

61, 1939

In the Privy Council

No. **36** of 1939

ON AN APPEAL FROM THE COURT OF KING'S BENCH
(APPEAL SIDE)

BETWEEN:

Montreal Trust Company

(Original Plaintiff and Appellant
in the Court of King's Bench (Appeal Side))

and

George Henri Séguin

(Original Mis-en-cause and Appellant
in the Court of King's Bench (Appeal Side))

APPELLANTS

and

Canadian National Railway Coy.,

(Original Defendant and Respondent
in the Court of King's Bench (Appeal Side))

RESPONDENT

RECORD OF PROCEEDINGS

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IN THE COURT OF KING'S BENCH

(Appeal Side)

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In the Privy Council

No. **36** of 1939

ON APPEAL FROM THE COURT OF KING'S BENCH FOR
THE PROVINCE OF QUEBEC (APPEAL SIDE)
CANADA

BETWEEN:

Montreal Trust Company

Plaintiff in the Superior Court,
and Appellant in the Court of King's Bench,
(Appeal Side)

&

George Henri Séguin

Mis-en-cause in the Superior Court,
and Appellant in the Court of King's Bench,
(Appeal Side)

APPELLANTS

and

Canadian National Railway Coy.,

Defendant in the Superior Court,
and Respondent in the Court of King's Bench,
(Appeal Side)

RESPONDENT

RECORD OF PROCEEDINGS

PLAINTIFF'S DECLARATION

1. By Deed of Lease passed before Lionel Joron, Notary Public, on the 8th day of August, 1930, the Mis-en-cause, Georges Henri Seguin, did let and lease for a term of ten years,

commencing on the first day of August, 1930, unto the Defendant, the Canadian National Railway Company, the following immoveable properties, namely:

10 An emplacement fronting on Pine Avenue, in Redpath, in the City of Montreal, composed of subdivisions 42 and 43 of lot 1755, St. Antoine Ward; the South-Westerly part of subdivision 44 of lot 1755; an emplacement also situate in Redpath Crescent, in Redpath, composed of the South-West portion of subdivision No. 81 of lot 1755, St. Antoine Ward; subdivisions Nos. 82 and 83 of lot 1755 St. Antoine Ward with the house thereon erected bearing civic number 1415 of said Pine Avenue.

20 2. The said Lease was so made for and in consideration of the sum of \$157,250 payable at the rate of \$15,725 per year in and by equal quarterly instalments of \$3,931.25, payable on the 1st days of the months of February, May, August and November of each year — the whole as appears by copy of the said Lease herewith filed as Plaintiff's Exhibit No. 1.

30 3. By Deed of Loan passed before Lionel Joron, Notary Public, on the said 8th day of August, 1930, the Plaintiff, Montreal Trust Company, loaned to the Mis-en-cause, Georges Henri Seguin, the sum of \$185,000., to bear interest at the rate of 6½% per annum, the said loan to be re-payable on the 1st day of August, 1940, in the meanwhile to reduce the principal of the said loan by re-payment of not less than 2% of the amount to the lender half-yearly on the first days of February and August of each year, the first re-payment to become due on the 1st day of February 1931 and the interest to be paid half-yearly on the 1st days of February and August in each year, the first payment of interest to become due on the said 1st day of February, 1931.

40 4. As security for the re-payment of the said loan the Mis-en-cause, Georges Henri Seguin, hypothecated to Plaintiff, Montreal Trust Company, the property hereinabove described, and by the same Deed did transfer to the Plaintiff as collateral security for the payment of the capital sum, the interest thereon and accessories. all his right, title, privileges and actions under the terms of the Deed of Lease to the Defendant Company, hereinabove set forth, with the right to the Plaintiff to collect and receive all rents accruing therefrom from the 1st day of August, 1930, with full subrogation into all the rights of the Mis-en-cause — the whole as appears by a copy of the said Deed of Loan and Transfer of Lease herewith filed as Plaintiff's Exhibit No. 2.

1 the
Superior
Court
Plaintiff's
Declaration
3 Oct. 1933
(Continued)

5. The leased premises were duly delivered to the Defendant Company which entered into possession of the same on or about the 1st day of August, 1930, and has ever since had peaceable possession thereof and until the 1st day of May 1933 performed the obligations of the lease and paid the rent as stipulated to the Mis-en-cause, who in turn remitted the same to the Plaintiff.

10

6. The rental due on the 1st May, 1933, not having been paid, and there being other moneys due by the Mis-en-cause to the Plaintiff, the Plaintiff caused the Transfer of the Lease from the Mis-en-cause to itself to be served on the Defendant on the 26th day of May, 1933, through the ministry of Jean-Marie Trepanier, Notary Public — the whole as appears by a copy of the said Deed of Signification herewith filed as Plaintiff's Exhibit No. 3.

20

7. There is now due, owing and unpaid by the Defendant to the Plaintiff the instalment of rental due on the 1st May, 1933, amounting to \$3,931.25 and a further instalment which fell due on the 1st day of August 1933, of a similar amount, namely, \$3,931.25, making a total of \$7,862.50, which the Defendant refuses to pay although thereunto duly requested.

30

WHEREFORE the Plaintiff brings suit and prays that the Defendant be adjudged and condemned to pay and satisfy to it the said sum of \$7,862.50 with interest and costs, and that the Mis-en-cause be summoned to hear the said Judgment, the Plaintiff reserving its right to take such other and further proceedings as it may be advised.

Montreal, 13th October, 1933.

Brown, Montgomery & McMichael,
Attorneys for Plaintiff.

40

PLEA OF THE DEFENDANT

(1) Answering paragraph (1) of the Plaintiff's Declaration, the Defendant alleges that the document therein referred to speaks for itself and further alleges that for the reasons hereinafter given the pretended Lease is illegal, null and void and of no effect.

1 the
Superior
Court
Defendant's
Plea
2 Dec. 1933

(2) The document referred to in paragraph (2) of Plaintiff's Declaration speaks for itself and the Defendant reiterates its statement as to the illegality of this document.

(3) Paragraph (3) of Plaintiff's Declaration is admitted.

10 (4) Answering paragraph (4) of the Plaintiff's Declaration, the Deed therein referred to speaks for itself.

(5) Paragraph (5) of the Plaintiff's Declaration is denied.

20 (6) Paragraph (6) of the Plaintiff's Declaration as drawn is denied. The Defendant, however, admits that on the 26th of May, 1933, it was served with the document filed as Plaintiff's Exhibit No. 3 and alleges that on the 15th of June, 1933, through the ministry of Dakers Cameron, N.P., an Answer was duly served, as will appear by a copy thereof herewith produced as Defendant's Exhibit No. 1.

(7) Paragraph (7) of the Plaintiff's Declaration is denied.

AND THE DEFENDANT FURTHER PLEADS:—

30 (8) The property hypothecated by the Mis-en-Cause, Seguin, in favour of the Plaintiff, although registered in the name of the Mis-en-Cause, in reality belonged to Ernest R. Decary, a Notary of Montreal, being held in the name of the Mis-en-Cause for the benefit and advantage of the said Decary.

40 (9) The loan by the Plaintiff to the Mis-en-Cause (Plaintiff's Exhibit No. 1) was a loan in reality made to the said Decary, at his request, for his benefit and advantage and to enable the said Decary to pay the purchase price of the said property and of the moveable effects therein contained, sold by Frederick Beardmore to the said Decary, although the title was given to the Mis-en-Cause by Deed of Sale made by the said Beardmore to the said Mis-en-Cause and passed before Joron, Notary, on the 8th of August, 1930.

(10) The Lease referred to in Plaintiff's Declaration (Plaintiff's Exhibit No. 2) although a Lease ostensibly between the Company Defendant and the Mis-en-Cause was in reality a contract between the Company Defendant and the said Decary for

the profit of the said Decary, and the Mis-en-Cause has not now and never has had any interest whatever in the said Lease or in the leased property.

10 (11) The purchase of the property and of the moveable effects above mentioned and the execution of the Deed of Lease (Plaintiff's Exhibits Nos. 1 and 2) were arranged and negotiated by the said Decary, in conjunction with the late Sir Henry Thornton, for their mutual benefit and advantage between and including the months of September, 1929, and the 8th of August, 1930.

20 (12) During this period Sir Henry Thornton was the Chairman and President of the Defendant Company and the Chairman of its Executive Committee. The said Decary during this period was a member of the Board of Directors of the said Defendant Company and also a member of its Executive Committee. The said Thornton was in addition a Director of the Company Plaintiff, having been elected as such on the 4th of April, 1930.

30 (13) Prior to the month of September, 1929, certain suggestions had been made by some of the Directors of the Company Defendant as to the payment of \$100,000 as a bonus to Sir Henry Thornton. Later it was suggested that an official residence should be purchased for his use. Neither of these suggestions, however, received the approval of the Minister of Railways and both were accordingly abandoned.

(14) During this period Sir Henry Thornton was negotiating with the Government on the subject of the renewal of his contract.

40 (15) Notwithstanding the foregoing, on the 17th of September, 1929, the Executive Committee of the Company Defendant adopted a resolution to the effect that the Committee should endeavour to obtain "a suitable and properly equipped residence for the use of the Chairman and President" on such terms and conditions as the Committee should consider proper.

(16) Sir Henry Thornton and the said Decary took part in the deliberations of the Executive Committee and voted in favour of the said resolution.

(17) On the 23rd of September, 1929, the Board of Directors of the Company Defendant adopted a resolution to the same effect and in the same terms.

(18) The said Decary took part in the Meeting of the Board of Directors and voted in favour of the resolution lastly referred to.

10 (19) By a Contract dated the 23rd of September, 1929, between Sir Henry Thornton and the Company Defendant, the Contract of the said Thornton with the said Company Defendant, as Managing-Head, was renewed, it being expressly stipulated, in regard to the remuneration, or salary of the said Sir Henry Thornton, as follows:—

20 “REMUNERATION. — The remuneration of the Managing Head for the full and entire services to be performed from time to time, and for the full period of employment under this agreement, shall be a fixed annual salary (irrespective of the magnitude or extent of the work or duties to be performed from time to time and without any extra fees or remuneration of any description) of Seventy-five Thousand Dollars (\$75,000.00) per annum, payable in equal monthly instalments on or about the first day of each month but not in advance it being understood and agreed that the monthly payments of the fixed annual salary of Seventy-five Thousand Dollars (\$75,000.00), hereunder for the period beginning the fourth day of October, 1928, and ending the third day of October, 1929, having been made immediately before the delivery of this agreement, the receipt whereof is hereby acknowledged by the

30 Managing Head.”

40 (20) The Contract of the 23rd of September, 1929, between Sir Henry Thornton and the Company Defendant was approved by an Order-In-Council of His Excellency the Governor General passed on the 23rd of October, 1929, in accordance with which, on the 25th of October, 1929, a further Contract between His Majesty The King and Sir Henry Thornton was duly executed, this Contract containing a clause as to the remuneration similar to the one above quoted.

(21) A copy of the Agreement of the 23rd of September, 1929, above referred to, between the Company Defendant and Sir Henry Thornton is herewith produced as Defendant's Exhibit No. 2.

(22) A copy of the Order-in-Council of the 23rd of October, 1929, is herewith produced as Defendant's Exhibit No. 3, and a copy of the Contract of the 25th of October, 1929, between His Majesty The King and Sir Henry Thornton is herewith produced as Defendant's Exhibit No. 4.

(23) Neither the contract of the 23rd of September, 1929, the Order-in-Council of the 23rd of October, 1929, nor the Agreement of the 25th of October, 1929, contained any clause permitting the leasing of a residence for Sir Henry Thornton and the effort of the said Thornton and the said Decary and of the Board of Directors so to do was contrary to the terms of the said Agreements and was in addition utterly illegal.

(24) That notwithstanding the terms of the said Contracts and of the Order-In-Council in question, all of which were thoroughly known to Sir Henry Thornton, to the said Decary and to the other Directors of the Company Defendant, Sir Henry Thornton, in conjunction with the said Decary, endeavoured to find a residence that might be leased by the Company Defendant for his personal use and that of his family.

(25) That for some considerable time prior to the 8th of August, 1930, Sir Henry Thornton had been occupying a property on Pine Avenue, in the City of Montreal, owned by one, Frederick Beardmore. The said property was in the first place rented to the said Thornton by the said Beardmore, for the sum of \$500 per month, which later was increased to \$600 per month, or an annual rental of \$7,200.

(26). In or about the month of November, 1929, Sir Henry Thornton started negotiations with the said Beardmore with the idea of purchasing the said house and subsequently arranged for the purchase of the same for a price of \$175,000, payable in cash, plus an additional \$10,000 for certain furniture therein contained.

(27) As a result of the aforesaid negotiations, all of which had taken place with the knowledge, consent and approval of the said Decary, an Option of Purchase was given by Beardmore to Thornton in May, 1930, and subsequently, in July, 1930, was transferred by the said Thornton to the Mis-en-Cause, Seguin. By this Option, Beardmore was to receive the sum of \$175,000 for the property and an additional sum of \$10,000 for certain moveable effects therein contained, or a total of \$185,000.

(28) At the same time the said Decary entered into negotiations with the Company Plaintiff to borrow the sum of \$185,000, necessary to pay the purchase price, and contracted with the Company Plaintiff that the property should be purchased by him, in his name, or in the name of a person whom he should designate; that it should be leased to the Company De-

In the
Superior
Court
—
Defendant's
Plea
12 Dec. 1933
(Continued)

10 defendant for a term of ten (10) years, at an annual rental of 8½% of the price of acquisition of the property, the Company Defendant in addition paying the taxes and assessments, repairs, improvements, assurances, etc.; that the Plaintiff should loan the said sum of \$185,000 for a term of ten years; that re-imburement of the loan should be guaranteed by a First Hypothec on the property, by the transfer of the Lease and by the personal undertaking of the said Decary; that the loan of \$185,000 should bear interest at 6½%, the difference between the amount of interest paid and 8½% to be applied as a Sinking Fund on the amount of the loan; the whole as will more fully appear by a letter written by the said Decary to the Company Plaintiff on the 24th of June, 1930, the original of which is in the possession of the Plaintiff, who is called upon to produce the same. A copy of the said letter is filed herewith as Defendant's Exhibit No. 5.

20 (29) The Company Plaintiff was from the outset fully aware of all the details of the transaction in question and as a result of the said arrangements that were made, it was agreed that the said Decary, a Director of the Company Defendant, should, at the termination of the lease, be the owner, at a cost to him of \$135,000, of a property for which \$185,000 had, to the knowledge of the Plaintiff, been paid, — all of which was illegal and improper.

30 (30) On the 16th of June, 1930, a resolution was adopted by the Executive Committee of the Company Defendant, by which it was resolved that the Defendant should lease from the Mis-en-Cause, for the term of ten (10) years, the property above referred to, for an annual rental of \$15,725, payable quarterly and that the Defendant should in addition pay the taxes and assessments generally and specially and should keep the property in a good state of repair during the entire continuation of the lease, the said property to be exclusively reserved as a private residence.

40 (31) All the transactions hereinabove referred to were completed on the 8th of August, 1930, when the Contract for the sale of the property to the Mis-en-Cause, the Deed of Loan by the Plaintiff to the Mis-en-Cause and the Lease by the Mis-en-Cause to the Company Defendant were executed.

(32) All the agreements set out in the preceding paragraph were executed by the Mis-en-Cause solely for the benefit and advantage of the said Decary and of the said Thornton and in no way for the benefit and advantage of the Mis-en-Cause. the latter having acted simply for the said Decary and as his

prete-nom, as both the said Decary and the said Seguin acknowledged when examined under oath before a Committee of the House of Commons entitled "Select Standing Committee on Railways and Shipping," which sat at Ottawa in the month of May, 1932.

10 (33) The said Contracts had in addition the effect of illegally and improperly conferring on the said E. R. Decary, a Director of the Company Defendant an illegal profit of over \$50,000, in addition to the rental of the property paid and emring to the benefit of the said Decary.

20 (34) The Lease forming the basis of the present action, made with Seguin, a person interposed and with no interest whatever in the matter, is in reality a Lease for the benefit and advantage of two of the Directors of the said Company Defendant, namely, the said Decary and the said Sir Henry Thornton and as such was prohibited by law and was and is illegal, null and void.

(35) That the Company Plaintiff had at all times a full and complete knowledge of all the transactions and arrangements hereinabove recited and in every way acquiesced in and consented thereto, although the said Company Plaintiff was well aware that the said transactions were utterly illegal, null and void.

30 (36) That, in addition, the arrangements considered as a whole were grossly improvident, illegal and improper. The fiduciary relationship existing between Sir Henry Thornton and the Company Defendant (Defendant's Exhibits Nos. 2, 3 and 4,) made it improper and illegal for the parties to enter into any such undertakings as those hereinabove outlined. In like maner, the fiduciary position of the said Thornton and the fiduciary position of the said Decary, as Directors of the Company Defendant, and the fiduciary position of the said Thornton, as a Director of the Trust Company, Plaintiff, incapacitated them from entering into, or from in any way, directly or indirectly, profiting by such engagements and undertakings. Finally, the purchase by Decary of the property, the placing of the same by him in the name of Seguin, the obtaining of a rental of \$15,725 per annum, from the Company Defendant for this property, previously rented to the said Thornton for the sum of \$7,200 per annum and the giving to Decary, a Director of the Company Defendant, on the termination of the lease, a personal profit of \$50,000, entitles the Company Defendant to demand, as it now demands, that the present claim by the Plaintiff be declared illegal, null and void and be dismissed.

40

(37) The Company Defendant reserves its right to recover from the Company Plaintiff and/or the Mis-en-Cause and/or the said Decary, all monies paid in the premises to them or any of them or for their account and prays acte of its said reservation.

10 WHEREFORE the Company Defendant, under reserve as aforesaid, prays that it be declared that the Deed of Lease executed on the 8th of August, 1930, between the Mis-en-Cause and the Company Defendant is and always has been illegal, null and void and of no effect, and if need be, that the said Deed of Lease be set aside; that the pretended Transfer of the Lease by the said Mis-en-Cause to the Plaintiff on the 26th of May, 1933, be also declared to be illegal and of no effect; and that the action of the Plaintiff be dismissed, with costs distracts to the undersigned Attorneys.

20 Montreal, December 12th, 1933.

John W. Cook,
J. C. H. Dussault,
Attorneys for Defendant.

CONTESTATION BY MIS-EN-CAUSE OF
DEFENDANT'S PLEA

- the
Superior
Court
Contestation
Mis-en-cause
Defendant's
Plea
March 1934
- 30
1. Paragraphs 1 and 2 of the plea are denied;
 2. Paragraphs 8 and 9 as drafted are denied;
 3. Paragraphs 10 and 11 are denied;
 4. Paragraph 12 is admitted except that mis-en-cause does not know if said Sir Henry Thornton was a director of Company Plaintiff;
 5. Paragraph 13 is denied as drafted;
 6. Mis-en-cause is ignorant as to paragraph 14;
 - 40 7. In answer to paragraphs 15 and 17, mis-en-cause says that the resolutions therein mentioned speak for themselves; otherwise said paragraphs are denied;
 8. Paragraphs 16 and 18 are admitted except that there was no vote taken, the resolutions were unanimous;
 9. As to paragraph 19, mis-en-cause says that the contract therein referred to speaks for itself, that such contract was approved by the directors of defendant at the same meeting and the resolution referred to in paragraph 17 of the plea and that the two have to be read together;

the
Superior
Court
—
contestation
—
mis-en-cause
—
defendant's
—
plea
—
March 1934
(Continued)

10 10. As to paragraph 20, mis-en-cause admits that a further contract was made between His Majesty and Sir Henry Thornton but denies that any approval by order in council was required of the contract of the 23rd September, 1929 between Sir Henry Thornton and the Company-defendant and alleges that the contract between His Majesty and Sir Henry Thornton was an independent matter with which the company had nothing to do;

11. The documents mentioned in paragraphs 21 and 22 speak for themselves;

12. Paragraph 23 is denied;

13. Paragraph 24 is denied except that it is admitted that Sir Henry Thornton, pursuant to the above resolutions, did endeavour to obtain a suitable and properly equipped residence for the use of the chairman and president of Defendant.

20 14. As to paragraph 25, mis-en-cause admits that Sir Henry Thornton had been occupying for a time the property therein mentioned but it is ignorant as to the balance of the paragraph;

15. Paragraph 26 is admitted;

16. As to paragraph 27, mis-en-cause admits the option of purchase and its transfer to mis-en-cause; otherwise the paragraph is denied;

30 17. As to paragraph 28, mis-en-cause says that the letter therein referred to speaks for itself; otherwise the paragraph is denied;

18. Paragraph 29 is denied;

19. The documents referred to in paragraphs 30 and 31 speak for themselves; otherwise the paragraphs are denied;

20. Paragraphs 32, 33, 34, 35 and 36 are denied;

40 21. At all meetings of either the executive committee or the board of directors of defendant-company and more particularly at the various meetings referred to in the plea, the Minister of Railways for Canada was represented by his deputy-minister and the general counsel for the company was present and they concurred in the resolutions which were adopted unanimously;

22. Copies of all the minutes of such meetings were sent to the Minister immediately after they were held;

23. The company-defendant was willing to lease the house in question for Sir Henry Thornton; the owner insisted on selling and plaintiff was willing to entirely finance the purchase provided it was secured by a lease in terms such as the one in issue and more particularly for a rental providing for interest and sinking fund as therein stipulated, and by a guarantee of said Ernest Décarv;

10 24. The said Ernest Décarv, to permit of the transaction that all the parties were desirous of making being effected, agreed to cause his partner, the mis en cause, to buy the house and furniture with the monies advanced by plaintiff, securing the advance by a transfer of the lease entered into by the Company-defendant and by the personal guarantee of the said Ernest Décarv who also guaranteed his partner;

20 25. It was then agreed and the said Ernest Décarv subsequently gave a letter evidencing such agreement, that the Company or Sir Henry Thornton would have an option during the term of the lease, but subject to termination in the event of the said Ernest Décarv dying, within six months of his death, to buy the said property and furniture at its cost at the date of the exercise of such option;

26. Under the circumstances, the said Ernest Décarv merely has pledged his personal credit to permit of this transaction desired by the defendant-company being effected with no chance of profit and with a risk of loss.

30 WHEREFORE, mis-en-cause prays that the plea be dismissed with costs.

Montreal, March 12th, 1934.

Geoffrion & Prud'homme,
Attorneys for Mis-en-Cause.

40 ANSWER TO CONTESTATION BY MIS-EN-CAUSE
OF DEFENDANT'S PLEA

(1) The Defendant prays acte of the admission contained in Paragraph 4 of the Contestation by Mis-en-Cause.

(2) The Defendant prays acte of the admissions contained in Paragraph 8 of the Contestation by Mis-en-Cause; otherwise the said paragraph is denied.

(3) Paragraph 9 of the Contestation by Mis-en-Cause is denied save insofar as the same accords with Paragraph 19 of Defendant's Plea.

In the
Superior
Court
—
Answer to
Contestation
by
Mis-en-cause
13 July 1934
(Continued)

(4) The Defendant denies Paragraph 10 of the Contestation by Mis-en-Cause save insofar as the same accords with Paragraphs 20 of Defendant's Plea.

(5) The Defendant prays acte of the admissions contained in Paragraphs 13, 14, 15 and 16 of the Contestation by Mis-en-Cause.

10 (6) The Defendant denies Paragraph 21 of the Contestation by Mis-en-Cause, save insofar as the same accords with Paragraphs 15, 16, 17, 18 and 30 of Defendant's Plea.

(7) The Defendant denies Paragraph 22 of the Contestation by Mis-en-Cause.

(8) The Defendant denies the allegations of Paragraphs 23 and 24 of the Contestation by Mis-en-Cause, save insofar as the same agree with the allegations of Defendant's Plea.

20 (9) Paragraph 25 of the Contestation by the Mis-en-Cause is false and is denied, as is the authenticity and relevancy of the pretended letter of the 6th of November, 1930, mentioned therein, (Plaintiff's Exhibit No. 4.) The Mis-en-Cause is called upon to produce the original of this letter and is put to the strictest proof in regard thereto.

30 (10) The Defendant in addition alleges that in any event no agreement between the said Decary and the said Thornton, if any such existed, which is expressly denied, could in any way affect the legal rights of the Company Defendant or the legal obligations of the said Decary and the said Thornton as Directors thereof. The letter of the 6th of November, 1930, referred to in Paragraph 25 of the Contestation by the Mis-en-Cause (Plaintiff's Exhibit No. 4) even if authentic and relevant, which is expressly denied, is a mere self-serving document, prepared and delivered long after the execution of the transfer of the property to the Mis-en-Cause, the Deed of Loan by the Plaintiff to the Mis-en-Cause and the Lease by the Mis-en-Cause to the Company Defendant, all of which agreements were completed on the 8th of
40 August, 1930.

(11) Paragraph 26 of the Contestation by the Mis-en-Cause is false and is denied and Defendant alleges that the transaction therein referred to for the reasons set out in Defendant's Plea is utterly illegal, null and void and of no effect and that the said transaction was desired and effected by the said Decary and by the said Thornton for their own personal convenience, gain and profit.

(12) The Contestation by Mis-en-Cause is unfounded in fact and in law.

WHEREFORE the Defendant prays that the said Contestation may be dismissed and further prays as in and by its Plea it has already prayed.

Montreal, July 13th, 1934.

John W. Cook,
J. C. H. Dussault,
Attorneys for Defendant.

10

PLAINTIFF'S REPLICATION TO
DEFENDANT'S REPLY

1. As to paragraphs 1, 2, 3, 4, 5 and 6 of said reply Plaintiff joins issue with Defendant.

2. As to paragraphs 7 and 8 of the same Plaintiff alleges that not only is the said letter authentic but that a copy of the same was forwarded to the Hon. R. J. Manion, M.D., M.P., Minister of Railways and Canals, on the 20th day of November, 1930, the whole as appears by copy of a letter from Sir Henry Thornton to the said Dr. Manion dated November 20th, 1930, herewith filed as Plaintiff's Exhibit No. 6, together with copies of the document and letter therein referred to, the letter being that already filed as Exhibit No. 4.

Montreal, 27th February, 1935.

Brown, Montgomery & McMichael,
Attorneys for Plaintiff.

30

PLAINTIFF'S AMENDED ANSWER TO
DEFENDANT'S PLEA

1. As to paragraph 1 of Defendant's Plea Plaintiff denies the same.

2. As to paragraph 2 Plaintiff joins issue with Defendant.

3. As to paragraph 3 Plaintiff prays acte of the admissions contained therein.

4. As to paragraph 6 Plaintiff prays acte of the admissions contained therein.

5. As to paragraph 8 Plaintiff denies the same, and in particular denies that the same was held for the benefit and advantage of the said Decary.

6. As to paragraph 9 Plaintiff denies the same, and in particular denies that the same was held for the benefit and advantage of the said Decary.

In the
Superior
Court
—
Answer to
Contestation
by
Plis-en-cause
3 July 1934
(Continued)

In the
Superior
Court
—
Plaintiff's
Answer to
Defendant's
Reply
7 Feb. 1935

In the
Superior
Court
—
Plaintiff's
Amended
Answer
to
Plea
March 1935

7. As to paragraph 10 Plaintiff denies the same, and in particular that the said lease was in reality a contract for the profit of the said Decary.

8. As to paragraph 11 Plaintiff denies the same, and in particular that the said contract was arranged and negotiated by the said Decary for his benefit and advantage.

9. As to paragraph 12 Plaintiff admits the same.

10. As to paragraphs 13 and 14 Plaintiff declares its ignorance.

11. As to paragraph 15 Plaintiff admits the same.

12. As to paragraph 16 Plaintiff denies the same and alleges that the resolution therein referred to was adopted unanimously without any detailed vote being taken.

13. As to paragraph 17 the same is admitted.

14. As to paragraph 18 Plaintiff denies the same and alleges that the resolution therein referred to was adopted unanimously without any detailed vote being taken.

14-(a) Moreover the Minister of Railways and Canals was represented at all meetings and took part in the deliberations and copies of the Minutes of all meetings were duly transmitted to the Department of Railways and Canals for their information.

15. As to paragraph 19 Plaintiff says that the contract therein referred to speaks for itself, but that the contract was approved and authorised by the Board of Directors of the Company Defendant on the same day and at the same meeting as the resolution referred to in paragraph 17 of Defendant's Plea was adopted, and that the two have to be read together.

16. As to paragraph 20 Plaintiff admits that a further contract was made between His Majesty the King and Sir Henry Thornton, as alleged in said paragraph, but denies that any approval by Order-in-Council was required of the contract of the 23rd September, 1929, between Sir Henry Thornton and the Company Defendant, and alleges that the contract between His Majesty the King and Sir Henry Thornton was entirely an independent matter with which the Company Defendant had nothing to do.

16-(a) The Plaintiff is furthermore advised that when the late Sir Henry Thornton was first engaged as managing head of the Canadian National Railway Company in the month of October, 1922, the only contract of engagement which was passed was between the Railway and the said Thornton, and that there was no second contract with the Crown; furthermore that on the

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Plaintiff's
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(Continued)

10 2nd September, 1925, at the time that he was re-engaged by the Railway Company a contract bearing that date was executed between himself and the Railway Company. The said Thornton, having been advised by the late Mr. Lafleur that there was doubt as to the power of the Railway Company to engage him as managing head to act as President and Chairman of the Company for more than one year, requested that a contract in similar terms be executed between the Government of Canada and himself, the whole as appears by a letter addressed by the late Sir Henry Thornton to the Rt. Hon. George P. Graham, then Minister of Railways, dated September 2nd, 1925, copy of which is hereby produced as Plaintiff's Exhibit No. 5.

20 16-(b) Pursuant to the said request and for the protection of the said Thornton an agreement in the same terms as that made between the said Thornton and the Railway was executed between the said Thornton and the Government, and in the year 1929 when the engagement with the said Thornton came up for renewal the same procedure was followed, a second independent agreement being made with the Government to ensure the validity of the engagement of the said Thornton for the said term of five years, but such agreement did not otherwise affect the power of the Railway, through its Directors, to engage the said Thornton or to make any terms with him that they saw fit either as to providing him with a residence or otherwise.

30 17. As to paragraphs 21 and 22 Plaintiff says that the contracts and Order-in-Council therein referred to speak for themselves.

18. As to paragraph 23 Plaintiff denies the same and says that the contract and agreements speak for themselves, and that it was entirely unnecessary for the said lease to be referred to in either of said contracts, the same having been authorised quite independently by the Board of Directors of the Company Defendant.

40 19. As to paragraph 24 Plaintiff admits that pursuant to the resolutions of the Executive Committee of the Company Defendant of the 17th September, 1929, and of the Board of Directors of the Company Defendant of the 23rd September, 1929, the late Sir Henry Thornton did endeavour to obtain "a suitable and properly equipped residence for the use of the Chairman and President", but otherwise the said paragraph is denied.

20. As to paragraph 25 Plaintiff admits that for some considerable time Sir Henry Thornton had been occupying a property on Pine Avenue in the City of Montreal owned by one Frederick Beardmore, but is ignorant as to the balance of said paragraph.

21. As to paragraph 26 Plaintiff admits the same, the said negotiations having been conducted pursuant to the resolutions hereinabove referred to.

22. As to paragraph 27 Plaintiff admits the option of purchase therein referred to and the transfer of the said option to the Mis-en-cause, otherwise the said paragraph is denied.

23. As to paragraph 28 Plaintiff says that the letter therein referred to and produced as Defendant's Exhibit No. 5 speaks for itself; except in so far as the said paragraph corresponds with the said letter the same is denied.

24. As to paragraph 29 the same is denied.

25. As to paragraph 30 Plaintiff declares its ignorance and calls upon the Defendant to produce a copy of the resolution of the 16th June, 1930, therein referred to.

26. As to paragraph 31 Plaintiff admits that the several contracts and deeds therein referred to were executed on the 8th day of August, 1930, otherwise the said paragraph is denied.

27. As to paragraphs 32, 33, 34, 35 and 36 Plaintiff denies the same.

28. Plaintiff further avers that although Plaintiff was unaware of the fact at the time it is now informed that the late Sir Henry Thornton had in fact been occupying the premises on Pine Avenue, herein referred to, for some time prior to the year 1930 under a temporary lease at a nominal rental but that he had been advised that the property was to be sold and that he would have to vacate, and it was pursuant to such notice that he acquired an option on the property pursuant to the resolutions of the Executive Committee of the Board of Directors referred to by the Defendant.

29. The late Sir Henry Thornton having acquired the said option, informed Mr. Decary of the fact and enquired from him whether he would be able to arrange for the financing of the purchase.

30. That thereupon Mr. Decary approached Mr. Donaldson, the Manager of the Company Plaintiff, to enquire whether the Company Plaintiff would make the necessary loan, to be guaranteed by a first mortgage on the property, by the transfer of the lease to the Canadian National Railways and by the personal guarantee of him, the said Decary, and following the letter, produced by Defendant as Exhibit No. 5, the Company Plaintiff agreed to make the loan.

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Superior
Court
Plaintiff's
Answer
March 1935
(continued)

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In the
Superior
Court
Plaintiff's
Amended
Answer
to Plea
March 1935
(Continued)

10 31. The Plaintiff is further informed that the said Mr. Decary had no personal interest in the purchase and the same was not made for his benefit, profit or advantage and that in fact the said Mr. Decary agreed with the late Sir Henry Thornton to turn the property over to him at any time for whatever balance might remain outstanding on the said loan, which agreement was confirmed by a letter from the said Mr. Decary to the said late Sir Henry Thornton dated November 6th, 1930, copy of which is hereby filed as Plaintiff's Exhibit No. 4.

