LAND TRANSFER ACT**

**IN THE MATTER OF THE LAND TRANSFER TAX ACT**

Province of Ontario } I, WILLIAM HERBERT WAUGH, of the City of Niagara  
 County of Welland. } Falls in the County of Welland, Province of Ontario, Bar-  
 To Wit: } rister, for the Grantee named in the within Transfer;  
 make oath and say:

*In the  
 Supreme  
 Court of  
 Ontario.*

1. I am Solicitor for the Grantee named in the within transfer.
2. I have a personal knowledge of the facts stated in this Affidavit.
3. The true amount of the moneys in cash and the value of any property

Exhibits.  
 Part Ex. 10.  
 Affidavit un-  
 der Land  
 Transfer Tax  
 Act.  
 4th January,  
 1932.

or security included in the consideration is as follows:

10	(a) Monies paid in cash .....	\$15,000.00	
	(b) Property transferred in exchange:		
	Equity value .....	\$ Nil	
	Encumbrances .....	\$ Nil	
		\$ Nil	
	(c) Securities transferred to the value of .....	\$ Nil	
	(d) Balance of existing encumbrances with interest owing at date of trans- fer .....	\$ Nil	
	(e) Monies secured by Mortgage under this transaction .....	\$ Nil	
	(f) Liens, Legacies, Annuities and Maintenance charges to which trans- fer is subject .....	\$ Nil	
20	TOTAL consideration .....	\$15,000.00	

—continued.

SWORN before me at the City  
 of Niagara Falls in the County  
 of Welland this 4th day of Jan-  
 uary, 1932.

W. H. Waugh

W. C. La Marsh,  
 A Commissioner, etc.

I certify that the within instrument is duly entered and registered in the  
 Registry Office for the Registry Division of the County of Welland, in Book 6 for  
 the Township of Stamford at 2.15 o'clock p.m. of the 4th day of Jan., 1932.

30 Number 21099.

E. E. Fraser,  
 Registrar.

**Exhibit 11.**  
 (Plaintiff's Exhibit.)

**Grant Under Power of Sale, Royal Bank of Canada to Welland Securities Limited.**

**Ex. 11.**  
**Grant under**  
**Power of**  
**Sale, Royal**  
**Bank of**  
**Canada to**  
**Welland Sec-**  
**urities, Ltd.,**  
**23rd Novem-**  
**ber, 1931.**

THIS INDENTURE made the twenty-third day of November, 1931, IN  
 PURSUANCE OF THE SHORT FORMS OF CONVEYANCES ACT.

B E T W E E N :

40 THE ROYAL BANK OF CANADA, having its Head Office or  
 Chief Place of business in the City of Montreal, in the Province  
 of Quebec, hereinafter called THE GRANTOR OF THE FIRST  
 PART,

—and—

*In the  
Supreme  
Court of  
Ontario.*

Exhibits.  
Ex. 11.

Grant under  
Power of  
Sale, Royal  
Bank of  
Canada to  
Welland Se-  
curities, Ltd.,  
23rd Novem-  
ber, 1931.

—continued.

WELLAND SECURITIES, LIMITED, having its Head Office in the City of Niagara Falls, in the County of Welland, hereinafter called THE GRANTEE OF THE SECOND PART.

WHEREAS by a Mortgage dated the 27th day of March, 1929, and registered on the 13th day of April, 1929, as Number 5185 for the Town of Bridgeburg, and also as Number 19333 for the Township of Stamford, made between Charles S. Frankland of the First Part and The Royal Bank of Canada of the Second Part, and Lenna Frankland the wife of the said Charles S. Frankland for the purpose of barring her dower, of the Third Part, the said Charles S. Frankland did grant and mortgage the lands hereinafter particularly described, among other lands unto The Royal Bank of Canada, its successors and assigns for securing payment of \$59,343.00 and interest as therein mentioned;

AND WHEREAS, the said Mortgage was expressed to be made in pursuance of The Short Forms of Mortgages Act, and contains the following proviso: "Provided that the said Mortgages on default of payment for one month may, on giving one month's notice, enter on and lease or sell the said lands."

