

76, 1935

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

BETWEEN:

THE BRITISH COLUMBIA LAND AND INVEST-
MENT AGENCY LIMITED

Plaintiff (Respondent),

AND:

MONTREAL TRUST COMPANY

Defendant (Appellant)

AND:

THE LONDON AND WESTERN TRUSTS COM-
PANY LIMITED and J. A. CLARK, executors of the
estate of C. V. Cummings, deceased,

Third Parties.

RECORD OF PROCEEDINGS

MESSRS. ROBERTSON, DOUGLAS & SYMES,
Solicitors for Defendant (Appellant).

MESSRS. BOURNE & DESBRISAY,
Solicitors for Plaintiff (Respondent).

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B 1207/1933

RECORD

In the Supreme Court of British Columbia

*In the Supreme
Court of British
Columbia*

BETWEEN :

THE BRITISH COLUMBIA LAND AND
INVESTMENT AGENCY LIMITED

No. 1
Endorsement
on Writ
Aug. 2, 1933

Plaintiff

AND :

MONTREAL TRUST COMPANY

Defendant

10 AND :

THE LONDON AND WESTERN TRUSTS COM-
PANY LIMITED and J. A. CLARK, executors of the
Estate of C. V. Cummings, deceased.

Third Parties.

No. 1

ENDORSEMENT ON WRIT

The Plaintiff's Claim is against the Defendant to recover the sum of \$1,032.16 for interest due under a certain mortgage dated the 15th day of January, 1925, and made between Prudential Holdings Limited as Mortgagor and the Plaintiff as Mortgagee, whereby the said Prudential Holdings Limited mortgaged to secure the repayment of the principal sum of \$13,000.00 together with interest thereon at the rate of six per centum (6%) per annum payable as in the said mortgage mentioned, ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Vancouver, Province of British Columbia, and more particularly known and described as Lots five (5) to nine (9) inclusive, in Block two (2), of Subdivision "C" of District Lot one hundred and eighty-three (183), Group One (1), New Westminster District, according to a plan deposited in the Land Registry Office at Vancouver, B.C., and numbered 417.

By the provisions of the said mortgage interest at the said rate of 6% per annum is payable on the said principal sum of \$13,000.00 half-yearly on the 25th days of March and September in each and every year.

In the said mortgage the said Prudential Holdings Limited covenanted and agreed with the Plaintiff to pay to it the aforesaid sum of principal and interest as in the said mortgage provided.

RECORD
 In the Supreme
 Court of British
 Columbia
 No. 1
 Endorsement
 on Writ
 Aug. 2, 1933
 (Contd.)

By certain conveyance dated the 15th day of February, 1926, the said Prudential Holdings Limited conveyed and set over unto the Defendant ALL AND SINGULAR the lands and premises above described subject to the said mortgage of the 15th day of January, 1925, in favour of the Plaintiff.

By a certain deed of Assignment dated the 1st day of June, 1933, the said Prudential Holdings Limited assigned and set over unto the Plaintiff the full benefit and advantage of all claims which the said Prudential Holdings Limited then had or might thereafter have against the said Defendant either at law or in equity or whether by way of claim for indemnity in respect of the said mortgage or otherwise howsoever; notice in writing of which said Assignment was duly given to the Defendant on or about the 23rd day of June, 1933. 10

The whole of the principal sum secured by the said mortgage together with interest as hereinafter set forth is now due and owing.

PARTICULARS OF INTEREST OWING

Sept. 25th, 1932—To 6 months interest to this date.....	\$390.00	
Mar. 25th, 1933—To 6 months interest to this date.....	390.00	20
Aug. 2nd, 1933—To 130 days' interest to this date.....	277.81	
Aug. 2nd, 1933—To interest on interest in arrears to this date	28.14	
	<hr/>	
Total Amount Due	\$1,085.95	
	<hr/>	

WHEREFORE THE PLAINTIFF CLAIMS the said sum of \$1,085.95 together with interest at the rate of 6% per annum on the said principal sum of \$13,000.00 from the date hereof until payment or judgment. 30

PLACE OF TRIAL—VANCOUVER, B.C.

DELIVERED this 2nd day of August, A.D. 1933.

“BOURNE & DESBRISAY,”

Plaintiff's Solicitors

AND the sum of \$50.00 (or such sum as may be allowed on taxation) for costs. If the amount claimed be paid to the Plaintiff or its Solicitors or Agents within four days from the service hereof, further proceedings will be stayed.

AMENDED STATEMENT OF CLAIM

Writ issued August 2nd, A.D. 1933

RECORD

*In the Supreme
Court of British
Columbia*No. 2
Amended
Statement of
Claim
Oct. 2, 1933

1. The Plaintiff's claim is against the Defendant to recover the sum of \$1,198.57 for interest due under a certain mortgage dated the 15th day of January, 1925, and made between Prudential Holdings Limited as Mortgagor and the Plaintiff as Mortgagee, whereby the said Prudential Holdings Limited mortgaged to secure the repayment of the principal sum of \$13,000.00 together
10 with interest thereon at the rate of six per centum (6%) per annum payable as in the said mortgage mentioned, ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Vancouver, Province of British Columbia, and more particularly known and described as Lots five (5) to nine (9) inclusive, in Block two (2), of Subdivision "C" of District Lot One hundred and eighty-three (183), Group One (1), New Westminster District, according to a plan deposited in the Land Registry Office at Vancouver, B.C., and numbered 417.

20 2. By the provisions of the said mortgage, interest at the said rate of 6% per annum is payable on the said principal sum of \$13,000.00 half-yearly on the 25th days of March and September in each and every year, arrears of both principal and interest to bear interest at the said rate.

3. In the said mortgage the said Prudential Holdings Limited covenanted and agreed with the Plaintiff to pay to it the aforesaid sum of principal and interest as in the said mortgage provided. The Plaintiff will at the trial of this action crave leave to refer to the said mortgage.

30 4. By a certain conveyance dated the 15th day of February, 1926, the said Prudential Holdings Limited conveyed and set over unto the Defendant ALL AND SINGULAR the lands and premises above described subject to the said mortgage of the 15th day of January, 1925, in favour of the Plaintiff, and the said Prudential Holdings Limited thereby and thereupon became entitled to be indemnified by the Defendant against its obligation to pay the moneys payable by it under and by virtue of the terms of the said mortgage.

40 4A. In the alternative the said Defendant by accepting the conveyance last above-mentioned, by applying to register the same in the Land Registry Office and by filing in support of its application to register a document purporting to be a certified copy of a resolution passed by the directors of Prudential Holdings Limited, which said resolution is in the words and figures following:

RECORD
 In the Supreme
 Court of British
 Columbia
 No. 2
 Amended
 Statement of
 Claim
 Oct. 2, 1933
 (Contd.)

“It was moved by T. R. Nickson and seconded by Mr. H. S. Coulter that the Company authorize and confirm the sale from the Company to the Montreal Trust Company of Lot 15 and the North half of Lot 16, Block 60, District Lot 541, in the City of Vancouver, British Columbia, and Lots 5, 6, 7, 8 and 9 in Block 2, in Subdivision of District Lot 183 in the City of Vancouver, Province of British Columbia, at and for the price of \$15,500.00, the said Montreal Trust Company to assume all mortgages against the properties hereby authorized to be sold, and the President and Secretary of the Company, that is to say, Thomas Ralph Nickson and Howard Stanley Coulter, respectively, are hereby authorized and instructed to sign the deed of transfer confirming the lands aforesaid to the Montreal Trust Company, and the said President and Secretary are further hereby authorized to affix the Corporate Seal of the Company to the said deed of transfer;”

and by entering into possession of the said lands and premises thereby conveyed, bound itself and specifically agreed to assume and pay the said mortgage mentioned in paragraph 1 hereof and to indemnify the said Prudential Holdings Limited against its obligation to pay the moneys payable by it to the said Plaintiff under and by virtue of the terms of the said mortgage.

5. By a certain deed of Assignment dated the 1st day of June, 1933, the said Prudential Holdings Limited assigned and set over unto the Plaintiff the full benefit and advantage of all claims which the said Prudential Holdings Limited then had or might thereafter have against the said Defendant either at law or in equity or whether by way of claim for indemnity in respect of the said mortgage or otherwise howsoever; notice in writing of which said Assignment was duly given to the Defendant on or about the 23rd day of June, 1933.

6. The whole of the principal sum secured by the said mortgage together with interest as hereinafter set forth is now due and owing:

PARTICULARS OF INTEREST OWING

Sept. 25th, 1932—To 6 months interest to this date.....	\$390.00
Mar. 25th, 1933—To 6 months interest to this date.....	390.00
Sept. 25th, 1933—To 6 months interest to this date.....	390.00
Sept. 29th, 1933—To interest on interest in arrears to this date	28.57
Total Amount Due	<u>\$1,198.57</u>

WHEREFORE THE PLAINTIFF CLAIMS:—

(a) The said sum of \$1,198.57, together with interest at the rate of 6% per annum on the said sum of \$1,170.00 from the date hereof until date of payment or judgment;

(b) Costs of this action;

(c) Such further and other relief as to this Court shall seem meet and the nature of the case may require.

RECORD
In the Supreme
Court of British
Columbia

No. 2
Amended
Statement of
Claim
Oct. 2, 1933
(Contd.)

PLACE OF TRIAL—VANCOUVER, B.C.

“BOURNE & DESBRISAY,”

10

Solicitors for the Plaintiff

DELIVERED this 2nd day of October, A.D. 1933, by Messrs. Bourne & DesBrisay, Barrister and Solicitors, whose place of business and address for service is 309 Royal Bank Building, 675 Hastings Street West, Vancouver, B.C.

To the Defendant,
And to Messrs. Burns, Walkem & Thomson,
its solicitors.

No. 3

AMENDED DEFENCE

No. 3
Amended
Defence
Jan. 31, 1934

20 1. The Defendant denies the making of the Mortgage referred to in paragraphs 1, 2 and 3 of the Amended Statement of Claim. If, which is not admitted, the said mortgage was made, the Defendant denies that any sum is owing thereunder either for principal or interest.

2. The Defendant denies the making of the conveyance referred to in paragraph 4 of the Amended Statement of Claim. If, which is not admitted, the said conveyance was made, the Defendant denies that Prudential Holdings Limited became entitled to be indemnified by the Defendant as alleged in paragraph 4 of the
30 Amended Statement of Claim or at all.

RECORD
 In the Supreme
 Court of British
 Columbia

No. 3
 Amended
 Defence
 Jan. 31, 1934
 (Contd.)

2A. In answer to paragraph 4A of the Amended Statement of Claim the Defendant denies that it accepted any conveyance as alleged, denies that it applied to register any such conveyance in the Land Registry Office and denies that it filed in any Land Registry Office any document purporting to be a certified copy of a resolution such as alleged in the said paragraph 4A, denies that it entered into possession of the lands and premises referred to in the Amended Statement of Claim, and denies that it bound itself or specifically agreed as alleged in the said paragraph 4A or at all.

2B. In further answer to paragraph 4A of the Amended Statement of Claim, the Defendant says that there was no agreement in writing nor was there any memorandum or note in writing of the alleged agreement sufficient to satisfy the Statute of Frauds. 10

3. The Defendant denies the granting of the Deed of Assignment referred to in paragraph 5 of the Amended Statement of Claim and denies that notice in writing as therein alleged was given to the Defendant on or about the 23rd day of June, 1933, or at any time.

4. In further answer to the whole of the Amended Statement of Claim, the Defendant says that on or shortly before the 15th day of February, 1926, the late Charles Victor Cummings, who is hereinafter referred to as "Cummings," verbally agreed to advance by way of loan to the said Prudential Holdings Limited the sum of \$15,500.00 and the said Prudential Holdings Limited verbally agreed to secure repayment to Cummings of such sum, together with interest thereon, by conveying to Cummings inter alia the lands described in paragraph 1 of the Amended Statement of Claim. 20

5. In accordance with his said agreement Cummings advanced the said sum of \$15,500.00 to the said Prudential Holdings Limited by causing the Montreal Trust Company to pay the same to the said Prudential Holdings Limited for him and on his behalf and he requested the said Prudential Holdings Limited in accordance with its said agreement to convey the said lands to his nominee, the Defendant, to be held by the Defendant in trust for Cummings upon the terms aforesaid, that is to say, as and by way of a mortgage to secure the repayment of the said sum and interest. 30

6. Pursuant to the said request the said Prudential Holdings Limited conveyed the said properties to the Defendant by a conveyance dated the 15th day of February, 1926. 40

7. The Defendant acted at all times solely as the nominee of and trustee for Cummings.

DATED at Vancouver, B.C., this 31st day of January, 1934.

“R. SYMES,”

Solicitor for Defendant

To Messrs. Bourne & DesBrisay,
Solicitors for Plaintiff.

DELIVERED by Reginald Symes, Solicitor for the Defendant, whose place of business and address for service is at the office of Robertson, Douglas & Symes, 640 Pender Street West, Vancouver, B.C.

RECORD
*In the Supreme
Court of British
Columbia*

No. 3
Amended
Defence
Jan. 31, 1934
(Contd.)

10

No. 4

REPLY AND JOINDER OF ISSUE

No. 4
Reply and
Joinder of
Issue
Feb. 3, 1934

1. In reply to the whole of the Statement of Defence herein the Plaintiff joins issue.

2. In further reply to paragraphs 4, 5, 6 and 7 of the Defence herein the Plaintiff says that the Defendant is estopped from saying what is alleged in the said paragraphs, or any of them, because on or about the 16th day of February, 1926, the Defendant made application by its solicitor to be registered as owner in fee simple of, inter alia, the lands and premises more particularly described in paragraph 1 of the Statement of Claim herein, subject to the Plaintiff's mortgage dated the 15th day of January, 1925, and more particularly referred to in said paragraph 1 of the Statement of Claim herein, and with such application in support thereof and for the purpose of so becoming registered as the owner in fee simple of the said lands and premises, deposited or caused to be deposited in the Land Registry Office at the City of Vancouver, British Columbia, the conveyance bearing date the 15th day of February, 1926, in paragraph 4 of the Statement of Claim mentioned, and a document purporting to be a copy of a resolution passed by the Directors of Prudential Holdings Limited, which said resolution is in the words and figures following:

“IT WAS MOVED by T. R. Nickson and seconded by Mr. H. S. Coulter that the Company authorize and confirm the sale from the Company to the Montreal Trust Company of Lot 15 and the North half of Lot 16, Block 60, District Lot 541, in the City of Vancouver, British Columbia, and Lots 5, 6, 7, 8, and 9 in Block 2, in Subdivision of District Lot 183 in the City of Vancouver, Province of British Columbia, at and for the price of \$15,500.00, the said Montreal Trust Company to assume all mortgages against the properties hereby authorized to be sold, and the President and Secretary of the Company, that is to say, Thomas Ralph Nickson and Howard Stanley Coulter, respectively, are hereby authorized and in-

RECORD
 In the Supreme
 Court of British
 Columbia

No. 4
 Reply and
 Joinder of
 Issue
 Feb. 3, 1934
 (Contd.)

structed to sign the deed of transfer confirming the lands aforesaid to the Montreal Trust Company, and the said President and Secretary are further hereby authorized to affix the Corporate Seal of the Company to the said deed of transfer.”

and the Defendant, pursuant to such application, became registered and is now registered as the owner in fee simple of the said lands subject to the said mortgage, and a Certificate of Indefeasible Title issued to the said Defendant in accordance with the provisions of the “Land Registry Act” being Chapter 127, R.S.B.C. 1924 and amending Acts.

10

3. In further reply to the said paragraphs 4, 5, 6 and 7 of the Defence herein the Plaintiff says that the Defendant is estopped from saying what is alleged in the said paragraphs of the Defence herein because the transaction between the Defendant and the said Prudential Holdings Limited is set forth and contained in writing, namely in the said conveyance from Prudential Holdings Limited to Montreal Trust Company of date February 15th, 1926, and the said resolution of the Directors of Prudential Holdings Limited.

4. In further reply to the said paragraphs 4, 5, 6 and 7 of the Defence herein the Plaintiff says that the Defendant by virtue of the provisions of the said “Land Registry Act” by making application for registration as set forth in paragraph 2 hereof, and by depositing the said resolution of Prudential Holdings Limited in the said Land Registry Office, estopped itself from saying what is alleged in the said paragraphs of its Defence, or any of them.

20

5. In further reply to the said paragraphs 4, 5, 6 and 7 of the Defence herein the Plaintiff pleads Sections 23, 36, 37, 38, 39 and 147 of the said “Land Registry Act” and says that by accepting the said deed of the 15th day of February, 1926, applying for and obtaining registration thereof and securing the issue in its name of Certificate of Indefeasible Title to the said lands, the Defendant is estopped from saying what is alleged in the said paragraphs of its Defence, or any of them.

30

6. In further reply to paragraphs 4, 5, 6 and 7 of the Defence herein, the Plaintiff says that the Defendant is estopped from saying what is alleged in the said paragraphs, or any of them, because the Plaintiff, relying on the document deposited in the Land Registry Office as aforesaid by or on behalf of the Defendant, obtained by purchase on or about June 1st, 1933, an assignment from the said Prudential Holdings Limited of all claims which the said

40

Prudential Holdings Limited then had or might thereafter have against the Defendant either at law or in equity or whether by way of a claim for indemnity in respect of the said mortgage, or otherwise howsoever.

DATED at Vancouver, B.C., this 3rd day of February, A.D. 1934.

“BOURNE & DESBRISAY,”
Solicitors for the Plaintiff

To the Defendant,
10 And to Messrs. Robertson, Douglas & Symes,
its Solicitors.

RECORD
*In the Supreme
Court of British
Columbia*

No. 4
Reply and
Joinder of
Issue
(Contd.)

RECORD

B 1207/1933

In the Supreme
Court of British
Columbia

In the Supreme Court of British Columbia

No. 5
Proceedings
at Trial
June 19, 1934

BETWEEN:

THE BRITISH COLUMBIA LAND AND
INVESTMENT AGENCY LIMITED

Plaintiff

AND:

MONTREAL TRUST COMPANY

Defendant

AND:

THE LONDON AND WESTERN TRUSTS COM-
PANY LIMITED and J. A. CLARK, executors of the
Estate of C. V. Cummings, deceased.

10

Third Parties.

(Before the Honourable Mr. Justice D. A. McDonald)

Vancouver, B.C., June 19th, 1934

No. 5

PROCEEDINGS AT TRIAL

H. A. BOURNE, ESQ., and
A. C. DESBRISAY, ESQ.,

appearing for Plaintiff. 20

A. BRUCE ROBERTSON, ESQ., appearing for Defendant,

Mr. Bourne: I appear for the Plaintiff, Mr. DesBrisay with me.

Mr. Robertson: I appear for the Defendant, my lord.

The Court: Are you ready in this B.C. Land case?

Mr. Bourne: Yes, my lord. This, my lord, is an action—

The Court: I have read the record, Mr. Bourne. Call your evidence.

Mr. Bourne: I have an amendment, my lord, in respect to which I have given notice. The amendment is contained in the record. 30

The Court: Which paragraph?

Mr. Bourne: Paragraph 4A, I will hand up a copy in case it may not have been put in.

Mr. Robertson: I want to amend the defence, my lord, setting up denial, and also pleading the Statute of Frauds, in reply to my friend's amendment. I will file a copy. My friend has it.

The Court: You have filed a copy?

Mr. Robertson: Not yet, my lord, but I will file a copy.

Mr. Bourne: I call Mr. Cotter.

40

JOSEPH COTTER, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

In the Supreme Court of British Columbia

DIRECT EXAMINATION BY MR. BOURNE:

Plaintiff's Evidence
No. 6
Joseph Cotter
Direct Exam.

Q. Mr. Cotter, you are a clerk in the Land Registry Office at Vancouver? A. Yes.

Q. You have with you certain documents which you were subpoenaed to bring here? A. Yes.

Q. Original documents? A. Yes.

10 Q. Have you a mortgage dated the 15th day of January, 1925, by the Prudential Holdings Limited to the British Columbia Land & Investment Agency Limited? A. Yes.

Q. Of Lots 5, 6, 7, 8 and 9, Block 2, Subdivision C, District Lot 183, Group 1, New Westminster District. A. (Producing document).

Mr. Bourne: I ask leave, my lord, to put in a certified copy of that and have it marked in place of the original.

(DOCUMENT MARKED EXHIBIT No. 1)

20 The Court: By the way, is any one appearing for the Third Parties?

Mr. Robertson: No, my lord, they admitted liability and the question was reserved until after the trial when the Defendant is to have the right to move against them, if necessary.

Mr. Bourne: Have you the original conveyance of the same property dated the 15th day of February, 1926, from the Prudential Holdings Limited to the Montreal Trust Company? A. Yes.

Q. The original of it? A. Yes.

The Court: What is that date, Mr. Bourne?

30 Mr. Bourne: The 15th day of February, 1926, my lord.

The Court: The Prudential?

Mr. Bourne: From the Prudential Holdings Limited to the Montreal Trust Company amongst that inter alia—that property inter alia and so far as that property is concerned expressed to be subject to the mortgage which has already gone in as Exhibit 1. I will put in the certified copy of that.

(DOCUMENT MARKED EXHIBIT No. 2)

40 Q. Now, have you the two applications to register: First, the application to register the mortgage, Exhibit 1. I am sorry, first, the application to register the last conveyance, Exhibit 2? A. Yes.

The Court: Application to register Exhibit 2?

Mr. Bourne: Q. And the following application, which is an application to register the other property mentioned in the deed Exhibit 2? A. Yes.

Mr. Bourne: You have the original of these. I am putting in certified copies of these, my lord, and I wish to mention when

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I am putting that in that this was made on the 16th day of February, 1926, and the usual declaration as to value and so on, and the payment is made by Mr. R. H. Tupper in respect of each—the application is made by him.

The Court: Yes, Exhibit 3, will be the application to register Exhibit 2?

Mr. Bourne: Yes, my lord.

The Court: The deed of these lands inter alia.

Mr. Bourne: The deed of these lands particularly, and the following then will be the application to register the other property under the same deed. It was necessary to make two applications because of two separate properties and not being contiguous. 10

The Court I see, that is 4.

(DOCUMENT MARKED EXHIBIT No. 4)

Mr. Bourne: I might mention that in that Exhibit 3 the application to register the particular property, the sworn valuation is \$34,500, that being the amount of the cash consideration shown in the deed Exhibit 2 plus the amount of the two mortgages against the two properties, only one of which we are interested in. Now, the resolution— 20

The Court: You are putting in the application to register the mortgage?

Mr. Bourne: No, my lord.

The Court: All right, now, the next one.

Mr. Bourne: Q. Have you the resolution from the Land Registry files of the Prudential Holdings Limited certified 12th February, 1926, authorizing the execution and delivery by the Prudential Holdings Limited and its officers and authorizing the seal to be affixed to the conveyance, Exhibit 2? A. Yes.

Q. You have the original? A. Yes. 30

Mr. Bourne: I will put in a certified copy of that, my lord, and I wish to read that at the moment.

Mr. Robertson: My lord, I am objecting to that document being accepted in evidence on the ground that it does not emanate from us in any way.

The Court: But still if a man is going to prove a deed, surely he can prove the authority by which the deed was executed.

Mr. Bourne: Probably I had better go on with questions on that, my lord, and show how it appears to be in the Land Registry Office. 40

The Court: Oh, I think so.

Mr. Bourne: Q. Where does that appear on your files, Mr. Cotter, that application? A. 15689K.

Q. Being what now? The deed of what—being the application to register what? A. Being the first application to register

Lots 5, 6, 7, 8 and 9 of Block 2, Subdivision C, D.L. 183, Plan 417.

Q. That is the application to register the conveyance Exhibit
2? A. Yes.

Q. And the additional property as well. Now, does that
appear in the same envelope, was that the application or how does
it appear? A. Yes, it appears to have been submitted with the
other documents at the time the application was made.

Mr. Bourne: That, my lord, means extracts from the min-
utes of the meeting of the directors of the Prudential Holdings
10 Limited held at the registered office of the Company at 218 Rogers
Building, 470 Granville Street, on the 5th day of February, 1926,
at which meeting all directors were present. (Reading document).

(DOCUMENT MARKED EXHIBIT No. 5)

Q. Now, have you the certificate of indefeasible title of Lots
5 to 9 inclusive, Block 2, Subdivision "C" of District Lot 183 in
the name of the Montreal Trust Company? A. Yes.

Mr. Bourne: I put in a certified copy, my lord, of that certi-
ficate of indefeasible title which is dated 17th February, 1926, the
day following the day on which the application to register was
20 made. That shows the property in question with an endorsement
on the back that it is subject to the mortgage in favour of the
British Columbia Land and Investment Agency Limited No.
307118 for \$13,000.

(DOCUMENT MARKED EXHIBIT No. 6)

Mr. Bourne: I am also putting in, my lord, certificate of
encumbrance dated this date, 19th June, 1934, in respect of the
property in question, showing it registered in the name of the
Montreal Trust Company, subject only to the mortgage in favour
of the British Columbia Land and Investment Agency Limited.

30 (DOCUMENT MARKED EXHIBIT No. 7)

Q. Mr. Cotter, are you able to say has that state of title as
shown by the last exhibit, the certificate of encumbrance, been the
state of the title with reference to that property since the certifi-
cate of title, the previous exhibit, was issued in 1926? A. There
has been nothing beyond what shows on the title itself. I am not
in a position to go back so far as that.

Q. You haven't checked that back giving the period to see
whether anything else is there? A. No.

Q. Have you the certified copy of the memorandum and
40 articles of association of the Prudential Holdings Limited? A.
Yes, the filing here is 13793.

Mr. Bourne: Produced from the Land Registry Office, I
will put in a certified copy, certified by the Registrar of Companies
of these two documents, my lord.

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(DOCUMENT MARKED EXHIBIT No. 8)

Mr. Bourne: Your witness.

No. 7

CROSS-EXAMINATION BY MR. ROBERTSON:

Q. Mr. Cotter, you stated that the certified copy of resolution Exhibit 5 appeared to have been filed at the same time that the application for registration of these files was made? A. Yes.

Q. Do you base that on anything more than the fact that you find that document in the envelope in which you find the conveyance? A. No, it is supported by the draft made by the drafter in preparing—in having the certificate of title prepared for registration and duly signed and sealed. 10

Q. That is another memorandum which you find in the envelope, is it? A. Yes.

Q. Now, is there any mention in the application to register of that resolution? A. No, there is no mention of it here.

Q. Now, the applications to register Exhibits 3 and 4 have on them the words, filing 13793, have they not? A. Yes.

Q. Those words in each case appear in a different handwriting from the main body of the application, do they not? 20

Mr. Robertson: That is not shown on the certified copy, my lord, so I am bringing it out now. A. It is written differently, but it looks like the same type of pen—"F", you see, and the heavy strokes go in sideways, but there is nothing to prove that.

Mr. Robertson: Perhaps if your lordship would look at the exhibits.

The Court: All right.

Mr. Robertson: That is all, thanks, Mr. Cotter.

(Witness aside).

Mr. Bourne: I call Mr. Boyd. 30

BRUCE BOYD, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

No. 8
Bruce Boyd
Direct Exam.

No. 8

DIRECT EXAMINATION BY MR. BOURNE:

Q. Mr. Boyd, you are a barrister and solicitor of the Supreme Court of British Columbia? A. Yes.

Q. And in May and June of 1933 you acted for the Prudential Holdings Limited? A. I did in a very limited way.

Q. I am producing document dated 1st June, 1933, being between the Prudential Holdings Limited assignor and the British Columbia Land and Investment Agency Limited as assignee. (Handing document to witness). Have you seen that document? A. Yes, I executed it. I looked after the acknowledgment section. I looked after the acknowledgment section of the document. 40

Q. Did you see the document signed there? A. Yes, I saw the document signed.

Q. And the seal affixed? A. Yes.
 Q. By T. R. Nickson and Hesse who are described as directors? A. Directors, yes.
 Q. Do you know whether the directors had a meeting— A. Yes, they had a meeting.
 Q. And passed a resolution? A. Yes.
 Q. Authorizing the giving of this document? A. Yes.
 Mr. Bourne: This document, my lord, is an assignment— (Reading document).

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10 (DOCUMENT MARKED No. 9)

Q. At the time this assignment was given, was any consideration given for it? A. I believe there was a consideration of \$100 or \$150, I don't know.
 Q. You received it? A. Well, I am not certain whether I received it or the Prudential Trust Company received it. I am not certain whether I received it. I know that it was received.
 Q. From the British Columbia Land— A. From the B.C. Land and Investment Agency.

No. 9

20 CROSS-EXAMINATION BY MR. ROBERTSON:

No. 9
 Bruce Boyd
 Cross-Exam.

Q. Mr. Boyd, that document was executed by Mr. Nickson as president, was it? A. Director I think it is here.
 Q. Mr. Nickson was in fact president of the Prudential Holdings Limited? A. I wasn't looking after the Prudential Holdings, I merely took that from his information that he gave me.
 Q. Do you know whether or not at the time he was president? A. I believe he was president.
 Q. He had been for a good many years prior to the— A. I think so. I only have his own statement as to that; I don't know.
 Q. You were acting as solicitor—solicitor for the company? A. No, I wasn't acting as solicitor of the company. I happened to be on this particular matter, but I hadn't been solicitor before. I was interested in the property, not as solicitor.

(Witness aside).

Mr. Bourne: I call Mr. Margeson.

No. 10

HARRY BURTON MARGESON, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

No. 10
 H. B. Margeson
 Direct Exam.

DIRECT EXAMINATION BY MR. BOURNE:

40 Q. Mr. Margeson, you are a director of E. B. Morgan & Company, Limited, a company carrying on an agency business in Vancouver? A. I am.
 Q. And you have been for how long? A. Oh, fourteen years.
 Q. Fourteen years? A. Yes.
 Q. That company is the agent in Vancouver for the Plain-

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 (Contd.)

tiff the British Columbia Land and Investment Agency Limited?

A. Yes.

Q. In respect of its mortgages in Vancouver? A. Yes.

Q. And have charge of these mortgages, including the mortgage in question in this action? A. Yes.

Q. And do you have charge of the mortgages of the B.C. Land and Investment Agency Limited? A. We have.

Q. And the mortgage accounts and the collection of all moneys under them? A. Yes.

Q. And, therefore, you are able to tell the present position and condition of the mortgage account in respect of the mortgage in question? A. Yes.

Q. Now, what is the present state of the account so far as interest is concerned? A. Arrear of interest to date—to June 19th, 1934—

Q. Just a minute.

The Court: Q. June 19th, 1934? A. \$1,743.78.

Mr. Robertson: Q. How much? A. \$1,743.78.

Mr. Bourne: Q. How is that made up, Mr. Margeson?

A. It is made up of—

Q. Give the separate items making up the amount, taking when the quarter payments are due and the amounts? A. There was a quarter payment due September 25th, 1932—no, that is not a quarter payment, that is a half yearly payment.

Q. Yes? A. \$390.

Q. Yes? A. March 25th, 1933, six months' interest to March 25th, 1933, \$390.

Q. Yes? A. September 25th, 1933, to six months' interest to September 25th, 1933, \$390; March 25th, 1934, to six months' interest to March 25th, 1934, \$390. June 19th, 1934, to eighty-six 30 days' interest to date \$183.78.

Q. Making the total you have got? A. Yes.

Q. What is the rate of interest—well, the mortgage speaks for itself? A. The mortgage is \$13,000 and the interest rate is 6 per cent.

Mr. Bourne: I might say, my lord, in the statement of claim we claim interest—the three periods first mentioned of six months each up to September 25th, 1933, and then the time period since this period has been completed, and he has added another payment. That will account for the difference.

The Court: You are claiming now up to date?

Mr. Bourne: Yes, you see the claim in our statement of claim, interest after the date of the writ. I am wrong in that statement, my lord, we claim—

The Court: You claim \$1198.57, then interest on that sum.

Mr. Bourne: Yes, interest on interest as provided in the

mortgage. I would ask leave to amend to bring the mortgage account up to date.

The Court: Well, I think that is an amendment that ought to be allowed. The other side are not surprised by it at all.

Mr. Bourne: Q. Now, has the Defendant Company, the Montreal Trust Company, ever paid interest to the B.C. Land or to your company for the B.C. Land in respect of this mortgage, and if so when did it commence paying? A. They started paying in 1926.

10 Q. In 1926? A. Yes.

Q. And who has paid since that date as far as you know?

A. The Montreal Trust Company have paid—

Q. That is up to the time the payments ceased to be made?

A. That is it, yes.

Q. Now, with reference to the assignment, Exhibit 9, are you able to say whether or not a consideration was paid by the B.C. Land and Investment Agency Limited to the Prudential Holdings Limited for that assignment? A. Yes, the consideration was paid.

20 Q. How much was it? A. I don't know—\$100 or \$150, I don't know the exact amount.

The Court: Well, Mr. Boyd covered that, did he not?

Mr. Bourne: Yes.

The Court: He was not cross-examined on it.

Mr. Bourne: That is all.

No. 11

CROSS-EXAMINATION BY MR. ROBERTSON:

30 Q. Mr. Margeson, you have known for a good many years, have you not, that the Montreal Trust Company was not the beneficial owner of the land in question? A. No.

Q. Did you not know that the Montreal Trust Company held that land in trust for another? A. Not until just recently.

Q. How recently? A. Oh, last fall, I would say. I don't know the exact date. We were informed by our solicitors in the letter they wrote us.

Mr. Robertson: Will my friend please produce letter of the 16th October, 1929, from the Defendant to Messrs. E. B. Morgan & Company Limited.

(Document produced by Mr. Bourne).

40 Q. You received that letter, Mr. Margeson? A. Yes.

Mr. Robertson: That letter, my lord, reads, "We beg to enclose our cheque . . ." (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 10)

Q. In reply to the letter Exhibit 10 did you write that letter, Mr. Margeson? (Handing document to witness). A. Yes.

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Mr. Robertson: This, my lord, is a letter dated 17th October, 1929, from Mr. Margeson to the Montreal Trust Company. (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 11)

Q. When you referred to the Montreal Trust Company's principal, to whom were you referring, Mr. Margeson? A. To the Montreal Trust head office or possibly— I don't know.

The Court: Q. I did not catch that answer. A. To the Montreal Trust Company.