32. That the said transaction was entered into by Plaintiff in the ordinary course of its business and in good faith and the Company Defendant is in bad faith in attempting to repudiate the said lease and the resolutions of its own Executive Committee and Board of Directors authorising the same.

20 WHEREFORE Plaintiff prays that the Defendant's Plea be dismissed and that its action be maintained as prayed for in its declaration, Plaintiff persisting herein.

Montreal, 2nd March 1935.

Brown, Montgomery & McMichael,
Attorneys for Plaintiff.

In the
Superior
Court
Defendant's
Reply to
Plaintiff's
Amended
Plea
March 1935

30 DEFENDANT'S REPLY TO PLAINTIFF'S
AMENDED ANSWER TO DEFENDANT'S PLEA

(1) The Defendant prays acte of the admissions contained in paragraphs 9, 11, 13, 16, 17, 19, 20, 21, 22, 23 and 26 of the Plaintiff's Amended Answer to Defendant's Plea.

40 (2) Defendant reiterates the allegations of paragraph 18 of its Plea and denies paragraphs 14 and 14-a of the Plaintiff's Amended Answer, save insofar as the same accord with the said paragraph 18.

(3) Paragraph 15 of the Plaintiff's Amended Answer is denied, save insofar as the same accords with paragraph 19 of the Defendant's Plea.

(4) Defendant denies paragraphs 16, 16-a and 16-b of the Plaintiff's Amended Answer to Defendant's Plea, save insofar as the allegations of the same accord with the allegations of paragraph 20 of the Defendant's Plea. And the Defendant further

alleges that save insofar as the allegations of said paragraphs 16, 16-a and 16-b of the Plaintiff's Amended Answer accord with the allegations of paragraph 20 of the Defendant's Plea the same are utterly irrelevant and illegal.

10 (5) Paragraph 18 of Plaintiff's Amended Answer is denied, save insofar as the same accords with paragraph 23 of the Defendant's Plea.

(6) Paragraphs 28, 29 and 30 of the Plaintiff's Amended Answer are denied, save insofar as the same agree with the allegations of Defendant's Plea.

20 (7) Paragraph 31 of the Plaintiff's Amended Answer is false and is denied, as is the authenticity of the pretended letter of the 6th of November, 1930, (Plaintiff's Exhibit B No. 4.) The Plaintiff is called upon to produce the original of the said letter and is put on strictest proof in regard thereto.

30 (3) The Defendant in addition alleges that in any event, no agreement between the said Decary and the said Thornton, if any such existed, which is denied, could in any way affect the legal rights of the Company Defendant or the legal obligations of the said Decary and the said Thornton as the Directors thereof. The letter of the 6th of November, 1930, even if authentic, which is denied, would be a mere self serving document, prepared and sent long after the execution of the transfer of the property to the Mis-en-Cause, the Deed of Loan by the Plaintiff to the Mis-en-Cause and the lease by the Mis-en-Cause to the Company Defendant, all of which agreements were completed on the 8th of August, 1930.

(9) In reply to paragraph 32 of the Plaintiff's Amended Answer, the Defendant denies the same and alleges that the transactions therein referred to and all of them, for the reasons set out in the Defendant's Plea, are utterly illegal, null and void and of no effect.

40 (10) The Plaintiff's Amended Answer is unfounded in fact and in law.

WHEREFORE the Defendant prays that the said Amended Answer may be dismissed and further prays as in and by its Plea it has already prayed.

Montreal, March 2nd, 1935.

John W. Cook,
J. C. H. Dussault,
Attorneys for Defendant.

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Superior
Court
—
Defendant's
Reply to
Plaintiff's
Amended
Plea
March 1935
(continued)

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

the
Superior
Court
Plaintiff's
Evidence
Discovery
position of
H. Hobbs
Examination
Chief
Feb. 1935

Part II — WITNESSES

10

Plaintiff's Evidence on Discovery

DEPOSITION OF WILLIAM HENRY HOBBS

A witness produced on behalf of Plaintiff on discovery.

20 On this twenty-fifth day of February, in the year of Our Lord, one thousand nine hundred and thirty-five, personally came and appeared William Henry Hobbs, of the City of Montreal, Assistant Secretary of the Canadian National Company, aged 44 years, a witness produced and examined on behalf of the Plaintiff on Discovery, who being duly sworn doth depose and say as follows:

Examined by Mr. George H. Montgomery, K.C., of counsel for Plaintiff.

30 Q.—I understand that Mr. Ormsby, Secretary of the Company, has left town, has he not?

A.—Yes.

Q.—He left a few days ago?

A.—Yes, about last Thursday.

Q.—And he is not available as a witness today?

A.—No.

Q.—Am I correct in stating you are the Assistant Secretary of the Company?

40 A.—Yes, that is right.

Q.—And you are here to take Mr. Ormsby's place, and to give any answers in connection with the allegations of the Company etc.?

A.—Yes.

Q.—Since how long have you been Assistant Secretary of the Canadian National Railway?

A.—Since October 1st, 1932.

Q.—Prior to that time what position had you occupied?

A.—Secretary to the President.

Q.—That is, to the late Sir Henry Thornton?

A.—Yes.

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

In the
Superior
Court

Plaintiff's
Evidence
at Enquete
Deposition of
H. Seguin
Examination
in Chief
4 March 1935

Q.—And how long had you occupied that position?

A.—Approximately ten years.

Q.—That would carry you back about to 1922? That is when he became President?

10 A.—Yes.

Q.—Are you familiar with the first contract that was made between the Railway and Sir Henry Thornton?

Mr. Cook:—I object to this question as illegal and irrelevant.

The question is suspended in the absence of the Judge.

By Mr. Montgomery:—

20 Q.—You are aware, are you not, Mr. Hobbs, that in 1925 there were two contracts made with Sir Henry Thornton?

Same objection.

The question is suspended in the absence of the Judge.

Q.—You are aware, are you not, the last contract between the Railway and Sir Henry was made in 1929, was it not?

A.—Yes.

Q.—And that was followed immediately afterwards by a final contract between Sir Henry and the Government?

30 A.—There were two contracts. I would have to check that up, when you say followed immediately afterwards?

Q.—Almost immediately afterwards?

A.—Yes.

Q.—I think the correct date of the first contract between the Railway and Sir Henry was September 23rd. The contract with the Government was October 25th?

A.—Yes.

Q.—Do you recall why there were two contracts in place of one?

40 A.—No.

Q.—This was not the first contract that was made between the Railway and Sir Henry.

Mr. Dussault:—We object to any evidence referring to contracts anterior to the dates alleged in the pleadings, and to facts that are not in issue in the case.

The question is suspended in the absence of the Judge.

By Mr. Montgomery:—

Q.—Have you the by-laws of the Canadian National Railway?

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

A.—Yes, I have them up until August 1930. These were the by-laws during the period we are dealing with.

Q.—I see the last one was April 1930?

A.—Yes, that is, the last one prior to August 1930.

Q.—And can I assume that there are no by-laws since August 1930 or since April 1930, which is the last year which would have any bearing upon this issue?

A.—Yes.

Q.—Will you be good enough to file this set of by-laws and amendments as Exhibit P-1 at Enquete?

A.—Yes.

Q.—Would you look at the contract of the 23rd September 1929, which has been produced as Defendant's Exhibit No. 2, and tell me whether you are acquainted with that contract?

A.—Yes.

Q.—And would the same answer apply to the contract with the Government dated the 25th October 1929, Defendant's Exhibit No. 4?

A.—Yes, I am acquainted with the existence of that contract?

Q.—If not duplicates of one another, they are substantially the same, are they not?

A.—I don't know. I have not examined them.

Q.—There they are, Mr. Hobbs, if you want to satisfy yourself about them.

Witness:—Do you want me to examine these?

Counsel:—There again you are asking Mr. Dussault. We are questioning you.

Witness:—This will take a little time.

By Mr. Geoffrion:—

Q.—You don't really know whether they were parallel contracts?

A.—I don't know from personal knowledge, by examination.

Q.—Do you know any other way?

A.—No.

Q.—Why the restriction in the first answer then?

A.—What is the question?

Q.—Why the restriction to the first answer?

A.—Because of lack of intimate knowledge of the documents, sir.

In the
Superior
Court
Plaintiff's
Evidence
on Discovery
Deposition of
W. H. Hobbs
Examination
Chief
Feb. 1935
Continued

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W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

Q.—Then, you will have to look at them. I thought you you would know enough to be able to answer us without looking at them. I presume it will take some time?

By Mr. Montgomery:—

10 Q.—Do you know why there are two contracts?

A.—No.

Q.—You were Secretary to Sir Henry Thornton during that period, were you not?

A.—Yes.

Q.—And I suppose you had a pretty intimate knowledge of his affairs?

A.—Fairly.

20 Q.—And you were no doubt acquainted with any correspondence that was exchanged by Sir Henry with the Railway or with the Government in reference to these contracts?

A.—Not necessarily.

Q.—Not necessarily?

A.—What I mean to say is, I cannot speak with very definite knowledge of correspondence: there was so much routine work there, and so much of more or less private correspondence that I did not see. I really cannot lay claim to knowledge of the prior correspondence between Sir Henry and the Government concerning this.

30 Q.—Is that the first occasion on which there were two contracts in the place of one?

Same objection.

Question suspended in the absence of the Judge.

Q.—You, of course, knew the late Mr. Lafleur?

A.—Yes.

Q.—You knew Sir Henry was in the habit of consulting Mr. Lafleur in reference to various legal problems, either of his own, or of the Railway?

40 A.—No.

Q.—You never saw, during the course of your service with Sir Henry, Sir Henry talking to Mr. Lafleur?

A.—I was not in the habit of consulting him. I remember him consulting Mr. Lafleur about something on one occasion.

Q.—Do you remember when that was?

A.—I do not remember that.

Q.—What was it about?

A.—I do not remember that. I do remember one consultation.

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

Q.—Frankly, I am going to ask you Mr. Hobbs, are you not aware that the reason for the second contract with the Government was an opinion given by Mr. Lafleur that this second contract with the Government was required for sir Henry's protection.

10

Same objection.

The question is suspended in the absence of the Judge.

Q.—You are aware that by the terms of that contract, Sir Henry was engaged as President and Managing head, or some similar words, for a period of five years.

Witness:—The contract with the Railway?

Counsel:—Yes.

20

Witness:—Here it is.

Q.—To use the terms of the contract, he was employed as the managing head, or to serve as president and chairman of the Canadian National Railway Company and of its various constituent subsidiary Companies for a term of five years from the 4th of October 1928?

A.—Yes.

Q.—Do you recall any question arising as to the power of the Railway to engage a President or Managing Head to act as President of the Company for a term of five years?

30

A.—No.

Q.—It was never discussed in your presence?

A.—No.

Q.—Do you recall Sir Henry having consulted Mr. Lafleur on that subject?

A.—No.

Q.—I do not suppose you actually took communication of Sir Henry's correspondence, or did you in some cases?

40

A.—I did in some years.

Q.—I will ask you, for instance, if you are able to identify a letter, of which I show you a copy, which appears in Sir Henry Thornton's files, addressed to the Honourable Mr. Graham, who was Minister of Railways, dated September 2nd, 1925?

Same objection.

Mr. Dussault:— We are entering into evidence of facts that happened in 1925, and we certainly object to any evidence relating to facts that happened in 1925.

W. H. HOBBS (*for Plaintiff on Discovery*) Exam. in chief.

Mr. Geoffrion:—If this witness does not happen to know a word about it, we will not have to lose our time with these objections, but if he does know something about it we will. The question is, whether he knows.

10 The question is suspended in the absence of the Judge.

By Mr. Montgomery:—

Q.—Can you tell us when, as a matter of fact, the practice of having two contracts instead of one, originated?

A.—From knowledge I have gained from examination of documents during the last few days, 1925 was the first.

Q.—I suppose that that was a fairly important epoch, was it not, the renewal of Sir Henry's engagement?

A.—Yes.

20 Q.—Not a very ordinary every day matter of routine?

A.—No.

Q.—And you were his private Secretary at that time?

A.—Yes.

Q.—And I suppose, in fairly close touch with him?

A.—Yes.

Q.—And that does not enable you to recall a fact so important as that, that there was a question of two contracts in the place of one?

A.—No.

30 Q.—And why?

A.—During many years I had the title of private Secretary to Sir Henry Thornton, but, as a matter of fact, my work was not precisely that. I was occupying a position more as office assistant and handling all kinds of things, and while I had cognizance of these things as they happened, I may say that all these financial matters were routine and they were not impressed upon my memory.

40 Q.—As office assistant rather more than as private secretary, you would surely remember an incident out of the ordinary such as the renewal of Sir Henry's engagement for a period of five years you remember the circumstances all right enough?

A.—Well, I remember the circumstance.

Q.—And you remember there was a great deal of publicity about it at the time?

Mr. Dussault:—Do you refer to 1929, Mr. Montgomery?

Mr. Montgomery:—1925.

Mr. Dussault:—Same objection.

The question is suspended in the absence of the Judge .

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

the
Superior
Court
—
Plaintiff's
Discovery
position of
H. Hobbs
examination
Chief
Feb. 1935
(continued)

By Mr. Montgomery:—

Q.—You were in the same position in 1930, were you not,
Mr. Hobbs?

A.—Yes.

10 Q.—You no doubt recall the circumstance in connection
with the leasing of a house for Sir Henry Thornton?

Witness:—The leasing of the house by the Company?

Counsel:—Yes.

A.—Yes.

20 Q.—Will you produce copies of all Minutes, either of the
Board of Directors or of the Executive Committee of the Rail-
way relating to the acquisition by purchase or lease of a suitable
residence for Sir Henry?

A.—Yes, I am ready to submit them. I had better read
them out.

“Certified extracts of Minutes of the Executive Commit-
tee Meeting, September 17th 1929, approved by the Directors
September 23rd 1929.”

Q.—Will you file those extracts as Exhibit P-2?

A.—Yes.

30 By Mr. Dussault:—

Q.—What is Exhibit P-3, Mr. Hobbs?

A.—A Directors' Meeting of September 23rd.

By Mr. Montgomery:—

Q.—Will you look at the Minutes of the Meeting of the
Executive Committee of the Railway of the 17th September 1929,
where there is a list given of those present?

A.—Yes.

40 Q.—Sir Henry was President of the Railway, and I sup-
pose Chairman of the Executive Committee?

A.—Yes.

Q.—Who is Mr. Henry who appears as Secretary?

A.—Mr. R.A.C. Henry, at that date Deputy Minister of
Railways and Canals.

Q.—And was there representing the Deputy Minister of
Railways and Canals?

A.—I am not informed as to that.

By Mr. Dussault:—

Q.—Mr. Henry was a Director?

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

A.—He was a Director, acting at that Meeting as a member of the Executive Committee.

By Mr. Montgomery:—

Q.—And he was at the same time Deputy Minister of Rail-
10 ways and Canals?

A.—Yes.

Q.—And had his office in Ottawa in the Department of Railways and Canals where he acted as Deputy Minister?

A.—Yes.

By Mr. Dussault:—

Q.—When you mention Mr. Henry's presence on September 17th, that was at a Meeting of the Executive Committee?

A.—Yes.

20 The next is a certified extract of Minutes of Meeting of the Executive Committee held March 24th 1930.

By Mr. Montgomery:—

Q.—Will you file it as Exhibit P-4?

A.—Yes.

Q.—I notice at that Meeting Mr. Henry was present, was
he not?

A.—Yes.

30 Q.—And I also notice the name of a Mr. Smart whose name does not appear on the earlier Minutes?

A.—Yes.

Q.—Can you tell me who Mr. Smart was?

A.—That is, March 24th is it not?

Q.—Yes, March 24th.

Mr. Cook:—1930.

40 Witness:—Mr. Smart was Mr. Henry's successor as Deputy Minister of Railways and Canals, was appointed a Director of the Canadian National Railways on March 5th 1930.

By Mr. Dussault:—

Q.—Did Mr. Henry remain a Director?

A.—Yes.

The next is a certified extract of the Executive Committee Meeting of June 16th 1930.

By Mr. Montgomery:—

Q.—Would you file that as Exhibit P-5?

A.—Yes.

In the
Superior
Court
Plaintiff's
Evidence
in Discovery
Deposition of
W. H. Hobbs
Examination
in Chief
15 Feb. 1935
(Continued)

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

Q.—I notice that Mr. Smart and Mr. Henry were both present at that Meeting?

A.—Yes.

10 The next is a similar certified extract of Minutes of Meeting of the Executive Committee held on August 7th, 1930.

Q.—Will you file that as Exhibit P-6?

A.—Yes.

Q.—I notice Mr. Henry was also present at the Meeting of August 7th, 1930?

A.—Yes.

Q.—And I notice another name that appears on practically all the Minutes that have been produced, Mr. Ruel?

A.—Yes.

20 Q.—Can you tell me who Mr. Ruel was?

A.—Mr. Ruel was the vice-president in charge of legal affairs of the Railway Company.

Q.—And was the chief legal adviser of the Company?

A.—Yes.

Q.—And he was present at these different Meetings which approved of the transaction in question in this case?

A.—Yes.

30 Mr. Dussault:—He does not seem to have been present at the first two Meetings.

By Mr. Montgomery:—

Q.—To satisfy Mr. Dussault, will you look at any Minutes that you have produced as to a lease of the Beardmore property on Pine Avenue, and tell me whether Mr. Ruel was present at all those Meetings?

A.—Mr. Ruel was present at the Meetings of March 24th, June 16th, August 7th.....

40 Q.—That is not an answer to my question Mr. Hobbs. Don't be so cautious. I asked you whether he was present at all the Meetings.

Mr. Dussault:—Answering that he was at those three Meetings and that he was not at the other two, would be a very complete answer.

Witness:—You won't allow me to leave my answer as it is?

Mr. Montgomery:—No.

Witness:—The answer is, yes.

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

Superior
Court
Plaintiff's
Evidence
in Discovery
Deposition of
V. H. Hobbs
Examination
by Chief
5 Feb. 1935
(Continued)

By Mr. Montgomery:—

Q.—Do you recall any question about an option to be given by Mr. Decary or Mr. Seguin upon the property?

A.—No.

10 Q.—Who was Minister of Railways in November 1930?

A.—So far as I know Doctor Manion was. I do not know the precise date of his appointment.

Q.—You remember the elections were in July 1930?

A.—Yes.

Q.—You will remember that the former Minister of Railways went out and a new Minister of Railways replaced him?

A.—Yes.

Q.—And that new Minister of Railways was Doctor Manion?

20 A.—Yes.

Q.—Do you recall a letter written by Sir Henry to Doctor Manion, a copy of which I notice on these files, dated November 20th 1930.

Mr. Dussault:—Of course, that is not the best proof. If there was a letter sent to Doctor Manion, Doctor Manion would be the party who should produce it.

Mr. Montgomery:—Will you undertake to have Doctor Manion here for examination?

30 Mr. Cook:—We cannot undertake that.

By Mr. Montgomery:—

Q.—You will notice that there is an option from Mr. Decary referred to in the copy of the letter which I showed to you?

A.—Yes.

Q.—I did not ask you whether you recall the letter of November 20th?

A.—I do not.

40 Q.—We would have to get Doctor Manion here for that purpose?

A.—Yes.

Q.—Do you recall the letter of option of November 6th, 1930, a copy of which you will note is enclosed to Doctor Manion in the letter of November 20th (the letter of option, I may say, is already filed in this record as Exhibit No. 4)?

A.—No, I do not.

Q.—Are there any other Minutes referring to this transaction?

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

Witness:—To the leasing of the property?

Counsel:—Or anything relating to the leasing of the property other than this law-suit. If you have any mental qualification, I want to tell you I do not mean that?

10 A.—No, there are no others relating to the leasing of the property.

Q.—Well, are there any other Minutes referring to the Beardmore property in any way, shape or form?

A.—No. There are Minutes of a later date.

Q.—I think you had better produce them, or be prepared to produce them, and if your solicitors think there is anything irrelevant they will offer their objection, but what I would like to get is, all Minutes relating to the Beardmore property, and also all Minutes relating to the provision of a residence?

20 A.—You have all those relating to the provision of a residence.

Q.—Then, will you get me any later Minutes that may exist in reference to the residence which was leased?

A.—That is all with regard to providing a residence.

Q.—Have you copies of those Minutes here?

A.—No, I have not.

Q.—Can you tell us what the practice was as regards communicating any Minutes, either of the Executive Committee or the Board of Directors, to Ottawa?

30 A.—It was the practice at that time to send drafts of the Minutes of each Meetings, Directors or Executive Committee, to the Deputy Minister of Railways and Canals after each Meeting.

Q.—I suppose there was usually a covering letter with these Minutes?

A.—Yes.

Q.—Have you with you the covering letters that accompanied the several Minutes of which you have been good enough to produce copies?

A.—No. There were copies on file of letters of transmittal.

40 Q.—So you are satisfied these Minutes were transmitted to Ottawa?

A.—So far as I can be.

Q.—And that the Minutes were written in the Minute Book and it is from that source you have made the copies?

A.—Yes.

Q.—What is your qualification to the last answer?

Witness:—About the Minutes?

Counsel:—So far as you can be, means you have seen copies of the letters purporting to forward them to Ottawa?

A.—Yes.

W. H. HOBBS (for Plaintiff on Discovery) Exam. in chief.

Q.—I suppose they would be forwarded the same day or the next day?

A.—Almost invariably the next day, or shortly after.

Q.—Did you receive any acknowledgement from Ottawa?

A.—No.

Q.—You are not aware of any criticism of the transaction referred to in these Minutes, having been received from Ottawa?

A.—No, I am not aware of any.

Q.—You found nothing in the files that would indicate there had been any criticism of these Minutes referring to this transaction?

A.—No.

Q.—They were merely formal covering letters just forwarding them on?

A.—Yes.

Q.—Addressed to the Minister of Railways and Canals?

A.—To the Deputy Minister of Railways for the time being, whoever he was.

Q.—That would be the ordinary course of communicating such things to the Department, would it not?

A.—No. We communicate in many ways. I could not answer that yes.

Q.—I think you said you have seen copies of the covering letters in respect to all those Minutes?

A.—All those that have been submitted today, yes.

And at this point the further examination of the witness was suspended pending argument and decision on the objections.

And further for the present deponent saith not.

E. W. Bush,
Official Court Reporter.

the
Superior
Court
—
Plaintiff's
Evidence
Discovery
position of
H. Hobbs
Examination
Chief
Feb. 1935
(continued)

10

20

30

G. H. SEGUIN (for Plaintiff) Examination in chief.

Plaintiff's Evidence at Enquete

10 DEPOSITION OF GEORGES HENRI SEGUIN

A witness examined on behalf of the Plaintiff.

On this fourth day of March, in the year of Our Lord One thousand nine hundred and thirty five personally came and appeared Georges Henri Seguin residing at No. 4960 Grosvenor Avenue, in the City of Westmount, in the District of Montreal, Notary, aged 38 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

20

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

Q.—Are you the G. Henri Seguin who is mentioned as lessor in the lease from G. Henri Seguin to the Canadian National Railway, filed as Exhibit No. 1?

A.—Yes.

Q.—That lease was for a period of 10 years from August 1st, 1930, was it not?

30

A.—Yes, sir.

Q.—Are you familiar with the purpose for which the leased premises were to be used?

A.—I was not at the time. I am now, but I did not know at the time.

Q.—You know the premises were leased as a residence for the late Sir Henry Thornton?

A.—Yes.

Q.—Who was, at that time, President of the Canadian National Railway Company?

40

A.—Yes.

Q.—Did Sir Henry go into possession on August 1st, 1930?

A.—I suppose so.

Q.—The rental was paid for the quarter beginning August 1st, 1930?

A.—Yes.

By the Court:—

Q.—Do you say Sir Henry occupied the premises?

A.—I suppose so. I am not sure.

Superior
Court
Plaintiff's
Evidence
at Enquete
Examination of
Georges Henri
Seguin
March 1935

G. H. SEGUIN (for Plaintiff) Cross-examination.

By Mr. Montgomery, continuing,—

10 Q.—In any event, you received your quarter's rental regularly for the balance of 1930, through 1931, through 1932, and to the spring of 1933, did you not?

A.—Yes, sir.

Q.—And, Exhibit No. 3 is the signification of the transfer upon the Canadian National?

A.—Yes.

Q.—Will you file, as Exhibit P-7, a letter addressed to you by Messrs. Cook & Dussault, under date April 27th, 1933?

A.—Yes.

20 Q.—There is a footnote on the copy to the effect that the letter was delivered to you about 10.30 a.m. April 27th, 1933. Do you recall having received it?

A.—Yes.

Q.—Will you look at the letter I show you, which purports to be signed by you, under date May 1st, 1933, (and which has just been handed to me by my friend Mr. Cook) and will you tell me whether this is the original of your reply?

A.—Yes, sir.

Q.—Will you file this letter as Exhibit P-8?

A.—Yes.

30 Q.—Will you file, as Exhibit P-9, the reply of Messrs. Cook & Dussault to that letter, dated the same day, May 1st, 1933?

A.—Yes.

Q.—On June 19th, 1933, you appear to have received a further letter, (as I note from the file of my friend Mr. Cook) returning the keys to the house. Will you produce this letter as Exhibit P-10?

A.—Yes.

Q.—What did you do with the cheque?

A.—Sent it back to the Canadian National Railway.

40 Q.—You returned the cheque?

A.—Yes.

Mr. Montgomery:—I have no further questions to ask the witness.

Cross-examined by Mr. Dussault, K.C., of counsel for Defendant.

Q.—I understood you to say that you had received payment of the rent up to the spring of 1933?

A.—Yes.

G. H. SEGUIN (for Plaintiff) Cross-examination.

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arch 1935
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Q.—Am I to understand this rent was paid by cheques?

A.—Yes, sir.

10 Q.—Will you look at the cheque I show you, dated January 23rd, 1931, to your order, for \$3931.25, together with the voucher attached, and will you file it as Defendant's Exhibit D-4; and will you say if this cheque was given for the period of three months ending January 31st, 1931, for the occupation of the Beardmore property by Sir Henry Thornton?

A.—Yes, sir.

Q.—The cheque is endorsed by you?

A.—Yes.

Q.—And, it appears to be also endorsed, for deposit, in the name of Mr. E. R. Decary?

A.—Yes.

20 Q.—Mr. E. R. Decary is the head of the Notarial firm of Decary, Barlow & Joron?

A.—Yes.

Q.—And, Mr. Decary was a Director of the Canadian National at the time?

A.—I do not know if he was at that time. I do not remember that.

Q.—There is a voucher attached to the cheque?

A.—Yes.

30 Q.—Will you look at the cheque I now show you, dated April 24th, 1931, payable to your order, for \$3931.25, and will you say if it was given to you in payment of the rent for three months ending April 30th, 1931, and if the cheque is endorsed by you and the voucher signed by you and will you file both the cheque and the voucher as Exhibit D-5?

A.—Yes.

Q.—You notice the cheque is endorsed by you, and endorsed, for deposit in Mr. E. R. Decary's account by Mr. E. R. Decary?

A.—Yes.

40 Q.—Will you look at the cheque I show you, for \$3931.25, dated August 3rd, 1931, payable to your order (to which is attached a voucher for a like amount). for the rent for the period of three months ending July 31st, 1931 and will you file the cheque and the voucher as Exhibit D-6?

A.—Yes.

Q.—Will you state if the voucher is signed by yourself, and the cheque endorsed by yourself, and also "For deposit to the credit of Decary, Barlow & Joron, Trust Account"?

A.—Yes.

G. H. SEGUIN (for Plaintiff) Cross-examination.

Q.—Will you look at the cheque, dated November 2nd, 1931, for \$3931.25, payable to your order (to which is attached a voucher for a like amount) for the rent of the same property, for the period of three months ending October 31st, 1931, and will you say if the voucher is signed by you, and the cheque endorsed by you, and also endorsed for deposit in the Trust Account of Decary, Barlow & Joron; and will you file the cheque and the voucher as Exhibit D-7?

A.—Yes.

Q.—Will you look at the cheque I show you, dated February 3rd, 1932, for \$3931.25 (with voucher attached), and will you say if the voucher is signed by yourself, and the cheque endorsed by you to Mr. Decary, and then endorsed for deposit by Mr. Decary and will file the cheque and the voucher as Exhibit D-8?

A.—Yes, sir.

Q.—Will you file, as Exhibit D-9, cheque for \$3931.25, to your order, for the rent for the period of three months ending April 30th, 1932, (together with the voucher attached thereto); and will you say if the voucher is signed by you, and if the cheque is endorsed by you and also endorsed for deposit to the account of Decary, Barlow & Joron, Trust Account?

A.—Yes, sir.

Q.—Does the same answer apply to the cheque for \$3931.25, dated August 1st, 1932, which I will ask you to file as Exhibit D-10?

A.—Yes, sir.

Q.—And does the same answer apply to the cheque I now show you, for \$3931.25, dated November 1st, 1932, which I will ask you to file (together with the voucher) as Exhibit D-11?

A.—Yes.

Q.—Will you file, as Exhibit D-12, cheque for \$3931.25, payable to your order (with voucher attached and will you say if the voucher is signed by you, and the cheque endorsed to the order of Mr. Decary, and endorsed by Mr. Decary, and subsequently endorsed for deposit in the account of Decary, Barlow & Joron, Trust Account?

A.—Yes, sir.

Mr. Dussault:—I have no further questions, for the moment, but we will require Mr. Seguin as a witness on our own behalf.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter:

he
Superior
Court
—
Plaintiff's
Evidence
Enquete
Exposition of
Seguin
Cross-
Examination
March 1935
(Continued)

W. H. HOBBS (for Plaintiff) Examination in chief.

DEPOSITION OF WILLIAM HENRY HOBBS

A witness examined on behalf of the Plaintiff.

10

On this fourth day of March, in the year of Our Lord one thousand nine hundred and thirty five personally came and appeared William Henry Hobbs residing at No. 2165 Lincoln Avenue, in the City and District of Montreal, Assistant Secretary Canadian National Railway Company, aged 44 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:—

20 Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

Q.—I understand the Secretary of the Canadian National Railway, Mr. Ormsby, is absent in England at the present time?

A.—Yes.

Q.—You are the Mr. Hobbs who was examined on discovery the other day?

A.—Yes.

30 Q.—Prior to being Assistant Secretary of the Canadian National Railway Company you were private secretary to Sir Henry Thornton?

A.—Secretary to the President of the Canadian National Railway Company.

Q.—Sir Henry was President of the Company, was he not?

A.—Yes.

Q.—You are, of course, familiar with the premises No. 1415 Pine Avenue, West, in question in this case?

A.—Yes.

40 Q.—And you were aware they were occupied by the late Sir Henry Thornton, as President of the Canadian National Railway, up to the time he left Montreal?

A.—Yes.

Q.—They were occupied by him, as his residence, for himself and his family?

A.—Yes.

Q.—Will you look at a letter I show you, addressed to you by Mr. Seguin, dated August 31st, 1933, and will you say whether that letter was received by the Railway?

A.—It was.

W. H. HOBBS (*for Plaintiff*) *Examination in chief.*

Q.—With that letter was the cheque for \$3931.25 therein referred to?

A.—Yes, sir.

10 Q.—To that letter was attached a Statement of the rental due as at August 31st, 1933, made up of the two instalments, the one due May 1st, 1933, and the second purporting to be due on August 1st, 1933?

A.—That is correct.

Q.—Will you file the letter with the attached Statement, as Exhibit P-11 ?

A.—Yes.

20 Q.—Ignoring for the purposes of your answer the controversy that exists between the Plaintiff Company and the Railway, that amount of rental would have been due under the terms of the lease?

A.—Yes.

Mr. Montgomery:—I have no further questions to ask the witness.

Mr. Cook:—We have no cross-examination.

Mr. Montgomery:—That is our case in chief.

30 And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

F. N. BEARDMORE (for Def. out of Court) Exam. in chief.

the
Superior
Court

Defendant's
Evidence
Discovery
Position of
Beardmore
Examination
Chief
Oct. 1934

Defendant's Evidence taken out of Court

10

DEPOSITION OF FREDERICK N. BEARDMORE

A witness examined on behalf of the Defendant.

20

On this twelfth day of October in the year of Our Lord One thousand nine hundred and thirty-four personally came and appeared Frederick N. Beardmore, of the City and District of Montreal, retired, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:

(The present examination is taken out of court, by consent inasmuch as the witness is leaving the province of Quebec, and will not be available at the Trial).

Examined by Mr. Cook, K.C., of counsel for Defendant.

30

Q.—I understand that for some years prior to August 8th, 1930, you were the proprietor of a large residential property on Pine Avenue, West. now known as No. 1415?

A.—Yes.

Q.—Did you know the late Sir Henry Thornton?

A.—I did.

Q.—Did you rent that house to him, and if so, when and for what rental?

A.—\$450 a month.

Q.—Can you give me the details?

40

A.—From October 11th, 1926, to April, 1928, he paid me \$450 a month. On May 1st, 1928, he commenced paying \$500 a month, which he paid until August 9th, 1930.

Q.—When the house was sold by you?

A.—I sold it on that date. It was transferred on that date.

Q.—I understand you had negotiations with Sir Henry Thornton during the periods you have mentioned, for the purchase of the house?

A.—Yes, we corresponded for nearly a year.

Q.—What was the ultimate result of that correspondence?

A.—I sold the house for \$175,000 and \$10,000 for the furnishings that were agreed to.