AND WHEREAS, default has been made in payment pursuant to the said proviso, and notice of the intention to sell the said lands has been duly given to the said Charles S. Frankland and to all persons appearing to have any interest in or claim upon the said lands;

AND WHEREAS, the said lands, after being duly advertised for sale, were offered for sale at Public Auction on Tuesday, the 12th day of November, 1929, at the Law office of Messrs. Pettit & Darby, Brigg's Building, Jarvis Street, Bridgeburg, by Benjamin Reinhardt, Esquire, Auctioneer;

AND WHEREAS, at the said Auction Sale no sufficient bid was made for the said lands and, default having continued, the Grantor has since contracted with the Grantee for the sale to it of the said lands for the sum of ONE DOLLAR AND OTHER VALUABLE CONSIDERATION.

NOW THIS INDENTURE WITNESSETH that in consideration of ONE DOLLAR and other valuable consideration, now paid by the Grantee to the Grantor (the receipt whereof is hereby by it acknowledged), the Grantor DOTH GRANT unto the Grantee, in fee simple, ALL AND SINGULAR those certain parcels or tracts of lands and premises situate, lying and being in the Town of Bridgeburg in the County of Welland and being composed of:

FIRSTLY: Lots Numbers 12, 13, 14 and 15 on the North side of Bowden Street, according to registered Plan Number 29 for the said Town of Bridgeburg.

SECONDLY: Lots Numbers 48, 50, 51, 52, 53, 54, 55, 57, 58, 59 and 61 on the North side of Emerick Avenue, and Lots Numbers 15, 16, 17, 18, 19, 20, 23, 24, 28 and 29 on the South side of Emerick Avenue, all according to registered Plan Number 28 for the said Town (formerly Village) of Bridgeburg.

THIRDLY: Lots Numbers 47 and 48 on the South side of the Bowen Road,

as shown on Plan Number 25 made by Geo. Ross, P.L.S., for Frederick Seisser, and filed in the Registry Office for the County of Welland on the 27th day of May, 1905, for the said Town of Bridgeburg.

*In the Supreme Court of Ontario.*

TO HOLD unto and to the use of the Grantee, its successors and assigns.

Exhibits. Ex. 11. Grant under Power Sale, Royal Bank of Canada to Welland Securities, Limited, 23rd November, 1931.

AND the Grantor covenants with the Grantee that it has done no act to encumber the said lands.

AND the Grantor releases to the Grantee all its claims upon the said lands.

IN WITNESS WHEREOF the Grantor has hereunto affixed its Corporate Seal, attested by its proper Officers in that behalf.

10

For THE ROYAL BANK OF CANADA (Seal)

Witness as to execution

by THE ROYAL BANK OF CANADA.

H. H. Holt, President.

T. C. Armstrong

S. G. Dobson, Asst. General Manager.

—continued.

AFFIDAVIT, LAND TRANSFER TAX ACT

In the Matter of the Land Transfer Tax Act, 1921 and 1922.

Part Ex. 11. Affidavit under Land Transfer Tax Act, 4th January, 1932.

PROVINCE OF ONTARIO }  
County of Welland }  
TO WIT: }

I, William Herbert Waugh, of the City of Niagara Falls, in the County of Welland, Solicitor for the Grantee named in the within transfer, make oath and say:

- 20 1. I am the Solicitor for the Grantee named in the within transfer.  
2. I have a personal knowledge of the facts stated in this Affidavit.  
3. The true amount of the monies in cash and the value of any property or security included in the consideration is as follows:
- |  |            |
|--|------------|
| (a) Monies paid in cash.....   | \$2,400.00 |
| (b) Property transferred in exchange to the equity and value of                    | \$ Nil     |
| (c) Securities transferred to the value of .....                                   | \$ Nil     |
| (d) Balances of existing encumbrances with interest owing at date of transfer..... | \$ Nil     |
| (e) Monies secured by Mortgage under this transaction.....                         | \$ Nil     |
| 30 (f) Liens, annuities and maintenance charges to which transfer is subject ..... | \$ Nil     |
- Total consideration ..... \$2,400.00

6. Other remarks and explanations, if necessary.

*In the  
Supreme  
Court of  
Ontario.*  
—  
Exhibits.  
Part Ex. 11.  
Affidavit un-  
der Land  
Transfer Tax  
Act.