Q. But you use the word "principal"? A. Yes, oh, yes. 10

Q. "And extend the balance for the time required by your principal," or words to that effect. Did you know who that principal was, or if they had a principal. What did you mean by that?

A. I didn't know who the principal was.

Mr. Robertson: Will my friend produce letter of the 13th November, 1929, from the Defendant to the manager of E. B. Morgan & Company Limited.

(Document produced by Mr. Bourne).

Q. Did you receive that letter, Mr. Margeson? A. Yes.

Mr. Robertson: That letter, my lord, reads as follows: 20
 (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 12)

Q. In reply to that, did you write this letter, Mr. Margeson?
 A. Yes.

Mr. Bourne: What is the date of it?

Mr. Robertson: 27th November, 1929, from Mr. Margeson to the Defendant. (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 13)

Q. Did you write that letter, Mr. Margeson (Handing document to witness). A. Yes. 30

Mr. Robertson: This, my lord, is a letter of the 20th August, 1931, from Mr. Margeson to the Defendant. (Reading).

(DOCUMENT MARKED EXHIBIT No. 14)

Q. To whom did you refer when you referred to the present owner, Mr. Margeson? A. Well, the principal, whoever it was, I didn't know who it was.

Q. Well, you knew that there was some principal involved other than the Montreal Trust Company, did you not? A. Possibly a joint owner or something of that kind.

Q. Didn't you know that they were acting as trustee for 40 somebody else? A. Never knew it.

Mr. Robertson: Well, we will go on. Will my friend pro-

duce letter of 3rd September, 1931, from the Defendant to Messrs. E. B. Morgan & Company.

(Document produced by Mr. Bourne).

Q. Did you receive that letter, Mr. Margeson? A. Yes.

Mr. Robertson: 3rd September, 1931. (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 15)

Mr. Robertson: Will my friend please produce letter of the 11th May, 1932, from the Plaintiff's managing director to the manager of the Plaintiff's Victoria office.

10 Mr. Bourne: What is the date, please?

Mr. Robertson: 11th May, 1932. It is enclosed in the letter of the 26th May, 1932.

Mr. Bourne: I haven't the original but there is a copy.

Mr. Robertson: Q. This is a letter, Mr. Margeson, from Mr. Brayne, the Plaintiff's managing director in England to Mr. Wolfenden who is manager in Victoria, isn't he? (Handing document to witness). A. Mr. Wolfenden was manager of Victoria of the B.C. Land and Investment Agency Limited.

20 Q. Yes? A. Of course, I don't know anything about that letter.

Mr. Robertson: Well, it is produced—it comes from my friend's custody, my lord. You have no objection. It reads—(Reading letter).

(DOCUMENT MARKED EXHIBIT No. 16)

Mr. Robertson: Then will my friend produce letter of the 26th May, 1932, from Mr. Wolfenden, to Messrs. E. B. Morgan & Company. (Document produced by Mr. Bourne).

Q. You received that letter from Mr. Wolfenden, Mr. Margeson? (Showing document to witness). A. Yes.

30 Mr. Robertson: That letter reads as follows (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 17)

Mr. Robertson: Will my friend produce letter of the 27th May, 1932, from the witness to the manager of the Plaintiff in Victoria.

Mr. Bourne: Well, there is just one paragraph of that. (Producing document).

Mr. Robertson: Yes, I will put in the first paragraph of this letter, my lord. "Re Prudential Holdings." That is a copy of a letter which you wrote, Mr. Margeson? A. Yes.

40 Mr. Robertson: In that letter the witness says that he will see Mr. Bone, the manager of the Montreal Trust Company, and will be as diplomatic as possible.

(DOCUMENT MARKED EXHIBIT No. 18)

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Mr. Robertson: Will my friend please produce letter of the 13th July, 1932, from the Defendant to Messrs. E. B. Morgan & Company.

(Document produced by Mr. Bourne).

Q. You received that letter, Mr. Margeson. (Showing document to witness). A. Yes.

Mr. Robertson: That letter reads as follows, my lord. (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 19)

Q. Now, when you received that letter referring to a principal who writes: "It is not my intention to put up any further money in connection with this property," did you still think the Montreal Trust Company were the beneficial owners of the property. A. It didn't—it didn't make any impression on my mind at all. 10

Mr. Robertson: Will my friend produce letter of the 15th July, 1932, from the witness to the manager of the Plaintiff's Victoria office.

(Document produced by Mr. Bourne).

Q. Is that a letter which you wrote, Mr. Margeson? A. Yes. 20

Mr. Robertson: The relevant part of that letter, my lord, reads as follows: (Reading).

(DOCUMENT MARKED EXHIBIT No. 20)

Q. That was the letter of the 13th July, Exhibit 19, which you enclosed, wasn't it? See the letter, please. A. Yes.

Mr. Robertson: "This no doubt will be bad news to you..." (continuing reading of letter).

Q. When you referred to the owner and said that you had enquired whether he could see his way clear to reduce the principal sum, to whom were you referring? A. I was referring to the same people that the Montreal Trust Company in the letter—they were speaking of principals, that is all, we hadn't any further information. 30

Q. But you realized there was some principal for whom the Montreal Trust was acting, did you not? A. Yes.

The Court: Do not forget, Mr. Robertson, that is five years nearly before they found that out. This mortgage is dated January, 1925, and you do not show any correspondence until October, 1929. I doubt if what you are putting in is relevant. I am not stopping you. 40

Mr. Robertson: The assignment was not until June, 1933.

The Court: That does not make any difference, they had their rights, they did not lose them all by the fact you were not principal. Whatever rights they had from the mortgage were not lost by what knowledge they gained four years afterward,

unless they are estopped. I do not see they are estopped yet. However, carry on.

Mr. Robertson: This evidence is directed to the estoppel which has been pleaded.

The Court: I do not see evidence yet. I am waiting for it every minute.

Mr. Robertson: Will my friend produce letter written by the witness on the 16th July—no, by Mr. Wolfenden of the 16th July, 1932, to Messrs. E. B. Morgan & Company Limited.

10 Mr. Bourne: That is again just one paragraph. (Producing document).

Mr. Robertson: Yes.

Q. That is a letter you received, Mr. Margeson? A. Yes.

Mr. Robertson: That is in reply to the last letter and asks him to tell the Montreal Trust they are considering the matter.

(DOCUMENT MARKED No. 21)

Mr. Robertson: Will my friend produce letter, please, from Mr. Wolfenden, to the managing director at London of the 16th July, 1932.

20 (Document produced by Mr. Bourne).

Mr. Robertson: This letter, my lord, reads as follows: (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 22)

Mr. Robertson: Will my friend produce letter from Mr. Brayne, the Plaintiff's managing director to the manager of the Victoria office of the 20th of October, 1932.

(Document produced by Mr. Bourne).

Mr. Robertson: This letter, my lord, reads as follows: (Reading letter).

30 (DOCUMENT MARKED EXHIBIT No. 23)

Mr. Robertson: A letter from Mr. Wolfenden, to Messrs. E. B. Morgan & Company 15th November, 1932.

(Document produced by Mr. Bourne).

Q. You received that letter, Mr. Margeson (Showing letter to witness). A. Yes.

(DOCUMENT MARKED EXHIBIT No. 24)

Mr. Robertson: That letter, my lord, sent to Messrs. E. B. Morgan & Company, a copy of Exhibit 23 of the 20th October and concludes "In view of what Mr. Hirst says . . ." (Reading).

40 A letter please of the 16th November, 1932, from Mr. Wolfenden, to Mr. Brayne.

(Document produced by Mr. Bourne).

The Court: These people did not seem to have had anything

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else to do much except write letters. If they had issued a writ they would have been further ahead. What is this one?

Mr. Robertson: This is a letter from Mr. Wolfenden to Mr. Brayne.

The Court: Yes, what does it say?

Mr. Robertson: "I note that the Board has decided . . ."
 (Reading Exhibit 25).

(DOCUMENT MARKED EXHIBIT No. 25)

Mr. Robertson: Letter of 16th November, 1932, from Mr. Margeson to the Defendant. 10

(Document produced by Mr. Bourne).

Q. You wrote that letter, Mr. Margeson. (Showing document to witness).

(DOCUMENT MARKED EXHIBIT No. 26)

Mr. Robertson: This is dated 16th November, 1932, from the witness to the Montreal Trust Company, my lord. (Reading letter). Will my friend please produce letter of the 18th November, 1932, from the witness to the manager of the Plaintiff's Victoria office.

(Document produced by Mr. Bourne). 20

Q. You wrote that letter, Mr. Margeson? (Showing document to witness). A. Yes.

Mr. Robertson: That letter reads as follows, my lord.
 (Reading Exhibit 27).

(DOCUMENT MARKED EXHIBIT No. 27)

Q. Now, to whom were you referring as the client of the Montreal Trust Company, and the principal who was going to be in the City next week, Mr. Margeson? A. Well, I hadn't any knowledge who I referred to.

The Court: Q. Did you know any difference between the owner of the property and the client, or did you think they were both the same person. You seem to use both expressions in that letter. One paragraph you say something about their client, and another you say provided the owner will pay? A. Well, when I was speaking of the principal, I always had in mind the Montreal Trust Company or their head office, but when they brought in a client in the matter, I didn't know who they referred to, I had no knowledge.

Mr. Robertson: Q. But when you said owner you meant the same person as client, did you not? A. Well, the only owner was the Montreal Trust Company—the registered owner. 40

Q. Well, you say provided the owner will agree to pay regularly, that owner there was the principal who was coming to town

next week, wasn't it? A. I would presume so by that letter, yes.

Mr. Robertson: Will my friend please produce letter from Mr. Wolfenden to Messrs. E. B. Morgan & Company of the 19th November, 1932.

(Document produced by Mr. Bourne).

Q. You received that letter, Mr. Margeson. (Showing document to witness). A. Yes.

(DOCUMENT MARKED EXHIBIT No. 28)

Mr. Robertson: "Prudential Holdings—Montreal Trust"
10 (Reading letter). "Will my friend please produce letter 25th November, 1932, from the witness to the manager of the Plaintiff's Victoria office.

(Document produced by Mr. Bourne).

Q. You wrote that letter, Mr. Margeson? (Showing document to witness). A. Yes.

Mr. Robertson: "Prudential Holdings—Montreal Trust Company" (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 29)

The Court: Q. Why did you use the word "principal" in
20 one sentence and "client" in the other. Can you tell me? A. No.

Q. You just did not know anything about it? A. No, I didn't know.

The Court: Well, you might as well say so. You have got three different expressions now, "principal," "client," and "owner," and you use them indiscriminately apparently.

Mr. Robertson: Will my friend please produce letter from the Defendant to E. B. Morgan & Co. Ltd., of the 8th December, 1932.

(Document produced by Mr. Bourne).

30 Q. You received that letter, Mr. Margeson. (Showing document to witness). A. Yes.

Mr. Robertson: "With reference to your letter of November 16th" (Reading letter).

(DOCUMENT MARKED EXHIBIT No. 30)

Mr. Robertson: Will my friend please produce letter of 12th December, 1932, from the witness to the manager of the Plaintiff's Victoria office.

(Document produced by Mr. Bourne).

40 Q. You wrote that letter, Mr. Margeson? (Showing document to witness). A. Yes.

Mr. Robertson: (Reads letter).

(DOCUMENT MARKED EXHIBIT No. 31)

Q. Mr. Hirst is in the office of the Montreal Trust, is he not, Mr. Margeson? A. Yes.

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Mr. Robertson: "We rang up Mr. Hirst." (Reading letter).

Q. Now, isn't it clear from that letter, Mr. Margeson, that at the time you wrote it you were of the opinion that the client about whom you had spoken and written before was the person who, if a quit claim of the property was to be given, would be the person to make it? A. Yes.

Mr. Bourne: On this basis it would have to be given by the Montreal Trust Company.

Mr. Robertson: The witness answers yes.

Mr. Bourne: No, my friend should not put a question like 10 that. He knows the only person that could quit claim at that time, as the records show, would be the Montreal Trust Company.

The Court: I think it must be so, because the record says so.

Mr. Robertson: Q: But you know, Mr. Margeson, that before the Montreal Trust could formally execute a quit claim, they would have to receive instructions from the person who was beneficially interested, didn't you? A. Yes, somebody that I knew nothing about.

Q. But you knew that there was such a person, while you may not have known his name? A. I don't think I would say 20 that. I knew that they seemed to be acting for someone, that was all that I took. Absolutely we knew nothing.

Q. What did you mean when you said you rang up Mr. Hirst and asked him if it was the desire of their client to quit claim the property? A. Well, he had suggested in a previous letter that there was a client, that was all.

Q. And you had got the impression from that that there was a client from whom any quit claim instructions would have to come, had you not? A. Yes, I would say so.

Mr. Robertson: Yes, will my friend please produce letter 30 of the 14th December, 1932, from Mr. Wolfenden to the managing director at London, England.

(Document produced by Mr. Bourne).

(DOCUMENT MARKED EXHIBIT No. 32)

Mr. Robertson: "Re Prudential Holdings—Montreal Trust Co." (Reading letter).

Mr. Robertson: That is all, thank you, Mr. Margeson.

Mr. Bourne. No questions.

(Witness aside).

Mr. Bourne: I propose to put in, my lord, some of the 40 examination for discovery of Mr. Bone, manager of the Defendant Company in Vancouver.

The Court: One moment until I keep this in order. I have no note here of the proof of the notice of assignment.

Mr. Bourne: Well, it is proved by this discovery, but I would

ask my friend, so that there will be no question about it, to save calling a witness, I will ask him to produce and admit the receipt of it.

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The Court: I just want to keep my record in order.

Mr. Bourne: Yes, my lord.

The Court: That will be Exhibit 33, if you have it.
(Document produced by Mr. Robertson).

Plaintiff's
Evidence
Proceedings
at Trial

Mr. Bourne: This is the formal notice, my lord, I need not read it, I take it, and the letter written by Bourne & DesBrisay
10 to Montreal Trust Company enclosing it. I will put them in as one Exhibit.

The Court: What is the date of that letter?

Mr. Bourne: The notice is dated 23rd June, 1933, and letter of the same day.

The Court: They can go in together.

(DOCUMENTS MARKED EXHIBIT No. 33)

Mr. Bourne: My friend, I take it, admits the receipt of this.

Mr. Robertson: Yes, I will admit that.

The Court: Any discovery?

20 Mr. Bourne: Examination for discovery of Mr. Bone: Questions 1 and 2.

The Court: That is in already, is it not—that certificate?

Mr. Bourne: No, it is an earlier certificate.

The Court: Do you want the earlier one in?

Mr. DesBrisay: Yes, put it in.

Mr. Bourne: It comes from their files. Possibly I can go on, my lord, in the meantime.

(Document produced by Mr. Robertson).

30 Mr. Bourne: That certificate of encumbrance is dated 19th February, 1926, issued by the Land Registry Office at Vancouver, showing the Montreal Trust Company to be the registered owners of the land in question subject to the mortgage by the Prudential Holdings Limited, to the British Columbia Land & Investment Agency Limited.

(DOCUMENT MARKED EXHIBIT No. 34)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

“WILLIAM R. HILL,”

40 Deputy Official Stenographer.

Mr. Bourne: Questions 4 to 12. (Reading). Questions 31 and 32. (Reading). This is a letter, my lord, dated the 19th of February, 1926, from Tupper, Bull & Tupper to the Montreal Trust Company. (Reading).

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Plaintiff's
Evidence

No. 12

Extracts
Exam. for
Discovery
Robert Bone
Mar. 27, 1934

(LETTER MARKED EXHIBIT No. 35)

Certificate of encumbrance was enclosed, and that has already gone in as Exhibit 34.

Questions 49; 59 to 62 inclusive; 72 to 74 inclusive; 77 to 79 inclusive; 184 to 187 inclusive. (Reading). That is the Plaintiff's case, my lord.

No. 12

EXTRACTS FROM EXAMINATION FOR DISCOVERY
OF ROBERT BONE taken pursuant to appointment before
the Examiner at Vancouver, B.C., March 27th, 1934.

10

EXAMINED BY MR. DESBRISAY:

1. Q. Mr. Bone, you are the manager of the Defendant Company? A. Yes.

2. Q. The Defendant Company is the registered owner of Lots 5 to 9, Block 2, Subdivision 'C' of District Lot 183. Have you got the certificate of encumbrance? This is the certificate of encumbrance which shows that to be the case? A. Yes.

(DOCUMENT MARKED No. 1 FOR IDENTIFICATION)

* * * *

4. Q. We can come to that later. I wish to get a full explanation of that, but just at the moment I would like to carry on without that. This is a duplicate original conveyance dated the 15th of February, 1926, from the Prudential Holdings Limited as grantor to the Montreal Trust Company as grantee, conveying Lot 15 in the north half of 16 in Block 60, in District Lot 541, and Lots 5 to 9 inclusive in Block 2, Subdivision "C," District Lot 183. This is a copy of that duplicate original of the deed? A. Yes. that is right.

5. Q. This indicates a cash payment of \$15,500 and that the properties are subject to two mortgages. The first mentioned lots 15 and 16, were mortgaged for \$6,000, and lots 5 to 9 subject to a mortgage dated the 15th of January, 1925, between the Prudential Holdings Ltd. as mortgagors and the British Columbia Land and Investment Agency Limited, to secure the sum of \$13,000. You, as the manager of the Defendant Company in Vancouver, received this conveyance on these terms? A. Yes.

(DOCUMENT MARKED No. 2 FOR IDENTIFICATION)

6. Q. At the time you received the conveyance did you receive the duplicate original of the mortgage that I have just mentioned, to the British Columbia Land Investment Agency Limited? A. I think so.

40

7. Q You have a document—I think it is number 76—this is the duplicate original of the mortgage mentioned in the conveyance to the British Columbia Land and Investment Agency Limited, the Plaintiff in this action? A. Yes.

8 Q Received by the Defendant Company at the time it acquired lots 5 to 9 as I mentioned before—I want that marked too.

(DOCUMENT MARKED No. 3 FOR IDENTIFICATION)

9. Q. In your statement of defence the Defendant denies that the conveyance which is Exhibit 2, and this mortgage, Exhibit 3, were ever made. That is simply a formal denial. You are not denying they were made at all. You admit they were made? A. Oh, yes, they were made through the Bank's Solicitor.

10 10. Q. But you admit that this conveyance was made and this mortgage was made? A. Yes.

11. Q. Was this sum of \$15,500 mentioned in the conveyance paid to the Prudential Holdings Limited? A. Yes.

12. Q. How, by cheque of the Defendant Company? A. By cheque.

20

* * * *

31. Q. Apparently on the 19th of February, Tupper, Bull & Tupper wrote to the Defendant Company a letter reporting they had obtained and enclosing a certificate of encumbrance, which apparently you had requested them to obtain? A. Yes.

32. Q. Showing you to be the owner—will you mark this?

(DOCUMENT MARKED No. 4 FOR IDENTIFICATION)

* * * *

49. Q. Now, the total purchase price of these two properties mentioned in the conveyance, as I gather from the documents, was \$34,500; \$15,500 cash and the balance being the amount of the two mortgages mentioned in the conveyance? A. Yes.

30

* * * *

59. Q. In the defence you deny the receipt of notice of assignment. I think it is number 58. I am producing a notice of assignment which is referred to in your affidavit of documents directed to the Defendant Company dated the 23rd of June, 1933, from Bourne and DesBrisay, solicitors for the British Columbia Land & Investment Agency Limited? A. Yes.

60. Q. You received this notice? A. Yes, I got that notice.

40

61. Q. With the letter enclosing the letter? A. Yes.

Mr. DesBrisay: Dated June 23rd likewise. Will you mark the notice and letter Exhibit 5.

(DOCUMENTS MARKED No. 5 FOR IDENTIFICATION)

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RECORD
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(Contd.)

62. Q. That was served on the Defendant Company? A. Yes.

* * * *

72. Q. I understand that the Defendant Company sold lot 15 in the north half of 16; that is the Burrard Street property? A. Yes.

73. Q. Was that property sold subject to the \$6,000 mortgage? A. Yes.

74. Q. And the Defendant Company I take it gave a deed? A. Gave a deed, yes.

10

* * * *

77. Q. And did the Defendant Company in effecting the sale of the Burrard Street property we have mentioned, and in its mention of these properties at any time refer to the Prudential Holdings Limited? A. No.

78. Q. Or to anyone on behalf of the Prudential Holdings? A. No.

79. Q. And never accounted to them in any way? A. No.

* * * *

184. Q. They acted as your solicitors for the purpose of effecting this registration? A. Through the instructions of the Bank, yes.

185. Q. But you acquiesced, I think you said? A. Well—

186. Q. You would confirm it? A. Yes.

187. Q. It was just as though you would give them yourself? A. Yes.

Defendant's
Evidence
No. 13

No. 13
DEFENCE

Mr. Robertson: My lord, the Defendant's case is shortly this: That the right to be indemnified only arises where the relationship between the parties is that of vendor and purchaser. It does not arise where property is conveyed subject to a mortgage, to a person who is to hold it as security. Nor does it arise where property is taken—where though there may be an actual sale and purchase of the property, the conveyance is taken by a nominee of, or the trustee for the purchaser. I shall endeavour to establish that the Montreal Trust—. In the first place the conveying of any property away from the Prudential Holdings was really by way of security for an advance made to the Prudential Holdings by the late C. V. Cummings, and that the Montreal Trust Company took the property only as a nominee of his. Parole evidence to show facts such as these, is admissible, and I think it may shorten matters if I refer very shortly to the headnotes in two of the cases on the point. I have other cases to refer to later. I refer first to *Corby vs. Gray*, 1887, 15 Ontario Reports, page 1. The headnote

30

40

reads as follows. (Reading). Then the fairly recent decision of the Supreme Court of Canada in *Campbell vs. Douglas* 1916, 54 S.C.R. page 28. The headnote reads as follows. (Reading). That is the position which I shall seek to establish here.

The Court: Call your evidence.

Mr. Robertson: I call Mr. Coulter.

HOWARD S. COULTER, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

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H. S. Coulter
Direct Exam.

No. 14

10 DIRECT EXAMINATION BY MR. ROBERTSON:

Q. Mr. Coulter, you are a barrister and solicitor practising in British Columbia, in the City of Vancouver? A. I am.

Q. And you were practising I think in 1926, were you not? A. I was.

Q. You had known Mr. T. R. Nickson for a long time? A. I had.

Q. And you also knew, and were a friend of Mr. C. V. Cummings? A. I was.

Q. Mr. Cummings is now dead? A. He is.

20 Q. He died last November? A. Yes.

Q. You had acted as intermediary between those two gentlemen with regard to certain personal and family matters, had you not? A. I had.

Q. Early in 1926 what was Mr. Nickson's business? A. He was the chief shareholder in Nickson Construction Company Limited.

Q. Was he interested in any other company? A. He also was interested in a company known as Prudential Holdings Limited.

30 Mr. Bourne: I wish to take the position, my friend has laid no foundation at present for this evidence at all. We are talking now of Mr. Nickson's private affairs.

The Court: He is only leading up, for the moment.

Mr. Robertson: Q. Did Mr. Nickson also have the controlling interest in Prudential Holdings Limited?

The Court: You have the evidence that Nickson was interested and signed as president. A. Mr. Nickson was the main shareholder in Prudential Holdings Limited, which was formed in my office. I was secretary and held one share. The only other
40 shareholder was Donald McPhail of this city, who also had one share. Mr. Nickson was Prudential Holdings Company.

Mr. Robertson: Q. Now, what was Mr. Nickson's position with regard to the Nickson Construction Company in February, 1926, financially? A. Very bad. He was being pressed by the Royal Bank for \$15,000 for immediate payment.

Mr. DesBrisay: How can my friend know this.

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 (Contd.)

The Court: Well, I do not know. That is for cross-examination. He has sworn to it, and he understands the nature of an oath I take it.

Mr. Robertson: Q. Now, what occurred, Mr. Coulter? A. In January or February of 1926, I knew that Mr. Nickson was being pressed by the Bank. The Prudential Holdings Limited, in the meanwhile, through the efforts of Mr. McPhail and by reason and because Nickson could raise the necessary money, have become the holders of certain properties; one on Powell Street and one on Burrard Street. In fact the company was formed for the purpose of holding the said properties which Mr. McPhail said he could acquire if Mr. Nickson could get the necessary money. Then Mr. Nickson suggested that he could not afford just to hold these properties for speculation or investment; that he needed if he could to use them for the purpose of raising money. 10

Mr. DesBrisay: Well, my lord, I am going to object.

The Court: All right, your objection is noted. Carry on.

Mr. DesBrisay: I would like to state my grounds of objection.

The Court: I doubt that any of this evidence is relevant for the moment. 20

Mr. Robertson: It is leading to the circumstances.

The Court: All right. Get to it.

The Witness: I might say that if I hesitate it is because all this took place over eight years ago.

The Court: Well, get down to the point if you know what the point is, please.

The Witness: I remember talking with Mr. Cummings with regard to the proposition made that he advance money to Nickson.

Mr. Bourne: It is clear, my lord, that the objection is made to apply. I only want to know— 30

The Court: Yes, I take it that the objection is noted.

The Witness: I prefer questions.

The Court: I thought perhaps when you were put in the box, they would explain to you what the point was. You are labouring under a difficulty.

Mr. Robertson: Q. You acted in the matter, too, did you Mr. Coulter as intermediary between Nickson and Cummings?

A. If not as intermediary, I was certainly in possession of all the facts given to me by both Mr. Nickson and Mr. Cummings. 40

The Court: Well, what they told you is not evidence as far as I know. You have got to prove your own case Mr. Robertson. You have got to prove the Montreal Trust Company acted as trustee for somebody, and I will expect you to prove it. You have not got anywhere with it yet.

Mr. Robertson: Q. Mr. Coulter, will you please state what

happened between Mr. Cummings and Mr. Nickson? Mr. Nickson, my lord, was President of Prudential Holdings, who conveyed the property. The Plaintiff's claim is founded upon the right of Prudential Holdings and is subject to any equities existing, and any admissions made by an officer of Prudential Holdings, is evidence against the Plaintiff.

The Court: If known to the Plaintiff.

Mr. Robertson: Whether known or not.

The Court: Well, certainly not. I doubt it very, very much
10 in a case like that.

Mr. Robertson: Q. What occurred between Messrs. Cummings and Nickson? A. Well, all I know is that Mr. Cummings expressed his willingness to advance the moneys to Nickson, and that the deal between them was that properties owned by the Prudential Holdings Limited were to be deeded—

Mr. Bourne: I take formal objection to that. How could he know this? It is entirely hearsay as far as he is concerned.

The Court: It is not evidence.

Mr. Bourne: And construing the resolution which has al-
20 ready gone in, and which is signed—

The Court: On the authority which you quoted, Mr. Robertson, although I am not quite sure whether they are applicable, I gave you leave to prove that Montreal Trust Company was acting for a client, who was the cestui que trust, and if you can prove it, prove it and give up all this.

Mr. Robertson: I may say my lord, that it was necessary for me to prove that the transaction was one of equitable mortgage and not of sale and purchase.

The Court: Unless you can tie up B.C. Land and Investment
30 with it I exclude the evidence.

Mr. Robertson: I tie them up in this way: the Plaintiff's case raises the point of implied right of indemnity which is alleged to have accrued to the Prudential Holdings Limited, on assignment of it to the B.C. Land and Investment back in June of 1933. The B.C. Lands now brings this action upon a section in the Laws Declaratory Act—

The Court: Please take it for granted that I know a little law. I know the basis of their action.

Mr. Robertson: Yes, my lord. Now, by conveyance prior
40 to June, 1933—the Prudential Holdings, were it bringing this action, it is evidence against it.

The Court: Give me authority on that. That is when they took the assignment they took it subject to the equity. In a case similar to this, I mean, of course.

Mr. Robertson: I refer first to the case, *Woolway vs. Rowe* 1834. 1 *Adolphus & Ellis*, 114; found at 110 English Reports.

RECORD

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Defendant's
Evidence

No. 14

H. S. Coulter

Direct Exam.

(Contd.)

RECORD
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 (Contd.)

The Court: I do not quite catch— Your point of law was that the Plaintiff in taking this assignment in June last year, took subject to existing equities as between the Prudential Holdings and the Montreal Trust. Now, what is your equity as between them? The Montreal Trust Company had bought the land from the Prudential.

Mr. Robertson: The Montreal Trust Company had taken a conveyance.

The Court: I call that buying. They took a conveyance of the land; it was registered and they became registered owners 10 subject to this mortgage. Now you say that when the Plaintiff accepted an assignment with the right of the Prudential to indemnity, it accepted subject to the existing equities. I take it that would be so under Laws Declaratory Act. Now tell me what those equities were.

Mr. Robertson: Those equities were, my lord, the Montreal Trust Company's right to show that the relationship of vendor and purchaser did not exist between Prudential Holdings Limited and itself; that they were simply a trustee for Prudential Holdings. 20

The Court: I will allow you to prove that, whether you are right or not.

Mr. Robertson: I am asking Mr. Coulter, who was secretary of the Prudential Holdings and who dealt with Messrs. Nickson and Cummings and also—

The Court: No, you can only take this as to what the Montreal Trust Company position was. If you can prove that the Montreal Trust did not buy and did not intend to buy, then I think it is admissible.

Mr. Robertson: Well, my lord, on the decision of the 30 Supreme Court of Canada to which I refer, we can also prove that they were not vendor and purchaser, and that the property was merely held by the Montreal Trust for Cummings who was the real advancer of the money.

The Court: Well, I think may be it will be safer for the benefit of the higher court, to allow you to prove that.

Mr. DesBrisay: It is understood—

The Court: It is subject to your objection, yes.

Mr. Robertson: Q. Now, will you please say what the arrangement made, was? 40

Mr. Bourne: The arrangement with whom?

Mr. Robertson: Between Mr. Nickson as president of Prudential Holdings, and Mr. Cummings.

The Court: I do not think that is admissible. But if he can show the arrangement between Prudential and Montreal Trust Company. What Nickson and Cummings said between them—

selves surely cannot be evidence as against anybody else. It cannot. Neither of your authorities lay such a proposition down.

Mr. Robertson: May I refer to this decision in *Campbell and Douglas* again?

The Court: Yes. Let me see it, please. (Perusing judgment). I think I will allow the evidence. It is pretty close. I doubt it will stick, but I think it is safer to let the evidence in.

Mr. Bourne: I wish to take the further objection that apart from that decision, when this evidence is developed it is purely
10 hearsay evidence.

The Court: Yes, that has already been noted. What this witness heard Cummings and Nickson say, and then he comes into the box to retail that, that is hearsay evidence and I take it it should not be admitted, but I think the safer way is to allow the evidence in and let the higher court deal with it.

The Witness: Well, as I remember the transaction, Mr. Cummings asked me as secretary of the Prudential Holdings, the particulars of the land, and stated to me that he did not want the land, that he would not hold it in his own name and that the Mon-
20 treal—well, this is hearsay of course—he had been told by his bank it could be arranged for a trust company to hold the land for him. He further stated that he did not intend to keep the land, that he took it, he would sell it, but that anything above, anything received upon the sale above what he had advanced to Nickson was to be Nickson's.

Mr. Robertson: Q. Now, was Nickson a party to this transaction too? A. Nickson talked that over with me also on that same basis.

Q. And what was done? A. We were then—or at least I
30 was instructed, not instructed necessarily as secretary, but as a result of this agreement having been come to I remember being in touch once with Mr. Tupper when it was decided for the Prudential Holdings to have the necessary documents prepared transferring the two properties in question to the Montreal Trust Co. And then we had a meeting and a resolution was passed putting that on record, and the nominated officers affixed the seal.

Q. It was a meeting of yourself and Mr. Nickson? A. Yes.

Q. And you were the directors of Prudential Holdings? A. Yes, we were two of them. We had power to hold a meeting.

Q. And when that resolution was put through what was the
40 understanding with regard to the position of the Montreal Trust Company?

The Court: That is not evidence. A. I cannot say that.

Mr. Robertson: Q. Why was a deed instead of a mortgage made? A. I remember the point Mr. Cummings raised was that he was not holding it himself. The Montreal Trust—

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Court of British
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Defendant's
Evidence

No. 14

H. S. Coulter
Direct Exam.

(Contd.)

RECORD
 In the Supreme
 Court of British
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Defendant's
 Evidence
 No. 14
 H. S. Coulter
 Direct Exam.
 (Contd.)

Mr. Bourne: That, my lord, is hearsay surely.

The Court: I think it is going a little too far.

Mr. Robertson: I am trying to show what the circumstances are.

The Court: Yes, I know, but I think you are going a little too far there. The deed was registered and there is a certificate of encumbrances showing.

Mr. Robertson: Q. Mr. Coulter, as secretary of Prudential Holdings and one of its directors who passed the resolution authorizing the execution of the deed, what was your knowledge of the position of the Montreal Trust in the transaction? A. That they were to hold the land as—for Mr. Cummings. 10

The Court: Q. Had you any communication with them whatever about it? A. I don't remember, my lord. Just the one fixed memory I have is that Mr. Cummings was not to hold it in his own name.

Q. What you heard was from Cummings— A. Well, what I heard from the bank.

Q. Which bank? A. The Royal Bank.

Q. Well, that is not evidence. Did you have any communication whatever with anybody in the Montreal Trust? A. I may have, but it is too long— 20

Q. Do you remember any? A. No, sir, I don't.

Mr. Robertson: Q. Did you get this same information from Mr. Nickson? A. Yes; it was understood.

Q. He was president of the Prudential Holdings then? A. Yes.

Q. And incidentally, how long did he continue to hold that office? A. Well, I don't know how long, but it was one or two years after that. I may say the Prudential Holdings ceased to be active at all after this transaction as far I know. 30

Q. He was still president in 1927? A. Yes, I know that. I know that from the records.

Q. May I have Exhibit 5? That, Mr. Coulter, is the certified copy, purports to be a certified copy of the resolution, certified by you as secretary of Prudential Holdings Limited. That document has been produced from the custody of the Land Registry Office. Can you tell me how it got there? A. I can't tell definitely. I can only testify as to a memory. I remember dictating it. 40

Mr. Bourne: My lord, I don't know what this is leading to. If he can't remember it that is the end.

The Court: Yes, that is the end of it surely.

The Witness: I do remember a phone call from the Land Registry Office saying the application papers were not complete.