In the
Superior
Court
Defendant's
Evidence
on Discovery
Deposition of
F. N.
Beardmore
Examination
in Chief
12 Oct. 1934
(Continued)

F. N. BEARDMORE (for Def. out of Court) Exam. in chief.

Q.—That would be \$185,000 altogether?

A.—\$185,000 altogether. \$185,000 was paid altogether.

Q.—Prior to the formal deed of sale being executed by you, had you given an option to Sir Henry Thornton to purchase?

10 A.—No, I did not give him any option. Not that I remember. Nothing of that kind at all.

It was settled finally by cable, I think.

Q.—Will you look at the deed of sale I now show you, being a deed of sale by Frederick N. Beardmore in favor of Georges Henri Seguin; and will you state whether it was the deed by which the property was transferred?

20 A.—Yes, I suppose this is the one. Of course, I never saw this, because I cabled to the Trust Company to turn the property over to him. I never saw this at all.

Q.—The Royal Trust Company were acting in the matter as your attorneys?

A.—Yes.

I was not here for six or eight months afterwards.

Q.—The Royal Trust Company had a power of attorney to act for you?

A.—They have a power of attorney.

30 Q.—And that is why the deed was signed by the Royal Trust Company?

A.—Yes.

I know nothing about Mr. Seguin, I knew no one at all in the deal except Sir Henry Thornton. I thought I was selling to him personally.

Q.—I would ask you to produce this deed as Defendant's exhibit D-1.

A.—Yes.

40 Q.—The purchase price, of \$185,000, was paid to the Royal Trust Company, for your account, in cash?

A.—Into my account, yes.

Q.—During all the time the negotiations were carried on for the sale of the property, prior to August 8th, 1930, you were away from Montreal?

A.—Yes.

Q.—And, the only person you had any negotiation with in the matter was the late Sir Henry Thornton?

A.—He was the only one. I knew nobody else. There was no real estate man in it either — at least none directly.

In the
Superior
Court

Defendant's
Evidence
on Discovery
Deposition of
F. N.
Beardmore
Cross-
examination
12 Oct. 1934

F. N. BEARDMORE (for Def. out of Court) Cross-examination.

Q.—And, you agreed by cable to sell?

A.—Yes.

Q.—Would the Royal Trust Company have that cable?

A.—I cabled them to turn the property over to him.

10 Q.—Apart from the rental of which you have spoken, paid by the late Sir Henry Thornton, did he pay anything else for the use of the house during the period of his occupation as tenant?

A.—No.

Q.—After the cable which you sent to the Royal Trust Company, accepting Sir Henry Thornton's offer of \$185,000, all further negotiations with reference to the matter were carried on by the Royal Trust Company on your behalf?

A.—Yes.

20 Q.—Do you know anything about an option, or a transfer of Sir Henry Thornton's rights, having been made in favour of Mr. Seguin.

A.—No, I do not know anything about that at all.

Q.—After your cable of acceptance of the Thornton offer all matters on your behalf were continued by the Royal Trust Company?

Witness:—After the sale?

Counsel:—No. After the cable. All matters were continued by the Royal Trust Company, as your agents and attorneys?

30 A.—Yes.

Q.—And, you approved of whatever they did?

A.—Yes.

Q.—And, if we require any further information as to what happened we can obtain it from the Royal Trust Company officials?

A.—Yes.

Q.—They are the persons who would know?

A.—Yes.

40 Mr. Cook:—I have no further questions.

Cross-examined by Mr. Geoffrion, K.C., of counsel for Mis-en-cause.

Q.—Had you a lease with Sir Henry Thornton?

A.—No. I do not think there was a lease, because it was done by letter.

Q.—You think you had no formal lease with Sir Henry Thornton, and that it was done by letter?

A.—Only letters. I do not think there was ever a lease. As far as I can remember, there was not.

In the
Superior
Court

Defendant's
Evidence
on Discovery
Deposition of
F. N.
Beardmore
Examination
in Chief
12 Oct. 1934
(Continued)

F. N. BEARDMORE (for Def. out of Court) Cross-examination.

Q.—It is suggested to me that this matter started with a lease some time before, which expired, and was renewed by correspondence. Would that be right?

A.—Yes, that is right.

10 Q.—Do you know for how long it was renewed each time?

A.—I think it was just a year, and it was on the condition that he would get out on three month's notice in case the property was sold.

Q.—You were trying to sell it then?

A.—I was not trying to sell it, but I did not want to tie the property up for a longer period.

Q.—Your remembrance is the lease was extended from year to year, with a three months' quit clause in case you sold the property?

20 A.—Yes. Of course, it was not in the hands of anybody to sell; it was only for sale if a big offer was obtained. Previously I had offers, or people looking after it.

Q.—But, the offers did not please you?

A.—No, it was not that, but nothing ever came to a head.

Q.—You are not living here any more?

A.—No.

Q.—Who paid the taxes on the property?

A.—I did. He paid the water taxes, and I paid the land taxes.

30 Q.—Do you remember what the land taxes were?

A.—No, I do not. I think somewhere around \$4000., but that is only guessing. I do not really remember what they were.

Q.—You think they would be somewhere around \$4000?

A.—No. I do not think now they were as high as that.

By Mr. Cook:—

40 Q.—I understand Sir Henry Thornton stated on one occasion that the rent was originally \$500, and later was increased to \$600. a month. If I understand your evidence correctly, Sir Henry Thornton was in error in that statement?

A.—He must have been, because I looked up my private ledger and I saw nothing but \$450, and then \$500 — \$6000 a year.

And further deponent saith not.

J. H. Kenehan.
Official Court Reporter.

In the
Superior
Court
—
Defendant's
Evidence
on Discovery
Deposition of
G. Donaldson
Examination
in Chief
2 Feb. 1935

F. G. DONALDSON (for Def. out of Court) Exam. in chief.

DEPOSITION OF FREDERICK GEORGE DONALDSON

A witness examined on behalf of the Defendant.

10 On this twenty second day of February, in the year of Our
Lcrod one thousand nine hundred and thirty five personally came
and appeared Frederick George Donaldson of the City and Dis-
trict of Montreal, General Manager Montreal Trust Company,
a witness produced and examined on behalf of the Defendant,
who, being duly sworn, deposes as follows:—

(The present examination is held out of Court, by consent,
inasmuch as the witness is about to leave the Province tempora-
rily, and will not be available for examination at the trial of the
20 case)

Examined by Mr. Cook, K.C., of counsel for Defendant.

Q.—I understand you are about to leave the Province, for
a holiday?

A.—Yes.

Q.—And, you will not be in Montreal when the case comes
to trial?

A.—No.

30 Q.—You are General Manager, and a Director, of the
Montreal Trust Company?

A.—I am.

Q.—For how many years have you been General Manager?

A.—About 15 years.

Q.—And, you have been a Director for some years?

A.—Yes, for some years.

Q.—Do you know Mr. Ernest Decary. of Montreal?

A.—I do.

40 Q.—Will you please tell me, in your own words, the ar-
rangements that were arrived at between you, acting on behalf
of the Montreal Trust Company, and Mr. Decary, in regard to
the house formerly owned by Mr. Beardmore, and bearing No.
1415 Pine Avenue, West?

A.—One day some months prior to June, 1930, during a
game of life pool in the Montreal Club, Mr. Decary mentioned
to me, as well as I can remember, that Sir Henry Thornton con-
templated buying a house; and he (Mr. Decary) asked me if the
Montreal Trust Company would advance the amount necessary
to purchase the property.

F. G. DONALDSON (for Def. out of Court) Exam. in chief.

This was a very disjointed conversation, as only a few words passed between us each time as we played. When I left the Club I thought nothing more about it.

- 10 Q.—Was any figure mentioned ?
A.—No figure was mentioned.

About two months after, I met Mr. Decary; I think it was on St. James Street. He stopped me, and said he was ready to go ahead with the proposition about which he had spoken to me in the Montreal Club. I had really forgotten about it, and I said to him: "Well, you had better put the matter in writing. Write me a letter and give me all the details, and I will consider it". At the same time I said: "You know all about this matter. Will you guarantee the proposition?" and he said: "Yes, I will".

- 20 On June 25th, 1930, I received from Mr. Decary a letter, dated June 24th, 1930.

Q.—Have you the letter?

A.—Yes, I have.

Q.—You have the original of the letter with you?

A.—Yes.

Q.—Would you mind producing it?

A.—I exhibit the original, and I will produce a certified copy of it.

- 30 Q.—Therefore, a certified copy of Mr. Decary's letter of June 24th, 1930, will be produced as Defendant's Exhibit D-2?

A.—Yes.

Q.—Did you reply to Mr. Decary's letter of June 24th, 1930?

A.—I did.

Q.—Will you produce a copy of your reply, as Exhibit D-3?

A.—I produce, as Exhibit D-3, a copy of our letter.

- 40 Q.—Was there any discussion between Mr. Decary and yourself of the terms set out in Mr. Decary's letter of June 24th, 1930, Exhibit D-2?

A.—No.

Q.—Neither before, nor after, the letter?

A.—To the best of my knowledge and belief, I did not discuss this matter with Mr. Decary again. What happened was that when I received this letter, and we decided to make the loan, I handed the letter over to Mr. Knublely, our Manager, and asked him to look after the mechanics of the transaction, and he has done so ever since.

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F. G. DONALDSON (for Def. out of Court) Exam. in chief.

Q.—Had you any discussion with Sir Henry Thornton regarding the matter?

A.—I never spoke to him at all about the matter.

Q.—He was one of your Directors at that time?

10 A.—I think he was, but I would not be quite certain. I could easily ascertain.

Q.—You knew this house was occupied by Sir Henry Thornton at the time?

A.—I do not believe I did.

Q.—You knew it was for the use of Sir Henry Thornton?

A.—Yes.

Q.—You knew it was intended to be used for Sir Henry Thornton?

20 A.—Yes: Mr. Decary told me that. He mentioned Sir Henry's name at the first interview I had with him.

Q.—Can you tell me when Sir Henry was appointed a Director of the Montreal Trust Company?

A.—He was appointed on April 4th, 1930.

Q.—Mr. Decary mentioned to you at the first interview that this house was to be purchased for Sir Henry's use?

A.—That was what I understood.

Q.—You say the matter was subsequently turned over to Mr. Knubley?

A.—Yes.

30 Q.—And, he has been in charge of it ever since?

A.—Yes.

Q.—He can give full particulars as to the payments that were made on account, etc?

A.—Yes. He can give full information.

Q.—Did you know Mr. Seguin in April, 1930?

A.—I never met Mr. Seguin, to my knowledge.

Q.—Never in your life?

A.—Not as far as I know.

Q.—You never knew anything about him?

40 A.—No nothing.

Q.—The transaction in question was entered into by your Company, on the guarantee of Mr. Decary, and because of the associations of Sir Henry Thornton with your Company?

A.—No. It was considered as a business proposition. We looked at it as a business proposition.

Q.—A loan by your Company, on a good property, with good security?

A.—At that time we considered the loan good, and the security good.

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F. G. DONALDSON (for Def. out of Court) Exam. in chief.

Q.—The security being Mr. Decary's guarantee, plus a hypothec on the property?

A.—Plus a first mortgage on the property, and the transfer of the lease as additional security. The loan would never have
10 been made without the lease as security.

Q.—You would refer us to Mr. Knublely in regard to all payments in connection with interest charges, and so on?

A.—Yes. Mr. Knublely will give you full particulars as to all details of the transaction.

By Mr. Dussault:—

Q.—You do not know who made those payments?

A.—Personally I do not, no.

20 Q.—Mr. Knublely can give us that information?

A.—Mr. Knublely would be able to give you the information, if we have it in our books. Of course, we may not have it, because it is not usual for us to show in our books where a payment comes from, or whose cheque was tendered in payment.

By Mr. Montgomery:—

Q.—The money would appear as a credit?

A.—Yes.

30

By Mr. Cook, continuing,—

Q.—If the cheque came accompanied by a letter, you would have the letter?

A.—We would have the letter, yes.

Q.—In any event, you would refer us to Mr. Knublely for information as to the manner in which the payments were made?

A.—Yes.

40

Mr. Cook:—I have no further questions.

Mr. Montgomery:—I have no cross-examination.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

In the
Superior
Court

Defendant's
Evidence
at Enquete
Deposition of
G. H. Seguin
Examination
in Chief
4 March 1935

G. H. SEGUIN (for Defendant) Examination in chief.

Defendant's Evidence at Enquete

10

DEPOSITION DE GEORGES-HENRI SEGUIN

L'an mil neuf cent trente-cinq, le quatrième jour du mois de mars, a comparu Georges-Henri Seguin, notaire de Montréal, âgé de trente-huit ans, le mis-en-cause, pour être interrogé de la part de la défenderesse

20 Lequel, après serment prêté sur les Saints Evangiles, dépose et dit :

Interrogé par Me J. C. H. Dussault, C.R., Avocat de la défenderesse :—

Q.—Vous avez été assermenté il y a un instant ?

R.—Oui.

Q.—Vous avez été aussi interrogé par Maître Montgomery comme témoin de la demande, n'est-ce pas ?

R.—Oui.

30 Q.—En mil neuf cent trente (1930), dans l'été de mil neuf cent trente (1930), particulièrement en août, mil neuf cent trente (1930), vous étiez l'associé de M. Ernest Décary ?

R.—Oui, j'étais au bureau de Décary, Barlow et Joron.

Q.—C'est-à-dire que vous étiez attaché au bureau de notaires de Décary, Barlow et Joron ?

R.—Oui.

Q.—Dont M. Ernest Décary est le chef ?

R.—Oui.

40 là ?
Q.—Vous étiez vous-même notaire pratiquant à ce moment

R.—Oui

Q.—Depuis combien d'années ?

R.—Ça fait quinze (15) ans maintenant ; en mil neuf cent trente (1930), une dizaine d'années.

Q.—Alors, vous n'étiez pas membre de la société ?

R.—Non.

Q.—M. Décary était à ce moment là directeur de la Compagnie des chemins de fer Canadian National Railways, n'est-ce pas ?

G. H. SEGUIN (for Defendant) Examination in chief.

R.—Je crois que oui. Je sais qu'il l'a été, mais je ne me rappelle pas de la date où il a cessé de l'être.

Q.—Vous êtes le monsieur Séguin qui a signé les trois actes qui ont été produits en cette cause :

10 Le contrat de prêt entre Montreal Trust et vous-même, le contrat de vente entre M. Beardmore et vous-même, et le bail entre vous-même et la compagnie défenderesse, Canadian National Railways Company ?

R.—Oui, monsieur.

Q.—Le contrat de bail, qui a été produit comme pièce numéro 1, le contrat de prêt, produit comme pièce numéro 2, et le contrat entre Beardmore et vous-même, qui a été produit comme pièce D-1 à l'enquête, ces actes-là, monsieur Séguin, ont-ils été signés par vous en même temps, le même jour ?

20 R.—En autant que je me rappelle, oui.

Q.—Pouvez-vous dire à quelle date ils ont été signés ?

R.— Non, je ne me rappelle pas la date exacte, mais la date est sur les actes.

Q.—Pour satisfaire mon savant ami, M. Geoffrion, n'est-il pas vrai que les actes ont été signés quelques jours avant la date qui est mentionnée à chacun de ces trois actes ?

R.—Je ne me rappelle pas de la date exacte. J'ai signé les actes devant notaire, mais je ne me rappelle pas à quelle date.

30 Q.—Votre mémoire est-elle moins bonne aujourd'hui qu'elle l'était lorsque vous avez été interrogé devant le Comité spécial des Chemins de fer, dans le mois de mai, mil neuf cent trente-deux (1932) ?

R.—Je ne sais pas si ma mémoire est moins bonne ou meilleure, cela est difficile à juger.

Q.—Vous rappelez-vous, dans tous les cas, que vous avez été interrogé devant ce Comité là ?

R.—Oui, monsieur.

Q.—Dans le mois de mai, mil neuf cent trente-deux ?

R.—Oui.

40 Q.—Vous rappelez-vous que vous avez déclaré là que vous aviez signé les trois actes en question à la connaissance de M. Décary, avant votre départ en vacances, le deux ou le trois août, mil neuf cent trente (1930) ?

R.—Je crois que oui, mon départ pour mes vacances me rappelle la chose.

Q.—Vous vous rappelez de cela ?

R.—Oui.

Q.—A la demande de M. Décary, vous avez signé les trois actes avant de partir, le deux ou le trois août ?

R.—Oui.

G. H. SEGUIN (for Defendant) Examination in chief.

Q.—Jusque là, monsieur Séguin, jusqu'au moment où on vous a demandé de signer les trois actes, aviez-vous quelque connaissance des transactions qui se faisaient ?

R.—Non, monsieur.

10 Q.—Vous n'étiez pas au courant du tout des faits ?

R.—Non, monsieur.

Q.—Vous n'aviez pris aucune part aux négociations qui avaient eu lieu avec le Montreal Trust, ou avec M. Beardmore, ou avec la Compagnie de chemin de fer, en rapport avec ces trois actes là, n'est-ce pas ?

R.—Non, monsieur.

Q.—Comme question de fait, vous n'aviez aucun intérêt dans tout cela ?

R.—Non, monsieur.

20 Q.—Dans toute l'affaire, et relativement aux trois contrats, vous avez agi pour M. Décary, n'est-ce pas ?

R.—Pas nécessairement pour lui, mais à sa demande.

Q.—N'est-il pas vrai que vous étiez tout simplement son prête-nom ?

R.—J'ai agi à sa requête, je ne sais pas si j'étais son prête-nom, à lui ou à d'autres.

Q.—Vous ne saviez pas si vous agissiez pour M. Décary ou pour d'autres, mais vous savez que vous n'agissiez pas pour vous ?

30 R.—Oui.

Q.—Vous avez été interrogé devant le Comité des Chemins de fer ?

R.—Oui.

Q.—Vous avez été interrogé sur l'intérêt que vous pouviez avoir dans l'affaire, n'est-ce pas ?

R.—Oui.

Q.—Est-ce que vous n'avez pas déclaré devant ce Comité que vous n'aviez aucun intérêt et que vous étiez le trustee de M. Décary ?

40 R.—Je ne me rappelle pas de cela.

Q.—A la page 162 du rapport des procédures devant le Select Standing Committee on Railways & Shipping, à la date du trois (3) mai, mil neuf cent trente-deux (1932), je lis les questions et réponses suivantes et je vous demande de me dire s'il n'est pas vrai que vous avez répondu de la façon qui est indiquée à cet endroit du rapport :

“By Mr. McGibbon:—

“Q.—Who owns the house to-day ?

“A.—I am the registered owner.

G. H. SEGUIN (for Defendant) Examination in chief.

“By the Chairman:—

“Q.—You are not the true owner?

“A.—No.

10 “for him?
“Q.—Mr. Décary is the true owner and you are the trustee

“A.—Yes.”

Avez-vous donné ces réponses là?

R.—Je ne me rappelle pas exactement. J’ai dû, probablement: c’est le rapport officiel.

Q.—A la même page, monsieur Séguin, je lis les questions et les réponses suivantes:

“By the Chairman:—

20 “Q.—Mr. Séguin, did you conduct negotiations for the
“purchase of that property?

“A.—No, sir.

“Q.—Who did?

“A.—I do not know. I was asked by Mr. Décary to purchase the property and sign the deed for borrowing the money.

“Q.—So far as you know, it was Mr. Décary’s child?

“A.—Yes.

“Q.—Of course, that is true, is it not?

30 “A.—Yes.

“Q.—Did you conduct negotiations with the Montreal
“Trust Company for the borrowing of the money?

“A.—No, sir.

“Q.—Mr. Décary did that too, did he?

“A.—Yes.

“Q.—That was Mr. Décary’s baby also?

“A.—Yes.

“Q.—So that, as far as you are concerned, you carried out
“your instructions?

“A.—Yes.

40 “Q.—And you took your instructions wholly from Mr. Décary?

“A.—Yes.

“Q.—And Mr. Décary gets the profits on this house, does
not he?

“A.—Yes.

“Q.—You are just a trustee, we will call you that?

“A.—Exactly.

“Q.—Did you get anything privately personally out of this
“house?

“A.—None of it.

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G. H. SEGUIN (for Defendant) Examination in chief.

“Q.—You got your salary and Mr. Décarry gets any profit
“there is?”

“A.—Yes.”

Q.—Avez-vous donné ces réponses que je viens de lire?

10 R.—Je crois que oui.

Par le Juge:—

Q.—Avez-vous des doutes?

R.—Je ne me rappelle pas des réponses exactes que j'ai
données il y a trois ou quatre ans devant le Comité des Chemins
de fer.

Q.—Avez-vous dit la vérité en répondant aux questions qui
vous ont été posées?

20 R.—Oui, Votre Seigneurie, en autant que je me rappelais,
oui.

Par Me Dussault:—

Q.—Voulez-vous produire, comme pièce D-13 de la défen-
deresse, le rapport des procédures devant le Comité des Chemins
de fer qui s'appelle “Select Standing Committee on Railways
and Shipping,” lequel contient toutes les procédures et le rap-
port de la preuve, ainsi que les conclusions du Comité, et est cer-
tifié par le greffier de la Chambre des Communes, et lequel con-
tient votre déposition dont j'ai donné lecture en partie?

30 Me Geoffrion, C.R., Conseil du mis-en-cause:—

Je m'objecte à la production du rapport. J'ai consenti à
la production du témoignage du témoin, mais les autres témoi-
gnages qui ont été entendus devant le Comité, nous ne voulons
pas qu'ils entrent au dossier, ni les débats.

Me Dussault:—Nous n'avons pas autre chose que le rap-
port complet du Comité, dans lequel se trouve la déposition de
M. Séguin.

40 Me Geoffrion:—Comme mis-en-cause, si l'on veut produi-
re tout le rapport, je retire mon consentement.

Le Juge:—Vous devriez produire le témoignage de M. Sé-
guin seulement.

Me Dussault:—Etant donné votre décision, nous produi-
rons, comme exhibit D-13, le témoignage donné par M. Séguin
devant le Comité qui a été mentionné, le trois (3) mai, mil neuf
cent trente-deux (1932). Afin qu'il n'y ait pas de malentendu, ce
que nous produirons comprendra les pages 160 à 171.

G. H. SEGUIN (for Defendant) Examination in chief.

Par Me Dussault:—

Q.—Le montant du prêt, monsieur Séguin, le montant du prêt que le Montreal Trust a fait, est-il passé par vos mains?

10 R.—Je crois que oui, je crois que le chèque était fait à mon ordre et qu'il a été endossé par moi. Je n'en suis pas absolument sûr pour le chèque.

Q.—Votre mémoire, évidemment, n'est pas aussi bonne aujourd'hui qu'elle l'était quand vous répondiez devant le Comité des Chemins de fer, en mil neuf cent trente-deux (1932)?

R.—Je crois que j'ai endossé un chèque quand je suis revenu de mes vacances.

Q.—Quand vous êtes revenu de vos vacances, les actes avaient été complétés?

R.—J'avais signé les actes avant de partir.

20 Q.—Vous, vous aviez signé avant de partir?

R.—Oui.

Q.—Et les autres parties aux trois différents actes les ont signés pendant votre absence?

R.—Oui.

Q.—Le bail, monsieur Séguin, ne couvre pas les meubles, n'est-ce pas?

R.—L'acte le dit, je ne me rappelle pas exactement; je ne sais pas si cela est mentionné dans l'acte.

30 Q.—Les meubles n'ont pas été loués par vous au Canadien National?

R.—Je ne sais pas ce que l'acte dit — je ne me rappelle pas ce que l'acte dit — je ne connais pas l'acte par coeur. L'acte est là — l'acte de bail est là.

Q.—Vous rappelez-vous si la vente qui a été faite par M. Beardmore à vous-même comprenait les meubles aussi?

R.—Je crois que oui, qu'il en était question dans l'acte. L'acte est là.

40 Q.—Le prix de vente de cent quatre-vingt-cinq mille dollars (\$185,000) comprenait cent soixante-quinze mille dollars (\$175,000) pour la propriété de M. Beardmore, l'immeuble, et de dix mille dollars (\$10,000) pour les meubles, n'est-ce pas?

R.—Je crois que c'est ce que l'acte dit.

Q.—Qu'est-ce que sont devenus les meubles, le savez-vous?

R.—Je ne le sais pas.

Q.—Cela ne vous intéressait pas, ni de près ni de loin?

R.—Non.

Q.—Pas plus que le reste?

R.—.....

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G. H. SEGUIN (for Defendant) Examination in chief.

Q.—Monsieur Séguin, revenant à la déposition que vous avez donnée devant le Comité: puisque l'on veut abrégé votre témoignage, êtes-vous prêt à dire maintenant que ce que vous avez déclaré devant ce Comité là, en réponse aux questions qui
10 vous ont été posées, c'est la vérité?

Me Montgomery, C.R., Avocat de la demanderesse:—Objecte à cette question, à moins que le témoin n'ait l'opportunité de lire son témoignage avant de répondre.

Me Geoffrion, C.R., Conseil pour le mis-en-cause:—Objecte à la question.

(L'objection est réservée par le juge).

R.—C'est la vérité, en autant que je la connaissais.

20 Par Me Dussault:—

Q.—C'est-à-dire qu'à toutes les questions qui vous ont été posées, monsieur Séguin, — et je n'en ai pas le moindre doute — vous avez répondu la vérité, n'est-ce pas?

R.—J'ai répondu au meilleur de ma connaissance.

Q.—Alors que vous étiez le témoin de mon savant ami, M. Montgomery en contre-interrogatoire j'ai référé aux différents paiements de loyers qui ont été faits par les chèques que nous avons produits. Vous n'aviez aucun intérêt, n'est-ce pas, dans ces
30 paiements là?

R.—Aucun intérêt personnel.

Q.—Et c'est pour cette raison que les chèques ont été endossés par vous et remis à M. Décary?

R.—Oui.

Q.—Qui, lui, suivant sa déclaration, les a déposés, soit à son compte personnel, soit à un compte "in trust" de la société "Décary, Barlow et Joron"?

R.—Oui.

40 (Me Dussault, C.R., déclare son interrogatoire clos.)

Me Geoffrion, C.R., pour le mis-en-cause:—Je ne voudrais pas interroger le témoin sur l'exhibit qui a été produit avant d'avoir eu le temps de le lire. Je ne l'ai jamais lu et je ne sais pas ce qu'il y a dedans.

(L'interrogatoire du témoin est suspendu et le témoin ne dit rien de plus pour le moment).

L. A. Cusson,
Sténographe.

G. A. STUART (for Defendant) Examination in chief.

DEPOSITION OF GORDON ARTHUR STUART

A witness examined on behalf of the Defendant.

10 On this fourth day of March, in the year of Our Lord one thousand nine hundred and thirty five personally came and appeared Gordon Arthur Stuart residing at No. 4922 Westmore Avenue, in the City and District of Montreal, Assistant Manager Real Estate & Mortgage Department Royal Trust Company, aged 35 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:—

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Examined by Mr. Cook, K.C., of counsel for Defendant:—

20 Q.—You are in the employ of the Royal Trust Company?

A.—Yes.

Q.—And, you have been in their employ for many years?

A.—Yes.

Q.—How many, as a matter of fact?

A.—18 years.

Q.—Are you familiar with the history, as far as your Company is concerned, of the house on Pine Avenue which belonged to Mr. Beardmore?

A.—Fairly familiar, I think.

30 Q.—Have you a memorandum showing what was happened in connection with that house while it was in your hands?

A.—I have.

Q.—Will you file the memorandum, as Defendant's Exhibit D-14?

A.—Yes.

Q.—This memorandum contains a correct Statement of the facts in regard to the sale of the house?

A.—Yes.

40 Q.—From the time it came into the hands of the Royal Trust Company for sale up to August 8th, 1930?

A.—Correct.

Q.—You were the agents of Mr. Beardmore during that time?

A.—We were the agents, only as regards this property. We just attended to the payment of the taxes, the insurance, and so on.

Q.—I notice this memorandum, Exhibit D-14, contains a reference to letters, cables, and so on, and as I do not wish to burden the Record by putting them in, will you just tell us briefly,

G. A. STUART (for Defendant) Examination in chief.

in your own words, what happened in connection with the sale of the house?

Witness:—You mean from the time it came into our hands?

10 Counsel:—Yes.

A.—When it came into our hands, in 1926, we did not have the exclusive listing either for sale or for rent. It was just stated at a figure for both. We had no negotiations regarding a lease, or sale, until around February, 1930, when Mr. Beardmore put the property definitely in our hands.

Q.—Then, will you please confine yourself to the period from February, 1930, forward.

20 A.—From February, 1930, if I remember rightly, it was listed at \$250,000. He listed the property with us, in February, 1930, definitely, for sale at \$250,000, and it was at that time under lease to Sir Henry Thornton.

In May, 1930, I think it was, we received an offer for the property.

By Mr. Montgomery:—

Q.—According to the memorandum, Exhibit D-14, it was on April 17th, 1930, you received the offer.

A.—Yes.

30 We received an offer through Ewing & Ewing of \$155,000 for the property, payable \$100,000 cash and the balance on terms.

On May 20th, 1930, we had a cable from Mr. Beardmore to refuse the Ewing offer, but accept \$200,000.

On May 21st, 1930, we cabled Mr. Beardmore that the Ewing buyer would not pay that price, but would, we understood, pay \$175,000 for the property and the contents if the property were offered at that figure for immediate acceptance.

40 On May 21st, 1930, we had a cable from Mr. Beardmore: “Make offer subject being unsold. Cable Ewing’s reply immediately. Have offered elsewhere at \$200,000, with good prospects”.

On May 22nd, 1930, we had a cable from Mr. Beardmore: “Refuse offer. Will accept \$195,000 subject being unsold on receipt of cable”.

On May 23rd, 1930, we cabled Mr. Beardmore: “Ewing states his client no longer interested”.

G. A. STUART (for Defendant) Cross-examination.

On May 27th, 1930, we had a cable from Mr. Beardmore stating he had sold the Thornton property, excluding some easterly lots for \$175,000.

10 By Mr. Cook, continuing,—

Q.—That is, sold to Sir Henry Thornton?

A.—Yes. The cable reads: “Have sold property Thornton, excluding lots, \$175,000 with furnishings, excepting those in a letter to Sir Henry Thornton dated November 29th, for \$10,000”.

Thereafter we attended at Sir Henry Thornton’s office, and obtained instructions to forward the Deeds to Mr. Decary, and the preparation of the Deed was put into motion.

20 Q.—And, in the result, the Deed of Sale Exhibit D-1 was signed on August 8th, 1930?

A.—Yes.

Q.—The Royal Trust Company acting through Mr. Clarkson?

A.—Yes.

Q.—You were not a party to it, were you?

A.—No. We acted as Attorney for Mr. Beardmore for the sale.

30 Q.—I see by the memorandum that on July 22nd, 1930, you state you submitted to Messrs. Meredith, Holden, Heward & Holden, copy of a letter dated July 9th, 1930, from Sir Henry Thornton to Mr. E. R. Decary, transferring all his rights to purchase the property to Mr. Georges H. Seguin. That is correct. I assume?

A.—Yes, sir.

Q.—You have that letter in your possession?

A.—If I remember correctly, the letter was returned to Mr. Decary. It was a letter from Sir Henry Thornton to Mr. Decary.

40 Q.—And, you returned it to Mr. Decary?

A.—I believe so.

Q.—And, he would have it?

A.—I would think so.

Mr. Cook:—I have no further questions.

Cross-examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

Q.—You have the files here in Court?

A.—No, I have not.

G. A. STUART (for Defendant) Cross-examination.

Q.—No letters, or memoranda?

A.—Nothing but the memorandum.

Q.—But, some of the letters referred to might be interesting for us to look at. Where are they?

A.—They are on file at the office. Certain of them are
10 copies, of course.

Q.—Have you them together in one file?

A.—I would have to sort them out. They are on the general
file.

Q.—Possibly we might have a look at them during the
luncheon adjournment.

A.—I would have to sort them out.

Q.—You had a “For Sale” sign on the property?

A.—Yes. Our first sign went up in February, 1930.

Q.—And, in your letter you advised several other respon-
20 sible agents that the property was available for purchase?

A.—I believe so.

Q.—And the asking price was \$250,000, including the fur-
niture?

A.—That is correct.

Q.—Mr. Beardmore was apparently quite in favor of try-
ing to get rid of the property at that time?

A.—At that time there was only the one offer we submit-
ted to him.

Q.—You submitted the offer you received from Ewing &
30 Ewing?

A.—Yes.

Q.—But, he was conducting the negotiations with Sir
Henry?

A.—With Sir Henry directly, yes.

Q.—I would gather from regarding your memorandum that
you informed several other responsible agents that the property
was available for purchase, and the price was \$250,000, including
the furniture. That is correct?

A.—Yes.

Q.—I do not like to ask you to bring your files to Court,
40 but I think I would like to look at them.

A.—I can bring the individual letters, if you wish.

Q.—If you could do that, it would be interesting to look
through the file, and see the letters and cables covered by the me-
morandum. We may find they are sufficiently mentioned in the
memorandum, in which event we will not trouble you to file them,
but we would be glad of the opportunity to examine them.

A.—Very well.

And further deponent saith not.

J. H. Kenchan,
Official Court Reporter.

In the
Superior
Court

Defendant's
Evidence
at Enquete
Deposition of
G. A. Stuart
Cross-
examination
4 March 1935
(Continued)

F. L. C. BOND (for Defendant) Examination in chief.

DEPOSITION OF FRANK L. C. BOND

A witness produced on behalf of the Defendant.