SWORN before me at the City of  
Niagara Falls in the County of  
Welland, this 4th day of January,  
A.D. 1932.

W. H. Waugh

W. C. LaMarsh  
A COMMISSIONER, &c.

I certify that the within Instrument is duly entered and registered in the  
Registry Office for the Registry Division of the County of Welland in Book A  
for the Town of Fort Erie at 2.50 o'clock p.m. of the 4 day of Jan 1932 Number 2

E. E. Fraser, 10  
Registrar

—continued.

Ex. 12.  
Deed, Royal  
Bank of  
Canada to  
Welland Se-  
curities Ltd.,  
23rd Novem-  
ber, 1931.

Exhibit 12.  
(Plaintiff's Exhibit.)

Deed, Royal Bank of Canada to Welland Securities Limited.

THIS INDENTURE made in duplicate the twenty-third day of November,  
in the year of our Lord, One Thousand Nine Hundred and Thirty-one.

IN PURSUANCE OF THE SHORT FORMS OF CONVEYANCES ACT.

B E T W E E N :

THE ROYAL BANK OF CANADA, having its Head Office or Chief  
Place of business in the City of Montreal, in the Province of Que- 20  
bec, hereinafter called THE GRANTOR OF THE FIRST PART, and  
WELLAND SECURITIES LIMITED, having its Head Office in the  
City of Niagara Falls, in the County of Welland, hereinafter called  
the GRANTEE OF THE SECOND PART.

WITNESSETH that in consideration of One Dollar, and other valuable  
consideration, of lawful money of Canada, now paid by the said Grantee, to  
the said Grantor (the receipt whereof is hereby by it acknowledged) it the said  
Grantor doth grant unto the said Grantee, in fee simple.

ALL AND SINGULAR that certain parcel or tract of land and premises  
situate lying and being in the Township of Stamford, in the County of Welland, 30  
and Province of Ontario containing by admeasurement an area of 64.13 acres  
more or less being part of Lots Nos. 16 and 25 in said Township, more particu-  
larly described as follows:

BEGINNING at a stone monument at the south westerly angle of said Lot  
No. 25, THENCE south 89 degrees and 28 minutes east 652 feet, THENCE  
North 89 degrees and 57 minutes east 1,146 feet and three tenths of a foot to  
the point of commencement of the herein described tract of land. THENCE  
North 89 degrees and 57 minutes east 160 feet and 4 tenths of a foot, THENCE  
South 89 degrees, and 4 minutes East 1,343 feet and 1 tenth of a foot to the  
westerly limit of St. Davids Road, THENCE North 24 minutes East along said 40



Westerly limit of St. Davids Road 780 feet THENCE North 60 degrees and 8 minutes West 70 feet, and 2 tenths of a foot, to a point in the Southerly limit of Beaver Dams Road, THENCE along the last mentioned limit on the following courses, North 75 degrees, and 44 minutes West 490 feet and 1 tenth of a foot, North 75 degrees and 27 minutes West 231 feet and 1 tenth of a foot, North 70 degrees and 56 minutes West 243 feet and 4 tenths of a foot, North 69 degrees and 24 minutes west 830 feet and 7 tenths of a foot, North 77 degrees and 38 minutes West 236 feet, and 4 tenths of a foot, North 80 degrees and 38 minutes west 200 feet North 81 degrees and 52 minutes west 100 feet, North 84 degrees and 46 minutes West 100 feet, North 89 degrees and 25 minutes West 100 feet, South 89 degrees and 35 minutes West 100 feet, South 85 degrees and 25 minutes West 100 feet, South 75 degrees and 59 minutes West 100 feet, South 72 degrees and 17 minutes West 471 feet, THENCE South 53 degrees and 36 minutes East 2,148 feet and 5 tenths of a foot to the point of commencement.