I remember that. And I am under the impression that that was on the record.

Mr. Robertson: Q. Can you say who put that in the Land Registration Office? A. I cannot. I think I did myself. It is eight years ago.

The Court: It is perfectly simple. Stick to the rules of evidence. There is nothing difficult about it.

Mr. Robertson: Q. Can you say, Mr. Coulter, whether or not, you ever showed that form to Mr. Tupper? A. I cannot.

10 Q. Does that language in this resolution "the said Montreal Trust Company to assume all mortgages against the properties hereby authorized to be sold"—

Mr. Bourne: If my friend is going to attempt to dispute what is already in writing over the signature of this witness then I want to take objection. This material is not our writing.

The Court: I do not know what your question was.

Mr. Robertson: I was asking the witness whether or not the words "the said Montreal Trust Company to assume all mortgages against the properties hereby authorized to be sold," do correctly
20 describe the transaction.

The Court: The evidence is excluded without hesitation.

Mr. Robertson: That is all, thank you.

No. 15

CROSS-EXAMINATION BY MR. BOURNE:

Q. You said, Mr. Coulter, that you remember Mr. Nickson was president of the company down till 1927. You remember that from the records? A. Well, I have not the file now, but I have been shown the minutes or the records that show that he was. I know that for a year after that time—

30 Q. When you say record, do you mean records, books of the company? A. Yes, extracts from the records of the company.

Q. How long did you remain secretary of the company? A. I don't remember. The file was—Mr. Nickson took the file away. The company ceased to function, as far as I remember, and I have had nothing to do with the Prudential Holdings after—well, for the last six years, I think.

Q. Did you have anything to do with the filling in of the company's annual report since the property in question in this action was acquired by the Montreal Trust Company A. I can
40 not answer without the file. I have not been able to look at the file even.

Q. You were a director of the Prudential Holdings in November, of 1926? A. I think I was. In fact I am practically certain I was. That year, 1926, during that year I know I was.

Q. I am producing to you a certified copy of the annual report made up to the 11th day of November, 1926. That annual

RECORD

In the Supreme Court of British Columbia

Defendant's Evidence

No. 14

H. S. Coulter Direct Exam.

(Contd.)

No. 15

H. S. Coulter Cross-Exam.

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 (Contd.)

report comes out of the office of the Registrar of Companies. That annual report shows you to be one of the directors, Nickson the other. You are quite familiar with that form? A. Yes.

Q. You see endorsed on the face of this report opposite the blank in which you are required to fill in the particulars of the mortgages, it is endorsed all lands mortgaged have since been sold or transferred subject to encumbrances save \$7500? A. I see that.

Q. Well, can you give me any explanation in view of the story you have been giving here today, why that would be con- 10
 tained, if this was to make it a transfer of the property? A. I cannot.

Q. It is a fact on its face that that was a record being filed of the facts as existing with reference to the particular property in question in this action at that time.

Mr. Robertson: I must object to the production of this.

The Court: He is a director of the company. He is responsible for what goes in unless he explains it. A. As a matter of fact, I don't remember the document. It is signed by Nickson. I don't know whether I ever drew it up or not. 20

Mr. Bourne. Q. No explanation you can give with reference to it? A. No.

Q. Now, Mr. Coulter, you said almost at the outset of your evidence in chief, and I took the words down carefully, "if I hesitate, it is because all this took place eight years ago"? A. Yes.

Q. Now, that was exactly the words you gave. And that is the position you are in at the moment, isn't it? A. Quite true.

Q. You have been asked by a number of people in the last few months what was your recollection of this whole transaction. That is correct, isn't it? A. By two people. 30

Q. By two people. Who were they? A. Mr. Robertson and Mr. DesBrisay.

Q. And your recollection at the beginning was very very vague as to anything, wasn't it? A. Never at any time vague as to what I have said this morning. The deal, to put it in plain English, the deal between Nickson and Cummings, I have known that from the beginning.

Q. I am referring now Exhibit 2 to you, that is a conveyance from Prudential Holdings to the Montreal Trust Company of the property in question. You signed, or you acknowledged, rather, 40
 the required acknowledgment of an officer of a Corporation under the Land Registry Act in respect of that conveyance? A. Yes.

Q. And you took that acknowledgment before Mr. R. H. Tupper? A. Yes.

Q. A Notary and Commissioner? A. Yes.

Q. On the 15th day of February, 1926. You say that is the

date of your signing the certificate and the date on which you appeared? A. Yes.

Q. And that certificate, you are quite familiar with the form of it. In that certificate you acknowledge before the notary that you are the person who subscribed his name to the annexed instrument as secretary of the company? A. Yes.

Q. The Prudential Holdings Limited, and affixed the seal of the Prudential Holdings Limited to the said instrument, and that you were duly authorized to subscribe your name as aforesaid, and affix the said seal to the said instrument, and that such Corporation is legally entitled to hold and dispose of land in the Province of British Columbia? A. Yes.

Q. Now, I take it that when you would go before a notary and acknowledge as secretary that acknowledgment, that you would only do it in respect of a document which expressed the actual transaction it purported to express? A. I did it.

Q. Well, answer the question. If you have any difficulty about it, I will ask the stenographer to read it (Stenographer reads: "Now, I take it that when you would go before a notary and acknowledge as secretary that acknowledgment, that you would only do it in respect of a document which expressed the actual transaction it purported to express?") A. Yes.

Q. And the authority that you got from the directors of the Prudential Holdings Limited, you being one and Nickson the other, was as set out in this resolution, Exhibit 5? A. Yes.

Q. And no other authority? A. No.

Q. The Montreal Trust Company, immediately after Exhibit 2 was executed delivered and registered entered into possession of this property described in Exhibit 2, did it not? A. Which is Exhibit 2?

Q. Exhibit 2 being the conveyance? A. No, that is a certificate. Where is the deed? I don't know anything about what happened after this transaction was done.

Q. You remained secretary and a director until at least a year afterwards. I think you said longer than that. When did you cease to be a director? A. I don't know. I haven't the file. I don't recall doing anything as secretary whatever after this transaction was completed.

Q. Did you not do things as director either? A. Not that I can remember. I have no file, nothing to tell me what I did.

Q. I point out to you that you were returned on the annual report as director as of the 11th November, 1926, having been re-appointed apparently at that time. So that you did continue on during 1926 that office—that is six or seven or eight months after the transfer? A. Yes. But I say I can recall nothing whatsoever in the way of business of any kind by Prudential Holdings

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Columbia*

Defendant's
Evidence

No. 15
H. S. Coulter
Cross-Exam.
(Contd.)

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 No. 15
 H. S. Coulter
 Cross-Exam.
 (Contd.)

after this was done, because anything the company had was out of its possession as far as I can remember.

Q. Was out of its possession? A. Yes.

Q. Well, then, possession was given to the Montreal Trust Company of the property in question when the transfer, Exhibit 2 was made and delivered? A. The paper speaks for itself.

Q. Well, is that a fact? A. I cannot speak beyond the document. I remember nothing now but the execution of that, according to their purport.

Q. There were two properties referred to in Exhibit 2, one was Burrard Street— A. Yes, and one on Powell. 10

Q. Now, do you know anything about what happened to that property on Burrard Street A. I do not.

Q. You don't remember anything about it? A. I may say that on the material, I see that and nothing else. All these transactions in regard to land were between Mr. Nickson and Mr. McPhail. They merely used my office as a place of convenience for any deal.

Q. Does your recollection go back that far? A. My recollection goes back to this transaction. 20

Q. Yes, but I am now talking about this property other than in respect to the transactions that you apparently recorded? A. I don't remember any further transaction dealing with lands after this.

Q. And you cannot tell me anything about the position, the collection of rents after this property was conveyed to the Montreal Trust Company? A. I don't remember any.

Q. And you cannot tell me anything about what happened to the Burrard Street property, the other property referred to in Exhibit 2? A. No. 30

Q. You have no recollection at all. A. I have not. As I say I have nothing to look at to refresh my memory. I am just relying purely on memory.

Q. So far as you were concerned as one of the only two directors of the Prudential Holding Company, you never heard while you were still such, you never heard from the Montreal Trust Company about either of these two properties after they were transferred? A. I did not.

(Witness aside).

Mr. Robertson: My lord, I will put in the order of the 16th of May, giving leave to examine Mr. B. L. Mitchell on commission in Toronto. 40

(ORDER MARKED EXHIBIT No. 36)

I also file an affidavit of Mr. Symes, Solicitor for the Defendant, that he believed Mr. Mitchell to be absent from the Province.

(AFFIDAVIT MARKED EXHIBIT No. 37)

The order provides for proof in that way, my lord. I propose to read Mr. Mitchell's evidence in chief.

Mr. Bourne: My lord, if I may interrupt now. I wish to take formal objection to any of this evidence being admitted.

The Court: Who is Mr. Mitchell.

Mr. Bourne: Mr. Mitchell, according to the evidence is manager, or was the manager of the Royal Bank of Canada in Vancouver some years ago. Now, the whole of this evidence—
 10 and I have to inspect it for the purpose of my objection—the whole of this evidence I submit is hearsay evidence. Mr. Mitchell attempts to, subject to objection all the way through, he gives evidence of various conversations he had with Mr. Cummings. Finally at the finish of the whole thing he says, at question 72:

“Q. From his conversation with you what did Nixon know about the true nature of the transaction.”

And there is objection:

“Mr. Thompson what did he learn from him?”

“Witness: I don't understand what you ask.”

20 “73. Q. What did Nickson learn from you as to the true nature of the transaction? A. As to how it was arranged with Mr. Cummings?”

“74. Q: Yes? A. I don't think that was discussed with him.”

There was not any discussion with Nickson. And then again question 75.

“Q. Did you ever tell Mr. Nickson anything about the Montreal Trust Company's status in the matter? A. I don't remember.”

And I will go on to 80:

30 “Q. Did Nickson say anything to you that would indicate whether he thought that the Montreal Trust Company was acting for itself or as a trustee? A. I cannot answer that.”

Now, I go to the end of it to show what the situation is in that regard. Now, it results in this, my lord, that the whole of this evidence of Mitchell is with reference to discussion he claims he had with Cummings. Cummings is now deceased; Nickson knowing nothing about it. He tries to bring that evidence in and tie us up with it, but the Montreal Trust being Defendant in the
 40 action. If my friend put his case in in the order I suggest it should be put in, and the facts, to have your lordship get the real significance of all this transaction, then it would be more apparent than I could make it. But all this is hearsay evidence and I say it cannot be anything else. Here is the man Mitchell who says

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that Nickson, the only man connected with the Prudential Holdings, knew nothing about anything he is talking about, and all the evidence is in respect of conversation he had with Cummings, which I say is inadmissible as being hearsay from the beginning. There is a further point called to my attention, that following the authorities that my friend has referred to, there is authority for giving a loan evidence of intention. But we now have got a document in which shows what the real transaction was. Now they are endeavouring to bring in evidence wholly disputing that, trying to make out it was a loan, and in support of that they are bringing 10 in what I say is entirely hearsay evidence.

The Court: Those are conversations between Mitchell and Cummings?

Mr. Bourne: Yes, my lord, all of them, and I refer to the particular questions to show that as far as Cummings was concerned, at the finish of the examination he was not claiming that Nickson knew anything about it.

The Court: Well, I do not think it is evidence. But you are not hurt, Mr. Robertson, by the exclusion of that evidence, because you have it, and if I am wrong the Court of Appeal may 20 look at it.

Mr. Bourne: May I object for the moment again. On this application there was a reservation made in the order that we had the right to cross-examine without prejudice to our position—

The Court: I do not propose to hear it. The one objection is sufficient. It is hearsay.

Mr. Robertson: First of all, my lord, with regard to the commission—with regard to what Cummings told him—the evidence is not confined to conversation. It deals also with providing 30 the money.

The Court: As I say, you get the full benefit of your right. You have it on record there. It is not like verbal evidence which may be excluded. What I want to avoid is a new trial.

Mr. Robertson: I would want an opportunity to show the full grounds.

The Court: All right, what is it?

Mr. Robertson: The moneys which were paid to Prudential Holdings through Montreal Trust Company came to Cummings, and I want to give evidence on what Cummings said when he paid those moneys. I refer first to Phipson Library Edition at page 40 54: (Reading).

The Court: Well surely we all know that. That is not what you have got here.

Mr. Robertson: Now, I refer to some cases, first of all, which Phipson cites. I will refer to decision in *Matchett vs. Stoefel*, 1916, 10 Ont. Weekly Notes, 276. "The fourth item . . . in issue."

Now, there Stoefel made a payment and he made the statement as to what it was for. In this case Nickson explained to Mitchell what the moneys he was paying were for, and I say that this falls within the same rule. There are other cases which Phipson cites in support. "Declarations as to business transactions, etc. . . . was signed." That is the ground upon which I say Cummings' evidence is admissible. Now, as to Nickson's evidence—I mean the statement which Mr. Mitchell says Mr. Nickson made to him. And Nickson was president of the Prudential Holdings. For the
 10 purpose of this action, their rights cannot be any greater than Prudential Holdings, and any evidence admissible against Prudential Holdings is admissible against the assignee. Admissions made by an officer of a company in the course of his duty are admissible in evidence against the company.

The Court: But you have not cited one case that is altogether parallel to the case at bar, excepting the *Campbell vs. Douglas* case. Not one of them. They all lay down certain principles that are applicable to the facts of the case, but the facts here are entirely different. I have never seen—

20 Mr. Robertson: The facts are not exactly the same, but they establish the principle.

The Court: We know the principle if we can get the facts. I am excluding that evidence. I have excluded it, but as I say, you are not hurt, because it is there, and if the higher court wishes it, it is there. I have so ruled. Have you any further evidence?

Mr. Robertson: There is the further evidence of Mitchell which my friend mentioned—

The Court: I am excluding that evidence.

Mr. Robertson: I will call Mr. Burr.

30 PERCIVAL REGINALD BURR, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

Mr. Robertson: This evidence, my lord, I should explain before I start is of admissions made by telegram by Nickson, president of the Prudential Holdings Limited with regard to the property in question.

The Court: Well, I will let it go in subject to objection.

Mr. Bourne: I take the further objection, that it cannot possibly affect this transaction. While my friend may urge it is before the assignment, it is nevertheless after this transaction.

40 The Court: All right, your objection is noted.

No. 16

DIRECT EXAMINATION BY MR. ROBERTSON:

Q. Mr. Burr, you knew Mr. Nickson, president of the Prudential Holdings Limited? A. I did. I knew nothing about Prudential Holdings. I know Mr. Nickson.

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*In the Supreme
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 No. 16
 P. R. Burr
 Direct Exam.
 (Contd.)

The Court: Who were you. What is your position? A. I am a real estate man. Manager of the real estate department Waghorn & Gwynn.

Mr. Robertson: Q. And you knew the property in which Nickson was interested, which is referred to as the Powell Street property? A. Yes.

Q. In October, 1929, did you send Mr. Nickson a telegram? A. Yes.

The Court: You cannot prove a telegram like that.

Mr. Robertson: I am going to produce the original. 10

The Court: Well, what is the original. They are all destroyed within a year.

Mr. Robertson: It is not the one deposited in the telegraph office, but it is the telegram—that is what Mr. Nickson received.

The Court: You cannot prove it in that way.

Mr. Robertson: Well, the telegrams are destroyed, my lord.

The Court: Quite so. You will have to get your telegram in the proper way. You certainly cannot do it in this way.

Mr. Robertson: If I could stand this witness down until after lunch, my lord, I will call Mr. Bone. 20

(Witness aside).

ROBERT BONE, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

No. 17
 Robert Bone
 Direct Exam.

No. 17

DIRECT EXAMINATION BY MR. ROBERTSON:

Q. Mr. Bone, you are manager of the Montreal Trust Company? A. Yes.

Q. How long have you held that position? A. 16 and a half years.

Q. Did you act for the Defendant in the part which it took 30 in the transaction in question in this action? A. Yes.

Q. Did you see Mr. Tupper in regard to the transaction? A. No, I never saw him.

Q. Did you see anybody representing the Prudential Holdings Limited? A. No.

Q. How did you come into the transaction? A. Well, as far as I remember Mr. Mitchell approached me and told me that the bank had a client—

Mr. Bourne: I object to this.

The Court: It is not evidence.

Mr. Robertson: I am seeking to show how the Montreal 40 Trust Company came into this.

The Court: What Mr. Mitchell of the Royal Bank told this witness cannot be evidence. We have got to fix some way. I am not worried about what you are seeking to show, but I am worried about whether you would follow the rules of evidence.

Mr. Robertson: Well, if Mr. Mitchell's evidence were in, I can show it came as instructions from other parties.

The Court: If you want to say in consequence of conversation with Mr. Mitchell of the Royal Bank he did something, I will let you prove it.

Mr. Robertson: Q. In consequence of a conversation with Mr. Mitchell of the Royal Bank what did the Montreal Trust Company do? A. We took title to property which he told me was on behalf—

10 Mr. Robertson: Well, you cannot say that.

Mr. Bourne: I suggest, this is in consequence of a conversation, I suggest before he goes any further he should put in the written instructions he got.

The Court: If he now says he got written instructions, what are they? He cannot give verbally if it is in writing.

Mr. Robertson: Q. I produce to you a letter, Mr. Bone dated 18th February, 1926.

Mr. Bourne: I wish to make an observation. Is my objection as originally put in.

20 The Court: You cannot object to that letter now, because you took it in your hands. You asked for it.

Mr. Bourne: I only made the objection in this way—

The Court: Once you have taken it into your hand it is evidence.

Mr. Robertson: Q. This, Mr. Bone, is a letter which you received from the manager, B. L. Mitchell? A. Yes.

Q. Mr. Mitchell is the manager, and Mr. W. A. Allingham is assistant manager? A. Yes.

(LETTER READ AND MARKED EXHIBIT No. 38)

30 Q. Now, on the same day did you write a letter to Mr. Mitchell. Did you write that letter to Mr. Mitchell. (Showing document to witness). A. Yes, that is my signature.

(Mr. Robertson reads letter).

Mr. Bourne: I wish to take, before this goes in, a formal objection to all this evidence going in.

The Court: Yes, the objection is noted.

(LETTER PRODUCED MARKED EXHIBIT No. 39)

Mr. Robertson: Q. Did you know at that time who the Royal Bank of Canada customer was? A. No.

40 Q. When did you learn? A. Just when this action was contemplated somewhere about last fall.

Q. At the time that these letters were written, did you know that this undisclosed principal was not actually purchasing the property? A. No, I didn't know.

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Defendant's
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No. 17
Robert Bone
Direct Exam.
(Contd.)

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 No. 17
 Robert Bone
 Direct Exam.
 (Contd.)

Q. Where did the Montreal Trust Company get the money to pay the \$15,500? A. From the bank.

The Court: Q. From the Royal Bank A. The Royal Bank of Canada.

The Court: All right, I take it that is common ground.

Mr. Robertson: And after receipt of this on the 18th February, you wrote to Mr. Mitchell, did you not? A. Yes.

Mr. Robertson: (Reads letter).

(LETTER AND CHEQUE PRODUCED MARKED EXHIBIT No. 40)

10

Q. Now, shortly after that did you receive a letter dated the same day from Mr. Mitchell? A. Yes.

(LETTER READ AND MARKED EXHIBIT No. 41)

Q. So that as a result of receiving that letter, you sent a cheque to Mr. Mitchell in favour of Prudential Holdings Limited for the balance of the \$15,500.00? A. Yes.

Q. Mr. Mitchell had objected to your making adjustment—

Mr. Bourne: Well, I do not think you should lead him that way.

Mr. Robertson: It is in the letter. This cheque, my lord, is \$466.89. It is in favour of Prudential Holdings Limited.

(CHEQUE MARKED EXHIBIT No. 42)

Q. Now, on the 23rd of February you wrote that letter to Messrs. Mitchell and Allingham, did you not?

The Court: You are not going on for another few days putting in letters between Mitchell and Bone. I let you have one letter in because Mr. Bourne had taken it in his hand. They cannot go on corresponding after that.

Mr. Robertson: I want to put this in as a reply to show the position of the Montreal Trust Company.

30

The Court: Well, you have already done that, according to your set-up. The Royal Bank could move the Bank of Montreal—the Montreal Trust, who I take it is their friend, to do this for them behind their back, and they did it.

Mr. Robertson: Then I will not press that, my lord.

Q. Now, the Defendant Company took over the management of the property, did it not? A. Yes.

Q. And some of the property was rented? A. Yes.

Q. What did it do with the rents? A. We held them to apply on the account of interest, insurance, taxes and so on, to pay 40 them.

Q. Were those rents sufficient for those purposes? A. No.

Q. What did you do about it? A. Called on the Royal

Bank of Canada to supply the necessary funds to make up the difference.

Q. And the Bank supplied those from time to time? A. They did.

Mr. Bourne: I object to that.

Mr. Robertson: Q. Did you ever see the resolution of the Prudential Holdings Limited, Exhibit 5? A. It was only submitted to me at my examination. That is the first time I ever saw it.

10 Q. Examination for discovery in this case? A. Yes, that was the first time I saw it.

Q. That was the first time you saw it? A. Yes.

Q. That was the first time you knew of it? A. First time I knew of it.

Q. Did you ever give Nickson authority to give an option on the Powell Street property to Burns & Company? A. No.

Q. Did the Montreal Trust Company have any financial interest in the Powell Street Property? A. None at all.

Mr. Bourne: Surely, my lord, he cannot give this.

20 The Court: No, about three quarters of this evidence is not admissible, but I will leave it for somebody else to decide.

Mr. Bourne: Shall I go on with the cross-examination now?

The Court: No, we will adjourn until 2:00 o'clock.

(PROCEEDINGS ADJOURNED AT 1:15 P.M. UNTIL 2:00 P.M.)

(2:00 P.M. PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT).

ROBERT BONE resumed the stand.

No. 18

30 CROSS-EXAMINATION BY MR. BOURNE:

Q. You have seen Exhibit 5, the resolution of the Prudential Holdings Limited? A. Yes, I saw that at the time of the discovery the first time.

Q. And you are familiar with the terms of it? Q. Yes, I know the terms of this.

Q. Now, that resolution indicates that the Prudential Holdings Limited at the time the resolution was passed understood the Montreal Trust Company to be the purchaser of this property in question? A. It states so, yes.

40 Q. And that resolution does set out the transaction between your company and the Prudential Holdings Limited with reference to the property in question as you understood it at the time the transaction was put through? A. Other than the assumption—no definite intention as to the assumption of the mortgages.

RECORD

In the Supreme Court of British Columbia

Defendant's Evidence
No. 17
Robert Bone
Direct Exam.
(Contd.)

No. 18
Robert Bone
Cross-Exam.
(Contd.)

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 Robert Bone
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 (Contd.)

Q. Why do you say that? A. Well, it was not our intention to assume the mortgages.

Q. You did, however, take an indemnity agreement, didn't you? A. We do that usually, Mr. Bourne, when we take properties in our name, irrespectively of whether there is a mortgage or not.

Q. What was the purpose of taking an indemnity agreement if you did not understand you were liable? A. Well, there are different things, in connection with taxation and so on. Even when there is no mortgage we take an indemnity agreement. 10

Q. Was not your main purpose in taking the indemnity agreement in this case to protect as against the liability that you would assume by taking this transfer as you did, the liability on this mortgage? A. That was possibly the view of the thing, yes.

Q. Was that not your main purpose in taking the indemnity agreement? A. No, as I say, we take an indemnity agreement at any time irrespectively of whether there are mortgages or not.

Q. Do you say it was not in the main idea you had in mind in taking the indemnity agreement? A. I recognize there is a mortgage but— 20

Q. Well, let me read some of your discovery, questions 108 and 109:

"108. Q. Why were you taking this indemnity agreement? A. To protect me against holding the property and any claims in connection with the property.

"109. Q. Did you have in mind the liability under the two mortgages? A. Well, that was possibly the principal thing."

Isn't that correct? A. That is what I was saying just now.

Mr. Bourne: I should have observed, but probably it is not necessary, my cross-examination on these questions, any of them, is subject to my preserving my rights to object. 30

The Court: Yes, I understand it, each of you is maintaining his objection throughout this.

Mr. Bourne: Q. You, acting for the Montreal Trust Company, listed the Powell Street Property, that is the property in question, for sale? A. Yes.

Q. You didn't refer to the Prudential Holdings Limited before you did that? A. No, sir.

Q. You did not refer to anyone? A. No. 40

Q. And of course you have already given evidence that you sold the Burrard Street Property which was part of the same deal? A. Yes, sir.

Q. At the time this transaction with reference to these properties was made, you knew of the legal proposition of the implied covenant? A. No, sir.

Q. Didn't you? You are quite sure. I will read this question to you in your discovery, 161:

“Q. And I assume you are aware that the purchaser of a property subject to mortgages is impliedly obligated to indemnify the vendor?”

A. Yes, that is after the previous question.

Q. I will go on, Question 162:

“Q. Against the mortgages. You knew that? A. Yes.

“Q. That is the reason you took the indemnity? A. I wanted the protection of the indemnity.

10 Q. So when you made that observation with regard to the word ‘assumes’ in this resolution, you simply meant that you had not specifically covenanted to pay the mortgages?
 A. That is right.”

A. It was my impression that the party—

Q. I will go on to 165:

“Q. But you would not say that that was an incorrect statement of the result of the transaction? A. No, no.

“Q. That is a correct statement of what the transaction was? A. Yes.”

20 Now, that is referring to the resolution? A. At the time the deed of the property was taken over by us, I was under the impression that all that procedure would not obligate us to pay any mortgages, unless we executed a document.

The Court: Well, you will not have any doubt about it in the future? A. No, I won't. When this action came up I got enlightened on that point.

Mr. Bourne: Q. Well, do you agree with the questions and answers that I have read there from your examination? A. Subject to that, that at that time I did not know the—

30 Q. Yes, but you see in question 164, the question is different: “So that when you made that observation with regard to the word ‘assumes’ in this resolution, you simply meant that you had not specifically covenanted to pay the mortgages? A. That is right.”

A. I never saw the resolution. I mean I never saw it—

Q. You had seen it on the examination? A. Yes.

Q. And you were asked if it correctly stated the transaction between you and the Prudential Holdings Limited? A. Yes.

Q. Doesn't it exactly do so?

Mr. Robertson: The question to which my friend referred: “Did it correctly state your understanding at the time?”

40 Mr. Bourne: What is the difference?

Q. Does not the resolution, Mr. Bone, correctly state your understanding of the transaction? A. Not in this assumption of the mortgages. We had no intention of assuming those mortgages. We are very specific in that line.

Q. You were asked on question 165: “But you would not say that that was an incorrect statement of the result of the trans-

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action? A. No, no. 166. Q. That is a correct statement of what the transaction was? A. Yes." A. Yes, of course, as it turned out.

Q. Is there any question about that? A. As it turned out it is a correct statement of the transaction.

Q. You wrote a letter to your manager in Montreal after this transaction was finished? A. Yes.

Q. And that was referred to on your examination? A. Reporting, yes.

Q. And did you report to him that you were assuming the 10 mortgages, the company was assuming the mortgages? A. If I remember the letter, Mr. Bourne, I stated that I did not think we were liable under the mortgages, because we had not signed any document.

Q. I will just read this question to you and see if you agree with the answer:

"195. Q. In which letter, after explaining generally what the transaction was, you went on to say: 'The full price paid for these properties was \$34,500; \$15,500 cash and an assumption of mortgages totalling \$19,000'? A. Yes. 20

196. Q. As I understand it, your idea was that while that was a statement of the arrangement between the parties, you would not be held to be liable in respect of such assumption unless you signed some document. That was your idea of the situation at the time? A. Yes." A. That is right.

Q. That is what you were saying? A. Yes.

Q. But you did say in the letter that you reported to your head office in Montreal, that you were assuming the mortgages? A. I said that in the letter, yes, I said that.

No. 19

30

No. 19
 Robert Bone
 Re-Exam.

RE-DIRECT EXAMINATION BY MR. ROBERTSON:

Q. Mr. Bone, you said that when you listed the Powell Street property for sale you referred to no one? A. No.

Q. Did anyone refer to you? A. Instructions of the Royal Bank to list it.

Mr. Bourne: That is not evidence, my lord.

The Court: I do not see how I can stop it.

Mr. Robertson: Q. My learned friend has read from a letter which you wrote—I want, my lord, to put in the correspondence to show what it is. 40

The Court: All right. Please do not go as far as you did the last time.

Mr. Robertson: No, my lord, just three letters.

The Court: Mark them 43, 44 and 45.

Mr. Robertson: The first letter is from Mr. Bone to the general manager of the Defendant in Montreal. (Reading).

Mr. Bourne: I did not refer to any specific letter, my lord. I asked him if he reported, and I referred to no letter.

The Court: You quoted some suggested letter.

Mr. Bourne. But I did not refer to any particular letter.

The Court: Well, surely he is entitled to put the whole letter.

Mr. Bourne: My lord, I read only that part of the letter which was quoted in his examination for discovery, because I had to do that to read the question at all. I simply referred to a letter, but I did not refer to the date. I asked him if he reported and
10 quoted from the examination for discovery.

The Court: If you put to a witness in this box—now, I am not referring to the discovery at all—but if you put to the witness in cross-examination, if you read a letter to him in which he said those things, surely he afterwards, in re-examination is entitled to say “That is my letter.”

Mr. Bourne: I submit not, my lord, if I refer to it as coming from the examination for discovery. But the letter, that is not identified. I submit that does not make the letter evidence.

The Court: I do not think it is fair to the witness to state
20 you said so and so in this letter there are three things. Surely he is entitled to say “Here is my letter, there are five things in it.” I do not think that would be fair.

Mr. Robertson: (Reading letter).

The Court: That is in already. We have that letter. That letter goes in. I do not think you have the right to put anything further. I am allowing that in on the ground that Mr. Bourne raised it in his cross-examination. I am ruling that. I am allowing that in on one ground, and I am not allowing it any further.

(LETTER PRODUCED MARKED EXHIBIT No. 43)

30 Mr. Robertson: That is the Defendant’s case, my lord.

The Court: Any rebuttal?

Mr. Bourne: No, my lord.

RECORD
—
*In the Supreme
Court of British
Columbia*
—
Defendant’s
Evidence
No. 19
Robert Bone
Re-Exam.
(Contd.)

ORAL REASONS FOR JUDGMENT OF THE
 HONOURABLE MR. JUSTICE D. A. McDONALD

No. 20
 Reasons for
 Judgment
 McDonald, J.
 June 19, 1934

The Court: I am going to give judgment now. The position, as I see it, is this. The Defendant Company purchased from the Prudential Holdings Company the land in question. At the same time it purchased from the Prudential Holdings Company other land on Burrard Street, which it afterwards sold, whereby, whether it affects the matter or not, it may be noted incidentally, the value of the Prudential Holdings Company's covenant was reduced. It is also a fact that the Defendant Company listed the property now in question for sale, although it is said that this was after someone at the Royal Bank spoke to Mr. Bone. 10

Now, in view of the documents that were executed and registered, it is my opinion that the Defendant Company cannot now be heard to aver as against the Plaintiff that it had had some secret transaction with third parties of whom the Plaintiff knew nothing, as a result of which it is now said that the Prudential Holdings Company, and the Plaintiff as its assignee, lost the right to be indemnified. 20

Only in the hope of avoiding a new trial in case I am wrong have I allowed in a great deal of the evidence that has been allowed in, because I thought in the higher courts a new trial might be avoided if that evidence was properly admissible, so that the Higher Court could read it.

I think there is no merit in the defence, and there will be judgment for the Plaintiff for the amount claimed.

(Concluded)

I hereby certify the foregoing to be a true and accurate report of the said proceedings. 30

"D. LANGFIELD,"
 Deputy Official Stenographer.

No. 21

RECORD

*In the Supreme
Court of British
Columbia*

No. 21

Evidence of
B. L. Mitchell
taken by
Defendant on
Commission

THIS IS THE EXAMINATION OF B. L. MITCHELL, a witness called by the Defendant and examined pursuant to the Order of the Honourable the Chief Justice of British Columbia, dated the 16th day of May, 1934, before me, Thomas T. Rolph, Special Examiner named in the said Order, at my Chambers, No. 85 Richmond Street West, in the City of Toronto, Province of Ontario, on the 29th day of May, 1934.

PRESENT:

- 10 M. DESBRISAY, ESQ., Counsel for Plaintiff.
C. A. THOMPSON, ESQ., Counsel for Defendant.

The Special Examiner then administered the following oath to the witness:

“You swear by Almighty God that you will true answer make to all such questions as shall be asked of you as a witness under this examination and therein you will speak the truth, the whole truth and nothing but the truth.”

B. L. MITCHELL, sworn.

- 20 The Examiner then administered the following oath to the reporter, Maud E. Coe:

“You swear by Almighty God that you will to the best of your skill, faithfully and accurately take down the evidence to be given upon this examination.”

Reporter sworn.

- 30 It is agreed in my presence by and between counsel for the Plaintiff and counsel for the Defendant appearing before me upon this examination that the evidence of the said B. L. Mitchell thereat should be taken down by Maud E. Coe, a shorthand writer and her transcript of her notes of the said evidence should be deemed to be the deposition of the said B. L. Mitchell, and that the reading over of the said transcript to the said B. L. Mitchell and his signature thereto should be dispensed with.

The 45 next succeeding sheets of paper annexed hereto were furnished to me by the said Maud E. Coe, as containing her transcript of her notes of the evidence of the said B. L. Mitchell given upon this examination before me.

- 40 Mr. DesBrisay: Mr. Thompson, I want to interrupt and have it recorded at the beginning that the Plaintiff objects to all evidence to be given by Mr. Mitchell and to point out that the order, sir, under which the witness is being examined provides that the Plaintiff's rights to object to the admissibility in evidence of all or any part of such depositions shall not be prejudiced by the Plaintiff's counsel having cross-examined the witness. The reason

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is, sir, that Mr. Mitchell, as we understand it, is to give evidence in support of a defence which denies and contradicts the written documentary evidence in the form of deeds and under the ordinary rule it would be inadmissible.

My instructions are to take that objection at the beginning and to reserve my rights to object to the form of any particular question.