10 On this fourth day of March, in the year of Our Lord, one thousand nine hundred and thirty-five personally came and appeared Frank L. C. Bond, of the City of Montreal, General Superintendent, Montreal District, Canadian National Railways, aged 58 years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:

In the
Superior
Court
Defendant's
Evidence
at Enquete
Deposition of
F. L. C. Bond
Cross-
examination
4 March 1935

Examined by Mr. Cook, K.C., of counsel for Defendant.

20 Q.—The Montreal District of the Canadian National Railways forms part of the Central Region, does it not, Mr. Bond?

A.—Yes, it does.

Q.—And you are in charge of the operations of the Railway in the Montreal district?

A.—Yes sir.

Q.—Do you know the property number 1415 Pine Avenue West?

A.—Yes, I do, the civic number.

Q.—That was the property that was sold by Mr. Beardmore to Mr. Seguin on the 8th of August, 1930, by Exhibit D-1?

30 A.—So I understand.

Q.—And leased by Mr. Seguin to the Canadian National Railways on the same day as appears by the lease, Plaintiff's Exhibit No. 1?

A.—So I understand. I have it as the property which was occupied by Sir Henry Thornton and formerly owned by Mr. Beardmore.

Q.—And the property covered by the Deed of Loan of the 8th August 1930 which is in issue in this case?

A.—I have not seen that Deed.

40 Q.—I would like to direct your attention to the terms of subsection 21 of section 2 of the Railway Act, which reads as follows:

“Railway means any railway which the Company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal, and works connected therewith, and also any railway bridge, tunnel, or other structure which the Company is authorized to construct and, except where the context is inapplicable includes street railway and tramway”.

F. L. C. BOND (for Defendant) Examination in chief.

Now I ask you, bearing in mind that definition if, as General Superintendent of the Montreal district, you have control and supervision over the various operations, structures and properties mentioned in the said paragraph which I have read?

10

A.—Yes, I have.

Q.—Can the property bearing the civic number 1415 Pine Avenue west serve any purposes necessary for the Railway as defined by that section?

Mr. Geoffrion, K.C., of counsel for Plaintiff objects to this question as a question of law.

The Court reserves the objection.

20

A.—No, I cannot conceive of it serving any purpose.

Q.—I would also draw your attention to section 121 of the Railway Act which reads as follows:

“No person who is a director of the Company shall enter into, or be directly or indirectly, for his own use and benefit interested in any contract with the Company other than a contract which relates to the purchase of land necessary for the Railway, nor shall any such person be or become a partner of or surety for any contractor with the Company”.

30

Bearing in mind that last definition I have read, I would ask you whether the property bearing the civic number 1415 Pine Avenue West is, in your opinion, land necessary for the railway?

Same objection.

Same reserve.

A.—My answer would be no.

Q.—Will you amplify your answer a little, Mr. Bond, and say why you give no as your answer?

40

Witness:—As to whether the house 1415 Pine Avenue West is necessary for the Railway?

Counsel:—Yes

A.—So far as operating is concerned it would be very difficult, if not impossible, to conceive of any use to which it might be put, and for the purposes for which it was used it could not be called necessary as there are other houses in Montreal which might be used for the same purpose.

Q.—Is it near the right of way of the Railway?

F. L. C. BOND (for Defendant) Cross-examination.

A.—No. The nearest point of the right of way would be the tunnel. It would be over half a mile from the tunnel station, but it would be at such a different elevation there would be no serviceable connection between the two.

In the
Superior
Court

10 By the Court:—

Q.—What tunnel do you refer to?

A.—The tunnel going under the mountain. That I think, would be the nearest to the property under discussion.

By Mr. Cook:—

Q.—Is the property in question near the offices of the Railway, or in proximity to them?

20 A.—No. It would be, I should say, pretty nearly three quarters of a mile from any of our operating properties in that category used as offices.

Q.—What sort of district is this house in?

A.—It is a high class residential district.

Cross-examined by Mr. Geoffrion, K.C., of counsel for Plaintiff.

Q.—Don't you think that question is one more for the directors to decide than for you?

A.—Which question?

30 Q.—The question whether this land is required for the railway or not, or that that house should be taken, or another house instead?

A.—I was asked whether it was necessary?

Q.—Is that not for the directors to decide, whether it is necessary or not?

A.—I do not see how you can use the word "necessary" when you have some selections to make.

40 Q.—Whenever there is a selection to make you cannot say whether it is necessary, therefore, if the Railway has two ways to reach a town, no part of the road bed would be necessary?

A.—That is not a parallel case. You are talking about buying a house to use for the purpose for which it is to be used.

Q.—When there is a selection you say none is necessary?

A.—When there is a selection I think, if you will follow the context of what I said, that particular house was not necessary when there were alternatives available.

Q.—As I say, one particular farm is not necessary to build a railway, when there are alternative farms available?

A.—That is not a parallel case.

Defendant's
Evidence
at Enquete
Deposition of
F. L. C. Bond
Cross-
examination
4 March 1935

F. L. C. BOND (for Defendant) Cross-examination.

Q.—Then, you do not think that question is one for the directors to decide?

A.—The directors dealt with it so far as I know.

10 Q.—I want to know if you do not think that is a question for the directors to decide?

A.—The question put to me was, was that house necessary?

Q.—You will have to answer the question as to whether it is more for the directors to decide than for you.

A.—When the word “necessary” comes in I can answer that question.

Q.—Therefore, the moment you say no, it is not necessary, that is the end of the Railway Company’s power to buy?

A.—No, I did not draw that conclusion.

20 Q.—You do not think the directors have any say as against your opinion?

A.—They are perfectly entitled to theirs, and I am entitled to mine.

Q.—And don’t you think the Court also has a say on that question?

A.—Unquestionably it will.

Q.—The Company has a lot of houses for its employees?

A.—At some points we have houses for our employees, yes.

Q.—In this case they could have put their houses in another place?

30 A.—Yes.

Q.—For example, they could put a station at another place?

A.—Very often when a line is being constructed, where the station is to go is a question of intense discussion.

Q.—As I say therefore, there is generally an alternative as to where you will place it?

A.—There is generally an alternative.

Q.—Therefore, that house would be in the same category?

A.—Yes.

40 And further deponent saith not.

E. W. Bush,
Official Court Reporter.

In the
Superior
Court
—
Defendant's
Evidence
at Enquete
Deposition of
F. L. C. Bond
Cross-
examination
4 March 1935
(Continued)

ALBERT BRANGAM (for Defendant) Examination in chief.

DEPOSITION OF ALBERT BRANGAM

A witness produced on behalf of the Defendant.

10 On this fourth day of March, in the year of Our Lord, one thousand nine hundred and thirty-five, personally came and appeared: Albert Brangam of the City of Outremont, Tax Accountant, in the employ of the Canadian National Railways, aged 43 years, a witness produced on behalf of the Defendant, who being duly sworn deposes as follows:

In the
Superior
Court
—
Defendant's
Evidence
a: Enquete
Deposition of
A. Brangam
Examination
in Chief
4 March 1935

Examined by Mr. Cook, K.C., of counsel for Defendant.

20 Q.—Mr. Brangam, you are in the employ of the Canadian National Railways, are you not, in Montreal?

A.—Yes sir.

Q.—As an accountant?

A.—Yes sir.

Q.—And have been for how long?

A.—Twenty-two years.

Q.—You are familiar with the Agreements in reference to the house No. 1415 Pine Avenue West that was leased by Mr. Seguin to the Railway on the 8th of August 1930?

30 A.—To the extent that it affected the accounting department.

Q.—So far as those Agreements affect the accounting department?

A.—Yes.

Q.—Have you prepared a statement of the payments made since the execution of the lease on the 8th August 1930 to the present time?

A.—To January 31st, 1933.

Q.—Down to the 31st January 1933?

A.—Yes, I have.

40 Q.—Will you let me know how much was paid in the year 1930 on account of that lease in rental, taxes...

Mr. Geoffrion:—I fail to see how this is relevant.

Mr. Cook:—You will see the relevancy of it in a moment.

The Court reserves the objection.

A.—There was paid to George Henry Seguin \$39,312.50 in rent for the total of that period.

ALBERT BRANGAM (for Defendant) Examination in chief.

By Mr. Montgomery:—

Q.—What period?

By Mr. Cook:—

10 A.—Beginning with the quarter ended October 31st 1930 and ending with the quarter ending January 31st 1933.

Q.—My question was, how much was paid under the lease during the year 1930, first in rental?

A.—In 1930 we paid \$3,391.25 in rental under the lease.

Q.—What else was paid during that year?

A.—There was paid during that year on property taxes, \$1,433.28, insurance \$221.25. That was an adjustment, but it was paid during that year anyway, \$221.25 for insurance, and that makes a total for 1930 of \$5,833.55.

Q.—Will you go on and explain your statement further?

20 A.—For 1930?

Q.—Yes, 1930.

A.—In addition to that we made an adjustment with Sir Henry Thornton, and with Decary. Barlow and Joran of amounts of \$4,000.00 and \$1,000.00 respectively. That covered rental for ten months, beginning with November 1929 to August 1930 inclusive, ten months at \$500.00 per month.

Mr. Montgomery, K.C., of counsel for Plaintiff objects to this evidence as irrelevant.

30 The Court reserves the objection.

Q.—What was the grand total of the moneys paid in the year 1930 for this property?

A.—10,833.00

Mr. Montgomery:—I presume it will not be necessary my Lord, to repeat the objection. The objection will apply to all questions.

Witness:—I beg pardon, you said for 1930.

40 By Mr. Cook:—

Q.—During the year 1930?

A.—I have the payments for 1930.

Q.—Yes, for 1930 if you like it better.

A.—There is a difference.

Mr. Geoffrion:—I make the same general objection to all this evidence.

Same reserve.

Witness:—The figure is \$10,833.55.

ALBERT BRANGAM (for Defendant) Examination in chief.

By Mr. Cook:—

In the
Superior
Court
—
Defendant's
Evidence
at Enquete
Deposition of
A. Brangam
Examination
in Chief
4 March 1935
(Continued)

1931? Q.—And what was the total amount paid during the year

A.—\$17,953.43.

10 Q.—And during the year 1932?

A.—\$18,263.30.

Q.—1933?

A.—1933, \$3,931.25.

Q.—Have you prepared a statement covering the evidence which you have just given?

A.—Yes sir.

Q.—Will you file that statement as Exhibit D-18?

A.—Yes.

20 Q.—Going back to the two items under the heading of 1930, the two items of \$1,000.00 and \$4,000.00, will you kindly explain those items to his Lordship?

A.—A cheque for \$1,000.00 was drawn against a voucher reading:

“In payment of attached account” —

pardon me, I should say it was drawn in favour of Messrs. De-
cary, Barlow and Joron.—

30 “In payment of attached account for rental of pre-
mises 1415 Pine Avenue West occupied by Sir Henry
Thornton, President, for the months June and July 1930
chargeable to the Canadian National Railways, under terms
of Resolution of Executive Committee of Board of Di-
rectors passed March 24th 1930”.

That is cheque number 44950 for a thousand dollars.

Q.—Will you please produce this cheque and the attached
vouchers as Defendant's Exhibit D-16?

A.—Yes.

40 Q.—Now, the next.

A.—Cheque number 44949 ...

Q.—This is in regard to the item of \$4,000.00?

A.—Cheque 44949 drawn in favour of Sir Henry Thorn-
ton for \$4,000.00 and refund of amount paid for rental of resi-
dence 1415 Pine Avenue West, Montreal, October 1929 to May
1930, both months inclusive at \$500.00 per month chargeable to
Canadian National Railways under terms of Resolution of Exe-
cutive Committee of Board of Directors passed March 24th 1930.

Q.—Will you file this as Exhibit D-17?

A.—Yes.

ALBERT BRANGAM (for Defendant) Examination in chief.

In the
Superior
Court
—
Defendant's
Evidence
at Enquete
Deposition of
A. Brangam
Examination
in Chief
4 March 1935
(Continued)

- 10 Q.—Looking again at Exhibit D-15, will you please for the convenience of the Court and Counsel distinguish in each year between the amount of rental and the amount of other charges paid for that property?
A.—Under the lease?
Q.—Under the lease?
A.—The rental under the lease in 1930 was \$3,931.25.
Q.—And what were the other charges?
A.—Property taxes, \$1,433.28, insurance \$469.02.
Q.—Would you distinguish in the same way for the year 1931: what was the total rental paid during that year?
A.—The rental for 1931, \$15,725.00.
Q.—The property tax?
A.—Property tax, \$2,228.43.
20 Q.—And there was no insurance?
A.—No insurance. The insurance paid in 1930 carried over during that period.
Q.—What was the rental paid for 1932?
A.—\$15,725.00.
Q.—And the property tax?
A.—\$1,983.30.
Q.—The water tax?
A.—Water tax 192.50.
Q.—And the insurance?
30 A.—\$362.50.
Q.—Making a total of \$18,263.30?
A.—\$18,263.30.
Q.—And in 1933?
A.—Rental, \$3,931.25. That was the only payment in 1933.
Q.—Have you prepared a statement showing the proportion of mortgage which would be amortized at its due date August 1st 1940 on account of the surplus of rental payments over the interest at six and one half per cent on balance of mortgage being applied on account in reduction of the mortgage?
40 A.—Yes sir.
Q.—Would you let me see that statement?
A.—Yes sir.
Q.—Will you please produce that statement as Exhibit D-18?
A.—Yes. May I qualify that statement?
Q.—Please do.
A.—That is not according to the records of the Company. It is merely my interpretation of the obligation. It is not recorded in the Canadian National Railways.

ALBERT BRANGAM (for Defendant) Cross-examination.

Q.—This is merely a question of arithmetic?

A.—Exactly.

10 Mr. Montgomery:—I assume the same objection will cover that. I do not want to argue it, and I suppose your Lordship will take it under reserve.

Mr. Geoffrion:—I make the same objection.

The Court allows the evidence under reserve of the objection.

By Mr. Cook:—

20 Q.—The capital of the loan by the Trust Company was a loan of \$185,000.00 upon the termination of the lease in August 1940. Will you tell me what capital amount would be due?

A.—According to my understanding of the provisions of the mortgage the capital would be \$133,673.43, a reduction in the original figure of \$51,326.57.

Q.—That is a mere question of arithmetic, is it not?

A.—As I explained before, it is not recorded in the Canadian National Railways in that way at all. We have merely recorded rental payments.

Q.—And your obligation as defined by the lease?

A.—Exactly.

30 Q.—And by the Deed of Loan?

A.—Yes, that is correct.

Cross-examined by Mr. Geoffrion, K.C., of counsel for Plaintiff.

Q.—As regards this voucher respecting a thousand dollars paid in November 1930 with Decary, Barlow and Joran, the voucher states that the payment was under terms of Resolution of the Executive Committee of the Board of Directors passed March 24th 1930?

40 A.—Yes sir.

Q.—The Resolution is annexed, is it not?

A.—Yes.

Q.—The Resolution which you filed with the Exhibit reads as follows:

“The President then left the Meeting and reference was made to the Resolution of the Directors passed on September 23rd 1929 regarding the provision of an official residence for the President, and to the unsuccessful efforts made to secure one.

ALBERT BRANGAM (for Defendant) Cross-examination.

10 It was decided, that in order to carry out the intention of the Directors as from the date of such Resolution an adjustment should, when the residence is purchased be made with the President in respect of rental, as of the date of his present contract”

That Resolution also covers the four thousand dollars paid to the President?

A.—Yes, I would understand so. It referred to that four thousand dollars.

20 Q.—The Resolution refers also to the adjustment with the President, and I point out to you the payment to Decary, Barlow and Joran was made on a bill of the latter entitled, “To amount paid to the Royal Trust, bill of Decary, Barlow and Joran” stating the amount paid the Royal Trust Company for rental of premises 1415 Pine Avenue for the months of June and July 1930. Now, these were two months for which the adjustment with the President was ordered to be made by the Resolution?

A.—Yes, only the voucher was drawn in favour of Decary.

Q.—But these are the two months for which the adjustment was ordered to be made with the President?

A.—Yes.

30 Q.—But apparently there was a bill from Decary showing that they, Decary, Barlow and Joran had paid to the Royal Trust for two of those months this rental: would that be your explanation why the cheque that had been made to Sir Henry, was made to Decary, Barlow and Joran?

A.—My understanding of it was, they paid the money to the Royal Trust for Sir Henry and we reimbursed them.

Q.—I will take you on your Exhibit D-18. This is a mathematical calculation, is it not?

A.—Yes.

Q.—And it is based on the mortgage of \$185,000.00?

A.—Yes, \$185,000.00 is the open figure.

40 Q.—And it is the calculation with compound interest, of the effect of the two per cent amortization, is not that all there is in it?

A.—It is interest on the reduced balance, that is to say, the \$185,000.00 were reduced by the amount of \$2,000.00.

Q.—It is purely and simply a calculation of the effect of the two per cent amortization, the amount thus going to the credit of the amortization fund being calculated with compound interest, is that it?

A.—It is not compounded. I would not say that. I say it is straight interest on the reduced balance.

W. H. HOBBS (for Defendant) Examination in chief.

Q.—But every year?

A.—Yes.

Q.—And it becomes compounded if you repeat the operation every year?

10 A.—Of course, this statement as you know, is not our statement.

Q.—It is a statement of your lawyers?

A.—It is a statement that is made for the convenience of the Court, but not according to our records.

Q.—What I mean is, it is nothing but calculating year after year the effect of the amortization of two per cent?

A.—Yes, that is correct.

20 Q.—And, of course, you include there the figure of \$185,000.00, and I am instructed the house was bought for \$175,000.00, and the furniture for \$10,000.00; you also include the amortization on the furniture?

A.—\$10,000.00 was also credited in the mortgage.

Q.—But you did not know?

A.—\$175,000.00 on the house and \$10,000.00 on the furniture.

Q.—The house was mortgaged for the purchase price of the house, \$175,000.00, and the \$10,000.00 the purchase of the furniture?

A.—Yes.

30 And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION OF WILLIAM HENRY HOBBS

A witness produced on behalf of Defendant.

40 On this fourth day of March, in the year of Our Lord, one thousand nine hundred and thirty-five, personally came and appeared William Henry Hobbs, of the City of Montreal, Assistant Secretary of the Canadian National Railway Company, aged 44 years, a witness produced on behalf of the Defendant, who being duly sworn deposes as follows:

Examined by Mr. Cook, K.C., of counsel for Defendant.

Q.—Mr. Hobbs, I show you Exhibit P-2, being an extract from the Minutes of the Meeting of the Executive Committee held on the 17th September 1929. Will you tell me who were pre-

W. H. HOBBS (for Defendant) Examination in chief.

sent at that Meeting, and whether these gentlemen who were present voted for the Resolution in question?

10 Mr. Montgomery:—You are not asking the witness to speak from memory as to that, are you? We will have to be governed by the Minutes. I object to the form of the question as the Minutes speak for themselves.

By Mr. Cook:—

Q.—From the Exhibit P-2 which you produced, have you any way of stating who were present at that Meeting of the 17th September 1929, and who voted for the Resolution?

20 Mr. Montgomery:—I object to this question, my Lord. The list of those present is shown on the certified copy of the Minutes already produced. Their names are all there, and it is not for this gentleman who was not even at that time the Secretary of the Company to say who voted, or how they voted. The Minutes are there, and I submit they speak for themselves..

His Lordship:—Do you want to contradict the Minutes in any way, Mr. Cook?

Mr. Cook:—No, your Lordship. I will withdraw the question and put another one.

By Mr. Cook:—

30

Q.—In that Exhibit P-2, I see the name of Sir Henry Thornton. Do you remember when he was appointed as President of the Company?

A.—Yes. I will have to refer to my notes. He was appointed President on October 10th 1932.

Q.—When did he resign?

A.—He resigned as of July 31st 1932.

Q.—When was Mr. Henry appointed a director?

40 1929. A.—Mr. Henry was appointed a director February 4th

Q.—When did he resign?

A.—He ceased to be a director December 24th 1930.

Q.—When was Mr. Decary appointed a director?

1922. A.—Mr. Decary was appointed a director October 4th

Q.—When did he cease?

A.—He ceased to be a director December 24th 1930.

Q.—Was Sir Henry a director during the entire term of his office?

ERNEST R. DECARY (for Defendant) Examination in chief.

A.—Yes, he was a director from a few days before his appointment as President. October 4th 1922 he became a director.

Q.—And he remained a director until his resignation in July 1932?

10 A.—Yes sir.

Q.—Mr. Ruel was not present at the Meetings of 17th September 1929 and the 23rd September 1929 (Exhibits P-2 and P-3) but I see that he was present at the other Meetings, namely, March 24th 1930, July 16th 1930 and August 7th 1930.

A.—One of those dates is June 16th 1930, instead of July.

Q.—June 16th 1930?

A.—The answer is yes, he was present at those Meetings.

Q.—When was Mr. Ruel elected as a director?

A.—Mr. Ruel became a director October 4th 1929.

20 Q.—And when did he resign?

A.—His resignation was effective September 30th 1932.

No cross-examination.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

DEPOSITION OF ERNEST R. DECARY

30

A witness produced on behalf of the Defendant.

On this fourth day of March, in the year of Our Lord, one thousand nine hundred and thirty-five, personally came and appeared Ernest R. Decary, of the Town of Dorval, Quebec, President of the Title Guarantee and Trust Corporation, aged 56 years, a witness produced on behalf of the Defendant, who being duly sworn deposes as follows:

40

Examined by Mr. Dussault, K.C., of counsel for Defendant.

Q.—But you are still a notary?

A.—I have not practised as a notary since 1918.

Q.—You have not ceased to be a Notary?

A.—I am still a notary. Once a Catholic always a Catholic.

Q.—You gave your principal occupation as President of the Title Guarantee and Trust Corporation?

A.—Yes.

ERNEST R. DECARY (for Defendant) Examination in chief.

Q.—The Title Guarantee and Trust Corporation is a Corporation dealing mostly in real estate, in Montreal?

A.—Loans and guarantees of titles.

Q.—Loans guaranteed by first mortgages on real estate?

10

A.—Yes.

Q.—And guarantees of titles relating to real estate?

A.—Yes.

Q.—Therefore, I can safely say that Mr. E. R. Decary the president of that Corporation is pretty much of an expert in so far as real estate in the city of Montreal is concerned?

A.—I know my business.

Q.—I understand you were looked upon as the member of the Canadian National Railway Board who was better able than anybody else to express an opinion on the value of real estate in Montreal?

20

A.—There was a Committee composed of Sir Henry Thornton, Mr. Ruel and myself handling real estate.

Q.—That is hardly an answer to my question. I am now referring to your own personal qualification, so far as the knowledge of real estate matters go?

A.—I was always consulted.

Q.—I think you said so. You might as well make it short. I think you said so in your examination before the Committee on Railways and shipping?

30

A.—I might have.

Q.—I think you said that you had been consulted by Sir Henry Thornton as to the purchase of the property that he would occupy as his own residence?

A.—Yes.

Q.—In fact, you were consulted by him with reference to this particular property of Mr. Beardmore?

A.—Yes.

Q.—And am I right in saying that you expressed the opinion to Sir Henry that if the property could be obtained at a reasonable price that you would attend to the financing of it?

40

A.—Not exactly that way. I was asked by the directors, not by Sir Henry, if such a deal could be financed, and I told them I would try. I told them that insofar as our Company was concerned we would finance anything of that kind.

Q.—But you are again getting away from my question, Mr. Decary. Did you suggest to Sir Henry Thornton that you would attend to the financing?

A.—No. I was asked to by the Board.

ERNEST R. DECARY (for Defendant) Examination in chief.

Q.—Did you express your willingness to finance it provided that particular property could be got at a reasonable price?

A.—To find the money to purchase it, yes.

Q.—Provided it could be got at a reasonable price?

10 A.—Yes. I said I would try to get it.

Q.—And you attended to the necessary negotiations when Sir Henry informed you that the property could be got for \$175,000.00?

A.—When Sir Henry told me the property could be bought at \$175,000 plus \$10,000.00, and the Board asked me if it could be financed, I met one day the manager of the Montreal Trust. I met him at the Club; we were playing billiards together and I said: “I have a deal I am asked to look after by the C.N.R. The deal consists in buying a property for Sir Henry Thornton; there will be no cash payment made; they want to borrow the full amount of the loan.” We discussed it.

By the Court:—

Q.—What do you mean by “borrow the full amount of the loan”?

A.—Of the purchase price, I beg your pardon. We discussed it, and provided we would pay the Company lender six and a half per cent and two per cent amortization for the term of the loan, and moreover these payments would be guaranteed by the C.N.R.; the Montreal Trust Company would lend the money.

That was early in the summer, perhaps in the month of May; then, towards the month of June I met Mr. Donaldson, the manager of the Montreal Trust on the street, and I told him — I said, “The Railway is ready to go ahead with the transaction I mentioned to you the other day. Are you still of the same opinion? Will you make the loan?” He said, “Yes, I will”, but he said, “I don’t know very much about this transaction, you know all about it. You know whether it is good”.

40 Well, I said, “You have the guarantee of the Railway behind it, it ought to be good”. Well, he said, “Write me a letter about it”, and he said, “Would you guarantee the thing, that it is all right?” I said, “Yes, I don’t mind”.

Q.—And it was after that, or just about that time that the letter of June 24th 1930 already filed as Defendant’s Exhibit No. 5 or D-2, was written to Mr. Donaldson of the Montreal Trust?

A.—To the Montreal Trust.

ERNEST R. DECARY (for Defendant) Examination in chief.

Q.—In answer to this letter you got the reply which was filed the other day by Mr. Donaldson as Exhibit D-2?

A.—I suppose so. I have not seen it.

10 Q.—The sale included the property at \$175,000.00 and some moveables?

A.—Yes.

Q.—Furniture and fittings, I suppose?

A.—Yes.

Q.—At \$10,000.00?

A.—That is what I was advised by Sir Henry Thornton.

Q.—That is the price you paid for it?

A.—Yes, because I was told by Sir Henry that is what they agreed to pay.

20 Q.—Do you remember that the moveables, furniture, fittings etc. were insured for \$40,000.00?

A.—I had no record of that. I don't remember. I may find it in my files may be. At the time of the sale?

Q.—Yes. I am refreshing your memory by saying that you stated before the Committee that the furniture was insured for \$40,000.00, but you made a reduction in the amount of the insurance to \$15,000.00?

A.—Most likely I thought it was not worth \$40,000.00.

Q.—What do you say? Is that statement correct?

A.—If I said so, it must be correct.

30 Q.—You are not denying that?

A.—No. My memory was fresher then than it is today.

Q.—I believe you stated before the Committee that if payments were made according to the lease down to the date of May 1st 1940, the price of sale would be reduced by approximately \$50,000.00?

40 A.—Yes, I think so. I made a further statement, that at the time the Railway Committee was trying to prove that there was some benefit to be derived by me personally from that sale, and the only benefit they could see was that two per cent which was amortizing the price every year, but they lost track of the fact that the Railway has the right at any time during the lease to purchase the property.

Q.—Just a minute....

A.—I am answering your question.

Mr. Dussault:—I object to the witness making a statement which will have reference to some matter which is in discussion between us, as to whether it is relevant or not. That was part of Mr. Hobbs deposition to which we objected. If my learned friend

ERNEST R. DECARY (for Defendant) Examination in chief.

raises the question in cross-examination, then, we will have the right to object, but I do not want Mr. Decary to take advantage of the fact that he is in the box and say something that we believe would be irrelevant evidence, and I object to the latter part
10 of Mr. Decary's evidence.

The Court maintains the objection.

By Mr. Dussault:—

Q.—Mr. Seguin, who was examined this morning stated that he had no interest of any kind in the property, in the lease, or in any of the negotiations that took place, and to which we have referred in this case. Did you hear Mr. Seguin say that
20 this morning?

A.—Yes.

Q.—And Mr. Seguin also said that his evidence before the Committee on railways and shipping had been truthful, and that he had acted as your Trustee?

A.—Well, I would not call it my Trustee. He acted as a prete nom in the matter as he acted many times before for the Canadian National Railways.

Q.—Acted for you?

A.—For the Canadian National Railways before.

Q.—Oh, before, I am not concerned with many things in
30 which you may have used Mr. Seguin as a prete nom. I am only concerned in this one particular case. Is it not a fact that Mr. Seguin was acting for you?

A.—Well, the property had to stand in somebody's name. We never looked into it to see where the property would go eventually, because we always thought first of all that Sir Henry would be ten years in office, that he would occupy that house for ten years, and God knows what would happen to the house after that.

Q.—Therefore, you had to find somebody, and you did
40 find somebody in your own office?

A.—Yes.

Q.—Why did you not do it in your own name?

A.—Because I was not buying the property.

Q.—Which is the truest statement, the one you are just making here, or the one we find in your letter of June 24th 1930?

A.—Well, I don't know what you mean by that?

Mr. Montgomery:—Show him the letter.

ERNEST R. DECARY (for Defendant) Cross-examination.

By Mr. Dussault:—

Q.—You are familiar with your letter of June 24th 1930 addressed to the Montreal Trust?

10 A.—Show me the letter.

(The witness is shown the letter).

By the Court:—

Q.—What is that letter?

A.—It is a letter written by myself to F. G. Donaldson.

By the Court:—

Q.—What is the date of the letter?

A.—24th June 1930.

20 Cross-examined by Mr. Geoffrion, K.C., of counsel for Plaintiff.

Q.—In relating to my learned friend your discussion with Mr. Donaldson of the Montreal Trust Company, you used an expression I did not quite catch. You said the Canadian National Railway would guarantee the loan. As I understand it, the Canadian National Railway did not guarantee the loan?

A.—Guarantee it through the lease.

Q.—Through the lease?

30 A.—Through the lease. That is what I meant.

Q.—Is that what you mean now that you said to Mr. Donaldson ?

A.—Yes.

Q.—You told Mr. Donaldson that this loan would be guaranteed by the lease to the Canadian National Railway?

A.—That is right.

Q.—Let me understand clearly what the proposition was that was put up to you. Was the Railway Company prepared to buy or to lease this residence for its President?

40 A.—They were not prepared to buy; they were prepared to lease.

By the Court:—

Q.—That is, the Defendant Company.

A.—The Canadian National Railway.

By Mr. Geoffrion:—

Q.—You did not deal at all with the owner Beardmore?

A.—No, it was all done by the Canadian National Railway.

ERNEST R. DECARY (for Defendant) Cross-examination.

- Q.—Was the report made to you that the owner Beardmore was willing to sell or to lease?
- A.—Oh no. If I understand right the owner had threatened that he had a buyer for the property, and he would put Sir Henry Thornton out of his premises.
- 10 Q.—In other words, he was unwilling to lease?
- A.—Yes.
- Q.—That is what I referred to a moment ago, he was unwilling to lease, but willing to sell?
- A.—He was unwilling to lease. He wanted to sell.
- Q.—Where was Sir Henry living then?
- A.—At that time in that house.
- Q.—That is why you say he was threatening to put him out?
- A.—Yes.
- 20 Q.—And this was the proposition that you were invited to finance by somebody, trying to satisfy Mr. Beardmore, and the Company leasing from that buyer?
- A.—Yes.
- Q.—You obtained from Mr. Donaldson of the Montreal Trust the financial undertaking, and you obtained one of your employees, Mr. Seguin ...
- A.—And put the property in his name.
- Q.—And you guaranteed both the Montreal Trust and your employee?
- 30 A.—I did not guarantee my employee. It was tacit.
- Q.—Well you said very clearly before that he was your prete nom as distinct from your trustee, whatever the difference is?
- A.—Whatever you call it.
- Q.—Did the Company know of your relationship with Seguin?
- A.—Oh yes.
- Q.—You said before that you had frequently used Mr. Seguin's name for Company deals as well as for your own deals?
- 40 Mr. Dussault:—I object to this as having no reference at all to this case.
- The Court reserves the objection.
- A.—Yes.
- By Mr. Geoffrion:—
- Q.—When the Company was informed the property was in Seguin's name, did they know who the real holder of the title was?
- A.—Yes.

ERNEST R. DECARY (for Defendant) Cross-examination.

Q.—Did they know it was your prete nom?

A.—They knew.

Q.—Were they told the purchase price?

A.—Oh yes, sure.

10 Q.—And of you requiring from the Montreal Trust the two per cent amortization?

A.—Yes.

Q.—Before I take you on another phase of this case — possibly my learned friends will object to it, but I want to call your attention to the evidence made before as to that thousand dollar payment made to the firm of Decary, Barlow and Jaron, notaries, of which you are the official head, on November 7th 1930, and to the account attached to this voucher from Decary, Barlow and Jaron, representing the amount paid to the Royal
20 Trust Company for rental of premises, 1415 Pine Avenue West for the months of June and July 1930. How did Decary, Barlow and Jaron come to be entitled to that thousand dollars?

A.—When Decary, Barlow and Jaron closed the deal with the Royal Trust, they had to give a cheque of \$185,000.00 plus \$1,000.00 of rent accumulated then against Sir Henry for June and July. I think Sir Henry was out of town at the time, and the firm gave his cheque of \$1,000.00, and that was being repaid. We had a claim against either Sir Henry or the Railway.

30 Q.—By Resolution Sir Henry was being given his rental for that period, and you paid that rental for him to the Royal Trust?

A.—I paid it for Sir Henry.

Q.—You were reimbursed for that payment?

A.—Evidently, we may have asked Sir Henry for it, and he told us to ask the Railway.

Q.—What have you to say to the suggestion that you are making the two per cent amortization clause insisted upon by the Montreal Trust Company, of the condition of the loan, a \$50,000.00 profit in ten years on that property?