*In the Supreme Court of Ontario.*

Exhibits. Ex. 12.

Deed, Royal Bank of Canada to Welland Securities Ltd., 23rd November, 1931.

*—continued.*

TO HAVE AND TO HOLD unto the said Grantee its successors and assigns to and for its and their sole and only use forever. Subject nevertheless to the reservations, limitations, provisoes and conditions expressed in the original grant thereof from the Crown.

The said Grantor covenants with the said Grantee that it has the right to convey the said lands, to the said Grantee notwithstanding any act of the said Grantor, and that the said Grantee shall have quiet possession of the said lands, free from all encumbrances, and the said Grantor covenants with the said Grantee that it will execute such further assurances of the said lands, as may be requisite. And the said Grantor covenants with the said Grantee that it has done no act to encumber the said lands. and the said Grantor releases to the said Grantee all its claims upon the said lands.

IN WITNESS WHEREOF the said Grantor has hereunto affixed its corporate seal attested by its proper officers in that behalf.

<p>30 SIGNED, SEALED and DELIVERED in the presence of T. C. Armstrong</p>	}	<p>FOR, THE ROYAL BANK OF CANADA H. S. Holt, President. S. G. Dobson, Asst. General Manager (Seal)</p>
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**AFFIDAVIT, LAND TRANSFER TAX ACT**

<p>Province of Ontario County of Welland TO WIT:</p>	}	<p>In the Matter of the Land Transfer Tax Act, 1921 and 1922.</p>
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Part Ex. 12. Affidavit under Land Transfer Tax Act, 4th January, 1932.

I, WILLIAM HERBERT WAUGH, of the City of Niagara Falls, in the County of Welland, Solicitor, for the Gantee, named in the within (or annexed) Transfer, make oath and say;

1. I am Solicitor for the Grantee named in the within (or annexed) Transfer. 2. I have a personal knowledge of the facts stated in this Affidavit.

*In the Supreme Court of Ontario.*  
 Exhibits.  
 Part Ex. 12.  
 Affidavit under Land Transfer Tax Act.  
 —continued.

3. The true amount of the monies in cash and the value of any property or security included in the consideration is as follows:

(a) Monies paid in cash.....	\$17,600.00	
(b) Property transferred in exchange to the equity value of.....	\$ Nil	
(c) Securities transferred to the value of .....	\$ Nil	
(d) Balances of existing encumbrances with interest owing at date of transfer.....	\$ Nil	
(e) Monies secured by Mortgage under this transaction.....	\$ Nil	
(f) Liens, annuities and maintenance charges to which transfer is subject.....	\$ Nil	10
Total consideration .....	\$17,600.00	

4. ....  
 5. ....  
 6. Other remarks and explanations if necessary.....

SWORN before me at the City of Niagara Falls, in the County of Welland, this 4th day of January, A.D. 1932.

W. H. Waugh

W. C. LaMarsh

20

A Commissioner, etc.

I, certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the County of Welland, in Book 6, for the Township of Stamford, at 2.07 o'clock p.m. of the 4 day of Jan. 1932, number 21098.

E. E. Fraser,  
 Registrar

**Exhibit 15.**  
 (Plaintiff's Exhibit.)

Cheque, Welland Securities Limited to Royal Bank of Canada for \$32,134.77. 30

Ex. 15.  
 Cheque, Welland Securities Ltd., to Royal Bank, of Canada, \$32,134.77.  
 31 December, 1931.

2c Excise Stamp

**WELLAND SECURITIES LIMITED**

Niagara Falls, Ont., December 31, 1931

PAY TO THE ORDER OF  
 Royal Bank of Canada, Bridgeburg..... \$32,134.77  
 Thirty-two thousand, one hundred and thirty-four and <sup>77</sup>/<sub>100</sub> DOLLARS

**WELLAND SECURITIES LIMITED**

F. W. Griffiths  
 President.

TO  
 THE ROYAL BANK OF CANADA,  
 Niagara Falls, Ont.