Mr. Thompson: I am instructed that before this order was issued the Plaintiff's solicitors wished a provision inserted in the order to the effect that every question and answer should be deemed to be taken subject to objection and that the Defendant's solicitors objected to that term in the order and it was therefore not included in the order. I think my friend, to make a valid objection, will require to object to any particular questions, but if my friend wishes to make an objection to any particular line of questions I would be prepared to allow that blanket objection to be made. 10

Mr. DesBrisay: My position is that I am entitled to take the general objection to all the evidence to be given by Mr. Mitchell, but that if the examination is proceeded with then my objection is recorded and as Mr. Thompson says I have the right to object to any particular question. 20

No. 22

EXAMINED BY MR. THOMPSON:

No. 22
 B. L. Mitchell
 Direct Exam.

1. Q. Mr. Mitchell, what is your present occupation? A. Supervision of branches of the Royal Bank of Canada in the Province of Ontario.

2. Q. What was your position in 1926? A. I was manager of the Royal Bank in Vancouver.

3. Q. Did you know the late Mr. C. V. Cummings of Vancouver? A. Quite well. 30

4. Q. At that time? A. I did.

5. Q. Was he a customer of the branch of which you were manager? A. He was.

6. Q. Did you know Mr. T. R. Nickson? A. I did.

7. Q. Was he also a customer of the branch? A. He was.

8. Q. And was the Nickson Construction Company a customer of the branch? A. It was.

9. Q. What did you know as to Mr. Nickson's relationship to the Nickson Construction Company? A. As president of that company I knew him. 40

10. Q. Did you know anything about his holdings in the company? A. I understood he controlled the company.

11. Q. Do you recall in February of 1926 any dealings that you had with Mr. Nickson and with Mr. Cummings? A. I do.

12. Q. Now, I would like you, as briefly as possible, to just tell us what those dealings were? A. At that time in early February, 1926, the Nickson Construction Company Limited were indebted to the bank in the amount of \$15,500. As the loan developed very unsatisfactorily and the security which we held proved to be worthless, consequently I sent for Mr. Nickson and told him this loan must be repaid immediately. The following morning I had a visit from the late C. V. Cummings wherein he told me that he had a call from Mr. Nickson to ask him to make him an advance of \$15,500 to be used to retire the advance which Mr. Nickson claimed he had from the bank. Cummings called to verify this as to amount and stated that Nickson had offered security of two parcels of real estate. This real estate was held by the Prudential Holdings Limited, a company which Nickson controlled. Cummings then said to me "I don't want to get mixed up in this transaction personally if I can avoid it. I don't want to have my name appear." And he asked me if there was any way whereby I could suggest it might be handled without his name appearing. I told him the only way I knew to handle such transactions would be to call upon a trust company.

13. Q. Before you go on, was there any reason given or was there any reason why Mr. Cummings didn't wish to have his name mixed up in the transaction? A. He said to me, "For obvious reasons you know why I don't want to have my name connected with this."

14. Q. And what were those reasons? A. Well, they were domestic reasons which I don't want to appear in evidence unless I have to. I telephone the manager of the Montreal Trust Company and told him the circumstances without disclosing any names.

15. Q. Would that be Mr. Bone? A. Mr. Bone. In the meantime I told Cummings of course if such a transaction were carried out for him we would require an indemnity from him. And of course I told Mr. Bone, manager of the trust company, that a proper indemnity would be taken from the undisclosed principal. Mr. Bone said they would be prepared to act. I then sent for our solicitor, Mr. Tupper, and asked him to examine the titles to these properties and take conveyance.

16. Q. Why did you tell him to take conveyance? A. Cummings expressed the view a deed to this property would probably simplify in the event of having to realize some time. A payment of \$15,500 was then made to the Montreal Trust Company by the bank.

17. Q. Where did the bank get it? A. I don't recall whether we loaned the money to Cummings or whether he had it on deposit. I think it was the latter.

18. Q. It was Cummings' money? A. We either loaned

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him the money or he had it on deposit. In any case he gave us a cheque but we in turn gave our cheque to the Montreal Trust Company.

19. Q. For—? A. \$15,500. Subsequently the Montreal Trust Company returned to me a cheque for \$15,000—what is that odd amount? Less than \$500. \$15,011 as I remember it.

20. Q. I am showing you a letter dated the 18th of February, 1926. Would you identify that letter as being what? A. A letter from the Montreal Trust Company with reference to this amount.

21. Q. To you? A. Addressed to me, B. L. Mitchell, dated the 18th of February, 1926.

22. Q. Just read that letter? A. (Witness reads letter).

EXHIBIT No. 1—LETTER DATED FEBRUARY 18th, 1926,
 FROM MONTREAL TRUST COMPANY TO WITNESS)

Mr. DesBrisay: I have allowed Mr. Mitchell to relate the transaction in which one of the parties is now dead, and he has related, and I have allowed him to, certain conversations between this deceased person, Mr. Cummings, and himself. Of course I take the objection that that is not evidence. It is not admissible and I want that recorded.

The Examiner: You can take the objection but I think you had better allow it to go for what it is worth.

Witness: In any case we received this cheque for \$15,033.11. The difference of \$466.89 was represented by adjustment, taxes and so on. So of course I telephoned to Mr. Bone of the Trust Company and told him I wanted a cheque for the full amount of \$15,500.

23. Q. Mr. Thompson: Then, would you look at that document? A. That is my letter to the Montreal Trust Company dated the 18th of February, signed by myself.

24. Q. Just read it? A. (Witness reads letter).

EXHIBIT No. 2—LETTER FROM WITNESS TO MONTREAL TRUST CO., DATED 18th OF FEBRUARY)

25. Q. Did you subsequently get this cheque for \$466.89? A. I had a letter with a cheque for \$15,033.11 previously received. These cheques were made payable to the Prudential Holdings Limited. I insisted of course they should be delivered to my office. Subsequently had them endorsed by the Nickson Construction Company, and the proceeds—

26. Q. Why did you insist on them being delivered to your office? A. I think that is obvious.

27. Q. It probably is but for the purpose of the record, would you state it? A. I wanted to have control of the funds at all times.

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28. Q. And did anyone apart from you have control of those funds at any time? A. No.

29. Q. During the transaction? A. No, except the Trust Company while they were in their hands.

30. Q. So far as Nickson or the Prudential Holdings were concerned? A. No.

31. Q. Your transaction was: You, the bank, gave the money to the Montreal Trust Company; they paid the money in the form of cheques payable to the Prudential Holdings Limited,
10 but delivered direct to you? A. Quite right.

32. Q. And you had those cheques endorsed by the proper persons and what eventually happened to the funds? A. They were used to retire the indebtedness of \$15,500 of the Nickson Construction Company, Limited. Subsequently one of these pieces of property was sold, the Burrard Street property and the proceeds applied on that indebtedness.

33. Q. The Powell Street property, do you know if that is the property in question in this action that is covered by the mortgage in question in this action? A. Yes; the Powell Street property, T. R. Nickson gave an option on to the P. Burns Company
20 Limited.

Mr. DesBrisay: Of course that is not evidence, as to something that happened years after where neither of the parties in this action are concerned.

Mr. Thompson: The statement was, as I understood it, that after this transaction of 1926 Nickson gave an option to P. Burns Company to buy the Powell Street property. The witness had already said the Burrard Street property had been sold.

Mr. DesBrisay: My objection, sir, is that Nickson who gave
30 the option is not a party to this transaction and that the suggested option took place years after this event and there must be some limit to the evidence that has been given on a transaction that took place in 1926.

The Examiner: I take it subject to the objection.

Mr. Thompson: I want it to go on record in saying briefly that anything that goes to show the true nature of the transaction is part of the res gesta and as such is admissible in evidence.

Witness: The option was given through the P. Burns Company, and under date of June 20th, 1927, this letter was received
40 from T. R. Nickson addressed to me.

Mr. Thompson: 34. Q. You know that is the Nickson letter: A. I do. Shall I read it.

35. Q. Yes. A. (Witness reads letter).

(EXHIBIT No. 3—LETTER TO WITNESS FROM
T. R. NICKSON, DATED JUNE 20th, 1927)

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Mr. DesBrisay: The objection I take is that this letter is not written on behalf of the Prudential Holdings, Limited, the owners of the property, and is not evidence.

Mr. Thompson: I want to put it in. It is written by the president of the Prudential Holdings, Limited.

The Examiner: We note your objection.

Mr. DesBrisay: It is not written in that capacity.

Mr. Thompson: 36. Q. In any event, he mentions speaking to you in this letter on his return to the city and finding out from you how much was owing. Do you recall he did speak to you on his return to the city? A. He did; and I gave him the information. 10

37. Q. I notice attached to this letter is a memo: "The amount owing \$12,557 together with interest from date of purchase." Whose writing is that? A. To the best of my knowledge and belief H. C. Samis.

38. Q. Was he employed in the bank at that time? A. As assistant manager.

Mr. DesBrisay: That is identified as to the writing—

Mr. Thompson: Yes. 20

Mr. DesBrisay: As to the amount owing to the Montreal Trust Company.

Witness: Yes.

Mr. Thompson: 39. Q. You had some negotiations with the Trust Company as to their liability in this transaction. Is that a fact? A. Yes.

40. Q. I am showing you two letters, both dated February 18th, 1926, Exhibit 4, whose letter is that? A. That is a letter written to the Montreal Trust Company signed by B. L. Mitchell and W. A. Allingham. 30

41. Q. He was your assistant manager? A. Yes.

42. Q. And in that letter, we won't trouble you to read it—it speaks for itself—you set out and confirm the conversations you had as to the position of the Montreal Trust Company? A. Yes.

(EXHIBIT No. 4—LETTER TO MONTREAL TRUST COMPANY, SIGNED B. L. MITCHELL AND W. A. ALLINGHAM, DATED FEBRUARY 18th, 1926)

43. Q. I am showing you this letter which will be Exhibit 5? A. A letter received from the Montreal Trust Company dated February 18th, 1926, addressed to me. 40

44. Q. Signed by Mr. Bone? A. Signed by Mr. Bone on behalf of the trust company.

(EXHIBIT No. 5, LETTER OF FEBRUARY 18th, 1926, FROM MONTREAL TRUST CO. TO WITNESS)

45. Q. In those letters there is a reference to an agreement of indemnity. I am showing you this document which will be Exhibit 6. A. Certified to be a true copy.

46. Q. Is that a fact? A. Yes.

47. Q. That document, Exhibit 6, is a true copy of what? A. Of the original indemnity which I held from Cummings.

(EXHIBIT No. 6, COPY OF INDEMNITY AGREEMENT)

48. Q. Briefly, on what terms did you hold that as between you and the Montreal Trust Company? A. We held it for safe-
10 keeping and to be given to them when occasion arose.

49. Q. Did they know at that time who the party of the Second Part was? A. No, that was purposely left out of that agreement.

50. Q. Who was that party? A. C. V. Cummings.

51. Q. Now, so far as your solicitors, Messrs. Tupper, Bull & Tupper, and the Montreal Trust Company were concerned, what instructions did you give them as to the nature of this transaction? A. I simply told them I was acting for an undisclosed principal. For certain reasons it was impossible for me to dis-
20 close his name. And his name was not disclosed to either solicitor or the trust company.

52. Q. Did you tell them anything about the matter apart from the outward form of the transaction? A. I had to outline the security, the proposition made by Nickson to Cummings in regard to taking the security—gave him details of that, and as I said in the former part of my evidence—

53. Q. I want you to be quite careful about this, Mr. Mitchell. Did you tell them that it was the taking of security or the giving of security? A. Very definitely I said to them it was a
30 case of taking security.

54. Q. Did you explain to them why the transaction was in the form of a conveyance? A. Other than to say that my client preferred to have it in that form.

55. Q. Would you say, Mr. Mitchell, that the Montreal Trust Company, at this transaction, was going through, knew from you that while the form of the transaction was a conveyance, it was in reality the giving of a mortgage or taking of security? A. My conversations with the trust company all indicated that it was simply taking of security.

40 56. Q. What do you mean by taking of security? A. Mortgage; whereas in my correspondence with them I undoubtedly referred to "purchase."

57. Q. Was there any reason for that? A. Well, I think it was just anxiety probably on my part to avoid any disclosure of particulars with regard to the principal. Beyond that I cannot say.

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58. Q. I am instructed, Mr. Mitchell, that attached to the original deed which has been registered in the Land Titles Office, or whatever they call the Registry Office there, is a resolution of the Prudential Holdings which is mentioned in the notice of intention to amend the statement of claim, in paragraph 4A:

“IT WAS MOVED by T. R. Nickson and seconded by Mr. H. S. Coulter that the Company authorize and confirm the sale from the Company to the Montreal Trust Company of Lot 15 and the North half of Lot 16, Block 60, District Lot 541, in the City of Vancouver, British Columbia, and Lots 5, 6, 7, 8 and 9 in Block 2, in Subdivision of District Lot 183 in the City of Vancouver, Province of British Columbia, at and for the price of \$15,500.00 the said Montreal Trust Company to assume all mortgages against the properties hereby authorized to be sold, and the President and Secretary of the Company, that is to say, Thomas Ralph Nickson and Howard Stanley Coulter, respectively, are hereby authorized and instructed to sign the deed of transfer confirming the lands aforesaid to the Montreal Trust Company, and the said President and Secretary are further hereby authorized to affix the corporate seal of the company to the said deed of transfer.”

Do you recall having seen that declaration at the time that the transaction went through? A. I don't.

59. Q. Can you say whether you ever saw it or not A. I can say I never saw it.

60. Q. Have you examined the duplicate original of that conveyance? A. I have.

61. Q. Does that resolution appear on it? A. It does not appear on it, no.

62. Q. Mr. Mitchell, what do you remember, if anything, that was said by Nickson or Cummings as to the duration of this loan that was being made by Cummings to Nickson? A. I don't recall the arrangement with regard to that, I know that he treated it as a loan. The rate of interest I don't recall, but he was to pay interest.

63. Q. You remember he was to pay interest? A. Yes.

64. Q. Was anything said as to when the money was to be repaid? A. No, what was said was that—

Mr. DesBrisay: I object to this absolutely, as to what Mr. Cummings said. I cannot allow that.

Mr. Thompson: 65. Q. Subject to the objection. A. He said when the transaction was originally entered into Nickson impressed upon him that these properties would be, he hoped, both sold within a very short time and the transaction cleaned up in that way.

66. Q. Was anything said by Mr. Nickson or Cummings as to any possible surplus that might be? A. It was distinctly understood that any surplus resulting from the sale of the properties over and above the amount of the advance would go to Nickson.

67. Q. Would it go to Nickson? A. The Prudential Holdings.

68. Q. To your knowledge did Mr. Cummings ever investigate, examine these properties before he made the advance? A. Not to my knowledge.

69. Q. You spoke to Nickson and told him he had to make payment, on one day, and I think you told us the next day. Cummings came in and said he would make the loan? A. That is correct.

Mr. DesBrisay: That is the evidence I object to, as to what Mr. Cummings said.

Mr. Thompson: 70. Q. So far as this surplus that we have been discussing, did you have it from Nickson or from Cummings whom any surplus was to be paid to? A. From Cummings in the first place and in conversation with Nickson he indicated—

Mr. DesBrisay: All objected to.

Witness: If he could sell the properties—the sooner he could sell them and the more he could get from them, the more there would be coming to him.

Mr. Thompson: 71. Q. Did Cummings ever discuss with you the question of the value of these properties? A. He thought that probably sufficient would be realized from them to clean up the amount of his advance and he was always anxious to get the thing cleaned up.

72. Q. From his conversation with you what did Nickson know about the true nature of the transaction?

Mr. DesBrisay: Surely that is not evidence, what Mr. Nickson knew.

Mr. Thompson: What did he learn from him?

Witness: I don't understand what you ask.

73. Q. What did Nickson learn from you as to the true nature of this transaction? A. As to how it was arranged with Mr. Cummings?

74. Q. Yes? A. I don't think that was discussed with him.

75. Q. Did you ever tell Mr. Nickson anything about the Montreal Trust Company's status in the matter? A. I don't remember.

76. Q. Did Mr. Nickson ever say anything to you that would indicate that he still considered himself as owner of these properties? A. In every conversation I had with him.

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77. Q. What did he say? A. The fact he was endeavouring to sell them was one answer.

Mr. DesBrisay: 78. Q. Cummings was endeavouring to sell them? A. No, Nickson, and as I said before any equity over and above the amount of this loan would accrue to him.

Mr. Thompson: 79. Q. He said that to you? A. Invariably; that was the understanding.

80. Q. Did Nickson say anything to you that would indicate whether he thought that the Montreal Trust Company was acting for itself or as a trustee? A. I cannot answer that.

Mr. Thompson: That will be all.

10

No. 23

CROSS-EXAMINED BY MR. DESBRISAY:

81. Q. Mr. Mitchell, when did you leave Vancouver? A. February, 1929.

82. Q. And this transaction took place then about— A. Three years before.

83. Q. About ten years ago? A. Right.

84. Q. And the evidence you have given today is based on your memory of the transaction ten years ago? A. That is right.

85. Q. Your object, I suppose, is to protect the Montreal Trust Company against being stuck on this? A. Not necessarily. It is to give a statement of facts.

86. Q. You mentioned, Mr. Mitchell, that you had certain conversations and correspondence with the Montreal Trust Company prior to the transaction and I think you used the words: "Very definitely I said it was a case of taking security"? A. Right.

87. Q. There is one letter I would like to see Mr. Thompson, and that is the letter on this examination, Exhibit 4 I think, No. 74 and 75 on the file dated February 18th, 1926. (Exhibit 4 produced).

88. Q. I note in this letter which is a letter from you to the Montreal Trust Company, dated February 18th, 1926, that you commence by saying "Confirming the various conversations which we have had with your Mr. Bone during the past few days, it is our desire that you should purchase in your name from the Prudential Holdings, Limited" and then the property is described and the mortgage is mentioned and the terms on which they are holding it set out? A. Yes.

40

89. Q. Then, Mr. Mitchell, I want you to look at the letter of the same date from the Montreal Trust Company to you. (Exhibit 5 produced).

90. Q. This is a letter dated February 18th, 1926, written by Mr. Bone to you. I notice, Mr. Mitchell, you received the letter which stated: "Acting as agent for an undisclosed principal you

have asked us to purchase in our name from Prudential Holdings Limited"? A. Correct.

91. Q. And then the property is described and the statement follows: "This we have done with monies supplied by you and we are now registered owners of the said lands subject to the said mortgages." Then in that letter the indemnity agreement referred to is enclosed. May I see that indemnity agreement? A. (Produced).

10 92. Q. Mr. Mitchell, this indemnity agreement which you have identified, I note particularly refers to the party of the Second Part as owner and sets out that the trust company is to hold it on the terms set out subject to the mortgages? A. Yes.

93. Q. For the use of the owner; the owner in this case is Mr. Cummings? A. Right.

94. Q. Then there is a letter marked Exhibit No. 1? A. (Produced).

95. Q. This is a letter dated February 18th, 1926, which you identified as a letter to you from the Trust Company? A. Yes.

20 96. Q. In which this statement appears: "At your request we have made out our own cheque in favour of Prudential Holdings, Limited, for \$15,033.11, which represents the price after the necessary adjustments were made"? A. Yes.

97. Q. Then I want you to look at a further letter which was marked Exhibit 2 I think, letter from the Montreal Trust Company to Mr. Mitchell dated February 18th?

Mr. Thompson: Exhibit 2 is a letter from the Royal Bank to the Montreal Trust. Do you refer to that?

30 Mr. DesBrisay: I want a letter from the Montreal Trust Company to B. L. Mitchell dated February 18th, 1926, enclosing the cheque.

Mr. Thompson: I don't think I have got it.

Mr. DesBrisay: It is on the letter file and there it appears as No. 3.

Mr. Thompson: The letter file starts on February 19th. I am quite sure I have not got it, Mr. DesBrisay; it has not been sent to me.

40 Mr. DesBrisay: 98. Q. Mr. Mitchell, I am referring to a letter of which I have a copy in which the Royal Bank sent to the Montreal Trust Company a cheque for the proceeds? A. I would assume that was correct.

99. Q. And in which it is said it was to complete the purchase? A. The wording of course I cannot admit now.

Mr. DesBrisay: Mr. Thompson, I think you have a letter dated March 18th, 1926, from the Montreal Trust to Mr. Mitchell. A. (Produced).

RECORD

In the Supreme Court of British Columbia

Evidence of B. L. Mitchell taken by Defendant on Commission

No. 23

B. L. Mitchell Cross-exam.

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100. Q. I want you to identify this letter written by the Montreal Trust Company to you dated March 18th, 1926. A. (Witness reads letter).

101. Q. You note that that letter mentions that you were advised that the mortgage against the above property that was assumed by your client calls for certain payments? A. Yes.

102. Q. Mr. Thompson, you have a letter dated July 24th, 1929, from the Royal Bank to the Montreal Trust Company? (Letter produced).

103. Q. Will you show that to Mr. Mitchell? A. (Witness reads letter). 10

Mr. Thompson: It was after you left the bank, Mr. Mitchell.

Witness: Am I required to identify this—in what way?

Mr. DesBrisay: 104. Q. I want you to note that that letter written by your bank states that the Trust Company were to note “that the above property is owned by a valued client of ours whose name we are not in a position to disclose and he has instructed us to endeavour to sell the property for the sum of \$22,000. We would be glad if the Trust Company would arrange to sell at that figure.” You were not there? A. No. 20

105. Q. You had left? A. I left in February, 1929.

106. Q. Mr. Thompson, I would like to see the deed? (Deed produced).

107. Q. I am handing you the deed from the Prudential Holdings, Limited, which you identified? A. Yes.

108. Q. That is the deed, Mr. Mitchell, that you instructed your solicitors to obtain, I suppose? A. It is.

109. Q. And mention was made of a resolution which accompanied that deed. Mr. Thompson, you have a copy of the resolution? 30

Mr. Thompson: I only have it in the pleadings.

Mr. DesBrisay: 110. Q. Mr. Mitchell, you identified that resolution? A. No, I didn't. I have no recollection of it.

111. Q. That is right; you have no recollection of that? A. No.

112. Q. You say you didn't see it with that deed? A. I say that.

113. Q. I take it your instructions to your solicitors were to do everything that was required to register the deed? A. Yes, search the titles and take conveyance. 40

114. Q. In that connection, the necessity of having a resolution showing that the deed was in fact authorized by the vendor company would be one of the things you would expect them to obtain? A. We would expect our solicitors to take whatever course was necessary to get the proper security.

115. Q. In the face of these documents, as a good banker

don't you think it is reasonable to say that in the eyes of all the world, the Montreal Trust Company was in fact the purchaser and owner of this property? A. The documents would indicate that. My understanding, and the understanding of my client, to the contrary.

116. Q. May I see the letter, Exhibit 5? Would you also agree with me, having regard to the correspondence between you and the trust company that there is no indication that they knew it was a case of taking security? A. Only in so far as my previous
10 conversations may have led them to think otherwise.

117. Q. But the correspondence would indicate it was a straight purchase? A. Would indicate that.

118. Q. Have you the letter, Mr. Thompson, from the solicitors? In the letter file it is No. 4 dated February 19th, 1926.

Mr. Thompson: I don't suppose it is properly producible.

Mr. DesBrisay: It was produced by your client on the affidavit.

Mr. Thompson: I don't think it matters anyway.

Mr. DesBrisay: I am handing you a letter from the solicitors, Tupper, Bull & Tupper, to the Montreal Trust Company,
20 dated February 19th, 1926? A. Of course I never saw that before.

120. Q. Having read that would you also just add to the conclusion you have reached that the solicitors also looked on it as a purchase? A. I think that is correct.

121. Q. So that your statement that the solicitors and the trust company very definitely were told by you it was a case of taking security depends entirely on the conversation you had with them at that time? A. Absolutely.

122. Q. Mr. Mitchell, you also agree, I suppose, that the
30 taking over of the properties by the Montreal Trust Company, managing them, collecting rents, over a period of years is a fact? A. They did.

123. Q. And that on the sale of one of the properties, the proceeds were remitted to the bank without any regard to the Prudential Land Company, the vendor company? A. I cannot answer that.

124. Q. You said in your examination that the Burrard Street properties were sold and the proceeds applied on the indebtedness? A. Right.

40 125. Q. And I suppose I can take it that when you knew the purchase was going through you saw to it that the money, the sale moneys, went right to the bank? A. That was correct.

126. Q. Then, turning to the question of the loan aspect, Mr. Mitchell, as a banker you will agree with me that it is usual to find some acknowledgment of a loan made either to the bank or by the customer of the bank, and that there is no such acknowledgment here? A. I don't understand that.

RECORD

*In the Supreme
Court of British
Columbia*

Evidence of
B. L. Mitchell
taken by
Defendant on
Commission
No. 23
B. L. Mitchell
Cross-exam.
(Contd.)

RECORD

*In the Supreme
Court of British
Columbia*

Evidence of
B. L. Mitchell
taken by
Defendant on
Commission
No. 23
B. L. Mitchell
Cross-exam.
(Contd.)

127. Q. You would agree that one would ordinarily find in a banking transaction where a loan is put through, an acknowledgment from the borrower?

Mr. Thompson: You mean written acknowledgment?

Mr. DesBrisay: 128. Q. Written acknowledgment? A. Not necessarily.

129. Q. Well, there was no such written acknowledgment in this case, anyway? A. You mean of the proceeds?

130. Q. No, of the receipt of the money by the borrower, the Prudential Land Company. A. Their endorsement on the 10 cheque.

131. Q. Is there a scratch of the pen from the Prudential Holdings either requesting this loan or authorizing the company to borrow the money? Do you know of any such evidence? A. I don't think there is anything in our file.

132. Q. And if there was any such evidence your bank would have it? A. Well, or the trust company.

133. Q. There are certain letters, Mr. Thompson, written by the bank to the trust company in which the bank pays on the instructions they received from their principal; one letter is No. 20 31 in the letter file dated November 12th, 1929.

(Letter produced to witness. (Witness reads letter).)

134. Q. The letter I have shown you, Mr. Mitchell is a letter from the Royal Bank dated November 12th, 1929, to the Montreal Trust Company and it is interesting because it shows Mr. Cummings's view of this transaction. You will note he says, "Naturally, as you know I am very loath to put any more money into this property if it can be avoided. I would like if at all possible to have the mortgage renewed in full for as long a term as possible and in the meantime would appreciate you and Mr. Bone using your 30 best efforts through some client brokers to dispose of this property at any price." Then, a further letter of the same nature dated July 12th, 1932.

Mr. Thompson: I don't think I have that, Mr. DesBrisay.

Mr. DesBrisay: 135. Q. The letter I refer to, Mr. Mitchell, is a letter which I have a copy which Mr. Cummings wrote to the bank as late as July 12th, 1932, and I just mention this because it is interesting. He stated, "It is not my intention to put up any further moneys in connection with these properties unless the mortgagee will agree to a definite extension for at least five 40 years of the principal amount." Mr. Mitchell, having heard the first letter and what was mentioned in the second letter, you agree that from the evidence you have to go on, Mr. Cummings looked on himself as the owner of the property and the person who would be interested in disposing of it? A. If he had been disposing of it, but I could not agree he regarded himself as the owner.

136. Q. Although in all documents he is referred to as the owner? A. Right.

137. Q. There is one letter I would like you to be reminded of: February 23rd, 1926. Have you that letter, Mr. Thompson? It is No. 78 in the letter file from Mr. Mitchell to the Montreal Trust Company.

Mr. Thompson: I have not got that.

Mr. DesBrisay: 138. Q. It is a letter written by you, Mr. Mitchell, to the Montreal Trust Company, advising the Montreal Trust Company that the principal, that is Cummings, was responsible and the arrangement was not being made to defeat creditors?

Mr. Thompson: I am sorry, I have that letter.

Witness: I am prepared to admit that letter. (Letter produced. Witness reads letter).

Mr. DesBrisay: 139. Q. Mr. Mitchell, going back to your statement that you made on your examination that you very definitely said to the Trust Company it was a case of taking security, do you say then that if Mr. Bone, manager of the Montreal Trust Company at that time and with whom you had the correspondence and conversations, states that he never heard of it being a case of security that he is telling something that is not a fact? A. His memory is not good, probably. I am quite sure he would not make a statement of that kind which was not true.

140. Q. I am going to read you what Mr. Bone said on his examination for discovery which I put in. The examination referred to was taken before an Official Examiner on March 27th, 1934, Mr. Bone being examined on that date by counsel for the Plaintiff. The first question:

30 "Mr. Bone, you are the manager of the Defendant Company? A. Yes."

And then proceeding to question 83:

40 "Before you get into that, can you tell me this: There is a letter apparently of February 18th, from Messrs. Mitchell & Allingham who were manager and assistant manager respectively of the main branch of the Royal Bank in Vancouver at that time, and that letter would indicate that you had conversations with them prior to the receipt of the letter. I would like to know just what the conversations were if you can recall them. A. Well, they came and saw me and asked me, explained the situation to me, and the explanation was that they had a client who was wishing to purchase this property but he was not disclosing his name and they asked if we would take the property in our name and hold it on his behalf and they would obtain the satisfactory indemnity from him. He was supposed to be a man of some substance.

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In the Supreme Court of British Columbia

Evidence of
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Cross-exam.
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Evidence of
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 B. L. Mitchell
 Cross-exam.
 (Contd.)

“Q. And you definitely agreed to the situation? A. Yes, I had no idea who the undisclosed principal was, no idea, and in carrying out that transaction later they gave me a cheque, their bank cheque for the amount to cover, to purchase these two properties.”

He asked “Is this in order.”

“Mr. DesBrisay: In connection with the Burrard Street property we went to Mitchell and Allingham for these moneys.

“Q. 95. Q. Well, then the position as explained to you by Mitchell and Allingham was that you were the purchasers for an undisclosed principal for the total price of \$34,500, which was to be paid \$15,500 cash and \$19,000 in two mortgages which were being assumed? A. Yes, I knew about the two mortgages. They told me that. 10

“Q. 96. Q. And they were to be assumed? A. Yes.

“Q. 97. Q. I think you said that they were to procure from this client an indemnity to the Defendant Company. Was that indemnity agreement to be handed to you at once? A. No, it was undisclosed in every way.

“Q. 118. Q. When did you first hear of the loan suggestion? A. At the time you started the action. 20

“Q. 119. Q. Against you? A. Yes, against us.

“Q. 120. Q. For this interest claimed in this action?

“In your statement of defence, that is in the Defendant Company’s statement of defence, it is alleged, or at least the Defendant says, ‘That on or shortly before the 15th of February, 1926, the late Charles Victor Cummings, who is hereinafter referred to as Cummings, verbally agreed to advance by way of loan to the said Prudential Holdings, Limited, the sum of \$15,500, and the said Prudential Holdings, Limited, verbally agreed to secure repayment to Cummings of such sum, together with interest thereon, by conveying to Cummings inter alia the lands described in paragraph 1 of the amended statement of claim. That would be the land, lots 5 to 9 mentioned in Exhibit 2.’ That is the defence made on behalf of your company. Now, I would like to know what facts you can have to support that contention? A. Can I see that? I didn’t know anything about Cummings at that time, no idea. 30

“Q. Do you know anything now as to the facts— A. 40
 No.

“Q. On which that allegation is based? A. No idea.

“Q. You know nothing about this at all? A. No, nothing at all.

“Q. 127. Q. Yes, and have you heard anything about

the contention that this \$15,500 which you paid the Prudential Holdings, Limited, was really advanced by way of a loan?
A. No, I didn't hear that.

"Q. 134. Have you received any information as to the details of this alleged transaction between Cummings and the Prudential Holdings, Limited? A. No.

"Q. 135. You have no information? A. No information at all.

10 "Q. 136. Q. And the Defendant Company throughout until after the action was commenced or threatened knew nothing of Cummings? A. Knew nothing of Cummings.

"Q. 138. I understand that in addition to selling the Burrard Street property you listed what you call the Powell Street property, this is the property in question mentioned in the mortgage? A. Yes.

"Q. 139. You listed that for sale as well? A. Listed that.

20 "Q. 140. Collected rents. Have you consulted with the Prudential Holdings, Limited, in connection with that? A. No, the bank gave me instructions.

"Q. 141. And you didn't see anyone in connection with the Prudential Holdings, Limited? A. No.

"Q. 142. Any officer of that company? A. No.

"Q. 143. Did you know who comprised the Prudential Holdings, Limited, other than Nickson? A. Other than Nickson.

"Q. 144. And no accounting was ever made to the Prudential Holdings? A. No.

30 "Q. 145. It was never suggested to you by the Bank or any person that you should? A. No."

And then this general question:

"Q. 155. Are you, as manager of the Defendant Company, and the person who throughout at all times material has been in charge and control of the arrangement for the purchase and handling of the properties, stating now that the transaction is not as evidenced in the conveyance and the resolution? A. Well, other than the fact— The transaction is all right so far as that goes, but the question of acting for another party.

40 "Q. 156. Q. That it does represent it truly as far as you know? A. As far as I know.

"Q. 161. Q. And I assume you are aware, that the purchaser of a property subject to mortgages is impliedly obligated to indemnify the vendor? A. Yes.

"Q. 167. The Defendant Company's position then is as you accept it and intended it to be as a result of this trans-

RECORD

In the Supreme Court of British Columbia

Evidence of B. L. Mitchell taken by Defendant on Commission

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B. L. Mitchell Cross-exam.

(Contd.)

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Evidence of
B. L. Mitchell
taken by
Defendant on
Commission

No. 23

B. L. Mitchell
Cross-exam.
(Contd.)

action, that it purchased from the Prudential Holdings, Limited, the properties for the amount I have mentioned subject to the two mortgages which you might become obligated to pay but that you were indemnifying or protecting the company against that possibility by taking this indemnity agreement? A. Yes."

141. Q. Now, Mr. Mitchell, does not that look as though the Montreal Trust Company had no knowledge that it was in any way a loan or that the properties were taken as security? A. Mr. Bone's evidence would indicate that.

10

142. Q. Having heard this evidence do you still stick to your statement that they both very definitely knew it was a case of taking security? A. I don't think I said that they knew very definitely, if I may be corrected in that. I said I knew very definitely that I had discussed it with them. They may have misunderstood.

143. Q. You have looked at the deed and you have noticed that the properties were conveyed subject to the mortgages? A. Right, I have.