40 A.—First of all I did not think, and I do not think now that the property will be worth more than \$135,000 in ten years from now, if it is worth that much, and secondly, the Railway has a writing from me ...

Mr. Dussault:—We object to this evidence.

Mr. Geoffrion:—That is part of our plea.

Mr. Dussault:—That does not arise out of my examination in chief. Mr. Decary is my witness. My learned friend can take him as his own witness?

ERNEST R. DECARY (for Defendant) Cross-examination.

His Lordship:—I maintain the objection, but I will allow you to take him as your own witness.

By Mr. Geoffrion:—

10

Q.—Let us take then what we are allowed to go into now, namely, one of the reasons why you could not make a profit, namely, the amortization of two per cent would not take care of more than the purchasing of the property. Can you give us any examples from your experience or any reason for that?

A.—All around there I have been trying to sell the property with the consent of the Railway for the last year, to get an offer for it so we could make a settlement of this affair. I have asked...

20

Mr. Dussault:—I object to this evidence as irrelevant to our examination of Mr. Decary.

Witness:—We could not get an offer.

By Mr. Dussault:—

Q.—Just a minute Mr. Decary.

30

His Lordship:—Do you object to that, Mr. Dussault.

Mr. Dussault:—I certainly do.

His Lordship:—Objection maintained.

And it now being four thirty P.M. the further testimony of the witness was adjourned until Tuesday the fifth day of March instant, at ten fifteen A.M.

40

And further for the present deponent saith not.

E. W. Bush,
Official Court Reporter.

E. R. DECARY (for Defendant) Examination in chief.

DEPOSITION OF ERNEST R. DECARY (recalled)

A witness examined on behalf of the Defendant.

10 On this fifth day of March, in the year of Our Lord one thousand nine hundred and thirty five personally came and re-appeared Ernest R. Decary already sworn, who being examined on behalf of the Defendant, deposes as follows:—

By Mr. Dussault, K.C.,—

Q.—You have already been sworn and examined in this case?

A.—Yes.

20 Q.—Will you tell His Lordship if Sir Henry Thornton occupied the Pine Avenue house leased by the Canadian National Railway during the continuance of the lease from its date, which would be August 8th, 1930, until the time of his death?

A.—No. I think Mr. Hobbs said yesterday he occupied the house until he left for New York, in 1932, after his contract was cancelled with the Canadian National.

Q.—In any event, Sir Henry was in occupation of the house when it was leased by the Canadian National?

A.—Yes.

30 Q.—And prior to that date he had been in occupation of the house, as a tenant of Mr. Beardmore?

A.—From personal knowledge, yes.

Q.—And, he occupied it from the date of the lease until some time in 1932, would you say?

A.—I do not know the date.

Q.—In any event, he occupied the house during all the time he was President of the Canadian National?

A.—Yes.

I think he left in the fall.

40 Q.—Would you say he occupied the house even after his resignation, on July 31st, 1932?

A.—Yes, he occupied it until the fall of 1932, if I remember correctly.

Q.—And, he occupied the house with his family and personnel, I imagine?

A.—Yes.

Q.—Will you refer to Exhibit P-6, which is an extract from the Minutes of a Meeting of the Executive Committee of the Directors of Canadian National Railway Company, held on the 7th day of August, 1930, which reads:

E. R. DECARY (for Defendant) Examination in chief.

10 “It was decided that the approval of the Executive Committee given on June 16th, 1930, to the lease to the Company of the house No. 1415 Pine Avenue, West, as a residence for the President, as approved by the Directors September 23rd, 1929, be now entered in the Minutes of the said Meeting of June 16th, 1930.”

And will you tell His Lordship why the Resolution of June 16th, 1930, had not been entered prior to this date, August 7th, 1930?

A.—The resolution was to be prepared by the Legal Department, so as to conform. When the Resolution was originally passed it was to be submitted to the Legal Department, so as to have no hitch in making the Deeds with the solicitors of the Montreal Trust Company.

20 Q.—When you mention the Legal Department, do you mean the Legal Department, or it may have been the C.N.R., I do not know which.

Q.—When you say “Our Legal Department”, to which Legal Department do you refer?

A.—The Title Gurantee Company.

In the meantime there was an election called, and it was decided that while there was an election on it was better not to complete this transaction, because we thought if the Government was overthrown the New Government should know about it.

30 It was my understanding, and Mr. Ruel’s understanding, that Sir Henry, on his way back from the West stopped at Fort William the day before, or two days before, and advised Mr. Manion, who was then slated as the Minister of Railways, and he reported that to the Meeting.

Q.—So, the reason this resolution of June 16th, 1930, was not entered in the Minute Book was because there was an election on?

A.—Yes. I just said that.

40 Not on the 16th, but later on.

Q.—On August 7th, 1930, was there a new Minister of Railways?

A.—I do not know.

Q.—Do you not remember the Hon. Dr. Manion was only sworn in as a Minister after August 7th?

A.—You could not expect me to remember that, could you?

Q.—I am just asking you. If you do not remember, just say so.

A.—I do not remember.

Mr. Dussault:—I have no further questions, and we declare our case closed.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

G. H. SEGUIN (for Defendant Mis-en-Cause) Exam. in chief.

Defendant's Evidence for the Mis-en-Cause

10 DEPOSITION OF GEORGES HENRI SEGUIN

A witness examined on behalf of the Mis en Cause.

On this fourth day of March, in the year of Our Lord one thousand nine hundred and thirty five personally came and appeared Georges Henri Seguin of the City and District of Montreal, Notary Public, already sworn, who being now called as a witness on behalf of the Mis en Cause, deposes as follows:—

20 Examined by Mr. Geoffrion, K.C., of counsel for Mis en Cause.

Q.—Have you ever read the deposition you gave three years ago?

A.—No, sir.

Q.—Would you care to read it, and see if you have any explanations to make, or anything of the kind?

A.—Yes, sir.

30 Q.—Then, I suggest you read it, and if you have any explanations you may come back and give them.

A.—Very well.

And the further testimony of the witness is suspended, in order that he may read the deposition referred to.

And upon the witness re-appearing, his testimony was continued as follows:—

By Mr. Geoffrion, K.C.,—

40 Q.—Have you read the deposition you gave about three years ago in Ottawa?

A.—Yes.

Q.—Have you any important changes to make in it?

A.—No.

Mr. Geoffrion:—I have no further questions.

And further deponent saith not.

J. H. Kenchan,
Official Court Reporter.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

Plaintiff's Evidence in Rebuttal

10

DEPOSITION OF WILLIAM HENRY HOBBS

A witness examined on behalf of the Plaintiff in rebuttal.

On this fifth day of March, in the year of Our Lord one thousand nine hundred and thirty five, personally came and appeared William Henry Hobbs already sworn, who, being called as a witness on behalf of the Plaintiff in rebuttal, deposes as follows:—

20 Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

Q.—You have already been sworn, and examined?

A.—Yes.

Q.—In your examination on discovery you were asked respecting a letter addressed to the Rt. Hon. George P. Graham, in 1925. I do not know whether I asked you whether the Rt. Hon. Mr. Graham was Minister of Railways in the month of September, 1925.

30 A.—I cannot be sure. I assume he was.

Mr. Cook:—We have already objected to this line of evidence when Mr. Hobbs was examined on discovery. Our objection was that the Plaintiff's claim is based on an agreement, of August 8th, 1930, and it is irrelevant and illegal to go into contracts long anterior to that date and long anterior to the agreement which is the basis of this suit.

I renew the objection.

40 Mr. Montgomery:—I do not know whether my friend wishes me to argue it or not, because since then we have filed a consent, subject to objection. If my friend merely wishes to have his objection placed of record, and reserved, I will not argue the point.

His Lordship:—I will take the evidence under reserve of the objection.

Mr. Dussault:—It will be understood the objection is to apply to all this evidence, so that it may not be necessary to renew it to each question.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

His Lordship:—All evidence of this character will be taken under reserve of the objection.

By Mr. Montgomery, continuing.—

10 Q.—I think you will remember the Rt. Hon. Mr. Graham was Minister of Railways under the Mackenzie King regime?

A.—Yes, that is so.

Q.—Will you produce an Admission, which has been signed by the respective Attorneys, admitting that on the 2nd day of September, 1925, the late Sir Henry Thornton addressed a letter to the Rt. Hon. Mr. Graham, a copy of which has been filed as Exhibit No. 5, and that that letter was duly received?

A.—Yes.

20 Q.—Since the Admission was signed I have received the original of that letter, which was sent me by the Rt. Hon. Mr. Graham, but I assume the copy will serve the purpose as well?

A.—Yes.

His Lordship:—Are you filing the original, Mr. Montgomery?

Mr. Montgomery:—A copy has already been filed, but I now have the original.

30 Mr. Cook:—My friend Mr. Montgomery and I have admitted the copy to serve as the original. Since the Admission my friend has received the original, but I do not insist upon it being filed.

His Lordship:—Do you prefer to file the original, Mr. Montgomery?

Mr. Montgomery:—It is really a matter of indifference to me, your Lordship. I have shown the original to my friend Mr. Cook, and if it is not required for filing I may return it to Hon. Mr. Graham.

40 The copy was filed with an Amendment to the Plea.

By Mr. Montgomery, continuing,—

Q.—You will notice the second paragraph in the Admission says that: “Following upon said letter an Order in Council was passed authorizing a contract between the Government of Canada and Sir Henry Thornton, which contract was subsequently executed”.

Q.—Will you produce as Exhibit P-12, a file received from the Clerk of the Privy Council, duly certified, containing: Cer-

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

10 tified copy of a Minute of the Meeting of the Privy Council held on the 5th September, 1925, to which is attached (a) extract from Minutes of Board of Directors of the Canadian National Railway held on the 2nd September 1925, (b) agreement dated Sep-
tember 2nd, 1925, between Canadian National Railway and Major General Sir Henry Thornton, K.B.E., (c) agreement between His Majesty The King and Major General Sir Henry Thornton, dated September 1925?

A.—Yes.

20 Q.—Two Resolutions of the Directors of Canadian National Railways have been produced, both bearing date September 23rd, 1929, one authorizing the renewal of the contract with Sir Henry Thornton, and the other authorizing steps to be taken to procure a residence. They both appear in the same Meeting, do they not?

A.—Yes.

Q.—Perhaps it would be as well if you filed a copy of the Minutes of that Meeting.

A.—That is the specific minute relating to the contract. You already have the resolution regarding the residence as an Exhibit.

Q.—I think we also have this one, in a different form. I think it forms part of the Exhibit you have just produced?

A.—It was 1925 we produced. We are now at 1929.

30 Q.—What I wish is a copy of the Minutes of that Meeting, to show that the two Resolutions were passed at the same Meeting, and by the same Board. You will note the extract which you have just handed me is an extract from the Minutes of a Meeting of the Board of Directors held September 23rd, 1929, and it authorizes the renewal of the contract with the late Sir Henry Thornton?

A.—Yes.

Mr. Dussault:—That is part of Defendant's Exhibit No. 2.

40 By Mr. Montgomery, continuing,—

Q.—My friends inform me that this extract forms part of Defendant's Exhibit No. 2.

There has also been filed, as Exhibit P-3, a resolution bearing the same date, whereby it was resolved that in the matter of the leasing of a suitable residence for the use of the Chairman and President of the Company in Montreal, the resolution adopted by the Executive Committee in this respect at its Meeting of September 17th is approved — “And the Committee is hereby au-

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

thorized to lease a suitable and properly equipped residence for the use of the Chairman and President of the Company, under such terms and conditions as the Committee may subsequently deem proper”.

10 What I want to have clearly of record is that those two Resolutions, the one authorizing the renewal of the engagement with Sir Henry Thornton, and the other authorizing the leasing of a suitable residence, were passed by the same Board, at the same Meeting.

A.—I declare they were. There was only the one Meeting.

Q.—Are the Minutes of the Meeting long, apart from those two Resolutions?

A.—Yes, they are quite long.

20 Q.—I am sure neither my friends nor I wish to burden the Record with unnecessary material, but I think if you could have a copy of the Minutes prepared, my friends and I could decide whether any useful purpose could be served by filing the full Minutes, so that we may see the connection between the two Resolutions, and when we are making up the Record we may give the copy an Exhibit number if it should appear desirable.

A.—I can prepare a copy of the Minutes, if you wish.

30 Q.—You told us when you were examined on discovery, and produced those five separate resolutions in connection with the leasing of a house for the President (they being Resolutions both of the Executive Committee and of the Board of Directors) that the Meetings at which they were passed were attended by the Deputy Minister of Railways, Mr. R. A. C. Henry (who was on the Board), and then Mr. Victor Smart?

A.—Mr. V. I. Smart.

Q.—And the last three Meetings relating specifically to the leasing of the Beardmore house were attended, as well by Mr. Ruel, Vice President in charge of legal affairs of the Railway?

40 A.—I had better be specific in my reply. I am not quite sure my answer is just to that effect. Mr. Henry was present at the Meeting of September 17th.

Q.—That is, the Meeting of the Executive Committee?

A.—Yes.

M. Henry was not present at the Meeting of the Directors on September 23rd.

I may say that Mr. Ruel was not present at either of those Meetings.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

Q.—At neither of those Meetings was there any question of the Beardmore house specifically?

A.—No, sir.

Q.—They were simply authorizing the Executive Committee to find and lease a suitable residence for the President, Sir Henry Thornton?

A.—Yes.

At the Executive Committee Meeting of March 24th, 1930, Mr. Ruel, Mr. Smart, and Mr. Henry, were present.

At the Executive Committee Meeting of June 16th, 1930, the same three gentlemen were present.

Q.—The Executive Meeting of June 16th, 1930, is the first Meeting which refers specifically to the Beardmore house, No. 1415 Pine Avenue, West?

A.—Yes.

Q.—And, at that Meeting Sir Henry Thornton, Mr. Smart, and Mr. Henry were all present, in addition to other Directors?

A.—Yes.

At the Meeting of August 7th, 1930, Mr. Ruel was present. Mr. Smart was not. Mr. Henry was present.

Q.—I think you told us that not only was the Department of Railways and Canals represented by their official Deputy Minister at those several Meetings, but that copies of all those Minutes were sent to the Department of Railways and Canals?

A.—You have two questions in one there. I do not think I told you precisely what you are suggesting by the first part of your question. I said Mr. Henry was present at some of those Meetings, and Mr. Smart at others, and those gentlemen were at the time occupying the office of Deputy Minister of Railways and Canals. So far as the later Meetings are concerned, Mr. Henry had ceased to be Deputy Minister, and Mr. Smart had become Deputy Minister.

Q.—When Mr. Smart replaced Mr. Henry as Deputy Minister, Mr. Henry nevertheless continued on as a member of the Board?

A.—That is correct.

Q.—So that whether it was Mr. Smart, or Mr. Henry, one or the other was at the Meeting authorizing the leasing of the Beardmore house?

A.—Mr. Smart and Mr. Henry were both there.

Q.—In addition to the Government being represented at those Meetings of the Board, you told us in your examination on discovery that copies of the Minutes were forwarded to the Department of Railways and Canals at Ottawa?

A.—Yes, I told you that.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

Q.—You said you had seen the covering letters forwarding them. Have you copies of those covering letters?

A.—Yes, I have brought certified copies of the letters. There are six of them.

10 Q.—Will you produce, as Exhibit P-13-A, copy of letter of September 18th, forwarding the draft of the Minutes of the Executive Committee Meeting held September 17th; as Exhibit P-13-B, a similar copy of letter of September 25th, forwarding a draft of the Minutes of the Meeting of September 23rd; as Exhibit P-13-C, similar letter, of March 25th, 1930, forwarding the Minutes of the Meeting of the Executive Committee of March 24th (Exhibit P-4); as Exhibit P-13-D, copy of letter dated June 17th, forwarding the Minutes of the Meeting of June 16th (Exhibit P-5) — those are the Minutes which specifically authorized the renting of the Beardmore house?

A.—Yes.

Q.—You will note there is a footnote: “P.S. You will remember our conversation regarding one matter that came up at the Meeting”. Of course, you do not know to what that refers?

A.—No, I do not.

Q.—Will you produce, as Exhibit P-13-E, a letter of August 9th, forwarding the Minutes of the Meeting of the Executive Committee held August 7th?

A.—Yes.

30 Q.—Will you produce, as Exhibit P-13-F, letter of August 12th, forwarding the Minutes of the Meeting held June 16th, which were apparently the Minutes which had been held up awaiting approval?

A.—Yes. That seems to be so.

Q.—I note at the foot of the several resolutions of the Executive Committee a note to the effect that they had been confirmed and approved at a subsequent Director's Meeting?

A.—Yes.

40 Q.—That is true in the case of all the Minutes of the Executive Committee Meetings which you have filed?

A.—Yes.

Q.—You apparently had sent an earlier draft of the Minutes of June 16th, and apparently some change had been made in them?

A.—This copy of letter indicates that when the drafts were set up — on June 17th, I think — the draft Minutes were not at that time complete. This letter of August 12th is completing the draft Minutes.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

Q.—That would harmonize with Mr. Decary's explanation that that Resolution with reference to the Beardmore house transaction was subsequently drafted either by the Legal of Notarial Department, and was inserted in that form in the Minutes?

10 A.—It would appear to.

Q.—And the copy of the Minute which you have produced is the copy of the Minute as finally revised and entered in the Minute Book?

A.—That is so, yes.

Q.—You were asked with reference to a letter written by the late Sir Henry Thornton to Hon. Dr. Manion, under date November 20th, 1930. Since your examination and Admission has been signed by the Attorneys for the parties, to which is annexed copies of Sir Henry Thornton's letter to Dr. Manion, with a copy
20 of the letter from Mr. Decary to Sir Henry Thornton, dated November 6th, 1930, and a copy of an agreement between Mr. Seguin and Sir Henry Thornton, dated October 31st, 1930.

Mr. Cook:—It is understood all this evidence is being made subject to the objection already taken as to relevancy. We propose to argue all this evidence is irrelevant.

His Lordship:—The evidence is taken under reserve of the objection.

30 Mr. Montgomery:—If it should be considered desirable, I can now annex to the Admission the original of the letter from Mr. Decary to Sir Henry Thornton, which has been procured from Sir Henry's Thornton files. I will produce the original of the letter as Exhibit P-14.

Mr. Dussault:—It is not really right to ask Mr. Hobbs, the Assistant Secretary of the Canadian National Railway, to file the original of this letter, when the Company never had any control over the letter. The letter either comes from Mr. Decary, or it comes (as my friend Mr. Montgomery has just stated) from
40 the private file of Sir Henry Thornton, and it is not right to ask the Assistant Secretary of the Canadian National to file this letter, because, as far as the Canadian National is concerned, it never had possession of the letter, or control over it in any way.

Mr. Montgomery:—At the time this letter was written Mr. Hobbs was, as he has stated, private Secretary to Sir Henry Thornton. If my friends wishes to stand on a technicality, I will simply call Mr. Decary as a witness, and have him identify the original letter.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

Mr. Dussault:—Perhaps my friend had better do it in that way.

By Mr. Montgomery, continuing,—

10 Q.—I would like you to produce a letter from Mr. Decary to Mr. L. B. Hummell, Assistant to the President Canadian National Railway, dated July 4th, 1930, and if you have not the original perhaps my friends will admit the copy to serve as the original. I am quite prepared to file the copy, to avail as the original, but if my friends would prefer to have the original, then I will have to ask you to produce it.

A.—I have no recollection of those letters at all and I would imagine have great difficulty in finding the original. Mr. Hummell has left Montreal, and I certainly could not undertake
20 to produce the originals of those letters.

Q.—The letter is addressed to an officer of the Canadian National Railways, and you are here to respond in the place of Mr. Ormsby. If you have any doubt about the copy, I will have to ask you to produce the original. I am quite willing to accept the copy, but if you raise any question about it it is your duty to produce the original.

A.—I will do my best to produce it.

Q.—Have you any doubt about the document I show you being a copy of the letter, and have you any doubt about Sir
30 Henry Thornton's signature on the enclosure?

A.—I have no doubt about Sir Henry Thornton's signature. I have no doubt either that this is a copy of the letter that went forward, but as to finding the original — I will do my best.

Mr. Montgomery:—By consent a copy of the letter of July 4th, 1930, from Mr. E. R. Decary to Mr. L. B. Hummell, Assistant to the President Canadian National Railways, to which was annexed a form, which apparently was subsequently returned, dated July 9th, signed by Sir Henry Thornton, will serve as originals.
40

By Mr. Montgomery, continuing,—

Q.—The letter of July 4th, of course, preceded the purchase of the Beardmore house and the lease to the Canadian National Railway?

His Lordship:—What Exhibits are those, Mr. Montgomery?

Mr. Montgomery:—The one of August 8th, 1930, is filed as Exhibit No. 1 with the Declaration. The Deeds are filed as Exhibit No. 2.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

10 Mr. Dussault:—I would like to repeat the objection I made a minute ago. My friend is examining the Assistant Secretary of the Canadian National Railway, and he takes papers from Mr. Decary's file, or from some other file, to which we have never had access, and over which we had no control, and he asks the Assistant Secretary of the Company to speak to those documents, and file them. That does not seem to me to be the proper way to proceed. If Mr. Decary has any document in his possession, which my friend wishes to have filed in the Record, it should be filed through Mr. Decary, and we will have an opportunity of questioning him on it — rather than asking the Assistant Secretary of the Canadian National Railway, who has no knowledge, and can have no knowledge of the documents which were found in Mr. Decary's private file or in Sir Henry Thornton's private
20 file.

By the Court:—

Q.—Have you any knowledge of those Exhibits?

A.—I have none. Of course, I can identify Sir Henry Thornton's signature.

30 Mr. Montgomery:—My friend has quite overlooked the fact that my object is something different from what he suggests. I have a copy of the letter, and I asked the witness, who is here as custodian of the documents, and who is under examination in place of Mr. Ormsby on account of Mr. Ormsby's absence, if he would produce the originals. I thought our difficulties would be over if he did one thing or another. He can take the time to find the originals, and if he does not we will make secondary evidence. Naturally the first thing to do is to ask the party to whom the original was addressed to produce it, and if he cannot do it, then we will make secondary evidence of it.

40 Mr. Dussault:—I quite accept my friend's explanation, so far as the letter of Mr. Decary to Mr. Hummell is concerned, but attached to that is a letter addressed to Mr. Decary, signed by Sir Henry Thornton, and bearing the stamp of the Title Guarantee & Trust Company. That is quite another matter, and it is in regard to that I make the objection.

Mr. Montgomery:—As to the document which is attached to the letter, I have already asked Mr. Hobbs if he recognizes Sir Henry's signature. I do not know that I could make any better proof of Sir Henry's signature than by his private secretary.

His Lordship:—I will allow the evidence, under reserve.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

By Mr. Montgomery, continuing,—

Q.—I do not know whether you remember, but, if you wish, I can show you for verification this chain of Deeds: the purchase, 10 the lease, and the Deed of Loan. They were all put through on August 8th, 1930?

A.—Yes.

Q.—The first of those letters is dated July 4th, from Mr. Decary to Mr. Hummell?

A.—Yes. The date is on the copy.

Q.—You will note that in that letter, over a month before the transaction, Mr. Decary advises “Mr. Seguin is my nominee”?

A.—That statement appears in the copy of the letter to 20 Mr. Hummell, Assistant to the President Canadian National Railway.

Q.—Will you produce the letter of July 4th, as Exhibit P-15; and will you produce, as Exhibit P-16, the letter of July 9th, signed by Sir Henry Thornton?

A.—Yes.

Mr. Montgomery:—I have no further questions to ask the witness.

Mr. Cook:—We have no cross-examination.

30

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

40

G. A. STUART (for Plaintiff in Rebuttal) Examination in chief.

DEPOSITION OF GORDON A. STUART

A witness examined on behalf of Plaintiff in rebuttal.

10 On this fifth day of March, in the year of Our Lord one thousand nine hundred and thirty five, personally came and appeared Gordon A. Stuart of the City and District of Montreal, already sworn, who, being now examined as a witness on behalf of the Plaintiff in rebuttal, deposes as follows:—

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

20 Q.—When you were examined by my friends yesterday you were asked to produce the several letters and cables to which you referred in the memorandum you filed as Exhibit D-14. The first letter which appears in the file you handed me just before Court opened this morning is a letter of January 29th, 1929, from Sir Henry Thornton to the Royal Trust Company?

A.—Yes.

30 Q.—This is a letter in which he advised you that he had the property under lease, and that “the lease has since been extended, by an exchange of letters between Mr. Beardmore and myself, until June 1st, 1929”. Then he copies certain clauses of the lease?

A.—Yes.

Q.—Sir Henry was, of course, occupying the Beardmore house, No. 1415 Pine Avenue, at that time?

A.—Yes.

40 Q.—The next appears to be a letter from Mr. Beardmore to the Royal Trust Company, under date February 13th, 1930, placing the property in the hands of the Royal Trust Company for sale, and advising that Sir Henry Thornton’s lease could be terminated at any time on three month’s notice. Will you produce, as Exhibit P-17, either the original of this letter, or a copy if you prefer, with my friends’ consent?

A.—I would prefer to file a copy.

Q.—In this letter Mr. Beardmore expresses his willingness to take \$250,000 for the house and grounds, although he represents that they cost him very much more than that.

A.—Yes.

Q.—The next in order of your memorandum is a letter of March 5th, 1930, from yourself to Mr. Beardmore. Will you file it as Exhibit P-18?

A.—Yes.

G. A. STUART (for Plaintiff in Rebuttal) Examination in chief.

Q.—In this letter you point out that there are quite a few houses of more or less similar class in the same locality being offered for sale?

A.—Quite a number of high class houses offered for sale, yes.

10 Q.—The next appears to be a letter dated April 17th, 1930, which I would ask you to produce as Exhibit P-19. To this is attached an offer from Ewing & Ewing at the figure of \$155,000?

A.—That is correct.

Q.—I note in this letter you draw Mr. Beardmore's attention to the changing character of that locality — that is, to the fact that Pine Avenue is becoming more or less a boulevard carrying traffic from the north end of Montreal to Westmount and Notre Dame des Graces?

A.—Yes.

20 Q.—And you also list a large number of similar properties which are either for sale (giving the asking prices), or have been sold (giving the sale prices)?

A.—Yes.

Q.—That represented the best judgment of the Royal Trust Company at that time?

A.—I presume so, yes.

Mr. Montgomery:—I understand my friends consent that these copies will avail as originals?

30 Mr. Dussault:—Yes.

By Mr. Montgomery, continuing,—

Q.—I think you told us you had procured copies of the cables exchanged. Have you a copy of the cable of May 20th, 1930, from Mr. Beardmore: "Refuse Ewing offer. Will accept \$200,000"?

40 A.—I am afraid I must have misunderstood you about the copies of the cables yesterday. I just had the letters copied, but I can verify the exact wordings of the cables from my memorandum.

By Mr. Dussault:—

Q.—Your memorandum gives the exact wordings of the cables?

A.—Yes.

By Mr. Montgomery, continuing,—

The memorandum gives the exact wording of the cable of May 20th?

A.—Yes.

G. A. STUART (for Plaintiff in Rebuttal) Examination in chief.

Q.—And, does the same answer apply to the cable of May 21st, 1930, which appears to be copied in your memorandum?

A.—Yes.

Q.—Does it also apply to the two cables of May 21st, 1930?

10

A.—Yes.

Q.—They are both correctly recited in the memorandum Exhibit D-14?

A.—Yes.

Q.—Would the same answer apply to the cable of May 22nd, 1930, from Mr. Beardmore?

A.—Yes.

Q.—And would it apply to the cable of May 27th, 1930?

A.—Yes.

20 Q.—The memorandum says you attended at Sir Henry Thornton's office and obtained copies of the cables and correspondence between Mr. Beardmore and Sir Henry Thornton. Is that the file now before you?

A.—Yes. Those are the copies I received from Sir Henry Thornton's office.

Q.—Will you file those cables as Exhibit P-20?

A.—Yes.

Q.—Those are cables exchanged between Sir Henry Thornton and Mr. Beardmore, who was apparently in England at that time?

30

A.—I think so.

Q.—And which resulted in the closing of the deal at \$175,000, plus \$10,000 for the furniture?

A.—Yes.

Q.—Would you mind mentioning the dates of those cables?

A.—May 19th, 1930, addressed to "Henthorn", London.

Q.—That is Sir Henry Thornton?

A.—Yes.

Q.—Requesting that he communicate an offer to Mr. Beardmore, who was in England?

40

A.—Yes. To try to find his present address.

Q.—To find his address, and communicate an offer to him?

A.—Yes.

May 22nd, 1930 — Beardmore, L. C. O., Henthorn, Montreal.

Q.—That is Beardmore to Sir Henry Thornton?

A.—Yes.

G. A. STUART (for Plaintiff in Rebuttal) Examination in chief.

May 26th, 1930, Thornton to Beardmore.

May 27th, 1930, Beardmore to Henthorn, Montreal.

May 27th, 1930, Thornton to Beardmore.

10 Q.—Through the whole of this correspondence, including the cables exchanged, do you find any reference direct, or indirect, to Mr. E. R. Decary — or Mr. Seguin, for that matter — having been privy to the negotiations in any way whatever?

Mr. Cook:—The correspondence and cables speak for themselves.

Witness:—From memory I would say no, but I cannot state definitely.

20 By Mr. Montgomery, continuing,—

Q.—Then, subject to verification, your answer is no?

A.—Yes.

Q.—I show you a letter, dated May 31st, 1930, addressed by you to Mr. E. R. Decary, in which, subject to your verification, I think you will find the first reference to Mr. Decary in connection with the transaction. You advise him that Sir Henry has agreed to purchase the Beardmore house — “Sir Henry Thornton advises us he desires you to prepare the required Deeds of Sale, and we presume you will communicate with him in order
30 to ascertain what his wishes are regarding a report on the title”?

A.—Yes.

Q.—This is a letter from the Royal Trust Company to Mr. Decary?

A.—Yes.

Q.—I notice this letter is signed by yourself, as Manager of the Real Estate & Mortgage Department of the Royal Trust Company?

A.—Yes.

40 Q.—Will you file this letter as Exhibit P-21?

A.—Yes.

Q.—The next in order of date is a letter from yourselves to Messrs. Meredith, Holden, Heward & Holden, under date July 15th, 1930, forwarding the draft Deed prepared by Notary Decary, and drawing attention to certain conditions in it?

A.—Yes.

Q.—And enclosing twenty two title deeds?

A.—Yes.

Q.—The next is the opinion of Messrs. Meredith, Holden, Heward & Holden, to you, dated July 17th, 1930, which I show

G. A. STUART (for Plaintiff in Rebuttal) Cross-examination.

to my friends, although I doubt whether it is of any interest to us in this case.

A.—Yes.

10 Q.—The next is a letter written by your Company to Mr. E. R. Decary, Title Guarantee & Trust Corporation, returning the draft Deed, and advising of your solicitor's comments and certain changes they wished to be made?

A.—Yes.

Q.—In this letter you say: "The sale to be made for the consideration of \$175,000 cash, and an extra \$10,000 additional for certain furnishings. In any case, the clause under the heading 'Price' should be amended accordingly"?

A.—Yes.

20 Q.—The next is a letter to Messrs. Meredith, Holden, Heward & Holden, enclosing a copy of an Exhibit filed this morning, namely, a letter from Sir Henry Thornton to Mr. E. R. Decary, dated July 9th, 1930, transferring all his rights to Mr. Georges Henri Seguin, and requesting him to grant a Deed of Sale to Mr. Seguin. I would ask you to produce this as Exhibit P-22?

A.—Yes.

Q.—I think you have told us you are Assistant Manager of the Real Estate and Mortgage Department of the Royal Trust Company?

30 A.—The Real Estate & Mortgage Department, yes.

Q.—You have been connected with that Department for quite a number of years?

A.—Yes.

Q.—You know the location of this property, do you not?

A.—I cannot say that I do. My work is practically indoors. I can only go on the contents of those letters, more or less.

Q.—Do you happen to know what depreciation is allowed for real estate by the Income Tax Department?

A.—I do not know that.

40 Mr. Montgomery:—I have no further questions to ask the witness.

Cross-examined by Mr. Cook, K.C., of Counsel for Defendant.

Q.—You produced a number of cables between Mr. Beardmore, the Royal Trust Company, and Sir Henry Thornton. Those cables always remained in your possession, did they not? They were not sent by you to the Canadian National Railway?

A.—Not as far as I know of.

G. A. STUART (for Plaintiff in Rebuttal) Cross-examination.

Q.—And, when I say “you”, I mean the Royal Trust Company?

A.—I think that is correct. I cannot say definitely.

Q.—In any event, you have no knowledge of their being sent to the Railway?

10 A.—No, I have no knowledge of it.

. Mr. Cook:—I have no further questions.

By Mr. Montgomery:—

Q.—Will you produce, as Exhibit P-23, the lease between Mr. Beardmore and Sir Henry Thornton, which is referred to in the first letter on your memorandum Exhibit D-14, and which we understand was continued by letter, and, for the sake of convenience, will you read clause 17 of that lease into the Record?

20 A.—I will produce the lease.

The clause reads as follows:—

“It is agreed that should the property hereby leased be sold, the lessor shall have the right to terminate this lease by giving the lessee three months notice in writing. In that event the lessee shall not claim or be entitled to any compensation”.

Mr. Montgomery:—I may say this photostat was handed to me by my friends the solicitors for the Defence.

30 By Mr. Cook:—

Q.—This lease is dated October 1st, 1926, and was extended from time to time by letters, I understand, — and Mr. Beardmore so stated?