L. M. Marks 40  
 Secty.

The Royal Bank of Canada  
PAID  
Jan. 7, 1932

*In the  
Supreme  
Court of  
Ontario.*

PARTICULARS AS PER CHEQUE

1931

Dec. 31. Payment in full for lands covered by option dated Nov. 11, 1931, to Welland Securities, Limited accepted by Welland Securities Limited, Nov. 19, 1931, 32,134.77

Exhibits.  
Ex. 15.  
Cheque,  
Welland Se-  
curities Ltd.  
to Royal  
Bank  
of Canada,  
\$32,134.77.  
31 December,  
1931.

10

ENDORSEMENT ON BACK OF CHEQUE  
THE ROYAL BANK OF CANADA  
Jan. 6, 1932  
Fort Erie North  
Ont.

*—continued.*

Part Exhibit 13(e)  
(Plaintiff's Exhibit.)

Letter, Pettit & Darby to Messrs. Griffiths & Co.

Part Ex.  
13(E).  
Letter,  
Pettit and  
Darby to  
Griffiths &  
Co., 14th  
January,  
1932.

January 14, 1932

Messrs. Griffiths & Co.,

Dear Sirs:

*Re Frankland vs. Oakes*

20 We enclose herewith copy of letter we have this day written to Mr. Harry Oakes, for your attention.

Yours very truly,  
PETTIT AND DARBY

Part Exhibit 13(d).  
(Plaintiff's Exhibit.)

Letter, Pettit & Darby to Harry Oakes.

Part Ex.  
13(D).  
Letter,  
Pettit and  
Darby to  
Harry Oakes,  
14th Janu-  
ary, 1932.

January 14, 1932

Harry Oakes, Esq.,  
151 Barton Avenue,

30 PALM BEACH, Florida, U.S.A.

Dear Sir:

*Re Frankland vs. Oakes*

We have instructions from Mr. C. S. Frankland of Bridgeburg to make a claim against you for damages in connection with the settlement between you of the Supreme Court action.

By the terms of the said settlement Mr. Frankland says you were to pay the sum of \$15,000.00 to The Royal Bank of Canada, being the amount of your guarantee, without recourse to him, thereby reducing his debt to the Bank by the said sum of \$15,000.00. Mr. Frankland instructs us that this has not been done.

*In the  
Supreme  
Court of  
Ontario.*

Our instructions are to issue a Writ against you for damages, but without prejudice Mr. Frankland is prepared to accept the sum of \$15,000.00 in full settlement of his claim. Please let us hear from you in this matter.

Yours very truly,

PETTIT AND DARBY

(Copy for Griffiths & Co., Barristers, etc., Niagara Falls)

Exhibits.  
Part Ex.  
13(D)  
Letter,  
Pettit and  
Darby to  
Harry Oakes,  
14th Janu-  
ary, 1932.

Part Exhibit 13.  
(Plaintiff's Exhibit.)

Copy of Letter, Pettit & Darby to Harry Oakes dated January 14, 1932.

NOT PRINTED

10

Part Ex. 18.  
Copy of Let-  
ter, Pettit  
and Darby  
to Harry  
Oakes, 14th  
January,  
1932. (Not  
Printed).

Exhibit 18.  
(Defendant's Exhibit.)

Receipt, Harry Oakes to The Royal Bank of Canada.

Fort Erie North, Ont.  
February 10, 1932.

Ex. 18.  
Receipt,  
Harry Oakes  
to Royal  
Bank of  
Canada,  
10th Febru-  
ary, 1932.

Received from The Royal Bank of Canada, (their Form 54) guarantee dated August 4th, 1927, signed by Mr. Harry Oakes, guaranteeing advances to Mr. Charles S. Frankland to the amount of \$15,000.00, full settlement of the liabilities of Mr. Oakes to the Royal Bank of Canada in this connection having been made on December 31st, 1931, to the amount of \$15,000.00 and the amount of the settlement credited to the account of Charles S. Frankland.

HARRY OAKES BY F. W. GRIFFITHS  
HIS SOLICITOR  
FOR THE ROYAL BANK OF CANADA  
Fort Erie North, Ont.

J. R. STEELE  
Manager.