144. Q. You mentioned that Mr. Nickson, who was an officer of the vendor company, retained some interest in the properties. Have you anything to show that except the letter which he wrote personally, which was produced, stating he had given an option. Have you any other evidence? A. Various conversations with the late C. V. Cummings in the event of these properties being sold and realizing more than to retire the indebtedness.

20

145. Q. My question was: Have you anything other than the letter you produced that will show Nickson on behalf of the vendor company, retained any interest in the properties? A. I have no written evidence.

30

146. Q. Did it occur to you that in writing that letter Nickson was simply hoping to get a purchase on which he would get a commission? A. No.

147. Q. Don't you think that is a reasonable suggestion? A. I don't.

148. Q. Was he hard up at that time? A. Yes, but he still hoped he had an equity in these properties, and wanted to get them sold and get this indebtedness cleaned up.

149. Q. That is a suggestion you agree might be made. When he wrote the letter personally he was thinking of the commission? A. It would not occur to me.

40

150. Q. You have no evidence that if it was a case of the Prudential Holdings, Limited, wanting a loan or asking for a loan, you have no evidence at all that they needed it. Did they need money? A. It was a member of the company that did, very badly.

151. Q. But the company? A. The Company was controlled by him.
152. Q. Did the company need money? A. As a company, no, as far I know.
153. Q. Did you know they passed any resolution authorizing the company to borrow this money or anything of that kind? A. I didn't, no.
154. Q. In other words there was nothing as between the borrower and the lender? A. Not as far as I was concerned.
- 10 155. Q. The inside story is that Nickson was indebted to the bank and you saw a way of getting the bank loan paid off? A. That does not express it properly, Mr. DesBrisay.
156. Q. I thought that was a reasonable— A. It was the way that Cummings came to me and told me what had transpired between himself and Nickson; that Nickson had approached him to beg money for the purpose of paying off the bank.
157. Q. But you cannot give any reason at all why the Prudential Holdings, Limited, as a company would want to borrow this money from the Royal Bank? A. They didn't.
- 20 158. Q. Didn't the money go to the Prudential Holdings, Limited? A. It went to the Nickson Construction Company.
159. Q. It went to the Prudential Holdings, Limited, in the first place? A. In the first place.
160. Q. And I take it it was endorsed by the man whom you wanted to endorse it? A. Quite right.
161. Q. But there was no request by the Prudential Holdings, Limited, for a loan? A. There was not.
162. Q. And you never of course ascertained whether they had the right to borrow the money? A. I did not.
- 30 163. Q. So far as the Prudential Holdings are concerned, so far as you are concerned, there was no reason for them getting this loan? A. Only in so far as the owner of the company required funds.
164. Q. But as far as the limited company is concerned the answer is no? A. The answer is no.
165. Q. I suppose you knew as a result of the closing of the transaction in 1926 that the mortgagee, the present Plaintiff, would look to the Montreal Trust Company for its interest? A. I would naturally take that for granted.
- 40 166. Q. I think you stated in your examination that so far as the loan was concerned there were no terms agreed on as to repayment or the rate of interest? A. I said I could not recollect.
167. Q. Getting back again to the evidence given by Mr. Bone, do you go as far as to say that if he now states that property was to be held by them by way of purchase and not as security for a loan he has either forgotten or that he is telling something that

RECORD

*In the Supreme Court of British Columbia*Evidence of
B. L. Mitchell
taken by
Defendant on
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No. 23B. L. Mitchell
Cross-exam.
(Contd.)

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 Court of British
 Columbia
 Evidence of
 B. L. Mitchell
 taken by
 Defendant on
 Commission
 No. 24
 B. L. Mitchell
 Re-exam.

is not a fact? A. My answer to that would be that there was nothing else in my mind, and I endeavoured to convey that idea to him.

168. Q. But as far as all the letters you had with him are concerned, the purchase proposition seems to be the one— A. Very badly constructed probably.

169. Q. Very clear though, Mr. Mitchell, in the correspondence?

No. 24

RE-EXAMINED BY MR. THOMPSON:

10

170. Q. You were asked in cross-examination if the evidence that you had given today in your examination in chief was based on your memory of a transaction that happened ten years ago. Have you had any assistance in refreshing your memory as to what happened ten years ago? A. I have from the file which I received.

171. Q. My friend was asking as to whether you knew of anything in writing which would indicate that this transaction was in reality a borrowing and giving of security. I think you told him you didn't? A. Yes, I did.

20

172. Q. You don't know, of course, what may have passed between Nickson and Cummings? A. I don't, any more than the conversations which were related to me by Cummings.

No. 25

No. 25
 B. L. Mitchell
 Re-cross
 Exam.

RE-CROSS EXAMINED BY MR. DESBRISAY:

173. Q. When you left Vancouver, Mr. Mitchell, did you leave instructions with your successor which would explain the letter that he wrote afterwards which I read to you? A. It was never referred to when I left Vancouver.

174. Q. Did you leave instructions with them? A. With regard to this transaction?

175. Q. Yes? A. None whatever.

176. Q. May I ask, Mr. Mitchell, in connection with the Prudential Holdings, Limited, did you have any conversations or correspondence with any of the officers of that company? A. Conversations, yes, with the president.

177. Q. Anyone else? A. No one else that I recall. I think on one occasion with Coulter. What capacity was he? Vice-President or Secretary? He was in my office in the early stages of the transaction.

40

178. Q. Does not it look to you as though this were a case where Nickson was looking for a purchaser of properties held by the Prudential Land Company and he was fortunate in finding a good buyer? A. My answer to that, very frankly, is no.

179. Q. Or that you found a buyer for them? A. Very frankly, no.

180. Q. It would look like that? A. On the contrary, the man with whom he entered into the transaction was very loath to undertake it. It was merely helping him out in what he regarded as a nasty situation.

181. Q. You say Nickson knew Cummings was the man helping him out? A. Absolutely; he went to him.

182. Q. That is based on conversations that you had with Cummings? A. Very definitely because he came to me to arrange it.

10 Mr. Thompson: 183. Q. Cummings came? A. Cummings came to arrange it.

Mr. Desbrisay: I think that is all, thank you very much, Mr. Mitchell.

RECORD
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Evidence of
B. L. Mitchell
taken by
Defendant on
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No. 25
B. L. Mitchell
Re-cross
Exam.

(Contd.)

20 I, Maud E. Coe, of the City of Toronto, the aforesaid shorthand writer, hereby certify that I attended and took faithfully and accurately notes of the examination of B. L. Mitchell, held before Thomas T. Rolph, Esq., at 85 Richmond Street, West, aforesaid, on the 29th day of May, 1934, and that the writing on this sheet of paper and the preceding forty-five sheets of paper annexed hereto is a faithful and accurate transcription made by me of my shorthand notes.

DATED at Toronto, the 30th day of May, 1934.

“MAUDE E. COO,”
Shorthand Writer.

I, the above named Examiner hereby certify that this sheet of paper and the forty-six preceding sheets of paper annexed hereto contain the depositions of the said B. L. Mitchell taken down in my presence.

Special Examiner.

RECORD

*In the Supreme
Court of British
Columbia*No. 26
Judgment
D. A.
McDonald, J.
June 19, 1934

No. 26

JUDGMENT

BEFORE THE HONOURABLE } TUESDAY, the 19th day
MR. JUSTICE D. A. McDONALD } of June A.D. 1934.

The trial of this action having this day come on for hearing in the presence of Mr. H. A. Bourne and Mr. A. C. DesBrisay of counsel for the Plaintiff and Mr. Bruce Robertson of counsel for the Defendant and no one appearing for the Third Parties; UPON HEARING what was alleged by counsel and application having been made to amend the Amended Statement of Claim 10 herein.

THIS COURT DOTH ORDER that the Amended Statement of Claim herein be further amended by adding thereto as paragraph 4-A the following:—

“4-A. In the alternative the said Defendant by accepting the conveyance last above-mentioned, by applying to register the same in the Land Registry Office and by filing in support of its application to register a document purporting to be a certified copy of a resolution passed by the directors of Prudential Holdings Limited, which said resolution is in 20 the words and figures following:—

‘IT WAS MOVED by T. R. Nickson and seconded by Mr. H. S. Coulter that the Company authorize and confirm the sale from the Company to the Montreal Trust Company of Lot 15 and the North half of Lot 16, Block 60, District Lot 541, in the City of Vancouver, British Columbia, and Lots 5, 6, 7, 8 and 9 in Block 2, in Sub-division of District Lot 183 in the City of Vancouver, Province of British Columbia, at and for the price of \$15,500.00, the said Montreal Trust Company to assume 30 all mortgages against the properties hereby authorized to be sold, and the President and Secretary of the Company, that is to say Thomas Ralph Nickson and Howard Stanley Coulter, respectively, are hereby authorized and instructed to sign the deed of transfer confirming the lands aforesaid to the Montreal Trust Company, and the said President and Secretary are further hereby authorized to affix the Corporate Seal of the Company to the said deed of transfer’;

“and by entering into possession of the said lands and premises thereby conveyed, bound itself and specifically agreed to assume and pay the said mortgage mentioned in Paragraph 1 hereof and to indemnify the said Prudential Holdings 40

Limited against its obligation to pay the moneys payable by it to the said Plaintiff under and by virtue of the terms of the said mortgage.”

RECORD
In the Supreme
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Columbia

and that the Defence herein be amended by inserting therein after Paragraph 2 thereof the following:

No. 26
Judgment
D. A.
McDonald, J.
June 19, 1934
(Contd.)

10 “2A. In answer to paragraph 4A of the Amended Statement of Claim the Defendant denies that it accepted any conveyance as alleged, denies that it applied to register any such conveyance in the Land Registry Office and denies that it filed in any Land Registry Office any document purporting to be a certified copy of a resolution such as alleged in the said paragraph 4A, denies that it entered into possession of the lands and premises referred to in the Amended Statement of Claim, and denies that it bound itself or specifically agreed as alleged in the said paragraph 4A or at all.

20 “2B. In further answer to paragraph 4A of the Amended Statement of Claim, the Defendant says that there was no agreement in writing nor was there any memorandum or note in writing of the alleged agreement sufficient to satisfy the Statute of Frauds.”

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff do recover from the Defendant the sum of Eleven hundred and ninety-eight dollars and fifty-seven cents (\$1198.57) and its costs of this action to be taxed.

BY THE COURT

“H. BROWN,”

Dep. District Registrar
“D.A.M.,” J.

Approved as amended “A.B.R.”
Checked “S.V.L.”

30 Seal of the
Supreme Court of
British Columbia
Vancouver Registry

Minutes Filed

Entered July 6, 1934
Order Book Vol. 90, Fol. 218
Per “L.J.B.”

B.C.L.S.
\$1.10
Vancouver
Jul. 6, 1934
Registry

RECORD

*In the Supreme
Court of British
Columbia*No. 27
Order
Amending
Judgment
July 20, 1934

No. 27

ORDER AMENDING JUDGMENT

BEFORE THE HONOURABLE } FRIDAY, the 20th day of
MR. JUSTICE D. A. McDONALD } July, A.D. 1934.

UPON the application of the Plaintiff; UPON READING the Notice of Motion herein dated the 17th day of July, 1934; the Orders of the Honourable Mr. Justice D. A. McDonald in Chambers made herein the 6th day of October, 1933, and the 24th day of January, 1934, respectively; the Order of the Honourable the Chief Justice in Chambers made herein the 16th day of May, 1934; the Judgment herein dated the 19th day of June, 1934; and the affidavit of Harry Allan Bourne sworn herein the 17th day of July, 1934, and filed; AND UPON HEARING Mr Alexander Campbell DesBrisay of counsel for the Plaintiff and Mr. A. Bruce Robertson of counsel for the Defendant: 10

THIS COURT DOTH ORDER that the Judgment herein dated the 19th day of June, 1934, be and it is hereby amended by adding at the end of the last paragraph thereof the words: "including the costs of and incident to the Defendant's application for the appointment of a Special Examiner to take the evidence of B. L. Mitchell at Toronto, Ontario, and of and incident to such examination; and that save as aforesaid the said application be and the same is hereby dismissed; 20

AND THIS COURT DOTH FURTHER ORDER that there be no costs of this application.

BY THE COURT

Approved "A.B.R."
Checked "S.V.L."

"J. F. MATHER,"

District Registrar

"D.A.M.," J.

30

Seal of Supreme Court
of British Columbia
Vancouver RegistryEntered Aug. 2, 1934
Order Book Vol, 90, Fol. 274.
Per "S.V.L."B.C.L.S.
\$1.10
Vancouver
Aug. 2, 1934
Registry

No. 28

NOTICE OF APPEAL

RECORD

*In the Supreme
Court of British
Columbia*No. 28
Notice of
Appeal
Oct. 22, 1934

TAKE NOTICE that the Defendant intends to appeal and does hereby appeal to the Court of Appeal from the judgment of the Honourable Mr. Justice D. A. McDonald pronounced at the trial of this action on the 19th day of June, 1934, and entered on the 6th day of July, 1934 (as amended by the Order pronounced herein by the Honourable Mr. Justice D. A. McDonald on the 20th day of July, 1934, and entered on the 2nd day of August, 1934) 10 whereby it was adjudged that the Plaintiff recover from the Defendant the sum of \$1,198.57 and its costs of the action.

AND FURTHER TAKE NOTICE that a motion will be made by way of such appeal to the Court of Appeal at its present sitting now being holden at the City of Vancouver, Province of British Columbia, at such time as the said Court may fix, for an order setting aside the said judgment appealed from and dismissing the Plaintiff's action with costs.

AND TAKE NOTICE that the said appeal will be based upon the following, amongst other, grounds:

- 20 1. The judgment is contrary to law.
2. The judgment is against the evidence and the weight of evidence.
3. The Statement of Claim discloses no cause of action.
4. The learned trial Judge erred in holding that Prudential Holdings Limited and through it the Plaintiff acquired any right to be indemnified by the Defendant in respect of the mortgage referred to in the Amended Statement of Claim.
5. The learned trial Judge should have found as a fact that the Defendant was not a principal in the transaction in question 30 but was involved only as the nominee of C. V. Cummings.
6. The learned trial Judge should have found as a fact that the Defendant was not a principal in the transaction in question but was involved only as Trustee for C. V. Cummings.
7. The learned trial Judge should have found as a fact that the conveyance referred to in the Amended Statement of Claim was given as security for an advance made by C. V. Cummings through the Defendant as his agent to Prudential Holdings Limited.
8. The learned trial Judge erred in finding that the Defendant 40 purchased the land mentioned in the Amended Statement of Claim from Prudential Holdings Limited.
9. The learned trial Judge erred in finding that the Defendant purchased certain land on Burrard Street from Prudential Holdings Limited.

RECORD
 In the Supreme
 Court of British
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 No. 28
 Notice of
 Appeal
 Oct. 22, 1934
 (Contd.)

10. The learned trial Judge erred in holding that the Defendant could not be heard at the trial of the action to aver as against the Plaintiff what the real transaction between Prudential Holdings Limited, C. V. Cummings and the Defendant was.

11. There was no evidence or alternatively no proper evidence upon which the learned trial Judge could hold that the Defendant became liable to indemnify Prudential Holdings Limited or the Plaintiff in respect of the said mortgage.

12. The learned trial Judge improperly admitted evidence which was not admissible and in particular the certified copy of a resolution which was marked as Exhibit 5. 10

13. The learned trial Judge improperly refused to admit evidence which was admissible and in particular the following:

(a) Evidence from the witness H. S. Coulter to explain why a Deed instead of a Mortgage was given.

(b) Evidence from the witness H. S. Coulter as to whether or not certain words in Exhibit 5 correctly described the transaction in question.

(c) The evidence of B. L. Mitchell taken on commission.

(d) Evidence from the witness Robert Bone to show in what way the Defendant became involved in the transaction in question. 20

(e) Evidence from the witness Robert Bone as to what his original instructions from B. L. Mitchell were.

14. The learned trial Judge should have held that there was no agreement in writing and no memorandum or note in writing of the agreement alleged in the Amended Statement of Claim to satisfy the Statute of Frauds.

15. The learned trial Judge erred in failing before delivering judgment to give to Counsel for the Defendant an opportunity to present argument on behalf of the Defendant. 30

DATED at Vancouver, British Columbia, this 22nd day of October, 1934.

“R. SYMES,”

Solicitor for the Defendant.

To the above named Plaintiff
 and to Messrs. Bourne & DesBrisay,
 its Solicitors.

THIS NOTICE OF APPEAL is given by Reginald Symes, Solicitor for the Defendant, whose place of business and address for service is at the office of Messrs. Robertson, Douglas & Symes, 640 Pender Street West, Vancouver, B.C. 40

REASONS FOR JUDGMENT OF THE HONOURABLE
THE CHIEF JUSTICE

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The real defence in this case is that the land belonged to one Cummings who agreed to advance to the Prudential Holdings Ltd., and did advance a large sum of money upon a mortgage on the same land on the alleged verbal promise of Cummings to convey the lands in question to the Holdings Company upon their undertaking to convey it back to Cummings or to Cummings' nominee.

10 The conveyance of the land was to be held in trust to secure Cummings, and therefore the Plaintiff acquired no right to indemnity by Defendants. The documents, however, contain no evidence of such a transaction. On their face they imply the conventional transaction used in documents between mortgagors and mortgagees, vendors and purchasers and assignments not of trust, and were acted on as such by the parties. Apart from the contradictory and disputed evidence I accept the evidence of the documents as excluding the implication for trust.

Moreover, the Plaintiffs had an assignment from the Holdings Company of all their rights including the right to indemnity

20 against all mortgages of the property, and are estopped from disputing the Plaintiff's claim in this action.

I would, therefore, dismiss the appeal.

(Sgd.) "J. A. MACDONALD,"
C.J.B.C.

VICTORIA, B. C.,
8th January, 1935.

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Court of Appeal

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Macdonald,
J.A.
Jan. 8, 1935

REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE M. A. MACDONALD

Appeal by the Montreal Trust Company, Defendant in the action, from a judgment of McDonald, J., holding it liable to the Respondent The British Columbia Land and Investment Agency Limited for interest (and liability for principal would follow in due course) under a mortgage given to Respondent as mortgagee by Prudential Holdings Ltd., as mortgagor on Vancouver property for the sum of \$13,000.00 with interest at 6 per cent. 10

I recite the essential facts because it is clear to me that the written documents presently referred to were not intended to finally embody the entire agreement between the parties. Parol evidence was therefor admissible to show that a document *ex facie* a deed was in fact a mortgage. Such evidence must be conclusive and the onus was on appellant to rebut by evidence the usual presumption that the document was what it purported to be (*McMicken v. Ontario Bank* (1891) 20 S.C.R. 548).

The late C. V. Cummings and one T. R. Nickson (also the Nickson Construction Company, controlled by Nickson) were 20 customers of the Royal Bank of which Mitchell was the Manager. The Construction Company owed the Bank \$15,500.00 and payment was demanded. Nickson asked Cummings for an advance to enable him to liquidate his indebtedness to the bank and Cummings agreed to assist him on certain terms. For security (as I believe) Nickson offered his equity of redemption in two parcels of real estate held by Prudential Holdings Limited (in which he owned practically all the stock) and mortgaged to Respondent for \$15,000.00 as aforesaid, but for domestic and personal reasons 30 undisclosed by the record Cummings, while he wanted security, did not wish his name to appear on any document. He, therefore, asked his banker, Mr. Mitchell, if it could be arranged, meaning, as I read the evidence if he (Cummings) could make the advance to Nickson or his Construction Company and receive security on the real estate referred to without his name appearing in any way.

Mitchell who knew the reasons for Cummings' attitude advised him that with the aid of the appellant, it could be arranged. Mr. Mitchell then telephoned to Mr. Bone, Manager of appellant, the Montreal Trust Company, advising him of the facts referred to including the further fact that an indemnity would be taken from the party concerned (Cummings' name was withheld from Mr. Bone) and enlisting his Company's aid in carrying it through. This was agreed to. Mr. Mitchell then asked the Bank's solicitor to investigate the titles and to take a conveyance of the properties to the appellant company. It was Cummings' view as stated to Mitchell that it would be better and simpler to take a deed as an aid to realization on the security if necessary.

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Cummings then advanced the required amount to the Bank, the latter sent its cheque for \$15,500.00 to appellant Trust Company and it, at the Bank's request, made out a cheque in favour of Prudential Holdings Limited for \$15,033.11 representing the alleged purchase price after necessary adjustments and stating (the letter signed by Mr. Bone) that it was "in respect of the purchase of Lot 15 and north half of Lot 16, etc." The cheque to the Prudential Holdings was by endorsement transferred to the Bank. Mr. Mitchell on behalf of all parties kept control of the transaction and of the cheques to ensure that with Mr. Cummings' advance the Nickson Construction Company's indebtedness to the Bank should be retired and Cummings should be secured through the agency of his nominee, the appellant. At the same time a letter signed by Mitchell and his assistant manager, was written to appellant in part as follows:

Confirming the various conversation which we have had with your Mr. Bone during the past few days, it is our desire that you should purchase in your name from the Prudential Holdings, Limited—ALL AND SINGULAR those certain parcels or tracts of land, etc . . .

In consideration of your agreeing to hold the said lands, subject to the said mortgages (to respondent) in trust for and for the use of our principal and to sell or otherwise dispose of the said land, subject to the said mortgages, as our principal shall direct, we undertake to obtain an indemnity from our principal protecting you from any loss in this transaction, this indemnity agreement to be delivered to you, duly executed, on demand . . .

It is agreed that you are not to be responsible in any way in respect to the said lands or the mortgages upon them, either to pay charges upon the said lands or otherwise beyond the amount of rents from the said lands which come into your

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hands and monies paid to you by our principal for payment of charges on the said lands.

The indemnity agreement has been executed by an undisclosed principal and we hold the same to be delivered to you upon your demand, it being understood that no demand will be made upon us for this agreement until you are entitled to enforce its terms.

Mr. Bone replied, in part, as follows:

It is agreed that we are not to be responsible in any way in respect to the said lands or the Mortgages upon them either to pay charges upon the said lands or otherwise, beyond the amount of rents from the said lands or otherwise, beyond the amount of rents from the said lands which come into our hands (for which we agree to account) and monies paid to us by your Principal for payment of charges on the said lands. 10

Some time later one of the properties (Burrard Street) was sold and the proceeds applied in the reduction of Nickson's indebtedness to Cummings. To indicate how Nickson viewed it and to show that in executing a deed he was not (except in form) conveying the property or his equity therein to appellant, he later 20 gave an option to P. Burns & Company to purchase the Powell Street property (subject to the mortgage in question to respondent) and wrote to Mr. Mitchell asking him to "get ready a statement showing just how much will be owing to the Montreal Trust Company." That meant an inquiry as to the amount he owed to Cummings, Nickson being well aware that the appellant Company was Cummings' nominee holding the security for him. It is not material that the letter is signed by Nickson, rather than Prudential Holdings Ltd., the Company he controlled. Our inquiry is as to the true nature of the transaction and on that point it is 30 evidence. Mitchell furnished Nickson with the statement requested. It showed an indebtedness at that time of \$12,557.00 and the only source by which the original indebtedness could be reduced was by the sale of the Burrard Street property already referred to. All this was inconsistent with a purchase of the property. It is significant that Nickson was not called as a witness. If he could say that he sold his equity to appellant he would doubtless be asked to do so. His acts showed clearly that he retained the equity and used it as security to protect Cummings for his advance. 40

Mr. Mitchell also knew that Cummings treated it as a loan upon which Nickson paid interest while Nickson on his part expressed the belief that the properties would be sold shortly and the

loan liquidated. In case of sale any surplus was to go to Prudential Holdings Ltd. That, according to Mitchell, "was distinctly understood."

Further appellant Company in managing the property collected rent and applied it in the usual way on interest, insurance, taxes, etc., and when rentals were insufficient called upon the Royal Bank of Canada, the agent responsible for initiating and carrying through the transaction, to supply the necessary funds to make up the difference.

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10 Notwithstanding the foregoing facts all the formalities observed in arranging the security indicated a sale. A resolution of the directors of Prudential Holdings Ltd. authorized the execution of a deed and confirmed the sale of the property from the Company to appellant, the latter "to assume all mortgages against the properties hereby sold." This resolution unknown at that time to appellant was filed on the application to register title. Other incidents and facts (descriptive words, *e.g.*, "owner") were of similar import. All this, however, while evidential and entitled to weight cannot displace the whole body of evidence indicating
20 the true nature of the transaction. If A borrows \$1000.00 from B and as security only, to the knowledge of both, transfers Blackacre by deed to B, it is a mortgage and not a deed conveying the beneficial ownership and its true character is not changed because by all parties concerned with its execution and registration it is treated as a deed. It is quite immaterial whether or not the solicitor who registered the document thought it was a deed and equally immaterial if in case A was a Company that its directors authorized its execution as a deed. There is nothing to prevent
30 A and B treating the transaction, so far as formalities are concerned, as a deed for reasons of convenience or otherwise knowing that *qua* the parties concerned it is a mortgage.

It transpired doubtless because of depreciation in real estate values that the properties transferred as aforesaid to the appellant were not of sufficient value to provide for the mortgage to respondent much less to also provide security for Cummings' advance. Respondent therefore obtained from Prudential Holdings for a consideration an assignment to it of—

40 " . . . the full benefit and advantage of all claims or rights which the said assignor (Prudential Holdings Ltd.) has or hereafter may have against the said Montreal Trust Company either at law or in equity or whether by way of claim for indemnity in respect of the said mortgage or the principal, interest or any other moneys remaining unpaid thereunder or otherwise howsoever and DOTH HEREBY assign, transfer

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and set over unto the assignee (respondent) all the right, title, interest, claim and demand which the said assignor has or hereafter may have against the said Montreal Trust Company under or with respect to the said mortgage and the said conveyance or either of them and whether the said claim arises or shall arise under an express or under an implied covenant.”

Respondent in this action now proceeds on the assumption that if, as it submits, there was a sale of the property to appellant subject to the mortgage there is an implied obligation on the part of the purchaser to indemnify Prudential Holdings Ltd. for payments due under the mortgage to respondent and Prudential Holdings having assigned its right of indemnity to respondent the latter may enforce the assigned rights against appellant and compel it to pay the interest on the mortgage and it necessarily follows the principal also. 10

I may assume for the purposes of this judgment that if Prudential Holdings Ltd., conveyed the property (subject to the mortgage) to appellant as a *bona fide* sale there is an implied agreement by the purchaser to indemnify the mortgagor — and the rights accruing to the grantor under that implied agreement may be assigned to respondent—in which case the judgment should stand. That too may be assumed (without deciding it) although the real purchaser was Cummings not his nominee the appellant. There is however no such right of indemnity if the property was taken as security for a debt. 20

The first question in determining the real nature of the transaction arises in respect to the evidence relied upon to establish it. The trial judge rejected much of it believing it inadmissible to vary the document but admitted it to the record in case a higher Court differed from him on the point. The alleged objectionable evidence was given chiefly by Mitchell, Bone and Coulter, the latter, a barrister, who testified that he remembered “talking with Cummings with regard to the proposition made that he advance money to Nickson.” He was in possession of all the facts as between Nickson and Cummings. As secretary of the Prudential Holdings Ltd., he gave evidence corroborating the view of the transaction outlined by Mr. Mitchell. Mitchell’s evidence was objected to in part on the ground that it was hearsay (*e.g.*, statements to Mr. Bone in respect to the nature of the transaction as obtained from Cummings) in part on the ground that it was inconsistent with the written documents and finally because he repeated as evidence statements made to him by Cummings, since deceased. Mitchell’s evidence was taken on commission and apart altogether from the question of its admission below as on an interlocutory application (*Allan v. McLennan* (1916) 23 B.C.R. 515 at 40

523) I think it was admissible. Evidence of Acts, statements and declarations contemporaneous with the transaction, *viz.*, what was said and done, are admissible to prove its real nature and if directed to the proof of the main issue it is not hearsay but primary evidence. There can be no doubt that everything said by Cummings to Nickson and by the latter to the former touching the transaction would be admissible evidence. It is also true that if instead of speaking directly they acted through and spoke by a common agent (Mitchell) he can give evidence of the transaction based upon their
 10 statements. The purpose or object of a transaction—and necessarily the transaction itself—cannot often be proven without admitting evidence as to what was said by the interested parties. The character of an act may be proven by declarations concerning it. As put by Phipson in his 7th ed. at 54:—

Acts, declarations and incidents which constitute or accompany and explain the fact or transaction in issue are admissible for or against either party, as forming parts of the *res gesta*.

Statements too by Cummings (since deceased) to Mitchell are
 20 also admissible on the well-known rule that where one is in a position to know a fact and makes a declaration concerning it orally or in writing which is against his interest *at the time* (it is not enough that it later turn out to be against his interest) is evidence of the fact as between third persons after his death. Whatever may be said later, in view of real estate values depreciating, it was undoubtedly at that time against Cummings pecuniary and proprietary interest to treat the transaction not as a sale but as security for a debt. (*Higham v. Ridgway* (1808) 103 E. R. 717). All his declarations therefore bearing on the submission that he
 30 was not by himself or his nominee the owner of the property were admissible. Nor is it only declarations by deceased persons that are admissible. Declarations in reference to the subject matter of an action in respect to his own rights under certain conditions are admissible although the declarant is still alive. (See Lord Denman, C.J., in *Woolway v. Rowe* (1834) 110 E.R. 1151 at 1152). There is such a declaration and it is of vital importance in determining the character of the transaction—in the letter written by Nickson to Mitchell (Ex. 3) in which he speaks of the option to purchase he gave to Burns. Certainly he had no authority to give an
 40 option on appellant's property if he or his company had no equity in it. Clearly we may reach a conclusion as to the company's attitude by the acts of one who controlled it when he writes a letter based on the assumption that he or his company still have an equity of redemption. It derogates from, qualifies and affects his title and is admissible, confining it only to a question of admissibility on the

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one point, *viz.*, the nature of the deal. There are broader grounds for considering its admissibility, (*e.g.*, Admissions by a predecessor in title—because these statements were made before the assignment to respondent of Prudential Holdings Ltd.'s right to indemnity—) but it is enough to confine it to the necessities of this case.

On all the facts (and as the trial Judge did not make a finding we must do so) notwithstanding a part of the evidence given by Mr. Bone favourable to respondent I have no doubt (assuming as I do that the evidence must be conclusive) as to the real nature of the transaction, *viz.*, that appellant as a nominee for Cummings held this property as security for a debt. Nickson made the first advance for assistance and when a loan is obtained it is usually secured by a mortgage or its equivalent. Cummings was not in the market as a purchaser of land. No evidence in the record is inconsistent with that view and a large body of it is wholly inconsistent with any other deduction. It is, therefore, the only find of fact that can reasonably be made. 10

Mr. Bone's evidence was relied upon by the respondent. It is not accurate to say that he admitted that the resolution already referred to passed by Prudential Holdings Ltd., upon the execution of the transfer correctly disclosed the true nature of the transaction, *viz.*, that the deed from Prudential Holdings Ltd., to appellants was intended to be treated as an outright transfer of the beneficial interest in the property. It is true that, due no doubt to the fact that he received partial information only from Mr. Mitchell, and was not therefore fully aware of all the facts that he was led on cross-examination into making statements from which a false inference might be drawn unless corrected by a reading of all his evidence in the light of undisputed facts. The resolution was passed by Prudential Holdings Ltd. Mr. Bone did not see it at any time while the security, as I call it, was arranged. It was called to his attention for the first time on his examination for discovery in the course of the action. The resolution *per se* does not establish that a document, in form a deed, can not, if the evidence justifies it, be treated as a mortgage. The submission, however, is that Mr. Bone admitted that its recital, *viz.*, that the transaction, was a sale and that all mortgages against the property were assumed by appellant is an accurate statement of the actual facts, and represents the true nature of the transaction. That is not Mr. Bone's evidence properly read. When asked if this resolution "set out the transaction between your company and the Prudential Holdings Ltd." His answer is "other than the assumption—no definite intention as to the assumption of the mortgages" adding "it was not our intention to assume the mortgages," and again 20 30 40

“Q. Does not the resolution Mr. Bone correctly state your understanding of the transaction? A. Not in this assumption of the mortgages. We are very specific in that line.”

When he states elsewhere that it is a correct statement of the transaction he means (although expressed very badly—leaving his evidence open to mis-construction) subject to the reservation referred to. In any event his evidence even insofar as it may be regarded as favourable to the respondent is not conclusive against the appellant. It is a part only of all the evidence by
 10 a witness not in a position to speak with knowledge. We must look at the whole body of evidence in the book and after doing so, in my opinion, a court or a jury could not reasonably say that all we are concerned with is an ordinary sale of real estate to appellant. It was on the contrary a transaction usually entered into in some form or other to secure the lender where one borrows money from another. All the evidence, apart from doubtful inferences drawn from Mr. Bone’s testimony points in that direction.

As to what follows there is no doubt. It is now settled that
 20 the equitable obligation imposed on the purchaser of an equity of redemption to indemnify the vendor, even where there is no covenant to assume the mortgage, only arises where the purchaser is a real one, *i.e.*, where the relationship of vendor and purchaser actually exists and an assignee could have no higher rights. *Campbell v. Douglas* (1916) 54 S.C.R. 28 affirming the judgment of the Ontario Appellate Division (34 O.L.R. 580) makes this clear. This obligation may be displaced by evidence to show that such was not the intention of the parties (*Sokolov v. Kachmark* (1929) 1 W.W.R. 353 at 358). I need not discuss the case in detail but
 30 refer only to the judgment of Hodgins, J.A., at p. 583, in the Court below where he outlines principles concurred in throughout. (*Mills v. United Counties Bank* (1912) 1 C.D. 231, at 236, referred to by the Chief Justice in the Supreme Court may also be usefully referred to). Once it is established that the relationship of vendor and purchaser does not exist there is nothing further to be said that can assist the respondent in this case. While not conceded I think this was recognized by Mr. Bourne. He urged strongly, that a sale and purchase took place in the case at bar. *Fullerton v. Brydges* (1895) 10 M.L.R. 431, is further
 40 authority for the view that the right of indemnity contended for does not arise where a conveyance is taken as security for a debt. Nor does it apply to a nominee like this appellant who upon request takes a deed absolute in form but for security purposes only (*Walker v. Dickson* (1893) 20 Ont. A.R. 96), followed by this Court in *Walker v. Woodyatt* (1931) 2 W.W.R. 306.