A.—The only reference I have to that is a note on what we call our Trust Sheet, which says that it was extended from May, 1928, to September, 1928.

Q.—I see the rent mentioned in this lease is given as \$450 a month. That is yearly rental of \$5400?

40 A.—Yes.

Q.—And that rental was later increased to \$500 a month, or \$6000 a year?

A.—I believe so.

Q.—And that was the rent that was being paid by Sir Henry Thornton for the property at the time of the sale on August 8th, 1930?

A.—I believe so.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

DEPOSITION OF ANDREW GUY ROSS

A witness examined on behalf of the Plaintiff in rebuttal.

10 On this fifth day of March, in the year of Our Lord one thousand nine hundred and thirty five personally came and appeared Andrew Guy Ross of the City and District of Montreal, real estate broker, aged 74 years, a witness produced and examined on behalf of the Plaintiff in Rebuttal, who being duly sworn, deposes as follows:—

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

20 Q.—What is your occupation?

A.—I am a real estate broker, and a real estate valuator.

Q.—I understand you had been acting in that capacity for a number of years in the City of Montreal?

A.—Over thirty five years.

Q.—You have acted as valuator, have you not, for a large number of important corporations?

A.—Yes, I have.

Q.—And you are familiar with the trends of the market in connection with real estate in the City of Montreal?

30 A.—I believe I am.

Q.—Are you acquainted with that section of the city in which the house No. 1415 Pine Avenue, West, is situated? That is the house formerly known as the Beardmore house?

A.—I know it very well. I built the house, and lived there for five years.

Q.—We have it in evidence that this property was purchased in the name of Mr. Seguin, from Mr. Beardmore, on August 8th, 1930, for the sum of \$175,000, plus \$10,000 for certain furniture in it. You had been in Court during the trial, have you
40 not?

A.—Yes.

Q.—And, you heard the evidence that was made?

A.—I did.

Q.—We also have it in evidence that on the same date a Deed of Lease was made between Mr. Seguin and the Canadian National Railway Company, by which the property was rented on a basis which gave 6½% on the sum of \$185,000, plus 2% amortization fund: those being the amounts stipulated in the Deed of Loan under which the Montreal Trust Company had fur-

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

nished the purchase price — the Deed of Loan bearing the same date, August 8th, 1930. You are familiar with those facts, I take it?

10 A.—I am familiar with them, having heard the evidence in Court.

Q.—A document has been produced by my friends, as Exhibit D-18, which purports to show that the lessor and borrower, Mr. Seguin, acting for Mr. Decary, stood to make a presumed profit of some \$51,326.57 out of the transaction. What I wish to know from you is this: with your experience in real estate generally in the City of Montreal, with your experience in real estate in that section of the City in particular, and with your experience in that class of real estate, whether the lessor could look forward, or would reasonably look forward, to making any
20 profit whatever on a transaction of that kind?

Mr. Cook:—I wish to enter an objection to this evidence, on the ground that it is not relevant, and is not covered by the Pleadings, and I ask your Lordship to reject the question.

Mr. Montgomery:—My friend is mistaken in his statement that it is not covered by the Pleadings. He has raised the issue that the transaction was for the advantage and benefit of Mr. Decary, and he attempted to prove his allegation by the production of the Statement. We have denied in our Pleadings that it
30 was of any advantage or benefit to him whatever, or that he stood to make a cent out of it.

His Lordship:—I think it is covered by the Pleadings.

I will allow the question, under reserve of the objection.

By Mr. Montgomery, continuing,—

Q.—A document has been produced by my friends, as Exhibit D-18, which purports to show that the lessor and borrower, Mr. Seguin, acting for Mr. Decary, stood to make a presumed
40 profit of some \$51,326.57 out of the transaction. What I wish to know from you is this: with your experience in real estate generally in the City of Montreal, with your experience in real estate in that section of the City in particular, and with your experience in that class of real estate, whether the lessor could look forward, or would reasonably look forward, to making any profit whatever on a transaction of that kind?

A.—I think the chances of making profit were very precarious, because nothing is coming off for depreciation of the property.

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

Any property depreciates, as times goes on; and in this case the market value of large properties — what you might call residential mansions — falls very much faster than the market value of moderate size houses which have a large market. Those
10 big houses are bought only by rich men, and only a few men, making a narrow market. Such houses would be interesting only to rich men, able to pay the price and maintain houses of that kind. Rich men, who are able to pay that much for a residence, prefer to build themselves, and not to take a secondhand house. So, the chances of selling are so poor for large houses that it is generally understood that not more than 50% can be expected in the sale of a house exceeding \$300,000 in value.

This is very evident, looking around that district. You have the Forget house, within a few yards of the house we are
20 discussing. This house cost over \$300,000. It was sold for \$100,000.

Then there was the Burland house, almost next door, which was sold to Mr. McConnell for one half of its cost.

Then there was the Gault house, at the corner of Pine Avenue and McTavish Street, which was sold for the price of the land — in other words, nothing for the buildings.

Then there was the Davis house, on Pine Avenue and McTavish, costing nearly \$300,000. There has never been a bona
30 fide bid of over \$115,000 for it.

I think when this house was tied up for ten years, the chances of making a profit were insignificant. To my mind, at the end of ten years a purchaser would not be found who would
• pay probably more than \$75,000 or \$100,000. So, to my mind, he was taking a great risk of recovering his money in the transaction as made.

Q.—I show you a letter, written by the Royal Trust Company to Mr. Beardmore, dated April 17th, 1930, and I show it to
40 you particularly because it was written more or less at the time of these particular transactions. As you see, it recites a number of transactions which had actually taken place, and a number of properties in that vicinity listed for sale, giving the purchase price. Are you familiar, generally speaking, with the transactions which are listed in this letter, either as having taken place, or are you familiar with the properties listed in that letter as being for sale?

A.—Yes.

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

I am well aware of those prices, and assessed values, and I know all the properties personally. I know each property.

Q.—Mention is made in this letter of a sale supposed to have taken place of the Ross house. As a matter of fact, did that
10 sale ever go through?

A.—No, it did not go through.

That was at one quarter of the actual cost.

His Lordship:—Where is the Ross house situated?

Mr. Montgomery:—On Upper Peel Street, just below Pine Avenue.

By Mr. Montgomery, continuing,—

20 Q.—And that property is still in the hands of the Trustee in Bankruptcy?

A.—I understand so.

Q.—And, has been for sale for a number of years?

A.—For many years.

Q.—And, can be bought for what fraction of its cost?

A.—They were willing to take \$250,000 at the time this gentleman was negotiating. They would probably take less now.

Q.—Did that figure represent anything like its cost?

A.—Not much more than one quarter the cost.

30 Q.—There is a list of a number of houses which were for sale in that vicinity, and you say you are familiar with those houses?

A.—Yes, I know them well.

Q.—This letter was written in 1930. Do you know of a single one of those houses that has been sold yet — in 1935 — although they have been for sale for six years?

A.—No. Not one of them has been sold, to my knowledge.

Q.—There are some others which occur to me: for instance, the Ogilvie house. That has been for sale for a number of years?

40 A.—It was for sale. It has been demolished.

Q.—I think that was the nearest to the Beardmore house of any that were mentioned?

A.—Yes. It is just about opposite.

Q.—And, that property was for sale for a number of years?

A.—Yes.

Q.—A very large, handsome house?

A.—Yes, a handsome house.

Q.—What has happened to it?

A.—It has been demolished.

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

Q.—They could not afford to pay the taxes?

A.—Yes.

By the Court:—

10 Q.—When was it demolished?

A.—It is being demolished. I do not think the demolition is completed.

By Mr. Montgomery, continuing,—

Q.—It has been in the course of demolition during the past year?

A.—Yes.

20 Q.—Have you in mind any other houses in the vicinity which have suffered a similar fate? And I am speaking of houses of a similar class.

A.—There is the well known McIntyre house, on Drummond Street. A very handsome mansion. It has been recently demolished. They could not find a purchaser for it, and, I suppose to save taxes they tore down the house.

Q.—The assessed value of that house was very high — I think it was listed as \$389,505?

A.—Yes.

Q.—And, you say the house has been demolished?

A.—Yes.

30 Q.—And you do not know of a single house on this list, which has been for sale since 1930 and for which a purchaser has been found — although we are now in 1935.

A.—No, not one.

Q.—May I ask you again whether a 2% amortization, with a ten year lease, even leaving aside physical depreciation, could be considered as something calculated to render a profit to the party in whose favor it was made?

Mr. Cook:—I enter the same objection.

40 His Lordship:—I will take the evidence under reserve of the objection.

Witness:—As I said before, there was a great risk of making a loss in entering a transaction of that kind. I would not call it a business-man's risk at all.

Q.—I do not want to lead you, but I would like to know which risk you considered the greater, or which chance you considered the greater — the chance of making a profit, or the chance of making a loss?

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

Mr. Cook:—We make the same objection.

His Lordship:—I will take it, under reserve of the objection.

10 Witness:—I think the chances were that some loss would be made; for the reason given, that the market for houses of that kind is very very narrow, and as a rule, the owner is fortunate in getting 50% of the cost.

Q.—You know the McIntyre house was for sale for years before this one?

A.—Yes. The McIntyre house must have been for sale for thirty years.

20 Q.—Do you know how long the Davis house has been for sale? I think it was in 1923 or 1924 Sir Mortimer Davis left for France.

A.—It has been for sale practically ever since his death — since the Executors took charge of the estate.

Q.—As a matter of fact, it was for sale before that, but I do not know whether you are familiar with that fact or not.

A.—I cannot say that.

By the Court:—

30 Q.—What was the value of the McIntyre house when it was built?

A.—I could only assume the figure. I do not know from actual knowledge. I can say, however, I think the building alone could not have cost less than \$300,000.

Q.—And with the land?

A.—It was a very large piece of land. There were over 100,000 feet of land, and it is worth \$2. a foot.

By Mr Montgomery. continuing,—

40 Q.—You have mentioned the Ross house. Can you give us any idea of what it cost, and their asking price for it?

A.—The cost, in one way or another, was over one million, with the alterations.

Q.—And, the house is still for sale?

A.—It is still for sale. It is placarded.

Q.—And, in addition to the very valuable house, there is an area of land vastly in excess of anything connected with the Beardmore house?

A.—Yes, there is a very large area of land in connection with the Ross house.

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

Q.—The Beardmore house is built practically right on the street?

A.—I should say it is built back about 40 feet from the street.

10 Q.—Speaking as to the character of that section of the City, it was originally a very fine residential district, was it not?

A.—Yes. It was that they call an exclusive section.

Q.—What is happening to it today, and what was happening to it in 1930?

20 A.—It has been, to a certain extent, losing its value. It was, at one time, a rather quiet residential street. In the last few years it has become practically a thoroughfare for people going to Westmount, and Notre Dame des Graces, who use that street to save being held up on Sherbrooke Street. They go up University Street, and along west in that direction. It is more or less a noisy thoroughfare.

By the Court:—

Q.—Do they not take Cedar Avenue, to reach Cote des Neiges Road?

A.—Yes, your Lordship. They go up University Street, or some of those streets more to the east, to avoid being delayed by the traffic.

30 By Mr. Montgomery, continuing,—

Q.—They go up University Street, and along Pine Avenue?

A.—Yes.

Q.—And, what streets do they take coming down?

A.—People living in the west end of the city come along Pine Avenue, instead of Sherbrooke Street.

It has become more or less of a thoroughfare.

Q.—There is very heavy motor traffic on it?

A.—Yes.

40 Q.—And, I think you have already told us the tendency of that would be to depreciate the value of the property?

A.—Yes, undoubtedly.

Q.—And that increase in traffic is still going on — in other words, the tendency to become a boulevard is still in process?

A.—I presume with the growth of the city it will increase.

Q.—What have you to say, in conclusion, as to the figures shown on Exhibit D-18, which indicate this dream profit of my friends, and the dream graft, as it were? Was there any such profit in sight, or any profit at all, in that deal as it was put through on August 8th, 1930?

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

Mr. Cook—Same objection.

His Lordship:—Under reserve of the objection.

10 Witness:—I can see very little hope, or practically no hope, of profit. As a matter of fact, the 2% should have been paid for an option. What was tied up. I understand, was for ten years. It could not be sold during that time. 2% is a moderate charge per annum for the privilege of having it there, and allowing nothing for wear and tear of the property.

Q.—Apart from the general depreciation which you tell us takes place in property of that class and in that district, do you happen to know what rate of depreciation is generally allowed — and I may say particularly, allowed by the Income Tax Department — on buildings of that class?

20 Mr. Cook:—Same objection.

His Lordship:—Under reserve of the objection.

A.—The Federal Income Tax Department allows you to deduct 2½% per annum.

Q.—And, they allow that regardless of how well you try to maintain the property?

A.—Yes.

30 Q.—Supposing the tenant is obliged to make all repairs, and the lease has the customary clause that he will turn the property back in the same order and condition as he got it; does that remove the element of obsolescence and age?

A.—No. A house, like a human being, is ageing all the time. It may not show it, but the process is going on all the time. It is a matter of a steady continuous process.

Q.—I have just another question to ask you, which was suggested by the question put by His Lordship. In connection with the traffic up Cedar Avenue. What is the location of this property in regard to Cedar Avenue?

A.—It is on the corner.

40 Q.—The corner of Pine Avenue and Cedar Avenue?

A.—Yes.

Q.—So, cars going along Pine Avenue and up Cedar Avenue, or down Cedar Avenue and along Pine Avenue, have to pass right around this house?

A.—Yes.

By the Court:—

Q.—There is a road leading up to the house, is there not?

A.—Cedar Avenue runs into Pine Avenue, and the traffic goes both ways. There is the double traffic there.

A. G. ROSS (for Plaintiff in Rebuttal) Examination in chief.

Mr. Montgomery:—Has your Lordship in mind that there is a road leading up to this house from either Pine Avenue or Cedar Avenue?

His Lordship:—I thought there was.

10 By Mr. Montgomery, continuing,—

Q.—Will you tell His Lordship how the house is situated with reference to Pine and Cedar Avenues? I think you stated it was about 40 feet back from the street?

A.—The building is about 40 feet back from the street.

Q.—But, the property forms the corner of Pine and Cedar Avenues?

A.—Yes. It is a wide corner.

Q.—So, it gets the traffic both ways, and on both streets?

20 A.—It gets the traffic going up Cedar Avenue, and the traffic on Pine Avenue.

Q.—Is the traffic up Cedar Avenue on a level grade, or is there a hill going up Cedar from Pine?

A.—There is quite a heavy slope.

Q.—Is the slope heavy enough to necessitate motor cars changing their gears?

A.—I should think in many cases it would.

Q.—Does that in any way affect the market value of the house, or the desirability of the house as a residence?

30 A.—I think it is always more or less a deterrent. People consider those things.

Mr. Montgomery:—When I said there was no road from the street to the house, Mr. Decary informs me I was not technically correct. There is a sort of a driveway in the 40 foot strip between Pine Avenue and the house. This driveway occupies a portion of the 40 feet, and it runs parallel to the house, and goes around the house.

40 And it being 12.15 o'clock, the further testimony of the witness is continued until 2.30 o'clock in the afternoon.

And further for the present deponent saith not.

And at two-thirty P.M. personally came and re-appeared the said witness A. Guy Ross, and his testimony is continued by Mr. Montgomery, K.C., of counsel for Plaintiff as follows:—

By Mr. Montgomery:—

Q.—Mr. Ross, in your examination this morning you referred to the Ogilvy house, the McIntyre house and houses in

A. G. ROSS (for Plaintiff in Rebuttal) Cross-examination.

that vicinity which were listed in the list I showed you this morning and which have not been sold, and which have since been pulled down. I merely wish to ask you whether their demolition was due to the fact that they were no longer suitable for residences, or whether it was due to some other reason?

10 A.—Well, I think my Lord, it might be an element of each. Houses, of course, get more or less out of date like anything else. It was chiefly the age of the houses and the fact that people had different tastes in houses, but most of it was owing to the age: people were unwilling to buy a house twenty or thirty years old.

Q.—What about the carrying charges, the taxes etc.?

A.—Of course, the object of demolition is to save the taxes.

Q.—That is what I want to get at. Just one more question: Do you remember the residence of the late Sir George Drummond
20 on Sherbrooke street?

A.—Yes, I knew it well.

Q.—That was not an exceptionally old house, was it? I remember it being put up?

A.—No, it was getting into the category of fairly old houses. It was built nearly forty years ago but I advised it for demolition because I said it would never be wanted to rent or to buy.

Q.—It was a very fine house certainly from the exterior, was it not, from the external point of view?

30 A.—It was in the interior a beautiful finished, hardwood, and the very best.

Q.—And was for sale for a long time?

A.—Yes.

Q.—And then it was eventually demolished?

A.—Yes.

Cross-examined by Mr. Cook, K.C., of counsel for Defendant.

40 Q.—Mr. Ross, I want you to look again at Mr. Brangam's statement, Exhibit D-18, in which he shows that on the 1st of August 1940 by reason of the amortization clause of two per cent the cost of the property would be \$133,673.43. Do you see that?

A.—Yes, I see that.

Q.—I understood in your examination in chief that you questioned the correctness of that statement?

A.—No, I figured it out. It is mere figuring.

Q.—You do not question the arithmetic?

A.—No.

Q.—The arithmetic is right?

A.—I confirm it, because I have a copy of that.

A. G. ROSS (for Plaintiff in Rebuttal) Cross-examination.

Q.—And you find the arithmetic as arithmetic is correct?

A.—Yes.

10 Q.—I would also ask you to look at the statement which has been filed as Exhibit D-14, which is the statement of Mr. Stewart of the Royal Trust Company, showing that the tax on Mr. Beardmore's property amounts to \$2,163.94 per annum?

A.—Yes. That is about \$25.00 per thousand.

Q.—That is correct?

A.—Yes.

Q.—You would not question that statement at all?

A.—No.

Q.—And you add to that the water tax, it makes a rather expensive house for anybody to carry? A house of that sort is an expensive house?

20 A.—Oh yes.

Q.—It is a very expensive house?

A.—But I do not see any difference between that house and any other large house. The taxes are all comparative.

Q.—Everything is the same. The taxes would be on the same basis?

A.—Yes.

Q.—The taxation and everything else would be on the same basis?

A.—Yes.

30 Q.—Is it not a fact that since the 8th of August 1930, the day upon which this house was sold to Mr. Seguin, there has been a consistent fall in the value of real estate?

A.—Yes.

Q.—And is not a fact that a price that might have been a proper price in 1930, might not be proper price in 1935?

A.—That is quite possible.

Q.—There has been a general depreciation?

A.—A general depreciation.

40 Q.—A general depreciation in everything, stocks, bonds and real estate?

A.—On all commodities.

Q.—And everything?

A.—Yes.

Q.—In fact, we are at the present time in what we choose to call a depression?

A.—We are just emerging I hope.

Q.—I hope so too, Mr. Ross.

A.—Real estate and everything else.

A. G. ROSS (for Plaintiff in Rebuttal) Cross-examination.

Q.—If we emerge from the present state of depression, Mr. Ross, I put it to you by the 1st of August 1940 the value of that house might be in excess of what it is today. As a matter of fact, it is possible?

10 A.—Do you mean that one might get a better offer than he would at the present?

A.—Yes, than at present?

A.—That also is possible.

Q.—And the same remarks which you are making in regard to the Beardmore house that we are now discussing might equally apply, and would equally apply to the Davis house, the McIntyre house, Sir George Drummond's house and the other houses that my friend has questioned you about?

A.—Yes, the same conditions are affecting all.

20 Q.—So that each particular case would have to be considered on its own particular merits in accordance with the demand and supply that there was in the market at the time for houses of this character?

A.—Well, presumably it would be the same, but what I was asked to reply to this morning was something different from that.

30 Q.—I am asking you to reply to something a little different to what you were asked this morning. What I suggest to you is that your general evidence might in five, six or eight years require to be entirely modified, is that not a fact?

A.—Yes.

Q.—Now, is it not a fact, Mr. Ross, that when Mr. Decary purchased this house he considered that the price of \$175,000.00 for the house and \$10,000.00 for the furniture, was a proper price?

A.—I must assume that.

Q.—And Mr. Decary is a man of experience like yourself, with a wide experience in real estate matters, and perfectly competent to come to an opinion, even though his opinion might ultimately be found to be erroneous, is that correct?

40 A.—Yes, I would respect his opinion in real estate.

Q.—I would like to refer you to the opinion expressed by Mr. Decary himself in regard to this purchase, before the Select Standing Committee of railways and shipping on the 4th of May 1932?

Mr. Montgomery:—I object to this question as not being evidence in this case.

The Court reserves the objection.

A. G. ROSS (for Plaintiff in Rebuttal) Cross-examination.

By Mr. Cook:—

Q.—Mr. Ross, I will read to you the statement of Mr. Decary and then I will put my question.

10 At page 229, of the Report in question. Mr. Decary is reported as saying the following:

“During the discussion with the Board, as I was supposed to know a little more about real estate than the others, I was asked if Sir Henry could purchase the house he was in, if I could finance it, and after we rented it I said I would, provided the property was bought at a right price. I followed a good deal in the negotiations between Sir Henry and Mr. Beardmore.

20 I think Mr. Beardmore wrote a long letter to Sir Henry stating that his house was worth \$300,000.00, but to Sir Henry Thornton he would sell it for \$250,000.00.

Sir Henry asked what I thought of it and I said, “Cannot buy it at that”. Somebody will be landed with the house at the end of the lease, and if I am going to be financing you I want something which will not be a loss to anybody, so if you cannot buy that house at a cheaper amount you might as well forget it.

30 Negotiations went on well on to 1930, in the spring of 1930, and at last after consulting with me, Sir Henry made a definite offer to Mr. Beardmore of \$175,000.00. That was well known to the whole Board of Directors. Mr. Beardmore answered ‘will accept your proposition,’ or something like like that, provided you buy the furniture that is in the house for \$10,000.00, to make it all \$185,000.00, subject to the right by Mr. Beardmore to move a certain amount of furniture that he mentioned.

40 I said to Sir Henry, ‘If the Board approves I am willing to stand behind it and finance the purchase of that house at \$185,000.00 and turn it over to the Railway as a tenant, for you’ ”.

Witness:—“As a tenant, for you”?

Counsel:—As a tenant. “Turn it over to the Railway as a tenant, for you”. You can read it for yourself. That is exactly as it is.

A.—Oh I see, there is comma there.

A. G. ROSS (for Plaintiff in Rebuttal) Cross-examination.

Q.—Tenant, for you. I ask you, Mr. Ross, if you have any doubt that at that time, on that date, when Mr. Decary gave that evidence, he considered that when he was purchasing the house at \$175,000.00 for the house and \$10,000.00 for the furniture, he was getting it at a proper price.

10 Mr. Montgomery:—That question is confusing, because you say at that date when he testified.

Mr. Cook:—I mean at the date of purchase.

Mr. Montgomery:—You did not say so. If you had said so I would not have objected.

Witness:—Are you asking me if I know what was in his mind?

By Mr. Cook:—

20

Q.—Is it not a fact that he considered as an expert ..

Mr. Montgomery:—How does the witness know that?

Witness:—I don't know what was in his mind. I cannot answer as to what he thought. I don't know what his motives were.

By Mr. Cook:—

Q.—You cannot answer that?

30 A.—I don't know what he thinks, or what his motive was. I have said already I thought it was a bad transaction from a commercial point of view.

Q.—From the evidence you gave this morning, your judgment would apparently be different to that of Mr. Decary?

Mr. Montgomery:—The evidence will speak for itself.

40 Witness:—My evidence this morning, if I recollect right was that he would buy the property for ten years with two per cent deduction, and was liable to have to take the property over at the end of that time, and I said I thought he was not getting enough to assume the risk as properties at any time generally depreciated fifty per cent, and this figured out about twenty-eight or twenty-nine per cent; he was not getting the security I thought a business man like myself should, in the transaction.

Q.—In other words, Mr. Ross, Mr. Decary in your view is not as keen a man in matters of this sort as you are?

Mr. Montgomery:—I object to this question. Why ask the witness if Mr. Decary is not as keen a business man as he is. The Court can appreciate that, and if there is any importance to it at all, it is a matter for the Court to determine.

A. G. ROSS (for Plaintiff in Rebuttal) Cross-examination.

Witness:—I am prepared to tell Mr. Cook what I think, I am not prepared to tell what anybody else thinks.

By Mr. Cook:—

10 Q.—Quite right. Now Mr. Ross, about the furniture. You do not pretend to know anything as to the value of the furniture, do you?

A.—No, I have seen the furniture. I am not a furniture appraiser.

Q.—You don't know about the value?

A.—No, I do not.

Q.—In criticizing the value of the statement which has been filed as Exhibit D-18, when you criticized the value of that statement this morning as a statement, had you in mind the fact...

20 A.—Excuse me, I did not criticize that statement. All I said was, that the transaction to which this refers, to my mind, was not a good transaction in my opinion.

Q.—Now Mr. Ross, what I want to ask you is this, when you made your criticism of that statement, D-18, as to the correctness of that statement, had you in mind the fact...

A.—Excuse me a moment. Let us understand each other. I do not recollect having criticized this statement. I criticized the business soundness of the transaction which is alluded to here.

30 Q.—That is what I understood Mr. Ross. I understand that exactly. When you were criticizing in the manner in which you have explained, the statement D-18, had you in mind ...

A.—Excuse me a moment again. I remember speaking of D-18. You are speaking of the transaction which is more or less alluded to here?

Q.—I am speaking of the entire transaction as evidenced by that Exhibit?

A.—Yes.

40 Q.—I am speaking of the entire transaction. I say that when you are criticizing that transaction, had you in mind the fact that an arrangement had been come to between Seguin and Sir Henry Thornton whereby \$50,000.00 was to be expended on that house?

A.—That is the first I have heard of that.

Q.—Would that fact in anyway (it would, I presume) alter the evidence you have given this morning?

A.—It would.

Mr. Montgomery:—Why ask that question. That is absolutely misleading. The \$50,000.00 had to be repaid as much as the \$185,000.00, consequently, there is no profit in that...

A. G. ROSS (for Plaintiff in Rebuttal) Cross-examination.

His Lordship:—I will allow the question.

10 Mr. Montgomery:—I want my objection clearly noted on the record. The evidence and agreements are there that that \$50,000.00 is to be spent on furniture very largely, not on the house.

Mr. Dussault:—And to make certain repairs, and to add to the furnishings thereof.

Mr. Montgomery:—There was no question of furnishing in my learned friend's question. If you are going to examine the witness on facts, put the facts to him correctly.

His Lordship:—You can re-examine the witness and bring that out.

20 Witness:—May I look at the clause. The wording means a great deal to me.

By Mr. Cook:—

Q.—I now show you the admission by the parties which was executed on the first instant, and I ask you to look at the Agreement which forms part of that admission?

30 A.—If I may say so, this is a very indefinite clause. It says, to make certain repairs thereto, and to add to the furnishings thereof. Who is to be the judge of that? "To the satisfaction of Sir Henry Thornton, but at a cost not to exceed \$50,000.00". He might have spent \$10,000.00 or he might have spent \$20,000.00. He might have spent any amount, and may have spent on the furnishings, which is a very loosely drawn clause.

Q.—Do not criticize us for the clause. I take it as it is, and I say that whatever the amount is that was expended on that house, in addition to the \$175,000.00 which was the cost would necessarily to that extent, we will put it in that way, alter the evidence you have given this morning?

40 A.—No, it would not. If you will allow me to answer that question.

Q.—Certainly. Please do.

A.—What you expend on that of necessary upkeep and repairs from time to time does not add one dollar to the house. It keeps it from going gradually into deterioration. If the cost meant you were to make structural changes, add a storey, add a wing and change the house, then, of course, you have a more valuable house, but you cannot speak to me about money spent on repairs adding to the value of the house one dollar. It is necessary that a human being must keep himself in order and a house must also be kept up.

A. G. ROSS (*for Plaintiff in Rebuttal*) *Re-examination.*

Q.—If I remember rightly, the Deed of Lease between Mr. Seguin and the Canadian National Railways provided that the Canadian National Railways were to do all necessary repairs?

10 A.—You say, if you remember rightly.

Q.—I will show you the lease?

A.—I have not read it myself, so I don't know. I will take your word for it.

Q.—I will show you the Exhibit.

A.—If you state that is the case, I will accept it. I have not read the lease, but the word "repairs" is mentioned in that clause, so it is not structural changes. What improves the house is structural changes.

20 Q.—I read under the heading of conditions of the lease, Plaintiff's Exhibit No. 1. "To execute all repairs of any nature whatever in the above described and presently leased premises, and the fire insurance premiums"?

A.—That is all right. You have read it.

Q.—If in addition to that some money (I don't say how much, it might be \$10,000.00 or \$20,000.00 or \$50,000.00) had been expended on the house in addition to the money expended under that clause, would not that add to the value of the house?

30 A.—If that money was in addition to repairs it would, if it was making some structural change that was beneficial, but a house of that kind, it is a matter of taste, people like an interior of one kind and some another. I am asked about the cost, which speaks of money being spent on furnishings. A man can buy a Turkish rug which costs \$10,000.00, and you call that furnishings.

Q.—That might amount to anything?

A.—Yes. You ask me if \$10,000.00 was wisely spent on the house, would it improve it. I would say it would improve it — I think it would.

40 Re-examined by Mr. Montgomery K.C., of counsel for Plaintiff.

Q.—You were questioned about the depression, what might happen if we emerged from the depression, and as to what the values might be in 1940 when this lease expired, and to state whether your general evidence given this morning might require to be entirely modified. I would ask you, putting yourself in the position of the parties in 1930, whether there is anything that has been brought out in your evidence that you would wish to modify, or whether your opinion is still the same as it was when you gave your evidence in examination in chief?

J. S. RAYSIDE (for Plaintiff in Rebuttal) Exam. in chief.

A.—I maintain that what I said in the morning, was my view, remains my view of the transaction.

By Mr. Dussault:—

10 Q.—You do not withdraw what you said this afternoon, do you?

A.—I beg pardon.

Q.—You have just said you maintain what you said this morning. I suggest you do not withdraw what you have said this afternoon?

A.—I think what I have said has been consistent all the way through.

And further deponent saith not.

20

E. W. Bush,
Official Court Reporter.

DEPOSITION OF JAMES STUART RAYSIDE

A witness produced on behalf of Plaintiff in rebuttal.

30 On this fifth day of March, in the year of Our Lord, one thousand nine hundred and thirty-five, personally came and appeared James Stuart Rayside of the City of Montreal, Lumber Merchant, aged 61 years, a witness produced and examined on behalf of the Plaintiff in rebuttal, who being duly sworn doth depose and say as follows:

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

Q.—Mr. Rayside, I understand you were a Director of the Canadian National Railways?

A.—I was.

40 Q.—Appointed, as were the other directors, by the Government?

A.—By the Government.

Q.—I understand under the provisions of the Canadian National Railway Act directors were, and are, appointed by the Government?

A.—They are appointed by the Government.

By the Court:—

Q.—Do you say you were a director?

A.—I was.

J. S. RAYSIDE (for Plaintiff in Rebuttal) Exam. in chief.

By Mr. Montgomery:—

Q.—Between what periods did you act as a director?

10 A.—I do not know the day of the month; I was appointed in September 1924 and retired in December 1930?

Q.—After the change in Government?

A.—After the change in Government.

Q.—Then, you would have been a director during the periods covered by the Resolutions which have been produced in this case, which I now exhibit to you, namely, Exhibits P-2, P-3, P-4, P-5 and P-6. You might glance at them and see whether you were a director at that time?

A.—Yes, I was a director at all those meetings.

20 Q.—Then, I take it from your last answer that you were acquainted with the transactions in regard to the Beardmore house?

A.—Yes, that is, as far as being a member of the Board.

Q.—I will start, Mr. Rayside, with the month of September 17th, 1929, being a meeting of the Executive Committee at which were present Sir Henry Thornton, Mr. Henry, who was then the Deputy Minister of Railways...

A.—R.A.C. Henry.

Q.—And as Deputy Minister of Railways he was on the Board?

A.—Yes.

30 Q.—The Government has always been represented by the Deputy Minister, who is on the Board?

A.—Yes.

Q.—Whoever he may be at the time?

A.—Yes.

Q.—And as to the other gentlemen whose names are mentioned in the Resolution, the extract reads:—

40 “Whereas in the opinion of the Executive Committee a suitable residence in Montreal for the chairman and president of the Company is essential for the proper conduct of the company’s business;

It was unanimously resolved that the Executive Committee should undertake to lease a suitable and properly equipped residence for the use of the chairman and president of the Company under such terms and conditions as the Committee may subsequently deem proper”.

Do you recall that?

A.—Yes.

J. S. RAYSIDE (for Plaintiff in Rebuttal) Exam. in chief.

Q.—And as stated that was the unanimous opinion of the Board?

A.—At that Committee Meeting?

10 Q.—Were you aware at the time that Sir Henry had been living in this house, on Pine Avenue, which was afterwards acquired and leased to the Canadian National Railways?

A.—Yes.

Q.—I note that Resolution of September 17th passed by the Executive Committee was approved at the following Meeting of the Board of Directors of September 23rd 1929, Exhibit P-3?

A.—Yes.

20 Q.—“Resolved that the matter of the leasing of a suitable residence for the use of the Chairman and President of the Company in Montreal, the Resolution adopted by the Executive Committee in this respect, at its Meeting of September 17th is approved, and the Committee is hereby authorized to lease a suitable and properly equipped residence for the use of the Chairman and President of the Company under such terms and conditions as the Committee may subsequently deem proper?”