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Mr. Bourne invoked the doctrine of estoppel basing it largely on appellant's acts (and its solicitors) in applying to register the conveyance as a deed on behalf of reputed owners and in support depositing a resolution of the directors of Prudential Holdings Ltd., already referred to, authorizing the execution not of a security but of a deed including the assumption of the mortgage. I do not agree. The transaction, of course, was put through in that form. That does not prevent disclosure of its true nature. The Prudential Holdings Ltd., did not change its position to its prejudice because of the form followed. There can be no estoppel 10 as between two parties to a transaction because of acts done with the acquiescence of both. No one was deceived, least of all Nickson or his company. His subsequent acts in offering the property for sale show that he or his company were not misled. There was therefore no substantial contradiction of the view that the conveyance was in fact a security only by these acts because it was mutually understood that the transaction should be carried through in this way.

I would allow the appeal.

(Sgd.) "M. A. MACDONALD," J.A. 20

VICTORIA, B.C.,
 8th January, 1935.

**REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE McQUARRIE**

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I would dismiss the appeal. The evidence of Bone, who is manager for the defendant at Vancouver, supports the plaintiff's claim that the documents filed as Exhibits set out the arrangement between the parties. The same applies to the resolution which was passed by the Prudential Holdings Limited, authorizing the conveyance to the appellant, which was filed in the Land Registry Office by the appellant, with its application for registration of the title in its name. Bone admits that the appellant had knowledge of the resolution and that it sets out the transaction. The said Resolution provides that the appellant shall assume the mortgage which is the subject matter of the action. It seems to me that the appellant undertook the full responsibility for payment of the said mortgage and while it may be true that it was acting for an undisclosed principal, the knowledge of whose existence was not communicated to the other parties, the appellant must rely entirely on the agreement for indemnity which it obtained from the late C. V. Cummings. It undoubtedly is entitled to relief against the Third Party.

“W. G. McQUARRIE, J.A.”

VICTORIA, B.C.,

8th January, 1935.

JUDGMENT OF COURT OF APPEAL

No. 32
Judgment
Jan. 8, 1935

BETWEEN:

THE BRITISH COLUMBIA LAND AND INVESTMENT
AGENCY LIMITED

Plaintiff (Respondent)

AND:

MONTREAL TRUST COMPANY

Defendant (Appellant)

AND:

THE LONDON AND WESTERN TRUSTS COM-
PANY LIMITED and J. A. CLARK, executors of the
estate of C. V. Cummings, deceased,

Third Parties.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF
BRITISH COLUMBIA;THE HONOURABLE MR. JUSTICE M. A. MAC-
DONALD;

THE HONOURABLE MR. JUSTICE McQUARRIE.

10

20

VICTORIA, B.C., the 8th day of January, 1935.

THIS APPEAL from the Judgment of the Honourable Mr. Justice McDonald pronounced on the 19th day of June, 1934, as amended by an Order dated the 20th day of July, 1934, coming on for hearing on the 21st, 22nd and 23rd days of November, 1934, and UPON HEARING Mr. J. W. deB. Farris, K.C., and Mr. Bruce Robertson of Counsel for the Appellant, Mr. H. A. Bourne and Mr. A. C. DesBrisay of Counsel for the Respondent, and UPON READING the Appeal Book herein, and judgment being reserved thereupon:

30

THIS COURT DOTH ORDER AND ADJUDGE that the said appeal be and the same is hereby dismissed with costs to be paid by the Appellant to the Respondent forthwith after taxation thereof.

BY THE COURT.

"J. F. MATHER," Registrar

Approved "A.L.R."

"J.F.M.," R.

"J.A.M.," C.J.

Entered Jan. 22, 1935.

Order Book Vol. 10, Fol. 41.

Per "A.L.R."

Seal of

Court of Appeal

B.C.L.S.

\$1.10

Vancouver

Jan. 22, 1935

Registry

40

CONDITIONAL ORDER FOR LEAVE TO APPEAL

CORAM :

THE HONOURABLE THE CHIEF JUSTICE OF
BRITISH COLUMBIA;
THE HONOURABLE MR. JUSTICE M. A. MAC-
DONALD;
THE HONOURABLE MR. JUSTICE McQUARRIE.

VICTORIA, B.C., the 28th day of January, 1935.

- 10 UPON MOTION of the Defendant (Appellant) for leave to
appeal to the Judicial Committee of the Privy Council from the
judgment of this Honourable Court delivered on the 8th day of
January, 1935, dismissing the appeal herein from the Judgment
of the Honourable Mr. Justice McDonald pronounced on the 19th
day of June, 1934, as amended by an Order dated the 20th day of
July, 1934, coming on for hearing before this Honourable Court
at the City of Victoria on the 25th day of January, 1935, and hav-
ing been adjourned until this day; AND UPON READING the
Notice of Motion herein dated the 22nd day of January, 1935, the
20 Appeal Book herein, the Affidavit of Robert Bone sworn herein
the 22nd day of January, 1935, and filed, and the exhibits therein
referred to; AND UPON HEARING Mr. J. W. deB. Farris,
K.C., of Counsel for the Defendant (Appellant) and Mr. H. A.
Bourne of Counsel for the Plaintiff (Respondent);

THIS COURT DOTH ORDER that subject to the perform-
ance by the said Defendant (Appellant) of the conditions herein-
after mentioned and subject to the final Order of this Court upon
the due performance thereof, leave to appeal to His Majesty in
His Privy Council against the said Judgment of this Honourable
30 Court be granted to the Defendant (Appellant);

AND THIS COURT DOTH FURTHER ORDER that the
said Defendant (Appellant) do within one month from the date
hereof provide security to the satisfaction of the Registrar of this
Honourable Court in the sum of £500 sterling for the due prose-
cution of the said appeal and the payment of all such costs as
may become payable to the Plaintiff (Respondent) in the event of
the Defendant (Appellant) not obtaining an Order granting final
leave to appeal, or of the appeal being dismissed for want of prose-

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cution, or of His Majesty in Council ordering the Defendant (Appellant) to pay the Plaintiff (Respondent's) costs of the appeal, as the case may be.

AND THIS COURT DOTH FURTHER ORDER that the Defendant (Appellant) do within three months from the date of this Order in due course take out all necessary appointments for settling the transcript record on such appeal to enable the Registrar to certify that the transcript record has been settled and that the provisions of this Order on the part of the Defendant (Appellant) have been complied with.

10

AND THIS COURT DOTH FURTHER ORDER that the costs of the transcript record on appeal and of all necessary certificates and of all costs of and occasioned by the said appeal (including the costs of this Order) shall abide the decision of the Privy Council with respect to the costs of appeal.

AND THIS COURT DOTH FURTHER ORDER that the said Defendant (Appellant) be at liberty within the said period of three months from the date of this Order to apply for a final order for leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of due compliance on its part with the terms of this Order.

AND THIS COURT DOTH FURTHER ORDER that all parties may be at liberty to apply to this Court wheresoever the same may be sitting.

AND THIS COURT DOTH FURTHER ORDER that execution on the said Judgment of this Honourable Court and on the said Judgment of the Honourable Mr. Justice McDonald be suspended pending the said appeal to His Majesty in His Privy Council.

BY THE COURT

30

"J. F. MATHER," Registrar

Form Approved:
 "H. A. Bourne"
 "O. B.,"
 D.R.

"J.A.M.," C.J.

Vancouver
 Feb. 11, 1935
 Registry

Seal of the
 Court of Appeal

Entered
 Feb. 11, 1935

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Order Book Vol. 10, Fol. 45
 Per "S.C.G."

REGISTRAR'S CERTIFICATE AS TO SECURITY

I HEREBY CERTIFY that the above-named Defendant (Appellant) has duly complied on its part with the terms of the Order of this Honourable Court dated herein the 28th day of January, 1935, in that the said Defendant (Appellant) has provided security to my satisfaction in the sum of Five Hundred Pounds Sterling for the due prosecution of its appeal to His Majesty in His Privy Council from the judgment herein of this Honourable
 10 Court dated the 8th day of January, 1935, and for the payment of all such costs as may become payable to the Plaintiff (Respondent) in the event of the Defendant (Appellant) not obtaining an Order granting final leave to appeal or of the appeal being dismissed for want of prosecution, and for the payment of such costs as may be awarded by His Majesty, His Heirs and Successors, or by the Judicial Committee of the Privy Council to the said Plaintiff (Respondent) on such appeal, by paying into Court the said sum of Five Hundred Pounds Sterling.

DATED at Vancouver, B.C., this 27th day of February, 1935.

20

“J. F. MATHER,”
 Registrar

B.C.L.S.
 \$1.00

Vancouver
 Feb. 27, 1935
 Registry

Court of Appeal
 Seal

COURT OF APPEAL

RECORD
 Court of Appeal
 No. 35
 Registrar's
 Certificate as
 to Settling
 Transcript
 Record
 Apr. 16, 1935

 No. 35

 REGISTRAR'S CERTIFICATE AS TO SETTLING
 TRANSCRIPT RECORD

I HEREBY CERTIFY that the above-mentioned Defendant (Appellant) has duly complied on its part with the terms of the Order of this Honourable Court dated herein the 28th day of January, 1935, in that the said Defendant (Appellant) has taken out all appointments necessary for settling the transcript record on its appeal to His Majesty in His Privy Council from the judgment herein of this Honourable Court dated the 8th day of January, 1935, and to enable me to certify that the transcript record has been settled and that the provisions of the said Order on the part of the Defendant (Appellant) have been complied with. 10

DATED at Vancouver, B.C., this 16th day of April, 1935.

"J. F. MATHER,"
 Registrar

Vancouver
 Apr. 10, 1935
 Registry

20

B.C.L.S. \$1.00

Seal of the
 Court of Appeal

COURT OF APPEAL

No. 36

FINAL ORDER FOR LEAVE TO APPEAL

RECORD
Court of Appeal
 No. 36
 Final Order
 for Leave to
 Appeal
 Apr. 18, 1935

CORAM :

THE HONOURABLE MR. JUSTICE MARTIN
 THE HONOURABLE MR. JUSTICE McPHILLIPS
 THE HONOURABLE MR. JUSTICE McQUARRIE

VICTORIA, B.C., the 18th day of April, 1935.

10 UPON THE APPLICATION of the Defendant (Appellant) pursuant to the Order granting conditional leave to appeal made herein the 28th day of January, 1935, UPON HEARING Mr. Roy Manzer of Counsel for the Defendant (Appellant) and Mr. H. J. Davis of Counsel for the Plaintiff (Respondent); UPON READING the said Order and the Certificates of the Registrar dated herein respectively the 27th day of February, 1935, and the 16th day of April, 1935, certifying that the Defendant (Appellant) has duly complied on its part with the terms of the said Order; AND UPON READING the Notice of Motion herein dated the 16th day of April, 1935;

20 THIS COURT DOTH ORDER that final leave to appeal to His Majesty in His Privy Council against the judgment of this Honourable Court delivered the 8th day of January, 1935, be and the same is hereby granted to the said Defendant (Appellant).

By the Court

“OSWALD BARTON,”
 Deputy Registrar

Victoria
 Apr. 18, 1935
 Registry

Vancouver
 Apr. 20, 1935
 Registry

30 Seal of the
 Court of Appeal

B.C.L.S. \$1.10

“O.B.”
 D.R.

Entered
 Apr. 20, 1935

“H.J.D.”

Order Book, Vol. 10, Fol. 64

“A.M.”
 J.A.

Per “L.J.B.”

RECORD
In the Supreme Court of British Columbia
 Plaintiff's
 Exhibit No. 8
 Extracts
 Memorandum
 and Articles
 of Association
 Prudential
 Holdings Ltd.
 Oct. 18, 1924

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 8
 The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.
 Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 8
 "COMPANIES' ACT, 1921" AND AMENDING ACTS

10

MEMORANDUM OF ASSOCIATION
 OF
 PRUDENTIAL HOLDINGS LIMITED
 A Company Limited by Shares

1. The name of the Company is "Prudential Holdings Limited."
2. The registered office of the Company will be situate at Vancouver, in the Province of British Columbia.
3. The objects for which the Company is incorporated are: 20
 - (1) To purchase, buy, lease, apply to purchase, or in any other way whatsoever acquire real property, lands, tenements and hereditaments of any tenure, and of all kinds and descriptions, and any interest therein ;
 * * *
 - (3) To sell, exchange, lease, mortgage or otherwise deal with lands, rights, or other property or effects of the Company, or any part thereof, of any kind or nature whatsoever, or the undertaking of the Company, or any part thereof, either to individual persons or companies . . . 30
 * * *
 - (28) To borrow, raise or secure money (with or without powers of sale or other special conditions) either by a charge on or deposit of any part, or all of the Company's property of any kind soever, or without such charge; to draw, make, accept, endorse, issue, execute and discount promissory notes, bills of exchange, bills of lading, warrants and other negotiable instruments; and to borrow or raise money on or by bonds or debentures (charged upon all or any part of the Company's property, both present and future, including its un-called capital), or acceptances, endorsements or promissory notes of the Company, and other negotiable instruments. 40
 * * *

(36) To lend money on any terms that may be thought fit and particularly to persons having dealings with the Company.

* * *

DATED this eighteenth day of October A.D. 1924, at Vancouver, B.C.

ARTICLES OF ASSOCIATION

OF

PRUDENTIAL HOLDINGS LIMITED

10 1. Subject as hereinafter provided and except as they are modified, altered or repealed hereby the regulations contained in Table "A" being the first schedule of the Companies Act, Chapter 10 of the Statutes of the Province of British Columbia, for the year A.D. 1921, shall apply to the Company as the same stood on the date of incorporation.

2. The company is to be a private company . . .

* * *

20 8. A resolution in writing signed by all the Directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted.

9. Without prejudice to the general powers conferred by Clause 62 of Table "A" and so as not in any way to restrict those powers and without prejudice to the other powers conferred by Table "A" and by these presents, it is hereby expressly declared that the Directors shall have the following powers, that is to say; power:

* * *

30 (f) To determine who shall be entitled to sign on the company's behalf, bills, notes, receipts, acceptances, indorsements, cheques, releases, contracts and documents.

* * *

(h) To enter into all such negotiations and contracts and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and on behalf of the company as they may consider expedient for or in relation to any of the matters aforesaid, or otherwise for the purposes of the company.

* * *

DATED this 18th day of October A.D. 1924.

40

* * *

NOTE

The remaining parts of the above Memorandum and Articles have been omitted from the Record by consent, with the right reserved to Counsel to refer to any part so omitted.

RECORD
In the Supreme Court of British Columbia
Plaintiff's Exhibit No. 8
Extracts Memorandum and Articles of Association Prudential Holdings Ltd.
Oct. 18, 1924

RECORD
 In the Supreme
 Court of British
 Columbia
 Plaintiff's
 Exhibit No. 1
 Mortgage
 Prudential
 Holdings Ltd.
 to
 B.C. Land &
 Investment
 Agency Ltd.
 Jan. 15, 1925

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 1
 The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.
 Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 1

THIS INDENTURE made the fifteenth day of January, one thousand nine hundred and twenty-five **IN PURSUANCE OF 10**
THE ACT RESPECTING SHORT FORMS OF MORTGAGES:

BETWEEN:

PRUDENTIAL HOLDINGS LIMITED a body corporate, having its registered office at number 218 Rogers Building, in the City of Vancouver, Province of British Columbia (hereinafter called "the Mortgagor")

OF THE FIRST PART

AND:

THE BRITISH COLUMBIA LAND AND INVESTMENT AGENCY LIMITED, a body corporate, duly registered under the laws of the Province of British Columbia, and having its registered office at 922 Government Street in the City of Victoria in said Province (hereinafter called "the Mortgagee")

20

OF THE SECOND PART

Whereas the Mortgagor is seized of both the legal and equitable estate in the lands hereinafter described, and has applied to the Mortgagee for a loan upon mortgage thereof.

NOW THIS INDENTURE WITNESSETH that in consideration of the sum of Thirteen thousand (\$13,000.00) Dollars of lawful money of Canada now paid by the said Mortgagee to the said Mortgagor (the receipt whereof is hereby acknowledged), the said Mortgagor **DOETH GRANT AND MORTGAGE** unto the said Mortgagee, his heirs and assigns forever **ALL** that certain parcel or tract of land situate in the City of Vancouver in the Province of British Columbia, and more particularly known and described as Lots numbered Five (5), Six (6), Seven (7), Eight (8) and Nine (9), in Block numbered Two (2), in Subdivision "C" of District Lot numbered One hundred and eighty-three (183) Group one (1), New Westminster District, according to a map or plan deposited in the Land Registry Office in the City of Vancouver in the Province aforesaid and numbered.

30

40

PROVIDED this Mortgage to be void on payment of the sum of Thirteen thousand Dollars (\$13,000.00) of lawful money of Canada, with interest at six per cent. per annum, as well after as before maturity, as follows: The said principal sum of \$13,000 to be due and payable on the 25th day of September, 1929; the said interest to be due and payable in half yearly instalments of Three hundred and ninety (\$390.00) Dollars each on the 25th days of March and September, in each and every year. Interest to be computed as from the 25th day of September, 1925, the first
 10 payment of interest to be made on the Twenty-fifth day of March, next (1925), arrears of both principal and interest to bear interest at the rate above mentioned, and such interest on arrears to be a charge on the land in the same manner as all other money hereby secured. The said several payments of principal and interest to be made in gold if required. 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, and that the Mortgagor has a good title
 20 in fee simple to the said lands. And that he has the right to convey the said lands to the said Mortgagee. And that on default the Mortgagee shall have quiet possession of the said lands free from encumbrances. 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 not less than the principal money hereby secured in dollars currency. But it is agreed that if and
 30 whenever such sum be greater than the insurable value of the buildings, such insurance shall not be required to any greater extent than such insurable value; and if and whenever the same shall be less than the insurable value, the Mortgagee may require such insurance to the full insurable value. And it is further agreed that the Mortgagee may require any insurance of the said buildings to be cancelled and a new insurance effected in the office of any company named by him and also may of his own accord effect or maintain any insurance herein provided for, and any amount
 40 paid by him therefor shall be forthwith payable to him with interest at the rate aforesaid by the Mortgagor and shall be a charge upon the said lands.

AND the said Mortgagor doth release to the said Mortgagee all his claims upon the said lands. Subject to the said proviso. The

RECORD

*In the Supreme
Court of British
Columbia*Plaintiff's
Exhibit No. 1
Mortgage
Prudential
Holdings Ltd.to
B.C. Land &
Investment
Agency Ltd.
Jan. 15, 1925
(Contd.)

RECORD
 In the Supreme
 Court of British
 Columbia
 Plaintiff's
 Exhibit No. 1
 Mortgage
 Prudential
 Holdings Ltd.
 to
 B.C. Land &
 Investment
 Agency Ltd.
 Jan. 15, 1925
 (Contd.)

said Mortgagor covenants with the said Mortgagee that he will keep the said lands and the buildings and improvements thereon in good condition and repair according to the nature and description thereof respectively, and in case of neglect to do so, or if the Mortgagor or those claiming under him commit any act of waste on the said lands or make default as to any of the covenants or provisos herein contained, the principal hereby secured shall, at the option of the Mortgagee forthwith become due and payable, and in default of payment the powers of sale hereby given may be exercised. 10

PROVIDED that the said Mortgagee on default of payment for one month may on two months' notice enter on and lease or sell the said lands. And provided also that in case default be made in payment of either principal or interest for three months after any payment of either falls due, the said powers of entering and leasing or selling or any of them may be acted upon without any notice by the said Mortgagee. And also that any contract or sale made under the said power may be varied or rescinded. And also that the said mortgagee may buy in and resell the said lands or any part thereof without being responsible for any loss or deficiency on resale or expense thereby incurrd. Provided that such sale may be either by public auction or private contract, and either for cash or on credit or part cash and part credit, and at such sale the whole or any part or parts of the said lands may be sold. 20

PROVIDED that the Mortgagee may distrain for arrears of interest. Provided that the Mortgagee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

PROVIDED that in default of the payment of the interest hereby secured, or taxes as hereinbefore provided, the principal secured shall become payable. 30

AND IT IS HEREBY AGREED between the parties hereto that the Mortgagee may pay any taxes, rates, levies, assessments, charges, moneys liens, cost of suit or matters relating to liens or encumbrances on said land, or pay property, mortgage or income tax imposed, or that may be imposed on the Mortgagee or the Mortgagor in respect of this property or Mortgage or the moneys secured hereby, and Solicitors' and other charges in connection with this Mortgage, and valuator's fees, together with all costs and charges, including all solicitors' charges and commission for the collection of any overdue interest, instalment of principal, insurance premiums, and all other monies whatsoever payable by the Mortgagor hereunder, which may be incurred by 40

taking proceedings of any nature in case of default by the Mortgagor, and the amount so paid or incurred shall be a charge on the said lands in favor of the Mortgagee and shall be payable at the time of payment of next quarter's interest, with interest at the rate aforesaid until paid; and in default, the power of sale hereby given, and all other powers thereunto enabling, shall be forthwith exercisable.

PROVIDED that the hereinbefore mentioned notice of exercise of power of sale or lease, or either, may be effectually given
 10 either by leaving the same with a grown up person on the mortgaged premises, if occupied, or placing the same on some portion thereof, if unoccupied, or, at the option of the said Mortgagee, by publishing the same twice in some newspaper published in the county or district in which the said lands are situate, and that such notice shall be sufficient though not addressed to any person or persons by name or destination, and notwithstanding any person or persons to be affected thereby may be unknown, unascertained, or under disability; and on any sale, time for payment
 20 may be given and special conditions may be made, and the cost of any abortive sale shall become a charge upon the lands, and the Mortgagee may tack them to the mortgage debt.

PROVIDED that the purchaser shall in no case be bound to ascertain that the default has happened under which the Mortgagee claims to lease or sell, and that the remedy of the Mortgagor shall be in damages only, and the sale under the said powers shall not be affected. PROVIDED that until default of payment the Mortgagor shall have quiet possession of the said lands.

AND the Mortgagor hereby attorns to the Mortgagee and becomes tenant of the said lands during the term of this mortgage
 30 at a rent equivalent to and payable at the same days and times as the payment of interest as hereinbefore agreed to be paid, such rent when so paid to be in satisfaction of such payments of interest. Provided the Mortgagee may in default of payment or breach of any of the covenants hereinbefore contained, enter on the said lands and determine the tenancy hereby created without notice.

IT IS AGREED that the Mortgagee may satisfy any charge now or hereafter existing or to arise or be claimed upon the said lands, and the amount so paid shall be added to the debt
 40 hereby secured and bear interest at the same rate, and shall be forthwith payable by the Mortgagor to the Mortgagee and in default of payment the principal sum hereby secured shall become payable, and the powers of sale hereby given may be exercised forthwith without any notice. And in the event of the Mortgagee

RECORD
 In the Supreme
 Court of British
 Columbia
 Plaintiff's
 Exhibit No. 1
 Mortgage
 Prudential
 Holdings Ltd.
 to
 B.C. Land &
 Investment
 Agency Ltd.
 Jan. 15, 1925
 (Contd.)

RECORD

*In the Supreme
Court of British
Columbia*

Plaintiff's
Exhibit No. 1
Mortgage
Prudential
Holdings Ltd.
to
B.C. Land &
Investment
Agency Ltd.
Jan. 15, 1925
(Contd.)

satisfying any such charge or claim, either out of the money advanced on this security or otherwise, he shall be entitled to all the equities and securities of the person or persons so paid off.

AND IT IS AGREED AND DECLARED that every part or lot into which the mortgaged lands are or may hereafter be divided does and shall stand charged with the whole of the moneys hereby secured, and no person shall have any right to require the mortgage money to be apportioned upon or in respect of any such parts or lots, and the Mortgagee may discharge any part or parts from time to time of the mortgaged lands for such consideration as he shall think proper, or without consideration if he sees fit; and no such discharge shall diminish or prejudice this security as against the lands remaining undischarged or as against any person whomsoever. 10

AND ALSO IT IS AGREED that if the said principal or any part thereof be not paid at maturity, the Mortgagor shall not be at liberty to pay the same except upon payment of interest thereon at the rate aforesaid in full to date of payment, and a further sum equal to three months' interest thereon as aforesaid by way of bonus. 20

AND IT IS FURTHER AGREED that in case default be made and the mortgage moneys be recovered or payment be obtained before maturity by action or by any other remedy or means, or in case of sale, the Mortgagee may collect and retain, whether out of the proceeds of sale or otherwise, an amount equal to three months' interest at the rate aforesaid upon the capital so recovered by way of indemnity.

PROVIDED that the Mortgagor is to have the privilege and is hereby authorized and permitted to prepay the sum hereby secured or any part of it, not less than \$1000 at any time during the currency of this Mortgage, by giving three months' notice of his intention to pay, or upon payment of a bonus equal to three months' interest upon the amount so paid, in lieu of such notice, and the Mortgagee hereby agrees to accept such payment or payments, and thereupon the interest shall cease upon such part of the debt as may be so paid; provided that the payment of all interest, arrears of interest, and all taxes, costs, and charges incurred during the currency hereof shall be a condition precedent to the exercise of this privilege. 30

AND ALSO IT IS AGREED that neither preparation nor registration of this mortgage shall bind the Mortgagee to advance the money hereby intended to be secured. 40

AND IT IS EXPRESSLY AGREED between the parties hereto that all grants, covenants, provisoes and agreements, rights, powers, privileges and liabilities contained in this mortgage shall be read and held as made by and with, and granted to and imposed upon the respective parties hereto, and their respective heirs, executors, administrators, successors and assigns, as if the words "heirs, executors, administrators, successors and assigns" had been inscribed in all proper and necessary places.

RECORD
In the Supreme Court of British Columbia

Plaintiff's Exhibit No. 1
Mortgage Prudential Holdings Ltd.

to
B.C. Land & Investment Agency Ltd.
Jan. 15, 1925
(Contd.)

10 Wherever the singular or masculine is used throughout this Indenture the same shall be construed as meaning the plural or the feminine or body corporate where the context or the parties hereto so require.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals.

20 SIGNED, SEALED AND DELIVERED in the presence of "IAN A. SHAW" 930 Rogers Bldg. Vancouver, B.C. Solicitor

PRUDENTIAL HOLDINGS LIMITED
"T. R. NICKSON," President
"H. S. COULTER," Secretary
(Seal of Prudential Holdings Limited)

RECORD
 In the Supreme
 Court of British
 Columbia
 Plaintiff's
 Exhibit No. 5
 Extracts from
 Minutes of
 Meeting of
 Directors
 Prudential
 Holdings Ltd.
 Feb. 15, 1926

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 5
 The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.
 Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 5

EXTRACT from the MINUTES of a MEETING of the DIRECTORS of the PRUDENTIAL HOLDINGS LIMITED, 10 held at the registered office of the Company at Number 218 Rogers Building, 470 Granville Street, Vancouver, B.C., on the 15th day of February, A.D. 1926; at which meeting all Directors were present.

IT WAS MOVED by Mr. T. R. Nickson and SECONDED by Mr. H. S. Coulter that the Company authorize and confirm the sale from the Company to the Montreal Trust Company of Lot

and
 "T.R.N." Fifteen (15), ~~in~~ the North Half of Lot Sixteen (16), in Block
 "H.S.C." Sixty (60), D/L 541, in the City of Vancouver, Province of 20
 British Columbia; and Lots Numbered Five (5), Six (6), Seven
 (7), Eight (8) and Nine (9), in Block Two (2), in Subdivision of
 D/L 183-C, in the City of Vancouver, Province of British Colum-
 Fifteen
 bia; at and for the price of ~~Eighteen~~ Fifteen Thousand Five hundred
 "T.R.N." (\$15,500.00)
 "H.S.C." (~~\$18,000.00~~) Dollars; the said Montreal Trust Company to assume
 all mortgages against the properties hereby authorized to be sold.

AND the President and the Secretary of the Company, that is to say, Thomas Ralph Nickson and Howard Stanley Coulter, 30 respectively, are hereby authorized and instructed to sign the Deed of Transfer confirming the lands aforesaid to the said Montreal Trust Company; and the said President and Secretary are further hereby authorized to affix the Corporate Seal of the Company to the said Deed of Transfer.

The above motion was carried unanimously.

I, HOWARD STANLEY COULTER (Secretary of the PRUDENTIAL HOLDINGS LIMITED, hereby certify that the above is a correct copy of the Minutes passed at the Directors' Meeting of the Company held the 15th day of 40 February, A.D. 1926.

(Seal of Prudential
 Holdings Limited)

Supreme Court of B.C.
Vancouver Registry
Exhibit No. 2

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.
Put in by Ptf. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 2

RECORD
*In the Supreme
Court of British
Columbia*

Plaintiff's
Exhibit No. 2
Conveyance
Prudential
Holdings Ltd.

to
Montreal Trust
Co.
Feb. 15, 1926

THIS INDENTURE made the Fifteenth day of February
10 in the year of our Lord one thousand nine hundred and twenty-six.

**IN PURSUANCE OF THE "REAL PROPERTY
CONVEYANCE ACT"**

BETWEEN:

THE PRUDENTIAL HOLDINGS LIMITED, a Com-
pany duly incorporated under the laws of the Province of
British Columbia, having its Head Office in the City of
Vancouver, Province of British Columbia

(hereinafter called the "Grantor")

AND:

20 **THE MONTREAL TRUST COMPANY** a Company
duly incorporated under the laws of the Dominion of
Canada, having its Head Office in the City of Montreal,
Province of Quebec, and having an office in the City of
Vancouver, Province of British Columbia,

(hereinafter called the "Grantee")

WITNESSETH, that, in consideration of Fifteen thousand
five hundred (\$15,500.00) Dollars of the lawful money of Canada
now paid by the said Grantee to the said Grantor (the receipt
whereof is hereby by him acknowledged) he, the said Grantor,
30 **DOTH GRANT** unto the said Grantee, his heirs and assigns **FOR-
EVER:**

ALL AND SINGULAR those certain parcels or tracts of
land and premises situate, lying and being in the City of Van-
couver, Province of British Columbia, and more particularly
known and described as Lot Fifteen (15), and North half of Lot
Sixteen (16), in Block Sixty (60), District Lot Five hundred and
forty-one (541), Group One (1), New Westminster District, Map
210, and Lots Five (5), Six (6), Seven (7), Eight (8), and Nine
(9), Block Two (2), Subdivision "C", District Lot One hundred
40 and eighty-three (183), Group One (1), New Westminster Dis-
trict, Map 417.

RECORD
 In the Supreme
 Court of British
 Columbia
 Plaintiff's
 Exhibit No. 2
 Conveyance
 Prudential
 Holdings Ltd.
 to
 Montreal Trust
 Co.
 Feb. 15, 1926
 (Contd.)

TOGETHER with all buildings, fixtures, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed, or appurtenant thereto; and the estate, rights, title, interest, property, claim and demand of him, the said Grantor, in, to, or upon the said premises.

TO HAVE AND TO HOLD unto the said Grantee, his heirs and assigns, to and for his and their sole and only use forever; SUBJECT NEVERTHELESS to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown and subject to a mortgage on Lot Fifteen (15) and North half of Lot Sixteen (16), aforesaid dated the 23rd November, 1925, made by the Grantor as Mortgagor to Charles Talbot Foxcroft as Mortgagee to secure repayment of the \$6,000.00 as therein mentioned, and registered in the Land Registry Office at Vancouver aforesaid as number 37644H, and subject also to a Mortgage of Lots Five (5), Six (6), Seven (7), Eight (8), and Nine (9), aforesaid dated 15th January, 1925, between the Grantor as Mortgagor and the British Columbia Land and Investment Agency Limited to secure the sum of \$13,000 as therein mentioned, registered in the Land Registry Office at Vancouver aforesaid as No. 30711-H.

The said Grantor covenants with the said Grantee that he 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 he will execute such further assurances of the said lands as may be requisite.

AND the said Grantor covenants with the said Grantee that he has done no acts to encumber the said lands.

AND the said Grantor RELEASES to the said Grantee ALL HIS CLAIMS upon the said lands.

WHEREVER the singular or masculine is used throughout this Indenture, the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties hereto so require.

IN WITNESS WHEREOF the Corporate seal of the Grantor has been hereunto affixed by the hands of its proper officers in that behalf on the date first above mentioned.

The Corporate Seal of the Grantor was hereunto affixed in the presence of :

Signature of Witness,
"Betty Scheidegger,"

Street address,
1770 Georgia West,

City or Town,
Vancouver, B.C.

10 Occupation of Witness,
Stenographer

PRUDENTIAL HOLDINGS LIMITED.

Per: T. R. Nickson, President
H. S. Coulter, Secretary.

Corporate Seal of Prudential Holdings Limited.

RECORD
In the Supreme Court of British Columbia
Plaintiff's Exhibit No. 2
Conveyance Prudential Holdings Ltd. to Montreal Trust Co.
Feb. 15, 1926
(Contd.)

ACKNOWLEDGMENT OF OFFICER OF A CORPORATION

I HEREBY CERTIFY that, on the 15th day of February, 1926, at Vancouver, in the Province of British Columbia HOWARD STANLEY COULTER (whose identity has been "RHT" proved by the evidence on oath of _____, who is) personally known to me, appeared before me and acknowledged to me that he is the Secretary of Prudential Holdings Limited, and that he is the person who subscribed his name to the annexed Instrument as Secretary of the said Prudential Holdings Limited and affixed the seal of the Prudential Holdings Limited to the said Instrument; that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British Columbia.

IN TESTIMONY WHEREOF I have hereunto set my Hand and Seal of Office at Vancouver in the Province of British Columbia, this 15th day of February in the year of our Lord one thousand nine hundred and twenty-six.

30 Notary Seal

"R. H. TUPPER"

A Notary Public in and for the Province of British Columbia.

A Commissioner for taking affidavits within British Columbia.