A.—Yes.

30 Q.—The next Resolution that has been submitted to me (I will take you over the ones which have been handed to me by the Secretary) is one dated March 24th 1930. I notice in addition to the gentlemen whose names I have already mentioned, that Mr. Ruel was present at that Meeting. He was the legal adviser of the Company?

A.—Vice President.

Q.—Vice President?

A.—Vice President of the legal department.

Q.—And also Mr. Smart in addition to Mr. Henry?

A.—Mr. Smart was then Deputy Minister.

Q.—And Mr. Henry remained on the Board?

A.—He remained on the Board.

40 Q.—“The President then left the Meeting”, the extract reads, and reference is made to the Resolution of the directors passed on September 23rd 1929 regarding the provision of an official residence for the President, and to the unsuccessful efforts made to secure one, it was decided that in order to carry out the intention of the directors as from the date of such Resolution, an adjustment should. when the residence is purchased, be made with the President in respect of rental as of the date of his present contract”. His contract had been renewed. The Resolution of September 23rd 1929 was the Resolution authorizing that?

J. S. RAYSIDE (for Plaintiff in Rebuttal) Exam. in chief.

Witness:—That would be his contract which expired in 1928, would it not?

10 Counsel:—Yes. The contract is filed. I think it is dated on the same day as the Resolution, is it not, September 23rd 1929?

Witness:—So his five years date from 1929 or 1928?

Counsel:—1929, I think.

Mr. Dussault:—No, 1928.

Witness:—1928, I think. The contract of 1928 was not renewed by the Minister at the time. We were told that he was delaying it and it came in the next year. and that is why he stayed in 1929.

20 By Mr. Montgomery:—

Q.—So in 1929 it was renewed for five years from 1928?

A.—From 1928.

Q.—Do you recall the circumstances regarding the provision of an official residence for the president and the unsuccessful efforts made to secure one in March 1930?

A.—Yes.

Q.—Were you aware of Sir Henry's efforts to secure the house in which he was then living?

30 A.—I would not say directly. I mean to say, he had not discussed it with me, although I knew he was trying to; they would not renew the lease. It was a question of buying it, and I did not know directly what efforts he was making himself.

Q.—I see that the matter came up on June 16th when it was resolved that the Company rent from George H. Seguin for the term of ten years commencing on the first day of August, 1930, and expiring on the 31st day of July 1940, that certain residence bearing number 1415 Pine Avenue West in the city of Montreal for the annual rental of \$15,725.00, payable quarterly on the first days of February, May, August and November of each year, the first payment to become due on the first day of November next 1930, and subject to the following conditions about rental — do you recall that circumstance?

40 A.—I do.

Q.—Do you recall what led up to passing a Resolution about a lease from George H. Seguin?

A.—After the Meeting in March, when they were not able to negotiate that — at least, Sir Henry was not able to renew his lease for the house, Mr. Decary was notified by the Executive

J. S. RAYSIDE (for Plaintiff in Rebuttal) Exam. in chief.

to go ahead and see if we could not acquire it, after he got a price, and if he could find the money; he was practically given full authority along with Mr. Ruel. In anything he did, he consulted Mr. Ruel.

10 Q.—Mr. Ruel being the general legal adviser of the Railroad?

A.—Yes.

Q.—And they were authorized to see what they could do in the way of acquiring, and financing, is that the idea?

A.—Financing the thing. We had the approval of the Minister — I mean, the Government did not want to buy the house, but it was advised of anything they did, and that was submitted with the approval of the Minister.

20 Q.—Was the Deputy Minister present at the Meeting at which Mr. Smart was present, as well as Mr. Henry?

A.—Yes.

Q.—And was he thoroughly au fait with the transaction which was being carried out?

A.—Well, there was no objection at all.

30 Q.—What I want to get from you (and I want to get it without leading you) is, as to whether or not the whole transaction was one which was explained to, and understood by the Board, by the Deputy Minister and every one, that his house should be leased on terms which would take care of the loan and provide the purchase price of the lease, as security for the loan? Was that transaction thoroughly well understood by the Board?

A.—It was all understood by the Board.

Q.—And as to whom Mr. Seguin was?

A.—Mr. Seguin was in Mr. Decary's office. As far as that is concerned it may have been any other name.

Q.—It was understood that Mr. Seguin was just Mr. Decary's prete nom?

A.—Yes.

40 Q.—And all this was done by Mr. Decary at the request of the Board?

A.—At the request of the Board.

Q.—There was nothing secret about Mr. Decary's arrangements or anything of that kind?

A.—Absolutely not.

Q.—The whole transaction was thoroughly well understood and approved?

A.—The whole transaction was thoroughly well understood and approved.

J. S. RAYSIDE (for Plaintiff in Rebuttal) Cross-examination.

Q.—Not only by yourself personally, but by the Deputy Minister who was present at the Meeting? Did you sit near him?

A.—I was immediately to the left of the Deputy Minister, and I, of course, asked him if that met with the approval of the Government.

10 Q.—And all your Minutes were transferred the following day usually to Ottawa, were they not?

A.—I understand they were.

Q.—Did you ever heard of any protest from the Government as to this transaction?

A.—No.

Q.—Do you remember anything about this Meeting of August 7th 1930 where the extract given me reads:

20 “It was decided that the approval of the Executive Committee given on the 16th June 1930 for a lease by the Company of the house number 1415 Pine Avenue West as a residence for the President as approved by the Directors on September 23rd 1929 be now entered in the Minutes of said Meeting of June 16th 1930”.

That seems rather peculiar that they should be passing a Resolution authorizing it to be entered in the Minutes of the Meeting where it was passed. Do you remember anything about that?

30 A.—Well, it was news to me, when I attended the Meeting in August, that it was not in the other Minutes. It should have been.

Q.—You heard the explanation, did you?

A.—I never got one myself.

•Cross-examined by Mr. Dussault, K.C., of counsel for Defendant.

40 Q.—Do I take it, Mr. Rayside, that the explanation given before this Court as to the non-entering of the Minute of June 16th, was not given to you or to other directors in your presence at any time?

A.—Perhaps at that Meeting there, as I should judge from the Meeting, Mr. Ruel I think, took it upon himself to instruct Mr. Ormsby not to enter that in the Minutes.

Q.—When was that?

A.—I could not tell you when he gave him instructions.

Q.—Do I understand that Mr. Ruel at the Meeting of August 7th gave the explanation that he had instructed the Secretary not to enter the Resolution of June 16th in the Minutes of June 16th?

A.—No.

J. S. RAYSIDE (for Plaintiff in Rebuttal) Cross-examination.

Q.—Well, then, will you make that clear to us?

A.—He did not give any explanation at all because I do not think he had any. He did not have authority.

Q.—Did you understand that Mr. Ruel having authority, or no authority, had instructed the Secretary not to enter this
10 Resolution in the Minutes of June 16th!

A.—That is what I heard.

By the Court:—

Q.—What do you mean by that is what you heard?

A.—I did not ask Mr. Ruel. As a member of the Executive I thought the transaction was completed in June. This Resolution completed, as far as going ahead and renting the house was concerned. Instead of that I suppose the negotiations were not complete. No doubt when Mr. Decary went to get the resolution
20 or something, it was not entered in the Minutes of the Meeting; it was kept out, and that was the explanation I got. Mr. Ruel was at the Meeting in June and he agreed to everything.

By Mr. Dussault:—

Q.—Mr. Ruel was the vice president?

A.—Of the legal department only.

Q.—He was also one of the directors?

A.—Yes, he was a director.

Q.—The Resolution of September 17th 1929, P-2, does
30 not refer to the Pine Avenue property at all?

A.—No.

Q.—And the same answer would apply to the Resolution of September 23rd 1929, P-3, a week later?

A.—Yes.

Q.—The Resolution of September 23rd was one of the Board of Directors confirming the Resolution of the Executive Committee?

A.—Yes.

Q.—Passed on the 17th September?

A.—Yes. The Executive of the Canadian National Rail-
40 way had a weekly meeting, and the Board met monthly, so that anything we passed at an Executive Meeting was approved at the next Meeting at the general Board.

Q.—So that those two Resolutions of September 17th and September 23rd 1929 only refer to some property in a general way, but had no reference at all to the property which was leased from Mr. Seguin afterwards?

A.—We might have discussed it at the Board, but we had nothing definite to put in the Resolution about the Beard-
more property.

J. S. RAYSIDE (for Plaintiff in Rebuttal) Cross-examination.

Q.—At any rate, the Resolutions I imagine, would speak for themselves, and they were the decisions arrived at by the Committee in one case and by the Board in the other?

A.—Yes.

10 Q.—When the Resolution of March 24th 1930, Exhibit P-4, was passed, you were still in the stage of nothing having been done? I see the Resolution refers to the unsuccessful efforts made to secure an official residence for the President?

A.—Yes, I suppose that is correct.

Q.—So that prior to, or at the time, that Sir Henry's engagement was made with the Canadian National Railways, or even subsequently up to March 24th 1930, there was no question of the Beardmore property, or the Pine Avenue property, being leased for the President?

20 A.—It was discussed by the Board. It would not be passed by a Resolution.

Q.—You mean in contradiction of the Resolutions that you passed?

A.—No, I mean that might be a Resolution passed by the Board, but the Secretary did not take down every discussion we had at the Board.

30 Q.—But up to March 24th 1930 inclusive, there had been no decision taken as to the Beardmore property? The leasing of the Beardmore property only came into question in the month of June 1930?

A.—As a matter of fact, regardless of the Resolution of the Board, the Beardmore property came in in September, when the question came up before the Board about securing sir Henry a residence.

Q.—But up to the 24th March 1930 the efforts to secure that property, or any other property, had been unsuccessful?

A.—We did not consider it unsuccessful. We had not given it up.

40 Q.—I believe you stated in your examination in chief that the Government was opposed to the purchase of the property for the President? Did I understand you correctly?

A.—They preferred doing it through a lease.

Q.—I will ask you the question again: were they opposed — were they absolutely opposed to the purchase by the Canadian National Railway of the property for the use of the President?

Mr. Montgomery:—If you want to ask that question, why don't you put it to Mr. Dunning. He told you why, because they could not put it in the budget.

J. S. RAYSIDE (for Plaintiff in Rebuttal) Cross-examination.

Mr. Dussault:—Mr. Rayside was one of the directors.

His Lordship:—Let us have no discussion. Please continue.

10

By Mr. Dussault:—

Q.—I am asking you if it is not true the Government was opposed to the purchase of a property for the use of the President of the Company?

A.—I could not answer that.

Q.—I thought you said so in your examination in chief?

A.—I did not say the Government were opposed. I said the Minister did not want to buy. I am not speaking for the
20 Government.

By the Court:—

Q.—Which Minister?

A.—The Minister of Railways and Canals.

By the Court:—

Q.—What is his name?

30 A.—Honourable Charles Dunning. He was Minister then.
Honourable Mr. Crerar was Minister later on.

By Mr. Montgomery:—

Q.—That is when Mr. Dunning became Minister of Finance?

A.—He became Minister of Finance in 1930.

40

And further deponent saith not.

Official Court Reporter.
E. W. Bush,

P. A. BRUNEAU (for Plaintiff in Rebuttal) Exam. in chief.

DEPOSITION OF PHILLIP A. BRUNEAU

A witness produced on behalf of the Plaintiff.

10 On this fifth day of March in the year of Our Lord one thousand nine hundred and thirty-five, personally came and appeared Phillip A. Bruneau of the City of Montreal, Appraiser and Valuator, aged 45 years, a witness produced on behalf of the Plaintiff who being duly sworn doth depose and say as follows:

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

Q.—I understand, Mr. Bruneau, you have acted as an appraiser and valuator for a number of years?

20 A.—Yes sir.

Q.—And at the present with what firm are you associated?

A.—Ross and McDonald.

Q.—You have been doing some very extensive valuation work around the city of Montreal, have you not?

A.—We have for the past three years done a great deal of it.

By the Court:—

30 Q.—With what firm are you?

A.—Ross and McDonald.

By Mr. Montgomery:—

Q.—In fact, you are making a survey of a considerable section of the city of Montreal in connection with municipal valuations and others?

A.—Yes, engaged through the medium of our subsidiary Company Assessment Appraisers we have valued a great deal of property, many millions.

40 Q.—Your subsidiary Company is called the Assessment Appraisers?

A.—Assessment Appraisers Limited.

Q.—And you are the principal valuator in connection with that Company?

A.—Yes, sir.

Q.—I would ask you first, whether you are acquainted with the section of the property on Pine Avenue between Cote de Neiges, and say, University Street?

A.—Yes sir.

P. A. BRUNEAU (for Plaintiff in Rebuttal) Exam. in chief.

Q.—Do you know the house that has been referred to in this case, 1415 Pine Avenue west, the Beardmore house?

A.—I do.

10 Mr. Dussault:—I make the same objection that was made this morning to Mr. Ross' evidence, and I presume your Lordship will take it under reserve of our objection.

The Court reserves the objection

By Mr. Montgomery:—

Q.—We have it in evidence, Mr. Bruneau, that in the month of August 1930, a transaction was entered into of the following nature: a certain Mr. Seguin purchased this Beardmore house for \$175,000.00 plus \$10,000.00 for the furniture, 20 making the total purchase price \$185,000.00, the purchase being Exhibit D-1. You have no doubt heard that mentioned while you have been sitting in Court?

A.—Yes sir.

Q.—We also have it in evidence that the purchase price was raised by Deed of Loan of the 8th of August, the same date, by which this \$185,000.00 was loaned subject to the conditions appearing in Articles second and third, the Deed being Exhibit No. 2 at Enquete. You have examined those two Deeds?

A.—Yes sir.

30 Q.—And I would draw your attention further to another condition by which the loan is further secured by an assignment of the lease made on the same day to the Canadian National Railways.

Now, turning to the lease which is filed as Exhibit No. 1, it is made on terms which, I am informed, correspond to the payments to be made under the loan; in other words, for a rental of \$15,725.00 per annum payable in quarterly instalments which I am informed, (and the Defendants in fact so allege) represents 40 the payments of six and a half per cent on the \$185,000.00 plus two per cent sinking fund, or amortization fund, over the period of ten years.

Now, I want to put the question to you whether, having in mind the course of real estate values, the particular section in which this house stood, the type of house itself, and any other factors that occur to you, the provision of two per cent per annum on the \$185,000.00 were calculated to give to the lessor a profit at the end of that time, and in that connection I would be glad to show you the Exhibit D-18 which was filed by the Defendant, and purported to show a prospective profit of over \$50,000.00?

P. A. BRUNEAU (for Plaintiff in Rebuttal) Exam. in chief.

My question is rather a lengthy one and I don't know whether you understood it, but I want to know whether the lessor entering into that contract on the 8th of August 1930 would look forward to making a profit?

10 A.—A profit could only be made on the transaction after taking into consideration depreciation both functional and physical.

Q.—What do you mean by that?

A.—Physical and functional depreciation; or, I will put it this way, depreciation and obsolescence, if you will, because functional depreciation is nothing more or less than obsolescence. The physical depreciation that is generally recognized on properties of that nature, both in this country and in other countries is

20

two and a half per cent.

Q.—Per annum?

A.—Per annum. Functional depreciation on the other hand is governed by so many different factors which enter into it that it may be, and very frequently is, considerably in excess of physical depreciation, and it would be my judgment that in this particular property here due to the changes which have taken place, and different conditions, that functional depreciation would in effect be greater than physical.

I do not see how it would be possible to set up a profit
30 without taking those two factors into consideration, and certainly your two per cent amortization would not cover them; therefore, a profit would not be possible in my opinion.

Q.—Then, a person entering into a transaction of that sort would not have done it looking upon it as an element of profit in any way?

A.—I do not see how he could make much in properties of that nature.

40 Q.—You are acquainted with the several properties which have been for sale — properties of that class which have been for sale in that section of the city for a number of years?

A.—Quite a few of them.

Q.—You know the Davis house, the Ross house, the Ogilvie house, the McIntyre, the Williams-Taylor house and ever so many more up in that section which have been for sale certainly before 1930? You are acquainted with those several properties?

A.—Yes.

Q.—And you know the number of years they have been for sale, and they are still unsold?

A.—They have been trying for twenty years to sell some of them.

P. A. BRUNEAU (for Plaintiff in Rebuttal) Exam. in chief.

Q.—They are places that require a special buyer?

A.—They require a wealthy man and due to conditions to-day wealthy people prefer to keep away from these larger homes.

10 By the Court:—

Q.—Was that the state of things in 1930?

A.—That has been the state of things in larger homes in that district for quite a number of years.

By the Court:—

Q.—Were we not in a state of prosperity in 1931 and 1932?

A.—But there were very few sales of larger homes even in the period covering ten years prior to that.

20 By Mr. Montgomery:—

Q.—Referring to his Lordship's questions which he has just asked you, I would ask you to look at a letter from the Royal Trust Company to Mr. Beardmore dated the 17th April 1930 which just preceded this transaction, and tell me whether you would agree with the several statements therein made? I will start with the third paragraph of the letter:

30 “In our opinion there is no doubt that your house is situated in one of Montreal's best residential districts where prices are well established, but even this district is undergoing some changes which may affect values on Pine Avenue which has been one of Montreal's finest residential streets, and which still is most attractive, is being used more and more to carry traffic from the north end of Montreal to Westmount and Notre Dame de Grace, with the result that traffic of this sort is increasing very much in volume, and there is a demand for a bus service which may possibly be met at any time. This has a tendency to depreciate values on Pine Avenue at the present time, and may be of greater importance in the not distant future.”

40

Do you agree with that statement?

A.—I think that is quite correct.

By the Court:—

Q.—Do you swear there was much traffic on Pine Avenue on those dates?

A.—There is an increasing amount of traffic there now and has been for some years.

P. A. BRUNEAU (for Plaintiff in Rebuttal) Exam. in chief.

By the Court:—

Q.—Do you live in that quarter?

A.—Yes, I do.

10 By the Court:—

Q.—Whereabouts?

A.—On Victoria Avenue.

By the Court:—

Q.—You do not live on Pine Avenue?

A.—No, not on Pine Avenue, but I go down Pine Avenue nearly every day to my office.

By Mr. Montgomery:—

20 Q.—The letter continues:

“While the demand for moderate priced houses centrally located still keeps up, at the present time the supply of high priced residences such as yours exceeds the demand and offers to purchase as large as the one enclosed are few and far between”.

Would you agree with that?

A.—That has been true for many years.

30 Q.—The letter continues:

“According to our information the following is a list of high priced houses in this district which are presently offered for sale with practically nobody, as far as we know, interested as buyers”.

Then follows a list of eleven houses in addition to the Ross house which would make it twelve.

40 That letter was written in 1930 and says they have been for sale for a number of years. We are now in 1935. Have any one of those houses been sold?

A.—Not to my knowledge.

Q.—Are you aware that the asking price is very much below the cost of many of them. I don't suppose you know of that, but I would just like you to look over the list.

A.—I know it is in some of them. I am not familiar with all of the costs.

Q.—You will note a reference just below this list to Mr. I. W. Killam. The paragraph reads:

P. A. BRUNEAU (for Plaintiff in Rebuttal) Exam. in chief.

“Mr. I. W. Killam purchased some time ago vacant land running from Pine Avenue to Redpath Crescent about opposite Mr. E. W. Beatty’s house, and is now offering the Pine Avenue frontage for sale at \$1.25 per square foot.”

10 And then, he gives a list of a number of different houses in different part of the city, none of them, as far as I can see on Pine Avenue, excepting two at the end, 728 Pine Avenue, Gregor Barclay to Hugh Matthewson, and on from the estate Botterel to Maurice: those are comparatively small houses?

A.—Yes.

Q.—Mr. Stuart has told us that represented the best opinion of the Montreal (sic.) Trust Company in 1930. Would you agree with what is stated in that letter?

20 A.—I think any real estate man conversant with conditions in Montreal would agree with the general details of the letter.

Q.—We have it in evidence that an option was given by Mr. Decary, on behalf of Mr. Seguin, good at any time during the lease to take it over at cost, but supposing the option had not been taken up, what would Mr. Decary have to look back at supposing at the end of ten years his property was thrown back into his hands? Would the situation be any different from that of the eleven houses which are listed there all for sale, and not finding

30 a buyer?

A.—I think it would be exactly the same.

By Mr. Dussault:—

Q.—Are you now referring to 1940?

A.—I am not a prophet. but conditions will certainly have to change materially to change the situation very much.

Q.—But they might?

A.—Of course, they might, but the trend is not that way.

By the Court:—

40

Q.—It is to be hoped?

A.—It is to be hoped they are.

By Mr. Montgomery:—

Q.—Do you know anything about any of these large houses, apparently in good condition, that have been demolished in order to save taxes?

A.—The Ogilvy house has been demolished; the McIntyre house has been demolished.

P. A. BRUNEAU (for Plaintiff in Rebuttal) Cross-examination.

Q.—Those were supposed to be fine residences?

A.—They were very fine residences, quite old, but they were very fine residences. I have not any doubt but what a lot more would like to demolish some of their places as well.

10 Cross-examined by Mr. Dussault, K.C., of counsel for Defendant.

Q.—Mr. Bruneau, in giving us your opinion, have you taken into consideration that the lease calls for the execution by the tenant of all repairs of any nature whatever in the leased premises during the whole term of the lease?

A.—They are to be carried out by the tenant?

Q.—Yes, by the tenant. Have you taken that into consideration?

20 A.—I take it there is nothing obligatory about those alterations or repairs. He may, and may not, carry them out as he so wishes.

Q.—Have you taken into consideration the obligation under the lease of the tenant leaving and abandoning the leased premises at the expiration of the lease in as good order and condition as they were at the time the lessee took possession thereof?

Witness:—Is that ordinary wear and tear excepted?

30 Counsel:—You understand by that, do you not, that the tenant as undertaken to keep this property in a good state of repair and has undertaken to return the property in as good order and condition as it was when the lease was passed?

Witness:—Is that not a standard...

Counsel:—It may be a standard. It is an obligation undertaken by the tenant, and do you not take that into consideration?

A.—No.

Q.—You do not?

40 A.—No.

Q.—Supposing the tenant carries out his obligation of repairing the house and having it so that it can be returned to the owner in good order and condition as it was at the time of the lease, does that effect your opinion?

A.—No. Your depreciation still continues and your obsolescence still continues.

Q.—Would your opinion be affected by the fact that the tenant made repairs and alterations when he took possession of the leased property to the extent of some twenty thousand dollars?

P. A. BRUNEAU (for Plaintiff in Rebuttal) Cross-examination.

Witness:—What would be the nature of the repairs or alterations?

Counsel:—Repairs and alterations in the house. When some one spends twenty thousand dollars on repairing and altering a
10 house is that not something that means much?

A.—No, not necessarily.

Q.—He might be all wrong in his judgment.

A.—He may be all wrong.

Q.—Or he may expend the sum of twenty thousand dollars in a very wrongful manner?

A.—Very easily.

Q.—But you are not aware that Sir Henry Thornton has done anything of the kind?

20 A.—No.

Q.—Have you seen the property?

A.—Not since he took it over.

Q.—Have you been near the property at all?

A.—Yes, many times.

Q.—After you were asked to give evidence in this case?

A.—No. I pass it every day and am near it every day.

By the Court:—

Q.—Do you make any valuations for loan companies?

30 A.—No, we have not.

By the Court:—

Q.—What is the nature of your work?

A.—Our work has been largely for large industrial concerns and major proprietors, both in Montreal and elsewhere, to enable them to know what the actual present day value of their property is.

By the Court:—

40 Q.—I am asking about you personally?

A.—That is my work personally.

By the Court:—

Q.—Not the valuations of your firm, whatever that firm may be?

A.—Whatever the firm does I have to do it in large part, I am sorry to say.

P. A. BRUNEAU (for Plaintiff in Rebuttal) Cross-examination.

By Mr. Montgomery:—

Q.—You might mention some of the concerns by whom you are employed, in order to give the Court an idea of the importance?

A.—We have made valuations in the last three or four years for the Dominion Square Corporation, the Canada Cement Company, National Breweries, Dominion Textile, the Royal Bank of Canada, the Bank of Commerce.

By the Court:—

Q.—For what purpose?

A.—For the purpose of setting a present day actual value on their property as a whole, land and buildings.

By Mr. Dussault:—

Q.—For Corporation statements?

A.—Corporation statements and in connection with taxation matters.

Q.—Now Mr. Bruneau, if it happened that Mr. Decary sold this property for something more than \$133,173.74, would he not be making a profit notwithstanding your definition of functional and physical depreciation?

A.—No, I do not think he would.

Q.—You do not think he would?

A.—No. That might depend on a good many things.

Q.—But if I buy a property for \$185,000.00 and somebody else pays a proportion of that which brings down my cost to \$133,173.47 at the end of a period of ten years, and if I sell the property for more than \$133,173.00 would I not be making a profit?

40 Witness:—Is that your cost at the end of ten years?

Counsel:—Yes.

A.—I am not so sure.

And further deponent saith not.

E. W. Bush,
Official Court Reporter.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

DEPOSITION OF ERNEST R. DECARY

A witness produced on behalf of the Plaintiff in rebuttal.

10 On this fifth day of March, in the year of Our Lord, one thousand nine hundred and thirty-five, personally came and appeared Ernest R. Decary of the city of Montreal, a witness already examined, now Recalled on behalf of the Plaintiff in Rebuttal, who being duly sworn doth depose as follows:

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

20 Q.—Mr. Decary, when we were putting in the chain of letters which were exchanged between yourself and Mr. Seguin on the one hand, and the Railway or their solicitors, Messrs. Cook and Dussault, on the other, I find there is one letter, the concluding one, which we omitted to put in; a copy of it is attached which my friends agree will avail as the original, is shown to you, and I will ask you to produce it as Exhibit P-24?

A.—Yes, I do.

Q.—That is the reply to the letter already filed, Exhibit P-10?

A.—Yes.

30 Q.—And the keys were duly returned to Messrs. Cook and Dussault with the letter?

A.—Yes.

Q.—As suggested this morning, I am going to ask you to identify the original of a letter dated November 6th 1930 purporting to have been written by you to Sir Henry Thornton, President of the Canadian National Railways, and which, as I take it this morning was secured from the private files of Sir Henry. Will you tell us whether you identify that letter as having been written by you on that date?

40 A.—Yes.

Q.—And that is the original of the letter, a copy of which was sent to Doctor Manion two weeks later, on the 20th November 1930?

A.—It is the original.

Q.—And by that letter you agree to allow the property to be taken over at any time during the term of the lease?

A.—The letter speaks for itself.

Q.—“Us”. I don’t know whom you mean by “us”?

A.—Seguin and I.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

Q.—I would be glad if you would explain the circumstances under which this letter came to be written, whether it had been arranged and understood before anything was done?

10 A.—When the property was purchased by Seguin and leased to the C.N.R., it was always understood that the C.N.R. could at any time purchase that property and for the actual balance remaining due on the mortgage, taking advantage of the two per cent depreciation. Unfortunately, it had not been incorporated in the lease, and when it was discovered I was asked to make good, which I did by that letter.

Q.—So that as far as you were concerned you stood to make nothing out of the property when the option was taken up? They were at liberty to take it at any time?

20 A.—As far as I read it, if the property was worth more than the balance remaining due upon the mortgage at any time during the lease, the Company could come over and take it. If it was worth less they would leave it there.

Q.—So your position was that you had everything to lose and nothing to gain?

A.—Absolutely.

30 Q.—Supposing the Millenium which was talked about by Mr. Cook and Mr. Dussault really came about and the state of affairs projected itself on the world such as is represented by the statement D-18, your position then was that somebody else could take over the property, and you made nothing out of it?

A.—Absolutely.

Q.—And then, as you have just explained if there was a loss they would leave it in your hands and you would have to stand it?

A.—Yes.

Q.—And under no circumstances would you win, and you took a chance of loss?

A.—Yes.

40 Q.—It makes me wonder why you entered into a transaction of that kind?

A.—It makes me wonder myself.

Q.—Quite apart from the fact that the property could be taken away from you at any time, if there was an increase in value, by simply refunding you the amount you had spent, what have you to say as to whether that two per cent amortization in the condition as it stood in 1930 represented a prospective profit to you at the end of the lease?

A.—I do not understand the question.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

Q.—In other words, would there be a profit of \$51,000.00 or could you look forward to a profit of even fifty cents in the matter?

10 A.—I honestly believe, and I am quite sure, that that property in ten years from now could not be sold for more than \$130,000 odd. It was paid at its very full price, a very good price when it was bought.

Q.—If you have not seen it, you will tell me, but there is a letter upon which I examined both Mr. Ross and Mr. Bruneau, containing a list of properties in that vicinity in April 1930 which were for sale, and which we have been told have not yet been sold five years later. You are familiar with those?

A.—Except those two Drummond street properties, I know them all.

20 Q.—Supposing the 1415 Pine Avenue property were to be turned back to you at the end of ten years, could you look forward to be in any different position than are the owners of those properties which are still being offered for sale without takers?

A.—No. My only wish is they won't turn them back to me.

Q.—Coming to actual facts, you told us yesterday that you had been more or less commissioned (I have forgotten the expression you used) to find a buyer for the property as one of the outlets for possible settlement, I suppose, or whatever it may have been. Have you done so?

30 Mr. Dussault:—I object to this evidence as not being covered by the pleadings and as absolutely irrelevant.

The Court allows the question under reserve.

40 A.—I had interviews with Mr. Labelle who is now one of the Trustees of the C.N.R., and was at that time, and with Mr. Hungerford, who is the President of the Railway, in Mr. Hungerford's room early last summer; since the action had been taken in continuance of the conferences we had had in the fall of 1933, I think before any action was taken, to try and see if we could not find a buyer for that property at a price that would allow the Railway to make a settlement.

By the Court:—

Q.—When was that?

A.—That was in June 1934, as the continuation of the interview in the fall of 1933, and I did think at one time I had the property sold for \$140,000.00 to Mr. Jules Timmins. After awhile Mr. Timmins thought the property was not even worth that, and he did not carry out his offer.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

By Mr. Montgomery:—

Q.—Have you been able to find any other prospective buyers?

10 A.—Mr. Killam was a prospective buyer for awhile and he would not come to more than \$120,000.00.

I think those are the only two serious buyers that I approached.

Q.—I see that apparently as of February 1st, 1935, being the nearest date to the present, that the balance of the mortgage even had the two per cent been paid, which it is not, and even had the rent been paid, which it is not, would have amounted to \$165,779.00?

20 A.—Yes.

Q.—I am not quite sure whether you gave this answer to my friend Mr. Geoffrion or not. How did you come into the transaction? By whom were you asked to go into it?

A.—By the Board.

By the Court:—

Q.—Which Board?

A.—The Railway Board.

By Mr. Montgomery:—

30 Q.—The Board of the Canadian National Railways?

A.—The Board of the Canadian National Railways.

Q.—And for what purpose?

A.—To try and find the money in some way to finance the property so that it could be leased to the Railway for the purpose of housing its President.

Q.—And at the mandate of the Board you undertook to see if you could find some one who would lend the money?

A.—Yes.

40 Q.—If the terms of six and a half per cent and two per cent are translated into rental, how was the rental arrived at?

A.—We considered first of all the rental was to cover all carrying charges of that house, taxes, insurance, repairs, interest on the money and depreciation.

Q.—There was no profit to you on the rental at all?

A.—No.

Q.—It was just carrying charges?

A.—If there was a profit, it would be in that two per cent. Every one was well aware of that.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

Q.—There was not profit to you whatever?

A.—None whatever.

Q.—And this two per cent was not kept by you? That was handed over to the Trust Company?

10 A.—It was handed over to the Trust Company. I received a total of, I think, some \$39,000.00 and I paid all that money to the Montreal Trust.

Q.—Could you look forward at the end of ten years to any profit accruing out of this two per cent provision, and if not, why not?

A.—Well, for two obvious reasons, first of all, that the Railways had the right to take over the property at any time during the lease for the balance of the mortgage then due, deduction made of the two per cent, and I had not visualized the property
20 would be left with me at the end of ten years. I had not thought of that. If it was, it would be in my interest to get rid of it as fast as I could for whatever was due on it.

Q.—You are acquainted, are you not, with the letter addressed by Sir Henry Thornton to Doctor Manion under date, if my memory serves me right, of November 20th 1930?

A.—No.

Q.—Let me show you then what I am talking about?

A.—I saw it lately.

Q.—You were not aware of it at the time?

30 A.—I was not aware of it before.

Q.—My question is directed to your answer that the Railway had an option to take the property over?

A.—I know, but I did not know the letter existed.

Q.—What I am trying to get at Mr. Decary is the question as to how the Railway had it, because that letter was one you addressed to Sir Henry Thornton?

A.—It was addressed as President, and I did not know what became of it. I was not aware really that he had passed it on to Doctor Manion.

40 Q.—In any event you will see that it was passed over to Doctor Manion in due course on November 20th?

A.—Yes.

Q.—So far as you were concerned, whether it was taken up by the Railway or taken up with Sir Henry was a matter of indifference to you?

A.—Yes.

Q.—In any event you had no right to hold it?

A.—I had no right to hold the property. It was not mine to hold. It was the Railway's if they wanted it.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

Q.—And you were in there simply carrying out the mandate of the Board and acting as the financier in connection with the transaction?

A.—That is all.

10 Q.—As regard Mr. Seguin, was his position always understood?

A.—Seguin was brought in at the last as the man into whose name the property was put. He was my prete nom.

Q.—Seguin's name had subsequently been mentioned?

A.—I mentioned in one of my letters specifically that the property was to be put in Seguin's name with my prete nom.