RECORD
*In the Supreme
 Court of British
 Columbia*
 Plaintiff's
 Exhibit No. 3
 Certified Copy
 Application to
 Register
 Conveyance
 No. 15689
 Feb. 16, 1926

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 3
 The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.
 Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

No. 15689

EXHIBIT No. 3
 Coat of Arms
 The Government of
 The Province of British
 Columbia

10

Land Registry Office
 Vancouver
 1:10
 Feb. 16, 1926

LAND REGISTRY ACT
 Form A, Section 124

Date: 16 Feb., 1926

I, REGINALD HIBBERT TUPPER, solemnly declare that 20
 I am [*or Solicitor for ~~or the duly authorized Agent of~~ The Mont-*
treal Trust Company, Vancouver, B.C., and that it is] entitled to
 be registered as the owner in fee-simple of the land hereunder
 described, and hereby make application under the provisions of
 the "Land Registry Act" and claim registration accordingly.

The full name, address, and occupation of the person so en-
 titled to be registered as owner is The Montreal Trust Company,
 614 Pender St. W., Vancouver, B.C.

The fee-simple is registered in Vol. 375, Fol. 2597K, of the
 Register. 30

DESCRIPTION OF LAND

MUNICIPALITY OR ASSESSMENT DISTRICT	LOT OR SECTION	ADMEASUREMENT OR ACREAGE	
City of Vancouver	Lots 5.6.7.8.9. Sub. "E"		
	Bl. 2, Sub. E. D. L. 183	\$2.50	
	Gp. 1,	39.40	
	N.W.D. Plan 417	1.00	
		3.00	
		45.90	40
		26.00	
		19.90	

LIST OF INSTRUMENTS

DATE	PARTIES	CHARACTER OF DEED	RECORD <i>In the Supreme Court of British Columbia</i>
15 Feb. 1926	Add Fees on Valuation 19.90 The Prudential Holdings Limited—Filing 13793 to The Montreal Trust Company Tax Receipt herewith	Paid 17/2/26 Conveyance of the equity C. of T. 2597 K. in L. R. O.	Plaintiff's Exhibit No. 3 Certified Copy Application to Register Conveyance No. 15689 Feb. 16, 1926 (Contd.)
10		R. W. T. R. W. T. 17.2.26	

And I solemnly declare that I have investigated and ascertained the value of the said land, and that the market value thereof at the date of this application, including all buildings and improvements thereon erected, is ~~15,500~~ 34,500 dollars, and that the title deeds mentioned hereon are all those in my custody, possession, or power, relating to the said land, [in case of a Solicitor or Agent, add] and to the best of my belief there are no other title deeds in the custody, possession, or power of the owner, relating to the same; and I am duly authorized by the above-named owner to
20 make this application, [in the case of an Agent, add] and I reside in the Province of British Columbia, and am of the full age of twenty-one years.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the "Canada Evidence Act."

Declared before me this 16th } (Signature) "R. W. Tupper"
day of February, 1926, at Van- } 525 Seymour St.
couver, British Columbia. } (Full Post-office address)

30 For mailing notices and documents

"W. L. HUNT,"

A Clerk in the Land Registry Office, Vancouver, B.C.

I HEREBY CERTIFY that this paper writing is a true copy of an original document deposited in the Land Registry Office at Vancouver and registered as a Fee Application under No. 15689-K.

DATED at the Land Registry Office, Vancouver, B. C., this 12th day of June, A.D. 1934.

"ARTHUR G. SMITH,"

Registrar

40 (Land Registry Office Seal)

Compared by
W. L. & B. G.

RECORD
In the Supreme Court of British Columbia
 Plaintiff's Exhibit No. 4
 Certified Copy Application to Register Conveyance
 No. 15690
 Feb. 16, 1926

Vancouver Registry
 Supreme Court of B.C.
 Exhibit No. 4
 The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.
 Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

No. 15690
 EXHIBIT No. 4
 (Coat of Arms)

The Government of the
 Province of British
 Columbia

Land Registry Office
 Received
 1:10
 Feb. 16, 1926

LAND REGISTRY ACT
 Form A, Section 124

Date: 16 Feb, 1926

I, REGINALD HIBBERT TUPPER, solemnly declare that 20
 I am [*or* Solicitor for ~~or the duly authorized Agent of~~ The Montreal Trust Company, Vancouver, B.C., and that it is] entitled to be registered as the owner in fee-simple of the land hereunder described, and hereby make application under the provisions of the "Land Registry Act" and claim registration accordingly.

The full name, address, and occupation of the person so entitled to be registered as owner is The Montreal Trust Company, 614 Pender St. W., Vancouver, B.C.

The fee-simple is registered in Vol. 420, Fol. 13946K, of the Register. 30

DESCRIPTION OF LAND

MUNICIPALITY OR ASSESSMENT DISTRICT	LOT OR SECTION	ADMEASUREMENT OR ACREAGE
City of Vancouver	Lot 15 & N. ½ 16 Bl. 60, D. L. 541, Gp. 1, N. W. D. Plan 210.	

LIST OF INSTRUMENTS

DATE	PARTIES	CHARACTER OF DEED	RECORD <i>In the Supreme Court of British Columbia</i> Plaintiff's Exhibit No. 4 Certified Copy Application to Register Conveyance No. 15690 Feb. 16, 1926 (Contd.)
15 Feb. 1926	The Prudential Holdings Limited—Filing 13793 to The Montreal Trust Company (inter alia) Tax receipt in L. R. O. with 13946 K.	Conveyance of the equity C. of T. 13946 K. in L. R. O. refer to appn.	
10	And I solemnly declare that I have investigated and ascertained the value of the said land, and that the market value thereof at the date of this application, including all buildings and improvements thereon erected, is \$5500 dollars, and that the title deeds mentioned hereon are all those in my custody, possession, or power, relating to the said land, [in case of a Solicitor or Agent, add] and to the best of my belief there are no other title deeds in the custody, possession, or power of the owner, relating to the same; and I am duly authorized by the above-named owner to make this application, [in the case of an Agent, add] and I reside		
20	in the Province of British Columbia, and am of the full age of twenty-one years.		
	And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the "Canada Evidence Act."		
	Declared before me this 16th day of February, 1926, at Vancouver, British Columbia.	(Signature) "R. H. Tupper" 525 Seymour St. (Full Post-office address)	
	For mailing notices and documents		
30	"W. L. HUNT," A Clerk in the Land Registry Office, Vancouver, B.C.		
	I HEREBY CERTIFY that this paper writing is a true copy of an original document deposited in the Land Registry Office at Vancouver and registered as Application under No. 15690-K.		
	(Land Registry Office Seal)	DATED at the Land Registry Office, Vancouver, B. C., this 12th day of June, A.D. 1934.	
40	"ARTHUR G. SMITH," Registrar		
	Compared by W. L. & B. G.		

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 6

Plaintiff's
 Exhibit No. 6
 Certified Copy
 Certificate of
 Indefeasible
 Title
 Feb. 17, 1926

The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.

Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 6

From Certificate No. 2597-K

No. 15689 'K'

(Coat of Arms)

10

THE GOVERNMENT OF THE PROVINCE
 BRITISH COLUMBIA

Certified Copy of Certificate of Indefeasible Title

Date of application for registration, the 16th day of February, 1926.

Register, Vol. 427.

THIS IS TO CERTIFY THAT MONTREAL TRUST COMPANY is absolutely and indefeasible entitled in fee-simple, subject to such charges, liens, and interests as are notified by endorsement hereon, and subject to the conditions, exceptions, and reservations set out hereon, to those pieces of land situate in the City of Vancouver and Province of British Columbia, and more particularly known and described as:

Lots	Five (5) to Nine (9) inclusive,	
Block	Two (2)	
Subdivision	"C"	
District Lot	One hundred and eighty-three (183)	
Group	One (1)	30
	New Westminster District	
Plan	No. 417	

IN WITNESS WHEREOF I have hereunto set my hand and seal of office at Vancouver, British Columbia, this 17th day of February, 1926.

"ARTHUR G. SMITH,"

Registrar

(Seal of Vancouver
 Land Registry Office)

CHARGES, LIENS, AND INTERESTS

	LAND	All
	Nature of Charge	M
	No.	30711-H
	Date of Application	26/1/25
	Time	11:46 a.m.
	Owner of Charge	The British Columbia Land and Investment Agency Limited
10	Value or Amount	
	Particulars	\$13000.00 due 25/9/29
	Term, Rate, etc.	Int. 6%
	Releases.	
	No. Date.	
	Registrar's Signature to Releases.	

RECORD
*In the Supreme
Court of British
Columbia*
Plaintiff's
Exhibit No. 6
Certified Copy
Certificate of
Indefeasible
Title
Feb. 17, 1926
(Contd.)

S. Ct. B.C.
B.C. Land v. Montreal Trust
This is Exhibit six referred to
20 on exam. of B. L. Mitchell
before me on May 29th, 1934.
"Thos. T. Rolph," Special Examiner

EXHIBIT No. 6

ON B. L. MITCHELL'S EXAMINATION ON COMMISSION

THIS INDENTURE made the Eighteenth day of February
in the year of our Lord One thousand nine hundred and twenty-
six

Defendant's
Exhibit No. 6
On Exam. of
B. L. Mitchell
on Commission
Indemnity
Agreement
Feb. 18, 1926

BETWEEN :

30 **MONTREAL TRUST COMPANY**, a Company duly in-
corporated under the laws of the Province of Quebec and
duly authorized to carry on business in the Province of
British Columbia, with a registered office at 614 Pender
Street West in the City of Vancouver in the Province of
British Columbia, hereinafter called the "Trust Com-
pany"

OF THE ONE PART

AND:

40of
.....in the City of
Vancouver in the Province of British Columbia, herein-
after called the "Owner"

OF THE OTHER PART;

RECORD
 In the Supreme
 Court of British
 Columbia
 Defendant's
 Exhibit No. 6
 On Exam. of
 B. L. Mitchell
 on Commission
 Indemnity
 Agreement
 Feb. 1st, 1926
 (Contd.)

WHEREAS by Conveyance dated the 15th day of February, 1926, made between the Prudential Holdings Limited as Grantor and the Trust Company as Grantee, and registered in the Land Registry Office at the City of Vancouver, as Nos. 15690 and 15689, the Prudential Holdings Limited granted and conveyed to The Trust Company the lands and premises hereinafter described, subject to the Mortgages hereinafter described:

AND WHEREAS the Trust Company has agreed by letter of even date with these presents to hold the said lands in trust for and to the use of the Owner and to dispose of and deal with the said lands as the Owner through his Agent, B. L. Mitchell and/or, W. A. Allingham shall direct:

NOW THIS INDENTURE WITNESSETH that in consideration of the said agreement and of the sum of One Dollar of lawful money of Canada now paid by the Trust Company to the Owner, the receipt whereof is hereby acknowledged, the Owner hereby covenants with the Trust Company that he the Owner will at all times hereafter indemnify and keep indemnified and save harmless the Trust Company from all actions, proceedings, claims and demands, costs, damages and expenses which may be brought or made against the Trust Company or which the Trust Company may pay, sustain or incur by reason of the said trust or in relation in any way to the said lands or the charges against the said lands now or hereafter. The said lands are ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the City of Vancouver, Province of British Columbia, and more particularly known and described as Lot Fifteen (15) and North Half of Lot Sixteen (16) in Block Sixty (60) District Lot Five hundred and forty-one (541) Group One (1) New Westminster District, Map No. 210, and Lots Five (5) Six (6) Seven (7) Eight (8) and Nine (9) Block Two (2) Subdivision "C", District Lot One hundred and eighty-three (183) Group One (1) New Westminster District, Map No. 417, now subject to a Mortgage on Lot Fifteen (15) and North Half of Lot Sixteen (16) aforesaid dated the 23rd November, 1925, made by the Grantor as Mortgagor to Charles Talbot Foxcroft as Mortgagee to secure repayment of the \$6,000.00 as therein mentioned, and registered in the Land Registry Office at Vancouver aforesaid as number 37644H, and subject also to a Mortgage on Lots Five (5) Six (6) Seven (7) Eight (8) and Nine (9) aforesaid dated the 15th of January, 1925, between the Grantor as Mortgagor and the British Columbia Land and Investment Agency Limited to secure the sum of \$13,000 as therein mentioned, registered in the Land Registry Office at Vancouver aforesaid as No. 30711H.

IN WITNESS WHEREOF the Owner has hereunto affixed his hand and seal.

SIGNED, SEALED AND DELIVERED in the presence of



A true copy of Indenture held by B. L. Mitchell and W. A. Allingham signed by undisclosed principal. "B. L. MITCHELL" "W. A. ALLINGHAM"

February 22, 1926

10 Supreme Court of B.C. Vancouver Registry Exhibit No. 40 The B.C. Land & Invest. Agcy. Ld. v. Montreal Trust Co. Put in by Deft. Date 19-6-34 "A.A.C.", Registrar

EXHIBIT No. 40

MONTREAL TRUST COMPANY

Executor and Trustee

20

614 Pender Street West Vancouver, B.C. 18th February, 1926

B. L. Mitchell Esq., Royal Bank of Canada, City.

Dear Sir,

Re: Property Purchased from Prudential Holdings Ltd.

30 We beg to acknowledge having received from you yesterday the Bank's own cheque for \$15,500.00, receipt for which we enclose herewith.

At your request, we have made out our own cheque in favour of Prudential Holdings Limited for \$15,033.11, which represents the price after the necessary adjustments are made in respect of the purchase of Lot 15 and North half of Lot 16 Block 60 District Lot 541, and Lots 5, 6, 7, 8, & 9 Block 2 Subdivision "C" District Lot 183 Vancouver, and which is charged against the funds represented by the cheque which you handed to us.

Kindly acknowledge receipt and oblige,

Yours faithfully,

"ROBERT BONE,"

Manager

40

RB/S

RECORD

In the Supreme Court of British Columbia

Defendant's Exhibit No. 6 On Exam. of B. L. Mitchell on Commission Indemnity Agreement Feb. 18, 1926 (Cont'd)

Defendant's Exhibit No. 40 Letter Robert Bone to B. L. Mitchell Cheque Drawn by Montreal Trust Company in favour of Prudential Holdings Ltd. Feb. 18, 1926

RECORD
 In the Supreme
 Court of British
 Columbia

Trust Department

MONTREAL TRUST COMPANY

Vancouver, B.C., 18 February/26. No. 3367

Defendant's
 Exhibit No. 40
 Letter
 Robert Bone
 to
 B. L. Mitchell
 Cheque
 Drawn by
 Montreal Trust
 Company
 in favour of
 Prudential
 Holdings Ltd.
 Feb. 18, 1926
 (Contd.)

Pay to the
 order of

PRUDENTIAL HOLDINGS LIMITED.....\$15,033.11

FIFTEEN THOUSAND & THIRTY-THREE DOLLARS AND ELEVEN CENTS

"Robert Bone," Manager

THE ROYAL BANK OF CANADA

Vancouver, B.C.

"F. N. Hirst,"
 Countersigned 10

Negotiable without charge at all Canadian branches of
 The Royal Bank of Canada

RUBBER STAMPS ON FACE

The Royal Bank of Canada
 Certified
 Feb. 19, 1926
 5
 Vancouver, B.C.

The Royal Bank of Canada
 PAID
 5th Teller
 Feb. 19, 1926

11
 4 20

Vancouver, B.C.

ENDORSEMENTS

Prudential Holdings Ltd.

"T. R. Nickson,"
 Pres.

Nickson Construction Co., Ltd.

"T. R. Nickson"
 Pres.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 41

The B.C. Land & Invest. Agcy. Ld. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

RECORD
*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 41
Letter
B. L. Mitchell
to
Montreal Trust
Company
Feb. 18, 1926

EXHIBIT No. 41

THE ROYAL BANK OF CANADA

10 Vancouver, B.C., February 18/1926

The Montreal Trust Company,
614 Pender West,
Vancouver, B.C.

Gentlemen:

Re: Property purchased from Prudential Holdings, Ltd.

We beg to acknowledge receipt of your letter of February
18th enclosing your company's cheque for \$15,033.11 in favor of
the Prudential Holdings, Limited, and we understand from the
telephone conversation which we have since had that you will send
20 us a further cheque for \$466.89, which will complete the price in
respect to the purchase of Lot 15 and North half of Lot 16, Block
60, District Lot 541, and Lots 5, 6, 7, 8 & 9, Block 2, Subdivision
"C", District Lot 183, Vancouver.

Yours very truly,

"B. L. MITCHELL,"
Manager

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 39

Defendant's
 Exhibit No. 39
 Letter
 Montreal Trust
 Company

The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 39

to
 B. L. Mitchell
 Feb. 18, 1926

February 18, 1926.

B. L. Mitchell, Esq.,
 Vancouver, B.C.

10

Dear Sir:—

Acting as Agent for an undisclosed Principal, you have asked us to purchase in our name from Prudential Holdings Limited ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the City of Vancouver, Province of British Columbia, and more particularly known and described as Lot Fifteen (15) and North half of Lot Sixteen (16) in Block Sixty (60) District Lot Five hundred and forty-one (541) Group One (1) New Westminster District, Map No. 210, and Lots Five (5) Six (6) Seven (7) Eight (8) and Nine (9) Block Two (2) Subdivision "C", District Lot One hundred and eighty-three (183) Group One (1) New Westminster District, Map No. 417, subject to a Mortgage on Lot Fifteen (15) and North Half of Lot Sixteen (16) aforesaid dated the 23rd November, 1925, made by the Grantor as Mortgagor to Charles Talbot Foxcroft as Mortgagee, to secure repayment of the \$6,000.00 as therein mentioned, and registered in the Land Registry Office at Vancouver aforesaid as number 37644H and subject also to a Mortgage on Lots Five (5) Six (6) Seven (7) Eight (8) and Nine (9) aforesaid dated 15th of January, 1925, between the Grantor as Mortgagor and the British Columbia Land and Investment Agency Limited to secure the sum of \$13,000.00 as therein mentioned, registered in the Land Registry Office at Vancouver aforesaid as No. 30711H.

This we have done with monies supplied by you and we are now registered owners of the said lands subject to the said Mortgages.

In consideration of your obtaining for us from your Principal an indemnity agreement protecting us from any loss in this transaction (which indemnity agreement you are to deliver to us duly executed on our demand) we agree to hold the said lands, subject

to the said mortgages, in trust for and to the use of your Principal, and to sell or otherwise dispose of the said land, subject to the said Mortgages, as your Principal shall direct, through you and/or through W. A. Allingham.

It is agreed that we are not to be responsible in any way in respect to the said lands or the Mortgages upon them either to pay charges upon the said lands or otherwise, beyond the amount of rents from the said lands which come into our hands (for which we agree to account) and monies paid to us by your Principal for
10 payment of charges on the said lands.

We enclose Indemnity Agreement in duplicate (having retained one copy) in the form we require and would be glad if you would reply confirming this agreement and particularly that you have had executed the Indemnity Agreement and hold the same to be delivered to us on our demand. We agree not to demand the delivery of this Indemnity Agreement until we are entitled to enforce its terms.

Yours truly,

MONTREAL TRUST COMPANY

20

“Robert Bone,”
Manager

Supreme Court of B.C.
Vancouver Registry
Exhibit No. 38
The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.
Put in by Deft. Date 19-6-34
“A.A.C.”, Registrar

EXHIBIT No. 38

30

THE ROYAL BANK OF CANADA

Incorporated 1869

B. Vancouver, B.C., February 18/1926

The Montreal Trust Company
614 Pender West,
Vancouver, B.C.

Gentlemen:—

Confirming the various conversations which we have had with your Mr. Bone during the past few days, it is our desire that you should purchase in your name from the Prudential Holdings,
40 Limited—ALL AND SINGULAR these certain parcels or tracts

RECORD
*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 39
Letter
Montreal Trust
Company
to
B. L. Mitchell
Feb. 18, 1926
(Contd.)

Defendant's
Exhibit No. 38
Letter
B. L. Mitchell
and
W. A. Alling-
ham to
Montreal Trust
Company
Feb. 18, 1926

RECORD
 In the Supreme
 Court of British
 Columbia
 Defendant's
 Exhibit No. 38
 Letter
 B. L. Mitchell
 and
 W. A. Alling-
 ham to
 Montreal Trust
 Company
 Feb. 18, 1926
 (Contd.)

of land and premises situate, lying and being in the City of Vancouver, Province of British Columbia, and more particularly known and described as Lot Fifteen (15) and North Half of Lot Sixteen (16) in Block Sixty (60) District Lot Five hundred and forty-one (541) Group One (1) New Westminster District, Map No. 210, and Lots Five (5) Six (6) Seven (7) Eight (8) and Nine (9) Block Two (2) Subdivision "C", District Lot One Hundred and eighty-three (183) Group One (1) New Westminster District, Map No. 417, subject to a mortgage on Lot Fifteen (15) and North Half of Lot Sixteen (16) aforesaid, dated the 23rd November, 1925, made by the grantor as mortgagor to Charles Talbot Foxcroft as mortgagee, to secure repayment of the \$6,000.00 as therein mentioned, and registered in the Land Registry Office at Vancouver aforesaid as number 37644H and subject also to a mortgage on Lots Five (5) Six (6) Seven (7) Eight (8) and Nine (9) aforesaid dated 15th of January, 1925, between the grantor as mortgagor and the British Columbia Land and Investment Agency Limited to secure the sum of \$13,000.00 as therein mentioned, registered in the Land Registry Office at Vancouver aforesaid as No. 30711H. In consideration of your agreeing to hold the said lands, subject to the said mortgages, in trust for and for the use of our principal and to sell or otherwise dispose of the said land, subject to the said mortgages, as our principal shall direct, we undertake to obtain an indemnity from our principal protecting you from any loss in this transaction, this indemnity agreement to be delivered to you, duly executed, on demand through B. L. Mitchell and/or through W. A. Allingham.

It is agreed that you are not to be responsible in any way in respect to the said lands or the mortgages upon them, either to pay charges upon the said lands or otherwise beyond the amount of rents from the said lands which come into your hands and monies paid to you by our principal for payment of charges on the said lands.

The indemnity agreement has been executed by an undisclosed principal and we hold the same to be delivered to you upon your demand, it being understood that no demand will be made upon us for this agreement until you are entitled to enforce its terms.

Yours very truly.

"B. L. MITCHELL"

"W. A. ALLINGHAM"

Copy of agreement enclosed.

"W.A.A."

RECORD

*In the Supreme
Court of British
Columbia*

Nickson Construction Co. Ltd.

"T. R. Nickson"

Pres.

Defendant's
Exhibit No. 42
Cheque
Drawn by
Montreal Trust
Company
in favour of
Prudential
Holdings Ltd.
Feb. 19, 1926
(Contd.)

\$466 89/100

Vancouver, B.C., Fby 19th 1926.

RECEIVED FROM THE MONTREAL TRUST COMPANY
the sum of

Ck for Four hundred and Sixty six 89/100—Dollars
on account of Prudential Holdings Ltd.

For the Royal Bank of Canada
Vancouver, B.C.

10

"W. A. Allingham"
Asst. Manager

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 35

The B.C. Land & Invest. Agey. Ld. v.
Montreal Trust Co.

Put in by Ptf. Date 19-6-34
"A.A.C.", Registrar

20

Plaintiff's
Exhibit No. 35
Letter
Tupper, Bull
& Tupper
to
Montreal Trust
Company
Feb. 19, 1926

EXHIBIT No. 35

Yorkshire Building,
525 Seymour St.
Vancouver, B.C.,
19th February, 1926

The Montreal Trust Company
614 Pender Street W.
Vancouver, B.C.

Dear Sirs,

Re: Prudential Holdings Limited

30

As requested by you we have obtained and enclose herewith
Certificates of Encumbrances showing you to be the registered
owner of the two properties purchased from the above Company,
subject to the Mortgages thereon.

Yours truly,

"Tupper, Bull & Tupper"

RHT:AL
Enc.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 34

The B.C. Land & Invest. Agcy. Ld. v.
Montreal Trust Co.

Put in by Ptf. Date 19-6-34
"A.A.C.", Registrar

RECORD
*In the Supreme
Court of British
Columbia*
Plaintiff's
Exhibit No. 34
Certificate of
Encumbrance
Feb. 19, 1926

EXHIBIT No. 34
CERTIFICATE OF ENCUMBRANCE

10

Land Registry Office

Vancouver, B.C.

No. 2/197 minutes past 10 o'clock 19th day of February, 1926.

I HEREBY CERTIFY that the following is the state of the
title to

City of Vancouver
Lots 5 to 9
Block 2
Subdivision "C"
District Lot 183

20

Group 1, New Westminster District
Plan 417

viz:

Registered Owner: Montreal Trust Company
Volume 427, Folio 15689 K. Indef.

Registered Charges: 30711 H. 26/1/25. 11.46. Prudential Hold-
ings Limited to The British Columbia Land & Investment
Agency Limited. Mortgage for \$13000. Due 25/9/29. Int. 6%

Applications for Registration. None.

30 Receiving Order or authorized Assignment under the "Bank-
ruptcy Act": None.

Assignment for benefit of Creditors: None.

Judgments: None against Montreal Trust Co. or The B. C. Land
& Invest. Agency Ltd.

Mechanics' Liens: None.

"ARTHUR G. SMITH"
(Seal)

Registrar

M.

'JAG'

To:—R. M. Tupper

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 43

Defendant's
 Exhibit No. 43
 Letter

The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.

Robert Bone
 to
 Montreal Trust
 Company
 Mar. 22, 1926

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 43

22nd March, 1926.

The General Manager,
 Montreal Trust Company,
 Montreal, Que.

10

Re New Business

Trust Record No. 146, B. L. Mitchell

and W. A. Allingham

Dear Sir:

We were approached by Messrs. Mitchell and Allingham, who are Manager and Assistant Manager respectively of the Main Office of the Royal Bank here, in the matter of having registered in our name, to be held in trust, certain properties which a valued client of the Bank was purchasing. This party did not wish his name disclosed but in view of the written report of his financial standing and of the fact that Messrs. Mitchell and Allingham were acting as his agents, we could not see any objection to our holding the properties, provided we were furnished with an Indemnity Agreement. Accordingly we obtained from Messrs. Mitchell and Allingham, acting as agents of the purchaser, a letter dated 18th February, 1926, stating that they held an indemnity agreement executed by their undisclosed principal and that they held same to our order, and for your information, we enclose copy of the said letter to which is attached copy of the Agreement as signed.

20

30

We enclose also the usual Trust Record Sheet pertaining to this business and copy of our letter dated 18th February, 1926, to Mr. Mitchell, bearing upon the taking of the properties in our name. The fee quoted by us is \$50.00 per annum and 5% on the rent collections which we hope you will consider satisfactory. The full purchase price paid for these properties was \$34,500.00 (\$15,500.00 cash and assumption of mortgages totalling \$19,000.00). Insurance on the Burrard Street property is carried to the amount of \$5,000.00 which is held by the mortgagee, and in the case of the Powell Street property \$6,000.00 is carried in favour of the mortgagee. We took up with Messrs. Mitchell and Allingham the

40

matter of further insurance and are advised that their principal considers the above amounts are all the insurable properties will carry—the land in both cases being the valuable asset.

We think that we have fully protected ourselves in this transaction, and shall feel obliged if you will have this business placed before the Executive Committee in the usual course.

Thanking you,

We are,

Yours faithfully,

“R.B.”

Manager

10 RB/JS.

S. Ct. B.C.
B.C. Land v. Montreal Trust
This is Exhibit Three referred
to on exam. of B. L. Mitchell
before me on May 29th, 1934.
“Thos. T. Rolph,” Special Examiner

EXHIBIT No. 3

20 ON B. L. MITCHELL'S EXAMINATION ON COMMISSION

Hotel Vancouver,
Vancouver, British Columbia
June 20/27

Mr. Mitchell,
Manager Royal Bank of Canada

Dear Mr. Mitchell:

Re Powell St. Property

30 There is every possibility of P. Burns taking up the option I gave to purchase this property. Would you please get ready a statement showing just how much will be owing to the Montreal Trust Co.

I have every reason to believe P. Burns and Blake Wilson will take over this property.

The writer is going out of the City for a few days and will get the statement when I return about June 24 or 25.

Yours faithfully,

“T. R. Nickson”

Amount owing—12557—together with interest from date of purchase.

RECORD
In the Supreme
Court of British
Columbia

Defendant's
Exhibit No. 43
Letter
Robert Bone
to
Montreal Trust
Company
Mar. 22, 1926
(Contd.)

Defendant's
Exhibit No. 3
On Exam. of
B. L. Mitchell
on Commission
Letter
T. R. Nickson
to
B. L. Mitchell
June 20, 1927

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 10

Defendant's
 Exhibit No. 10
 Letter
 Montreal Trust
 Company

The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

to
 E. B. Morgan
 Co., Ltd.
 Oct. 16, 1929

EXHIBIT No. 10

MONTREAL TRUST COMPANY

Executors and Trustees

10

614 Pender Street West,
 Vancouver, B.C.,
 16th October, 1929

Your reference L 203

Messrs. E. B. Morgan & Co. Ltd.,
 402 Pender Street West,
 City.

Dear Sirs:

Re: Mortgage on Lots 5-9 Block 2 D.L. 183c
 Powell Street, Vancouver.

20

We beg to enclose our cheque for \$390.00 in payment of interest to 26th ulto. on the above mortgage.

We should feel much obliged if you would endeavour to have this mortgage extended for a further period and should like to hear from you in this connection.

Thanking you in advance,

We are,

Yours faithfully,

"F. N. HIRST,"

Frank N. Hirst, for the Manager 30

FNH/DR.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 11

The B.C. Land & Invest. Agcy. Ld. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 11

E. B. MORGAN & COMPANY LIMITED

10

402 Pender Street West
Vancouver, B.C.
17th October, 1929.

Messrs. Montreal Trust Co.
614 Pender St. W.,
Vancouver, B.C.

Dear Sirs:

Re Mortgage \$13000 @ 6%. L. 203. Covering Lots 5-9
Blk. 2, D.L. 183-C

We beg to acknowledge receipt of yours of the 16th inst.
20 enclosing cheque for \$390 in payment of interest on the above to
the 26th ultimo. Our official receipt is enclosed herewith. Re-
garding the question of having this mortgage extended for a fur-
ther period, we should be glad if you would write us again, stating
definitely just how long an extended period you would require.
We would also like to know whether it would be possible to have
this mortgage reduced by a payment on account of say \$3000, and
extend the balance, \$10,000 for the time required by your princi-
pal. As soon as we hear from you again in this connection, we
will be only too pleased to take the matter up with the mortgagées.

30

Yours truly,

HBM:BG
Encl.

"H. B. MARGESON"

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 11
Letter

E. B. Morgan
& Co., Ltd.

to
Montreal Trust
Company
Oct. 17, 1929

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 12

Defendant's
 Exhibit No. 12
 Letter

The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.

Montreal Trust
 Company
 to

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

E. B. Morgan
 & Co., Ltd.
 Nov. 13, 1929

EXHIBIT No. 12
 MONTREAL TRUST COMPANY

Executors and Trustees 10

614 Pender Street West,
 Vancouver, B.C.,
 13th November, 1929.

The Manager,
 E. B. Morgan & Co. Ltd.,
 402 Pender Street West,
 City.

Dear Sir:

Re: Mortgage of \$13,000.00 on Lots 5-9 Blk. 2,
 D.L. 183c (Powell St.) 20

Referring to your favour of 17th ulto.—we regret the delay in answering same but we only heard from our principal this morning.

Our principal has requested us to endeavour to obtain a renewal of this mortgage in full, for as long a term as possible. In the meantime we are bending every effort to effect a sale of the property. Perhaps it would be well to leave the mortgage as it now stands for a while, but we should like to hear further from you in this connection.

Thanking you, 30

We are,

Yours faithfully,

"F. N. HIRST,"

Frank N. Hirst, for the Manager

FNH/DR.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 13

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 13

E. B. MORGAN & COMPANY LIMITED

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 13
Letter

E. B. Morgan
& Co., Ltd.

to
Montreal Trust
Company

Nov. 27, 1929

10

402 Pender Street West
Vancouver, B.C.
27th November, 1929.

Messrs. Montreal Trust Co.,
614 West Pender St.,
Vancouver, B.C.

Dear Sirs:

Re Mortgage \$13,000. Lots 5 to 9, Blk. 2, D.L. 183-C

Your letter of the 13th inst. in the above connection was forwarded by us to the Mortgagees in Victoria for their perusal and consideration, and we have their reply as follows:—

20 "Will you please inform the Montreal Trust Co. that we regret that we are unable to accede to their request, and that before an extension will be granted they will have to pay at least \$3000 on account principal. We also think that the Mortgagors should pay 7% from now on, so please ask it of them."

We would be glad therefore to hear from you as soon as possible as to what your intentions are in connection with this proposal.

Yours truly,

"H. B. MARGESON"

30 HBM:BG.

RECORD
 In the Supreme
 Court of British
 Columbia

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 14

Defendant's
 Exhibit No. 14
 Letter

The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.

E. B. Morgan
 & Co., Ltd.
 to

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

Montreal Trust
 Company
 Aug. 20, 1931

EXHIBIT No. 14

E. B. MORGAN & COMPANY LIMITED

402 Pender Street West 10
 Vancouver, B.C.
 20th Aug., 1931.

The Manager
 The Montreal Trust Co.
 Vancouver, B.C.

Dear Sir:

Re Prudential Holdings Ltd. \$13000 @ 6%. L. 203

The Managing Director of The B. C. Land & Investment Agency Ltd., is here from London, England on one of his periodical tours of inspection. He has asked us to call to your attention 20 the fact that the above mortgage is long past due. We have been requested to ask you to make arrangements as soon as possible to repay the amount owing. Would you therefore be good enough to advise us on or before the 31st inst. just what the present owner can do in the matter.

Yours sincerely,

"H. B. MARGESON"

W/HBM.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 15

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 15
Letter
Montreal Trust
Company

to
E. B. Morgan
Co., Ltd.
Sept. 3, 1931

EXHIBIT No. 15
MONTREAL TRUST COMPANY

10

Executors and Trustees

The Royal Bank Building,
Vancouver, B.C.,
3rd September, 1931.

File FNH/DR.

Messrs. E. B. Morgan & Co. Ltd.,
402 Pender Street West,
Vancouver, B.C.

Dear Sirs:

20

Re: Prudential Holdings Ltd. Mortgage on
Powell Street Property

With reference to your letter of 20th August last—we have taken up the matter referred to therein with our client and he states that it is impossible for him to pay off the mortgage mentioned at the present time. He points out that he has kept up the interest in connection with this mortgage in the past and will do so in the future and will also endeavour within the next few months to reduce the amount of the principal.

We shall be glad if you will convey this information to your principals and we hope it will be satisfactory to them.

30

We are,

Yours faithfully,

"F. N. HIRST,"

Frank N. Hirst, for the Manager

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 16

Defendant's
 Exhibit No. 16
 Letter

The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.

A. E. Brayne
 to
 A. R. Wolfen-
 den
 May 11, 1932

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 16

Copy

20-21 Essex Street, Strand,
 London, W.C. 2, 11th May, 1932. 10

The Manager,
 Victoria Office,
 Victoria, B.C.

No. 186

Dear Sir:

Prudential Holdings, Ltd.

I sent on to our Chairman a copy of what you wrote in your No. 864 of April 20th, and the following is what Mr. Leonard writes in reply—which kindly note.

“Thanks for your letter with copy letter from Mr. Wolfenden. 20

“I agree that it would not be worth while to pay anything for an assignment to us by the Prudential of the indemnity unless (1) it is clear that they have an enforceable right of indemnity and (2) that if we acquired it, it would be enforceable by us against some company which is quite able to pay.

“Might it not be as well that Mr. Wolfenden should suggest to the Montreal Trust that if it is not convenient to them to pay off the whole matter at once they should at least reduce it?”

Yours faithfully,

30

“A. E. Brayne,”
 Man. Dir.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 17

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 17
Letter
B.C. Land &
Investment
Agency Ltd.

to
E. B. Morgan
& Co., Ltd.
May 26, 1932

EXHIBIT No. 17

10 THE BRITISH COLUMBIA LAND AND INVESTMENT
AGENCY LIMITED

922 Government Street,
Victoria, B.C., 26th May, 1932.

Messrs. E. B. Morgan & Co.
B. C. Mining Exchange Bldg.,
Vancouver, B.C.

Dear Sirs:

Re Prudential Holdings:

20 We enclose herewith copy of London Office letter No. 186 of
the 11th of May. It speaks for itself, and if you do not think it
inadvisable, will you please watch your opportunity to ask the
Montreal Trust if it will be convenient for them to pay something
at least on account of principal sum of Mortgage. You will prob-
ably have to be a bit diplomatic the way you go about it as on no
account do we wish to antagonize them so long as they are paying
interest and taxes.

Yours faithfully,

ARW/JB.
Encl.

"A. R. Wolfenden"
Manager

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 18

Defendant's
 Exhibit No. 18
 Letter The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.

H.B. Margeson Put in by Deft. Date 19-6-34
 to "A.A.C.", Registrar

B.C. Land &
 Investment
 Agency Ltd.
 May 27, 1932

EXHIBIT No. 18

May 27th, 1932. 10

The Manager,
 Messrs. The B.C. Land & Investment Agency, Ltd.,
 922 Government Street,
 Victoria, B.C.

Dear Sirs:

We acknowledge receipt of the 26th instant.

Re Prudential Holdings—Thanks for copy of London Office
 Letter No. 186 of the 11th of May in the above connection and con-
 tents noted. As suggested we will endeavor shortly to interview
 Mr. Bone, Manager of the Montreal Trust Co., with the purpose
 of seeing if it is possible to get them to pay something at least 20
 on account of principal sum of mortgage. We will take your tip
 and be as diplomatic as possible in the way we approach these
 people in this matter.

J. A. Sayward—121 Heatley Avenue—(Omitted)

Yours faithfully,

HBM:FEL.
 Encl.

"H. B. MARGESON"

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 19
 The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.
 Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

RECORD
 In the Supreme
 Court of British
 Columbia

Defendant's
 Exhibit No. 19
 Letter
 Montreal Trust
 Company
 to
 E. B. Morgan
 & Co., Ltd.
 July 13, 1932

EXHIBIT No. 19

MONTREAL TRUST COMPANY

10

Executors and Trustees

The Royal Bank Building,
 Vancouver, B.C.,
 13th July, 1932.

FNH/OM

Attention Mr. Margeson.

Messrs. E. B. Morgan & Co., Ltd.
 402 Pender Street West,
 Vancouver, B.C.

Dear Sirs:

Re Powell Street Property

20 With reference to your call on us a few days ago—we wrote
 to our principals requesting them to supply us with funds with
 which to pay interest on the mortgage and the current year's taxes
 and are today in receipt of a reply which reads as follows:

30 "It is not my intention to put up any further money in
 connection with this property unless the mortgagee will agree
 to a definite extension for at least five years of the principal
 amount. I might also state, that I will not sign any document
 in the form of a renewal of this mortgage which would in any
 way bind me, personally, for the principal amount, but if the
 mortgagee will agree to a definite extension of say five years,
 subject to interest and taxes being paid, I will, as in the past,
 continue to advance money from time to time to take care of
 same, with the option to the mortgagee that should I fail to
 keep interest and taxes paid they would have the liberty to
 foreclose the property."

We shall feel obliged if you will take this matter up with your
 client and advise us if the arrangement for an extension of at least
 five years as outlined above can be arranged.

Thanking you, we are,

40

Yours faithfully,

"F. N. HIRST,"

Frank N. Hirst, for the Manager

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 20

Defendant's
 Exhibit No. 20
 Letter

The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.

H. B. Margeson

Put in by Deft. Date 19-6-34

to
 B.C. Land &
 Investment
 Agency Ltd.

"A.A.C.", Registrar

EXHIBIT No. 20

July 15, 1932

July 15th, 1932.

The Manager,
 Messrs. The B.C. Land & Investment Agency, Ltd.,
 922 Government Street,
 Victoria, B.C.

10

Dear Sir:

We acknowledge receipt of yours of the 9th, 12th and 13th inst.

Finlayson Estate—Federici—(Omitted).

Dr. C. F. Covernton—(Omitted).

J. A. Sayward—Uyesugi—(Omitted).

Montreal Trust Company—Prudential Holdings

20

Carrying out our promise of a few weeks ago, we called on the Manager of the Montreal Trust Co., a day or two ago, for the purpose of discovering whether or not the present holder of the security held under the above mortgage could see his way clear to reduce the principal sum to some extent and he promised a reply by letter which came duly to hand and is enclosed herewith for your consideration. This, no doubt, will be bad news for you and all we can say is that the borrowers are certainly taking every advantage these days of the Moratorium Act, etc., and are not backward in putting forward propositions wholly in their favor and in this case, the Owner not being on the Covenant is certainly taking advantage of this fact. Your instructions awaited.

J. H. Arnott—Hill—(Omitted).

H. J. Landon—A. and E. Lee—(Omitted).

Yours faithfully,

"H. B. MARGESON"

HBM:FEL.
 Encl.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 21

The B.C. Land & Invest. Agcy. Ld. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 21

10 THE BRITISH COLUMBIA LAND AND INVESTMENT
AGENCY LIMITED

922 Government Street,
Victoria, B.C., July 16, 1932.

Messrs. E. B. Morgan & Co., Ltd.
B. C. Mining Exchange Bldg.,
Vancouver, B.C.

Dear Sirs:

Yours of the 15th inst. is to hand.

Finlayson Estate—Federici—(Omitted).

Montreal Trust Company (Prudential Holdings):

20 Thanks for sight of the letter from the Montreal Trust Company to you of the 13th inst., but it is not at all nice reading. They have left us no alternative but to agree to their terms, if we don't do it then I expect we shall have to foreclose. This is something we don't want to do at the present time. A copy of the letter is today being passed on to London Office for the Directors' consideration. In the meantime you might be good enough to tell the Montreal Trust what we are doing in the matter.

The letter is returned herewith.

J. H. Arnott—Hill—(Omitted).

30 H. J. Landon and E. Lee—(Omitted).

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 21
Letter
B.C. Land &
Investment
Agency Ltd.
to
E. B. Morgan
& Co., Ltd.
July 16, 1932

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 22

Defendant's
 Exhibit No. 22
 Letter

The B.C. Land & Invest. Agy. Ld. v.
 Montreal Trust Co.

A. R. Wolfenden
 to

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

A. E. Brayne
 July 16, 1932

EXHIBIT No. 22

Copy. No. 891.
 The Managing Director,
 London, England.

July 16th, 1932.

10

Dear Sir:

Re Prudential Holdings—Montreal Trust Co.

Herewith please find copy of letter from the Montreal Trust Company to Messrs. Morgan & Co. of the 30th inst., to which we have replied as per the enclosed carbon copy.

We were always under the impression that the Montreal Trust was acting for the Royal Bank, but the letter indicates that they are acting for an individual; possibly that individual is the Manager of the Bank. At any rate, it would appear that we must either accept their proposal or run the risk of having the property back on our hands. 20

Yours faithfully,

"A. R. Wolfenden,"
 Manager

ARW/MW.
 Enc.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 23

The B.C. Land & Invest. Agcy. Ld. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 23

Copy.

London, W.C. 2, 20th October, 1932.

10

No. 252

The Manager,
Victoria Office,
B.C.

Dear Sir:

Prudential Holdings—Montreal Trust Co.

Referring to your letter No. 891 which enclosed:

- (a) copy of letter from Mr. Frank N. Hurst "for the Manager of the Montreal Trust
- (b) copy of your letter to Morgan & Co. thereon.

20 There still appears to be some mystery about this person or Company who or which is interested in the Powell Street Property. The Montreal Trust Manager speaks of writing to his "principals" (sic) and such "principals" write "I" and "my". So none of us know whether the party interested is a corporation, firm or individual. So we refer hereinafter to "the principal(s)" as "the interested party".

The Board had this matter before them yesterday, and decided as follows:

- 30 (1) If the interested party will agree to pay regularly and punctually (a) interest on our loan, (b) taxes on the property, (c) insurance—and maintain the premises—

We will, so long as he observes that agreement, not ask for the principal for five years.

You observe we use the word "agree"—implying a Deed of Agreement. This is the arrangement which the Board would prefer. But maybe you will not be able to get that; perhaps the interested party will not reveal his identity or put his hand to anything.

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 23
Letter
A. E. Brayne
to
A. R. Wolfenden
Oct. 20, 1932

RECORD
 In the Supreme
 Court of British
 Columbia

Defendant's
 Exhibit No. 23
 Letter
 A. E. Brayne

to
 A. R. Wolfen-
 den
 Oct. 20, 1932
 (Contd.)

(2) If you cannot get that then the Board authorize you to say:

That the Company will agree not to call in the principal so long as—during the next five years—the interest, taxes and insurance are regularly and punctually paid and the maintenance of the property is kept up.

Five years is rather a long time—I think the Board would prefer three or four—but in the circumstance, we can only get what we can.

I suppose it would be useless to try and get the interested party to put his hand to a covenant to repay the principal—he says quite definitely he won't.

It is definitely understood here that neither of the above alternatives (1) or (2) includes or implies any obligation on the interested party to make himself responsible for the principal.

On the other hand, should default occur in the fulfilment of any of the conditions set out above as to payment of interest, taxes, etc., then, as the interested party agreed, we should have the liberty to foreclose the property.

Yours faithfully,

20

“A. E. BRAYNE,”
 Man. Dir.

P.S. Carbon enclosed in case you wish to send it to Messrs. Morgan & Co.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 24

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No 24
Letter
B.C. Land &
Investment
Agency Ltd.

to

E. B. Morgan
& Co., Ltd.
Nov. 15, 1932

EXHIBIT No. 24

10 THE BRITISH COLUMBIA LAND AND INVESTMENT
AGENCY LIMITED

922 Government Street,
Victoria, B.C., November 15, 1932.

Messrs. E. B. Morgan & Co., Ltd.
B. C. Mining Exchange Bldg.,
Vancouver, B.C.

Dear Sirs:

Re Prudential Holdings—Montreal Trust Company

20 You will remember that on the 13th of July last Mr. Frank
Hurst, as representing the Manager of the Montreal Trust, wrote
to you to the effect that he would put up no further money unless
he was granted an extension of at least five years, for payment of
the principal amount. A copy of that letter was sent on to London
Office, together with a copy of our reply to you of the 16th of
July. We are now in receipt of reply, copy of which is enclosed
herewith.

30 The letter speaks for itself and, in view of what the Directors
say, will you kindly inform the Montreal Trust that their request
for extension for five years—under the conditions mentioned in
their said letter of 13th of July—has been granted; but at the same
time the Directors are in hopes that they will be satisfied with a
shorter time—say four years. In view of what Mr. Hurst says it
is no use our asking for a binding document, other than a written
acknowledgment to the effect that the conditions specified in their
letter of the 13th of July will be complied with.

Dr. Covernton—(Omitted).

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 25

Defendant's
 Exhibit No. 25
 Extracts Letter
 A. R. Wolfen-
 den
 to

The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.
 Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

A. E. Brayne
 Nov. 16, 1932

EXHIBIT No. 25

EXTRACT OF LETTER No. 928, dated 16/11/32

A. R. Wolfenden to A. E. Brayne

10

"Prudential Holdings—Montreal Trust: I note that the Board has decided that if the interested party will agree to pay regularly and punctually interest taxes and insurance, and maintain the premises the matter of payment of principal may remain in abeyance for a term of five years, as asked for in the Montreal Trust Company's letter to Messrs. Morgan & Co. of the 13th July last.

Inasmuch as Mr. Hirst—as Manager for the Montreal Trust Co.—distinctly stated that he would sign no binding agreement we could hardly ask him to sign anything, other than an acknowledgment of a letter, and stating that he would carry out the terms and conditions of his said letter of the 13th of July. We have therefore passed on to Messrs. Morgan & Co. a copy of your letter with instructions to convey the information to Mr. Hirst, and ask for such an acknowledgment. Further, we mentioned that five years was a long time, and that the Board would like to limit the extension to four years, if possible."

20

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 26

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 26

E. B. MORGAN & COMPANY LIMITED

10

402 Pender Street West
Vancouver, B.C.
November 16th, 1932.

Montreal Trust Company,
Royal Bank Building,
Vancouver, B.C.

Dear Sirs:

Re: Powell Street Property

Referring to your letter of the 13th of July last, we beg to
advise that we are now in receipt of instructions from the Direc-
20 tors in London, to the effect that your client's request for an ex-
tension of time, in which to repay the principal sum has been
granted, for four years instead of five, as specified by your prin-
cipal, providing the mortgagor agrees to pay regularly and punc-
ually, interest on mortgage, taxes on the property, insurance, main-
tain the premises in good state of repair.

We would be glad if you would lay this matter before your
client for his consideration and should he agree to same, we are
prepared to give him a letter setting forth the terms of said ex-
tension, as above mentioned.

30

Yours very truly,

"H. B. MARGESON"

HBM:FEL.

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 26

Letter
E. B. Morgan
& Co., Ltd.

to
Montreal Trust
Company
Nov. 16, 1932

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 27

Defendant's
 Exhibit No. 27
 Letter

The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.

H.B. Margeson
 to

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

B.C. Land &
 Investment
 Agency Ltd.

EXHIBIT No. 27

Nov. 18th, 1932.

Nov. 18, 1932

The Manager,
 Messrs. The B.C. Land & Investment Agency, Ltd.,
 922 Government Street,
 Victoria, B.C.

10

Dear Sir:

We beg to acknowledge receipt of yours of the 12th, 15th and 16th inst.

E. Festus Kelly—S. W. Smith—(Omitted).

Prudential Holdings—Montreal Trust Co. Thanks for copy of London office letter No. 252, dealing with the above matter and in accordance with instructions we have notified the Montreal Trust Co., that the Directors have acceded to the request of their client for an extension of time, in which to repay the principal sum, for a period of four years, instead of five, providing the owner of the property will agree to pay regularly and punctually, interest on the loan, taxes and insurance premium and keep the premises in good state of repair. Mr. Hirst, of the Montreal Trust Company, stated that they expected their principal in the City next week and he will lay our letter before him at that time. Should this mortgagor insist that the said extension be for five years, instead of four, we will as instructed agree to same. 30

Dr. Covernton—Sullivan Block—(Omitted).

Tax Sale—(Omitted).

"H. B. MARGESON"

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 28

The B.C. Land & Invest. Agcy. Ltd. v.
Put in by Deft. Date 19-6-34

Put in by Deft. 19-6-34.
"A.A.C.", Registrar

EXHIBIT No. 28

THE BRITISH COLUMBIA LAND AND INVESTMENT
AGENCY LIMITED

10

922 Government Street,
Victoria, B.C., November 19, 1932

Messrs. E. B. Morgan & Co. Ltd.,
B. C. Mining Exchange Bldg.,
Vancouver, B.C.

Dear Sirs:

Yours of the 18th inst. is to hand.

E. Festus Kelly—S. W. Smith—(Omitted).

20 Prudential Holdings—Montreal Trust: We note that you have told the Montreal Trust Co. that the Directors would accede to the request for extension of time for payment of principal sum for a period of four years, subject to the provisos in London Office letter No. 252, and we are in hopes that the Trust Co.'s client—whoever he may be—will be agreeable; but should he insist that the extension should be for five years, then, of course, we shall have to submit.

Dr. Covernton—Sullivan Block: Thank you for copy of
(Omitted)

Tax Sale—(Omitted).

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 28
Letter
B.C. Land &
Investment
Agency Ltd.

to
E. B. Morgan
& Co., Ltd.
Nov. 19, 1932

RECORD
*In the Supreme
 Court of British
 Columbia*

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 29

Defendant's
 Exhibit No. 29
 Letter

The B.C. Land & Invest. Agy. Ld. v.
 Montreal Trust Co.

H. B. Margeson
 to

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

B.C. Land &
 Investment
 Agency Ltd.
 Nov. 25, 1932

EXHIBIT No. 29

Nov. 25th, 1932.

The Manager,
 Messrs. The B.C. Land & Investment Agency, Ltd.,

10

922 Government Street,
 Victoria, B.C.

Dear Sir:

We beg to acknowledge receipt of yours of the 18th and 19th inst.

C.P.L. No. 43—Burns and Company Lease—(Omitted).

Tax Sale—(Omitted).

T. S. Smith—M. C. Prentice Estate—(Omitted).

James Wilson—Rev. A. M. Pollock—(Omitted)

20

Prudential Holdings—Montreal Trust Company—We have just been speaking to Mr Hurst over the 'phone, with reference to our letter which he promised to lay before his client and he advises us that up to the present, that he has had no reply. He stated that he found it necessary to take the matter up with his principal by mail and he is hoping to hear from him within the next day or two.

Yours faithfully,

"H. B. MARGESON"

HBM:FEL.

40

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 30

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

RECORD

In the Supreme
Court of British
Columbia

Defendant's
Exhibit No. 30
Letter
Montreal Trust
Company
to
E. B. Morgan
& Co., Ltd.
Dec. 8, 1932

EXHIBIT No. 30

MONTREAL TRUST COMPANY

10

Executors and Trustees

The Royal Bank Building,
Vancouver, B.C.,

File RB/CM

8th December, 1932.

Messrs. E. B. Morgan & Co. Ltd.,
402 Pender Street West,
Vancouver, B.C.

Dear Sirs:

Re: Powell Street Property

20 With reference to your letter of November 16th, our client has requested us to advise you that due to changed conditions, it will be impossible for him to continue advancing money for the payment of taxes, interest, etc., on the above property.

Yours faithfully,

"F. N. HIRST,"
Frank N. Hirst, for the Manager

RECORD
 In the Supreme
 Court of British
 Columbia

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 31

Defendant's
 Exhibit No. 31
 Letter

The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.

H.B. Margeson
 to

Put in by Deft. Date 19-6-34
 "A.A.C.", Registrar

B.C. Land &
 Investment
 Agency Ltd.
 Dec. 12, 1932

EXHIBIT No. 31

December 12th, 1932.

The Manager,
 Messrs. The B.C. Land & Investment Agency, Ltd.,

10

922 Government Street,
 Victoria, B.C.

Dear Sir:

We beg to acknowledge receipt of yours of Dec. 9th & 10th.
 (Paragraph omitted)

Mrs. Mary Broadbent—deceased—(Omitted).

J. Mayne—(Grantham)—(Omitted).

Federici—Finlayson—(Omitted).

J. A. Sayward—Uyesugi—(Omitted).

20

Prudential Holdings—Montreal Trust Co.

We are in receipt of the enclosed letter from the last named Company which speaks for itself. Upon receipt of this letter, we rang up Mr. Hirst and asked him, if it was the desire of their client to quit claim the property and he simply stated that outside of the information set out in his letter, he had received no further instructions. At the same time, we asked him what the premises were bringing in each month, by way of rental, and we were informed that rents amounted to about \$55 per month and that net rents have been turned over to us as they accumulated. We would be pleased to receive your further instructions in this connection.

30

Yours faithfully,

"H. B. MARGESON"

HBM:FEL.

Encl.

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 32

The B.C. Land & Invest. Agcy. Ltd. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 32

RECORD

*In the Supreme
Court of British
Columbia*

Defendant's
Exhibit No. 32
Letter
A. R. Wolfenden

to
A. E. Brayne
Dec. 14, 1932

Copy.
10 No. 941.

14th December, 1932

The Managing Director,
London, England.

Dear Sir:

re Prudential Holdings—Montreal Trust Co.

The enclosed copy of letter is anything but pleasant reading, but in view of present conditions combined with the previous attitude of the Montreal Trust Co. I was not at all surprised on reading what they have to say. Will you please bring the matter before the Directors and instruct us what, if anything, we are to do under the circumstances. I don't suppose we would stand much chance in Court, but it occurs to the writer that the Directors might take the view that it would be worth while to make a test case of it, i.e. see if the Montreal Trust Co. cannot be held to its implied covenant.

Yours faithfully,

"A. R. Wolfenden,"
Manager

ARW/JB

RECORD
 In the Supreme
 Court of British
 Columbia
 Plaintiff's
 Exhibit No. 9
 Assignment
 Prudential
 Holdings Ltd.
 to
 B.C. Land &
 Investment
 Agency Ltd.
 June 1, 1933

Supreme Court of B.C.
 Vancouver Registry
 Exhibit No. 9
 The B.C. Land & Invest. Agcy. Ld. v.
 Montreal Trust Co.
 Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 9

THIS INDENTURE made the 1st day of June in the year
 of our Lord one thousand nine hundred and thirty-three. 10

BETWEEN:

PRUDENTIAL HOLDINGS LIMITED, a body cor-
 porate, duly incorporated under the laws of the Province
 of British Columbia (hereinafter called the "Assignor")

OF THE FIRST PART

AND:

THE BRITISH COLUMBIA LAND AND INVEST-
 MENT AGENCY LIMITED, a body corporate, having
 its registered office for the Province of British Columbia
 in the City of Victoria, British Columbia (hereinafter
 called the "Assignee") 20

OF THE SECOND PART

WHEREAS by a certain Indenture of mortgage dated the
 15th day of January, 1925, and made between the assignor as
 mortgagor and the assignee as mortgagee the said assignor granted
 and mortgaged unto the assignee to secure the sum of thirteen
 thousand (\$13,000.00) Dollars and interest and other moneys
 therein mentioned ALL that certain parcel or tract of land situ-
 ate in the City of Vancouver, Province of British Columbia and
 more particularly known and described as Lots five (5), six (6), 30
 seven (7), eight (8) and nine (9), in Block two (2) of subdivision
 "C" of District Lot one hundred and eighty-three (183), Group
 one (1), New Westminster District, according to a map or plan
 deposited in the Land Registry Office at Vancouver, British
 Columbia, and numbered 417;

AND WHEREAS by indenture dated the 15th day of Feb-
 ruary, 1926, made in pursuance of the "Real Property Convey-
 ance Act" the assignor granted and conveyed unto Montreal Trust
 Company, a Corporation duly incorporated and having its Head
 Office in the City of Montreal, Canada, and having an office in the 40
 City of Vancouver, British Columbia, the aforesaid lands and
 premises (inter alia) and in the said indenture the aforesaid lands
 and premises were expressed to be conveyed subject to the afore-
 said mortgage;

AND WHEREAS there remains unpaid under the aforesaid mortgage the sum of Thirteen thousand (\$13,000.00) Dollars for principal which said sum is now overdue and there remains unpaid interest on the said sum at six (6%) per centum per annum from the 25th day of March, 1932;

AND WHEREAS the assignee has demanded from the assignor payment of the said principal sum and interest;

AND WHEREAS the assignor has agreed to assign to the said assignee all rights whether at law or in equity of the said assignor against the said Montreal Trust Company in respect of the said conveyance and mortgage and the moneys remaining unpaid thereunder.

NOW THIS INDENTURE WITNESSETH that in consideration of the premises and the sum of One (\$1.00) Dollar of lawful money of Canada now paid by the said assignee to the said Assignor (the receipt whereof is hereby by it acknowledged), the said assignor doth hereby assign, transfer and set over unto the assignee its successors and assigns the full benefit and advantage of all claims or rights which the said assignor has or hereafter may have against the said Montreal Trust Company either at law or in equity or whether by way of claim for indemnity in respect of the said mortgage or the principal, interest or any other moneys remaining unpaid thereunder or otherwise howsoever and DOTH HEREBY assign, transfer and set over unto the assignee all the right, title, interest, claim and demand which the said assignor has or hereafter may have against the said Montreal Trust Company under or with respect to the said mortgage and the said conveyance or either of them and whether the said claim arises or shall arise under an express or under an implied covenant.

AND THE ASSIGNOR DOTH HEREBY give to the assignee full power to enforce the rights, claims and demands hereby assigned, transferred and set over unto the assignee as fully and effectually as the assignor itself could do.

IN WITNESS WHEREOF the Assignor has caused its corporate seal to be hereunto affixed together with the signatures of its proper officers in that behalf.

SIGNED, SEALED AND DELIVERED in the presence of:

“T. R. Nickson” (Seal) Director
“L. Blair Hesse” Director
(Seal Prudential Holdings Limited)

RECORD
In the Supreme Court of British Columbia
Plaintiff's Exhibit No. 9
Assignment Prudential Holdings Ltd.
to B.C. Land & Investment Agency Ltd.
June 1, 1933
(Contd.)

RECORD
 In the Supreme
 Court of British
 Columbia

Supreme Court of B.C.
 Vancouver Registry

Exhibit No. 33

Plaintiff's
 Exhibit No. 33
 Notice of
 Assignment
 and Letter
 Bourne &
 DesBrisay
 to

The B.C. Land & Invest. Agcy. Ltd. v.
 Montreal Trust Co.

Put in by Ptf. Date 19-6-34
 "A.A.C.", Registrar

EXHIBIT No. 33

To:—

Montreal Trust
 Company
 June 23, 1933

MONTREAL TRUST COMPANY,
 The Royal Bank Building,
 Vancouver, B.C.

10

WHEREAS by a certain conveyance bearing date the 15th day of February, 1926, PRUDENTIAL HOLDINGS LIMITED, a body corporate, having its Head Office at the City of Vancouver, Province of British Columbia, granted and conveyed, among others, the following lands and premises, namely:—

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Vancouver, Province of British Columbia, and more particularly known and described as Lots Five (5), Six (6), Seven (7), Eight (8) and Nine (9) in Block Two (2) of Subdivision "C" of District Lot One hundred and eighty-three (183), Group One (1), New Westminster District, according to a map or plan deposited in the Land Registry Office at Vancouver, British Columbia, and numbered 417;

unto you, the said Montreal Trust Company, subject to a certain mortgage bearing date the 15th day of January, 1925, wherein the said Prudential Holdings Limited is Mortgagor and The British Columbia Land and Investment Agency Limited is Mortgagee, to secure the repayment of the sum of Thirteen thousand Dollars (\$13,000.00) with interest as therein provided, the assumption of which mortgage by you, the said Montreal Trust Company, was part of the consideration for the said conveyance of the said lands.

YOU ARE HEREBY NOTIFIED that the said Prudential Holdings Limited has assigned and set over unto the said The British Columbia Land and Investment Agency Limited the full benefit and advantage of all claims which the said Prudential Holdings Limited has or hereafter may have against you either at law or in equity and whether by way of a claim for indemnity in respect of the said mortgage above described, or otherwise howsoever; and all right, title and interest, claim or demand which it,

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the said Prudential Holdings Limited, has or hereafter may have against you arising out of the said mortgage or the said conveyance or either of them and whether such claim arises or shall arise under an express or under an implied covenant.

DATED at Vancouver, B.C., this 23rd day of June A.D. 1933.

“BOURNE & DESBRISAY,”

Solicitors for the British Columbia Land
and Investment Agency Limited

BOURNE & DESBRISAY

Barristers & Solicitors

Royal Bank Building,
Vancouver, B.C.
June 23rd, 1933.

Montreal Trust Company,
Royal Bank Building,
Vancouver, B.C.

Dear Sirs:

Re Prudential Holdings Limited and British Columbia Land
and Investment Agency Limited

20 We hand you herewith Notice of Assignment from Prudential Holdings Limited to The British Columbia Land and Investment Agency Limited of the benefit and advantage of all claims of the said Prudential Holdings Limited against your Company arising out of the conveyances of the lands mentioned in the said Notice subject to the Mortgage to our client also mentioned therein. Our instructions are to demand payment of principal and interest owing under the said Mortgage.

We should be glad to hear from you.

Yours truly,

BOURNE & DESBRISAY,
per “A. C. DesB.”

30

ACD/FW
Encl.

RECORD
*In the Supreme
Court of British
Columbia*

Plaintiff's
Exhibit No. 33
Notice of
Assignment
and Letter
Bourne &
DesBrisay
to
Montreal Trust
Company
June 23, 1933
(Contd.)

RECORD
In the Supreme Court of British Columbia
Defendant's Exhibit No. 36
Order of Chief Justice giving leave to examine B. L. Mitchell on Commission May 16, 1934

Supreme Court of B.C.
Vancouver Registry
Exhibit No. 36
The B.C. Land & Invest. Agcy. Ld. v. Montreal Trust Co.
Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 36
No. B. 1207/1933

IN THE SUPREME COURT OF BRITISH COLUMBIA 10

BETWEEN:

THE BRITISH COLUMBIA LAND AND INVESTMENT AGENCY LIMITED

Plaintiff

AND:

MONTREAL TRUST COMPANY

Defendant

AND:

THE LONDON AND WESTERN TRUSTS COMPANY LIMITED and J. A. CLARK, executors of the estate of C. V. Cummings, deceased,

20

Third Parties.

BEFORE THE HONOURABLE THE CHIEF JUSTICE IN CHAMBERS

WEDNESDAY, the 16th day of May, 1934.

UPON THE APPLICATION of the Defendant; UPON HEARING Mr. A. Bruce Robertson of Counsel for the Defendant and Mr. A. C. DesBrisay of Counsel for the Plaintiff; UPON READING the Summons herein dated the 11th day of May, 1934, the Affidavit of Robert Bone sworn herein the 11th day of May, 1934, and filed, the Affidavit of Mildred Elizabeth Louise Gordon sworn herein the 14th day of May, 1934, and filed, and the exhibit therein referred to, and the pleadings in this action; AND UPON HEARING what was alleged by Counsel aforesaid; 30

IT IS ORDERED that Thomas T. Rolph or, in the event of his being unable to act, John Bruce, both of Toronto in the Province of Ontario, be appointed as Special Examiner for the purpose of taking the examination, cross-examination and re-examination viva voce on oath or affirmation of B. L. Mitchell of Toronto aforesaid, a witness on the part of the Defendant, at Toronto aforesaid. The Defendant's Solicitor to give to the Plaintiff's 40

- Solicitors three days' notice in writing of the date on which he proposes to send out this order to Toronto for execution, and that two days after the service of such notice the Solicitors for the Plaintiff and Defendant respectively do exchange the names of their agents at Toronto to whom notice relating to the examination of the said witness may be sent, and that two days (exclusive of Sunday) prior to the examination of such witness hereunder, notice of such examination shall be given by the agent of the Defendant to the agent of the Plaintiff (unless such notice be dispensed with).
- 10 And that the depositions when so taken, together with any documents referred to therein or certified copies of such documents or of extracts therefrom, be transmitted by the Examiner under seal to the District Registrar of this Court at Vancouver there to be filed in the Registry. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions, without any other proof of the absence of the said B. L. Mitchell from the Province of British Columbia than an affidavit of the Defendant's solicitor or manager at Vancouver as to his belief that the said B. L. Mitchell is absent from
- 20 such Province. And that the Plaintiff's right to object to the admissibility in evidence of all or any part of such depositions shall not be prejudiced by the Plaintiff by its Counsel having cross-examined the witness. And that the trial of this action be stayed until the filing of the depositions to be taken on such examination. And that the costs of and incident to this application and such examination be reserved to be dealt with by the trial judge.

RECORD
 In the Supreme
 Court of British
 Columbia
 Defendant's
 Exhibit No. 36
 Order of
 Chief Justice
 giving leave
 to examine
 B. L. Mitchell
 on Commission
 May 16, 1934
 (Contd.)

“AULAY MORRISON,” C.J.

Entered May 17, 1934
 Order Book, Vol 168, Fol. 110
 30 Per “S.C.G.”

B.C.L.S.
 60c.

Vancouver Registry
 May 17, 1934

RECORD
In the Supreme Court of British Columbia

Supreme Court of B.C.
Vancouver Registry

Exhibit No. 37

Defendant's
Exhibit No. 37
Affidavit of
R. Symes
June 19, 1934

The B.C. Land & Invest. Agcy. Ld. v.
Montreal Trust Co.

Put in by Deft. Date 19-6-34
"A.A.C.", Registrar

EXHIBIT No. 37

No. B. 1207/1933

IN THE SUPREME COURT OF BRITISH COLUMBIA 10

BETWEEN :

THE BRITISH COLUMBIA LAND AND
INVESTMENT AGENCY LIMITED

Plaintiff

AND :

MONTREAL TRUST COMPANY

Defendant

AND :

THE LONDON AND WESTERN TRUSTS COM-
PANY LIMITED and J. A. CLARK, executors of the
estate of C. V. Cummings, deceased,

20

Third Parties.

I, REGINALD SYMES, of 2810 South West Marine Drive
in the City of Vancouver, Province of British Columbia, make
oath and say as follows:

1. That I am the Solicitor in this action for the above-named
Defendant.

2. That I verily believe that B. L. Mitchell of Toronto in
the Province of Ontario is absent from the Province of British
Columbia.

30

SWORN before me at the City of Vancouver,
Province of British Columbia, this 19th day of
June, 1934.

"CECIL KILLAM"
A Commissioner for taking affidavits within
British Columbia

} "R. SYMES"