Q.—I understand that letter was produced this morning, letter of June 4th 1930?

A.—Yes.

20 Q.—So that no matter how matters went, had you any chance of making any money on it?

A.—I cannot see where I have.

Q.—As a matter of fact, how do you find yourself as a result of what has happened?

A.—I find myself in a rather bad position.

Q.—Dealing with this two per cent, in the first place that two per cent was calculated on the \$185,000.00?

A.—Yes.

Q.—And what did that include besides the house?

30 A.—Some furniture that was there.

A.—Which was purchased for \$10,000.00.

And it now being four-thirty P.M. the further testimony of the witness was adjourned until Thursday next, the 7th day of March Instant at ten-fifteen A.M.

And further for the present deponent saith not.

40

E. W. Bush,
Offical Court Reporter.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

CONTINUATION OF TESTIMONY OF
ERNEST DECARY

On this seventh day of March, in the year of Our Lord one
10 thousand nine hundred and thirty five, personally came and re-
appeared the said witness Ernest R. Decary and his testimony
was continued as follows:—

By Mr. Montgomery, K.C.,—

Q.—When we adjourned on Tuesday we were referring to
that portion of the purchase price of \$185,000 which represented
the cost of the furniture (which, I believe, was \$10,000). This
was furniture which had already been used for a number of years
by Mr. Beardmore?

20 A.—Yes.

Q.—And then by Sir Henry Thornton, as the tenant of the
property?

A.—Yes.

Q.—What would be probable value of that furniture at the
end of the ten year period?

A.—I consider it would be nil.

As a matter of fact, all the bedroom furniture of that house
was transferred, while the lease to the Government existed, into
30 the servants' quarters, to be used by the servants; and two thirds
of the rest of it was taken away from the house, and stored in
a commercial storage place downtown belonging to the Railway.

Q.—That was after Sir Henry had left?

A.—No: before. While he was still there.

So, I do not suppose it would amount to anything.

Q.—That storage was not in any way on your behalf?

A.—No.

Q.—Nor at your instance, nor with your concurrence?

40 A.—I did not know until I was told.

Q...—So, as far as depreciation is concerned, we may, in
your opinion, wipe off \$10,000 of the \$185,000, to begin with?

A.—Absolutely.

Q.—As regards the remainder: you have told us of the
option which you gave, which permitted them to take the pro-
perty over at any time during the term of the lease?

A.—Yes.

Q.—You identified it the other day?

A.—Yes.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

Q.—The option to which I refer is the one which has been filed as Plaintiff's Exhibit P-14, and copy of which is attached to the Admission, as having been sent to Dr. Manion?

A.—Yes.

10 Q.—Let us assume that option were not exercised, and that the property were left in your hands at the end of the ten year period. How do you think your position would compare with that of the owners of the twelve houses in that vicinity which are mentioned in the letter of the Royal Trust Company to Mr. Beardmore?

A.—It would be similar.

Q.—In your examination by my friend Mr. Cook, your attention was drawn to a paragraph in your evidence before the Special Committee, in which you said:

20 “During the discussion of the Board, as I was supposed to know a little more about real estate than the others I was asked if Sir Henry might purchase the house he was in if I could finance it. And after we rented it I said I would, provided the property was brought at a right price”.

Do you recollect that in your examination?

A.—Yes.

30 Q.—Did you ever express any opinion as to what the right price was?

A.—Yes, I did.

While the negotiations were on — at the beginning of the negotiations — I went to see Sir Henry, and I said: “Don't you think before you go further, before making offers and trying to close a deal, the Railway should have a report made by its architects as to the value of the building” and he got in touch with Mr. Archibald, the architect, who was acting for the Railway at the time. Mr. Archibald went over the whole house, and made me a report. which I supplemented with a letter dated January 40 28th, 1930, addressed to Sir Henry Thornton, as President of the Canadian National Railway.

Q.—Is the copy of the letter which you have before you a copy of the letter which was sent to Sir Henry?

A.—Yes.

Unfortunately I have not a copy of Mr. Archibald's report. I did not keep a copy of it. I just sent the report as I received it. This, however, is a copy as taken from my file of the letter I wrote him on January 28th, 1930.

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

Q.—Will you file this copy as Exhibit P-25?

A.—Yes.

Q.—I do not know whether we have it formally in the Record — although it is a matter of common knowledge. Sir Henry
10 left in the fall of 1932, did he not?

A.—Yes.

Q.—And, he afterwards died?

A.—Yes.

Q.—The following year, I think?

A.—In the spring of 1933, I think.

His Lordship:—For what term was the second lease?

Mr. Montgomery:—Does your Lordship mean the agreement for his services, or the lease of the house?

20 His Lordship:—The agreement for his services.

Mr. Montgomery:—For five years from 1928; but he resigned prior to the termination of his agreement.

His Lordship:—That would be in the fall of 1932?

Mr. Montgomery:—Yes, your Lordship.

By Mr. Montgomery, continuing,—

Q.—In your letter of January 28th, you enclose Mr. Archibald's report, and then you go on to refer to the price of land
30 in that section?

A.—I tried to determine the price of land according to the actual sales that had taken place at that time. I based that price of land on a small boom that took place just then in that section, on Redpath Crescent, when Judge Barclay, and the Molsons, and Holt, and a couple of contractors built a number of houses.

Q.—And, Mr. Ross McMaster?

A.—Yes.

40 The place had been dead for ten years, and all of a sudden boom started there. I based the price of land on that boom price, making it as high as I could.

Q.—Mr. Dobell, of the Ogilvy Flour Mills, and a number of others also built there?

A.—Yes. There were about twenty five houses put up in that section about that time.

Q.—You conclude your letter by saying:

“I am of opinion that \$150,000 is a very good price to offer for this property, and think should Mr. Beardmore

E. R. DECARY (for Plaintiff in Rebuttal) Examination in chief.

accept the same you would be paying what I consider full value for his property”.

A.—Yes.

10 Q.—I understand Mr. Beardmore was unwilling to take \$150,000?

A.—I always remained under the impression after I sent that report to Sir Henry that Ewing’s offer to Beardmore was on behalf of Sir Henry.

Q.—That is the offer of \$155,000?

A.—Yes.

Q.—Although the Royal Trust Company say they have Ewing’s assurance it was not?

A.—Yes. I know. but Ewing used to act for Sir Henry.

20 By Mr. Dussault:—

Q.—But, you have no information about it?

A.—No direct information that I remember.

By Mr. Montgomery, continuing,—

Q.—In any event, Beardmore was unwilling to take \$150,000, and he first asked \$250,000?

A.—At that time he was asking \$250,000: but I think then Mr. Beardmore came down to \$175,000.

Q.—Or Sir Henry went up?

30 A.—Sir Henry came to me, and said: “Mr. Decary, I want this house; the Railway wants it; we all want it. You say it is worth \$150,000. Do you think you could finance it at \$175,000?” I was getting sick and tired of the thing, and I said: “All right, go ahead and offer \$175,000’. And the offer was accepted.

Q.—Did you at any time figure on making one cent of profit out of the transaction?

A.—No. You can see at the time he was bidding \$175,000 for it I thought it was only worth \$150,000. With the 2% amortization it would bring it down to \$136,000, which left only \$14,000
40 depreciation for ten years to come.

Q.—Apart from your desire to serve, if you could do it, had you any other motive in the transaction?

A.—No, absolutely not.

Q.—And, you were requested by the Board to do it?

A.—Yes.

Q.—Was your whole position in connection with it fully known?

A.—Yes.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—And the method by which the transaction was to be financed was fully known?

A.—Absolutely.

10 Q.—I include in that method the fact that the loan was being made largely on the strength of the lease, which was to be assigned as security?

A.—Absolutely. Otherwise it would have been a crazy loan.

Q.—Without that lease would it have been possible to have financed the purchase?

A.—I leave it to your judgment. Who could lend 100% of an inflated value?

20 Q.—So, summing up your deposition, to avoid a further examination you were in the position of having an owner who was willing to sell, but unwilling to lease, and a party wishing to acquire in some form in the way of a lease, but unwilling to buy?

A.—Yes.

Q.—And, as an intermediary, you put through the deal?

A.—Yes.

Q.—Without any hope or expectation of profit or gain?

A.—Yes.

Mr. Dussault:—I suppose the facts speak for themselves, apart from Mr. Decary's statement.

30 Mr. Montgomery:—I agree with my friend. The facts do speak for themselves.

I have no further questions to ask the witness.

Cross-examined by Mr. Dussault, K.C.. of counsel for Defendants.

Q.—Let us deal, first, with the subjects you mentioned this morning, and later on we will come to the evidence you gave on Tuesday.

40 You referred to the furniture, for which the sum of \$10,000 was paid to Mr. Beardmore, as having little value at the time, and you suggested that at the end of the lease it would have no value at all?

A.—No. I did not say that. I said that through the use that was made of it after it was purchased it became of little value, and I consider it will have no value when the lease is finished.

Q.—Was a great proportion of this furniture kept in the house?

A.—No, most of it has gone.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—It is gone now, but I am speaking of at the time. The lease was in 1930. Was not the house furnished then, and the furniture kept in the house?

A.—No.

10

Let me explain:

The house was rented in 1930. Sir Henry then decided to refurnish the house. The whole bedroom floor was either thrown into the servants' quarters, or taken away. Most of it was thrown into the servants' quarters.

The whole dining room was thrown out. As far as I can see it must have taken to the storage.

20 The whole living room was taken out, and the room remodelled, and the furniture put in the living room upstairs.

Q.—When you say the living room was taken out and remodelled, you mean the furniture in the room was taken out?

A.—Yes.

What could be salvaged was remodelled, and put upstairs in the upstairs living room.

30 The billiard room downstairs — the billiards were given away by Sir Henry. I do not know by what authority. It was presented to the Beaconsfield Golf Club.

Q.—Was any of the furniture sold?

A.—Not that I know of.

Q.—While we are dealing with the furniture: there was an agreement made between Mr. Seguin — whom I take to be yourself — and Sir Henry Thornton, on October 31st, 1930?

A.—Yes.

40 Q.—That agreement appears by a copy attached to an Admission made by the parties, dated March 1st, 1935 (and which, for the sake of convenience, we will mark Exhibit P-26)?

A.—Yes.

Mr. Montgomery:—And, at the same time, we will mark the original letter to the Rt. Hon. Mr. Graham as Exhibit P-27.

By Mr. Dussault, continuing,—

Q.—This agreement was really one between yourself and Sir Henry Thornton?

A.—Absolutely.

Q.—Although made in the name of Mr. Seguin?

A.—Yes.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—Under this agreement you, as the owner of the property, undertook to make certain repairs to the property, and to add to the furnishings thereof, to the satisfaction of Sir Henry Thornton, but at a cost not to exceed \$50,000. That is correct?

10 A.—Yes.

Q.—As I understand it, this expenditure of \$50,000 was left to Sir Henry Thornton, as your agent? The agreement says so, does it not?

A.—Yes.

Q.—And, Sir Henry agreed to pay back the \$50,000 that would be expended, by monthly payments of \$521 during the whole term of the lease between Mr. Seguin and the Railway?

A.—That is right.

Q.—How much of the \$50,000 was expended?

20 A.—I gave the whole \$50,000 to Sir Henry.

Q.—How much did you get back?

A.—About \$15,000.

Q.—At the rate of \$521 per month?

A.—I could see exactly by my books.

I got \$521 a month from Sir Henry while he lived. It started from the first of September, 1930, down to some time in March, 1933, when he died. That would be about two and a quarter years, out of ten.

30 Q.—At the rate of \$521 per month?

A. At the rate of \$521 per month.

Q.—As called for by the agreement?

A.—Yes.

Will you read further and see what the agreement says about all this furniture returning to Sir Henry for \$1, when he would have paid for it? It was simply a loan on furniture. That was all it was — a disguised loan.

40 Q.—The \$50,000 was to be expended partly for repairs to the property, and partly for furnishings?

A. That is what the document says.

Q.—Are you able to say how much of the \$50,000 was expended for repairs?

A.—No. I do not know at all.

Q.—Would you expect Sir Henry's statement in his letter to Dr. Manion, copy of which forms part of Exhibit P-26, that \$20,000 was put into the property by way of repairs and alterations?

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

10 A.—“I should have mentioned this matter to you earlier, but both you and I have been away so much, and there was likewise so much on my mind that it escaped my attention. As far as concerns helping me to finance the \$20,000 which has been put into the property by way of repairs and alterations. regarding which you will recall, I think, that my wife had some conversation with Mr. Bennett in London, it is only fair to say that she was at that time under the impression (as I was myself) that there was in existence an option to purchase. This explains the statement to that effect, as I would not like it to appear that she willingly made a mis-statement”,

By Mr. Montgomery:—

20 Q.—Will you read the first page of the letter?

Mr. Dussault:—I am not now dealing with the question of the option. We will come to that later on, and Mr. Decary will have an opportunity to make any explanation he wishes.

Mr. Montgomery:—Then, let him read the whole document.

30 His Lordship:—The witness is an intelligent man, and there is no object in intervening. You may make any objection you wish, Mr. Montgomery, and I will decide whether I should maintain it or not, but I do not think you should intervene when the witness is being cross-examined.

By Mr. Dussault, continuing,—

Q.—My question was: would you accept Sir Henry's statement, in his letter to Dr. Manion, copy of which forms part of Exhibit P-26, that \$20,000 was put into the property by way of repairs and alterations.

40 Now that you have read into the Record part of Sir Henry Thornton's letter to the Hon. Dr. Manion, I put it to you: do you accept Sir Henry's statement that \$20,000 was expended on repairs and alterations to the property?

A.—The statement in the letter which you show me is an estimate of what he thinks he ought to have spent. It is not what he had to spend.

Q.—Then, you do not agree with Sir Henry's statement that \$20,000 was expended on the property?

A.—I do not know what he spent. I gave him the money, and he did what he wanted to with it. I was making him a loan, and I did not care what he did with it.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—The \$50,000 of which we have spoken is the \$50,000 which you mention in your letter of November 6th, 1930, to Sir Henry Thornton, which is also part of Exhibit P-26?

A.—Yes.

Q.—It is the same?

10

A.—Yes.

Q.—So, whoever had the right to exercise the option, — and I am not discussing that for the moment — whoever had the right to exercise the option you pretend to have given on November 6th, would have to pay back not only the \$185,000 but would also have to pay back the \$50,000, under this agreement?

A.—Not at all. That was a personal affair between Sir Henry Thornton and myself; and I will explain how it came about, if you like.

Q.—I think we have all the explanations here.

20

A.—No, you have not. I will tell you how it was done, if you like.

Q.—The \$50,000 mentioned in this letter is the same \$50,000 to which the agreement Exhibit P-26 refers?

A.—Yes.

Q.—When you were examined before the Railway Committee you made no reference to your letter of January 28th, 1930, to Sir Henry Thornton, which you have now filed as Exhibit P-25?

A.—No.

30

Q.—This letter was written several months before the transaction was made — this was in January, 1930?

A.—It was written a couple of months — two or three months — before Sir Henry accepted the option. When the option was accepted was when the transaction was made.

Q.—You mean a few months before Mr. Beardmore gave the option to Sir Henry Thornton?

A.—I do not know the date of the sale, but you have it all of record.

40

Q.—You made no reference to this letter before the Railway Committee?

A.—No.

Q.—You said before the Committee — and you will correct me if I am wrong—that negotiations went on well on to 1930—in the spring of 1930....

A.—(interrupting) You are not reading it right. They went well on.

Q.—I am reading your words before the Committee: “And at last, after consulting with me, Sir Henry made a definite offer to Beardmore of \$175,000”. Is that correct?

A.—Yes.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—Did you say that?

A.—I must have, since it is there. He had to consult with me, because I had to pay the piper, and I did.

Q.—And, I am sure he did consult with you.

10 A.—He could not buy unless he got the money. He did not know what I could get.

Q.—And, I am sure that was a very important point.

A.—The money was, yes.

Q.—My learned friend, Mr. Montgomery, on Tuesday and again this morning, had you identify the original of a letter of November 6th, 1930, from you to Sir Henry Thornton, copy of which forms part of Exhibit P-26?

A.—Yes.

20 Mr. Montgomery:—The original is filed as Exhibit P-14.

By Mr. Dussault, continuing,—

Q.—Did you supply that original to the Plaintiff's Attorney, to be exhibited here?

A.—No, sir.

Q.—Do you know where the letter come from?

A.—No, sir. I was surprised to see he had that letter.

Q.—Were you surprised to hear that it was in Sir Henry's personal papers?

30 A.—I do not know where it came from.

Q.—Is this the option to which you refer, and which, according to you, would give the Railway the right to purchase the property; or is there some other document you have in mind?

A.—That is the only document.

Q.—Therefore, if the Railway Company wished to try to exercise the right to obtain title to this property, they would have to use this document which forms part of Exhibit P-26?

A.—Yes.

Q.—And, nothing else?

40 A.—No.

Mind you, this was written, and my attention was brought to the fact that it was not put in the original lease.

By the Court:—

Q.—The first lease?

A.—The lease from Seguin to the Railway was made in August, 1930. When Lady Thornton was in England she met Mr. Bennett....

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

By Mr. Dussault:—

Q.—When was that?

A.—I think in November, or at the end of October.

10 She met Mr. Bennett, and she asked him if he would not help to furnish the house, as the house was to belong to them.

Q.—That is only hearsay, of course?

A.—No, it is not.

As the house was to belong to them. They had the right to purchase.

Mr. Bennett communicated with Montreal, to find out if it was so; and, in looking through the lease, they found this op-
20 tion did not exist.

By the Court:—

Q.—How do you know that?

A.—You have all the evidence here, in the correspondence and telegrams of Sir Henry, which have been filed as Exhibits. I have read them, and they are all there.

Mr. Montgomery:—They are not filed, but I have them all here.

30 Mr. Dussault:—Of course, this has no bearing whatever on the issues, and even if it had the witness cannot be allowed to say things which simply pass through his mind, or things he may have heard through somebody else and does not know of his own personal knowledge.

His Lordship:—Put your question, Mr. Dussault, and the witness will answer it, if he knows.

By Mr. Dussault, continuing,—

Q.—The original lease was passed in August, 1930?

40 A.—Yes.

Q.—Your letter to Sir Henry Thornton is dated November 6th, 1930?

A.—Yes.

Q.—You have just stated that his letter was the result of some conversation Lady Thornton had with the Prime Minister while she was in Europe. Is that correct?

A.—That is what I was told by Sir Henry at the time, and that is what the file shows.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—So, up to the time of Lady Thornton's visit to Europe, at the end of October, there had been no question of an option to anybody?

10 A.—I do not say that. Because it was the intention that the option should be in the lease; but, it was omitted. As a matter of fact, I had a discussion with Seguin after I came back to my office. He insisted it was in the lease, but I said it was not since my people did not find it.

Q.—The option was omitted from the lease?

A.—Yes.

Q.—And, it was also omitted from the Minutes of the Company? The Minutes of the Company do not show any option you had given to anybody?

A.—I do not know.

20 Q.—You do not know?

A.—I do not keep the Minutes. I have not the Minutes.

Q.—But, you were a Director of the Company?

A.—Yes.

Q.—And, a very active Director of the Company, I believe?

A.—Yes.

Q.—And, you were a member of the Executive?

A.—Yes.

Q.—And, a very active member of the Executive?

A.—Just like an ordinary executive — no more active.

30 Q.—As active as the others, in any event. You attended most of the Meetings, from what I can see by the Minutes?

A.—Yes. I lived here.

Q.—You attended most of the Meetings of the Committee and of the Directors?

A.—Yes, because it was my duty to attend them.

Q.—And, for those reasons are you not able to say there is no mention of any kind in the Minutes of the Company relating to an option to the railroad to purchase that property?

40 A.—I cannot say. I can say, however, it was always the intention that they could take the property whenever they wanted it.

Q.—Sir Henry Thornton had arranged for an expenditure of some \$50,000 on the property, in the latter part of October, 1930?

A.—Yes.

Q.—Was there any understanding that the \$50,000 would be repaid by somebody else than Sir Henry Thornton?

A.—Absolutely not. The understanding was that, as most of it was supposed to be for his furniture at the time...

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—(interrupting) The Railway Company had nothing to do with that expenditure of \$50,000?

A.—Absolutely nothing.

10 Q.—Therefore, apparently the one who was interested at that time was Sir Henry Thornton?

A.—Sir Henry Thornton wanted to have his house furnished, I suppose. He was trying to have it furnished by the Government, but eventually he had it furnished himself.

Q.—And, I take it it was on account of that interest, and the expense of \$50,000 that was being incurred to repair the property and furnish it, that Sir Henry was anxious to secure from you an option to get the property?

A.—You would not let me say what was in Sir Henry's mind.

20 Q.—But, I am asking you.

A.—I do not know at all.

Q.—Do you know that Sir Henry pretended that the option to buy the property from you was for himself and for nobody else?

A.—I never heard that.

Q.—If you refer to Sir Henry's letter to the Hon. Dr. Manton, you will note he says the option to purchase was taken in his own name — and I will read Sir Henry's exact words:

30 “The option to purchase which I took in my own name is, of course, assignable to any nominee of my own”,

A.—I wrote the letter to Sir Henry, as President of the Canadian National Railways. In any evidence before the Committee at Ottawa I think I declared that I intended to give it to the President of the Railway. At the time I did not know of this letter. I just saw this letter today.

Q.—Although you were intending to give the Railway some option, when you wrote to Sir Henry you said:

40 “As you asked me also I hereby agree on behalf of the owner of property 1415 Pine Avenue, which you now occupy, to sell you this property at any time during the term of this lease to the Canadian National Railways?

That was your language?

A.—That was my language.

Q.—And, that was what you wrote to Sir Henry Thornton?

A.—Yes.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—And, I suppose we will be allowed to draw our own conclusions from it?

A.—Yes, of course.

10 Q.—I suppose you were receiving fees as a Director of the Canadian National Railway?

A.—Yes.

Q.—Both as a Director and as a member of the Executive Committee?

A.—Yes.

Q.—I will not ask you the figures, but they were the regular fees for Directors and members of the Executive?

A.—The same as everybody else.

20 Q.—In your examination in chief you referred to interviews you had with Mr. Labelle, one of the present Trustees of the Canadian National Railway, and with Mr. Hungerford, President of the Company; and I understood those interviews took place since the Action was taken, or shortly before?

Witness:—When was the Action taken?

Counsel:—The Action was served on October 13th, 1933.

A.—It was either in the summer of 1934, or 1933. I rather think it would be the summer of 1934, but I do not remember exactly.

30 Q.—Therefore, it would be after the institution of the Action?

A.—Yes.

It was in the summer. — either 1933, or 1934, I forget which. At the time the opinion of Messrs. Cook & Dussault had been given. I know that. I do not know if the Action was taken.

40 Q.—So, the interviews with Mr. Labelle, and with Mr. Hungerford, took place after the Railway Company had decided they were not going to carry out the terms of the lease — after the opinion of the solicitors for the Canadian National Railway in this case had been given?

A.—Yes.

Q.—Or, the interviews took place after the Action had been taken?

A.—Yes: one or the other.

Q.—I take it those interviews were had without prejudice to the rights of the parties, and under reserve?

A.—I think Mr. Labelle came to discuss the matter with me in a friendly way.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—Or, did you go to him to discuss the matter with him in a friendly way?

A.—He came to my office.

Q.—Did you ask him to go?

10 A.—I was using pretty strong language at the time as to just what I thought of the C.N.R., and he said to me that perhaps we might find a settlement of the thing. He said: “Why don’t you go and discuss the matter with Mr. Hungerford?”

Q.—So, there were informal discussions between you and Mr. Hungerford?

A.—Yes. There was no talk of reserves, or anything of the kind.

Q.—Were you present in Ottawa when Sir Henry Thornton was examined before the Committee?

20 A.—No. I went to Ottawa to give my evidence, and I came right back. I went there at two o’clock in the afternoon, and I came right back.

Q.—Did you hear any part of Sir Henry’s evidence before the Committee?

A.—No.

Q.—On Tuesday, when you were under examination by my friend Mr. Montgomery, you gave the following evidence:

30 “Q.—If the terms of 6½% and 2% are translated into rental how was the rental arrived at?

30 A.—We considered, first of all, the rental was to cover all carrying charges on that house: taxes, insurance, repairs, interest on the money, and depreciation”.

May I be permitted to suggest the answer is not quite correct.

A.—It is not correct.

Q.—As I understand the lease the rental covered the interest at 6½% on \$185,000, the amount of the mortgage, and covered 2% as a sinking fund, or amortization?

A.—Yes.

40 Q.—The carrying charges, such as taxes, insurance and repairs were paid by the Canadian National, the lessee, in addition to the 6½% interest and the 2% amortization?

A.—The taxes and the insurance were paid by the Railway.

I do not think they can show that they spent five cents of their money on repairs.

Q.—Sir Henry had attended to that, I suppose, for some time?

A.—Yes.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Q.—Under the lease the Canadian National was obliged to keep the house in repair?

A.—That lease had the usual clause that appears in every lease in that respect.

10 Q.—Although, in your estimation, the property has become different from what it was in 1930, you were prepared to saddle the Canadian National Railway, of which you were a Director, with an expenditure of \$18,000 or \$19,000 per year?

A.—I was only one of twenty Directors. I did not always agree with what was said at the Committee. Sometimes I objected, but the majority carried, and I followed — like others have done in the Committee; they objected with me, but they followed in the end and voted for it.

20 By the Court:—

Q.—That was the general rule?

Witness:—What, your Lordship?

His Lordship:—What you have just stated.

A.—I said that in this transaction about the house I was not always in agreement with the majority. I was, first of all, against the purchase of a house — entirely against it. What I was in favor of was to give Sir Henry a lump sum of money, as a bonus, and let him buy his house.

30 By Mr. Dussault:—

Q.—That did not carry?

A.—That did not carry. It was not that it did carry: he did not want it.

Q.—You were opposed to the purchase of the property?

A.—Absolutely.

Q.—I think I understand from your statement that the Directors were not all of the same mind on this question?

40 A.—I say sometimes in the discussion they were not all of the same mind, but when it came to a vote they all voted for it.

Q.—Even when they had expressed their dissent?

A.—It was not a dissent. It was more of a ...

Q.—(interrupting) There was a dissent in the discussion?

Mr. Montgomery:—I would ask that Counsel allow the witness to answer.

Witness:—It was not a dissent. It was more of a discussion.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

By Mr. Dussault, continuing,—

Q.—Is it not a fact that Mr. Ruel, for one, dissented from the Resolution of June 16th, 1930?

10 A.—No, he did not dissent. He voted for it, like I did. At the time we both were not very warm on the transaction — that is, neither Mr. Ruel nor I — but we both voted for it.

Q.—Is it not true Mr. Ruel strongly objected to the Resolution of June 16th, 1930?

A.—No.

Q.—And, even followed his objection up by giving instructions to the Secretary not to enter the Resolution of June 16th in the Minutes of that Meeting?

A.—No, that is not true.

20 Q.—Do you say it is not true, or do you say that you have no knowledge of it?

A.—I say it is not true.

Q.—You know all that took place?

A.—Yes. I was very close to Mr. Ruel.

Q.—And, you say it is not true?

A.—I was closer to Mr. Ruel than any of the other Directors of the Board, and I will say Mr. Ruel just changed his mind about entering the Resolution when the elections were put on.

30 Q.—And the elections were on just then — on June 16th, 1930?

A.—No, I do not think so.

Q.—Do you remember the date of the polling?

A.—Yes, July 30th, or 31st.

40 Q.—So, it was very much during the election campaign of 1930?

A.—I do not know exactly. I cannot tell you. If you have the date you can verify it.

I have checked since with the office.

40 The Resolution was passed unanimously at the June Meeting, and I told the Secretary, after the Meeting, “You had better let a legal man prepare that Resolution, because it will have to be attached to several Deeds, and it should be carefully prepared”

I gave instructions to our office to have the Resolution prepared, but it was forwarded to the Legal Department of the C.N.R. only in July. The elections were coming close. Sir Henry was then away in the West, and, naturally, the Secretary, Mr.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Ormsby, showed the Resolution to Mr. Ruel, to see if it was in order. Then Mr. Ruel said — and you can bring him here and ask him, if you wish — “While the elections are on, and we are subject to a change of Government, I would rather hold the Resolution”.

10 Q.—And, it was not entered in the Minutes of the Meeting of June 16th. Did you have a Meeting in the month of July?

A.—Let me answer you. What I wanted to say was: when I asked for the Resolution, and if it had been forwarded to the office, I was told by Mr. Ormsby of this decision of Mr. Ruel’s. You ask if there was another Meeting. I do not think so.

Q.—Was there not a Meeting in July?

A.—I do not think so. When Sir Henry was away we generally did not hold Meetings. However, you can ask the Secretary. He is here. I do not think there was a Meeting between 20 June and August.

Q.—I believe you said on Tuesday that you had received some \$39,000 from the Railway, and you had paid it all to the Montreal Trust Company?

A.—Yes.

Q.—I believe your statement in that regard was practically correct as to the figure. The exact figure would be \$39,312.50?

A.—Yes.

Q.—So, your statement on that score is quite accurate?

30 A.—Yes.

Q.—This \$39,312.50 would include the payments of rent on February 1st, 1931, and the months of August, 1931; February, 1932; August, 1932; and up to February 1st, 1933, inclusively?

A.—Yes.

Q.—On that date your debt to the Montreal Trust Company was reduced to \$174,922.96, according to the Statement filed as Exhibit D-18?

A.—Yes.

Q.—There can be no question as to that?

40 A.—Those are the figures you have there.

Q.—On February 1st your indebtedness to the Montreal Trust Company, on account of moneys paid in by the Canadian National Railways, was reduced to \$174,922.96?

A.—That is what your figures show.

Q.—Do you quarrel with my figures?

A.—No, I do not.

Mr. Montgomery:—So that there may be no misunderstanding, I am told the figures are not correct according to the records of the Montreal Trust Company.

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

Mr. Dussault:—Is there a substantial difference?

Mr. Montgomery:—Mr. Knuble is here, and can give you the figures from the records of the Montreal Trust Company, as taken from the ledger.

10 Mr. Dussault:—Of course, the ledger of the Montreal Trust Company might be wrong.

Mr. Montgomery:—Of course, the human factor cannot be eliminated.

Witness:—In any event, the \$39,312.50 was fully paid to the Montreal Trust Company.

By Mr. Dussault, continuing,—

20 Q.—There is no doubt of the fact that the \$39,312.50 was fully paid, and it was intended to cover the interest at 6½% on the mortgage, — whatever would be the balance on the date of payments, after deducting the 2% amortization?

A.—Yes.

To day I would think \$174,922.96, plus the interest on that since which has not been paid.

Q.—But, if at the end of the period of the lease you sell the property for any amount in excess of \$133,673, you will make a profit?

30 A.—If I can sell it, yes.

Q.—You will make a profit?

A.—Provided the option is not exercised by the Railway.

Q.—Provided the payments under the lease are made?

A.—Yes.

And provided the house is sold the day after. It would have to be sold right then, because from that time on carrying charges will accrue against that property, which will not be paid by anybody except myself.

40 Q.—When you speak of carrying charges you refer to carrying charges after May 1st, 1940?

A.—Yes.

Q.—Because all your present carrying charges are taken care of in the lease?

A.—Absolutely.

Q.—I would like to draw your attention to what I read in your letter of November 6th (forming part of Exhibit P-26):

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

10 “As you asked me also I hereby agree on behalf of the owner of property 1415 Pine Avenue, which you now occupy, to sell you this property at any time during the term of this lease to Canadian National Railways for the sum remaining due to us on the advances of \$185,000 and \$50,000.”

Is that correct?

A.—It should be “by us”.

Q.—The letter says “remaining due to us”.

A.—It is “by us”.

Q.—You would like to change the language of your letter now?

A.—No. It is all right. It was due to me, and I owed it to somebody else.

20 Q.—That was what you wrote to Sir Henry Thornton?

A.—Yes.

Q.—Therefore, when you said the Railway would at any time have the right to exercise the option, it would have to exercise this option under the terms of the option?

A.—That letter was written very quickly, and the only thing I was conveying to Sir Henry was “Give me my money back, and the property is yours. I do not want it”. That was the idea of the letter.

30 Q.—Now that you have filed the letter, we will allow His Lordship to give it the interpretation it should have.

A.—Yes, of course.

Q.—If by any chance the Railway had the right to exercise the option, and tried to exercise it, it would have to pay Mr. Decary not only the balance due him on \$185,000, but it would also have to pay the balance due him on the \$50,000 to which we have referred?

A.—That is the way the letter reads.

40 Mind you, I had in mind then that this would happen at the end of the ten years, and if both things went together, the payments which the Railway had to make and the payments Sir Henry had to make, the \$50,000 would by that time be automatically paid up.

This \$50,000 amounted to this: when Sir Henry had bought the property — I say it was Sir Henry: it was the Railway. We always confused Sir Henry with the Railway. When Sir Henry had bought the property he came to us to have repairs made to it, to put the house in good order — in great order. We said: “No, this cannot be done. You cannot refurnish your property. You cannot spend a lot of money — not to repair, but to ame-

E. R. DECARY (for Plaintiff in Rebuttal) Cross-examination.

liorate, perhaps — when the property at present does not belong to the Railway. You had better look after that yourself.”

Q.—When you say “we”, you refer to Mr. Seguin and yourself?

A.—No.

10 I was not alone at that time. Mr. Hummell, Mr. Ruel, and I were at the interview. Those are the “we” I refer to.

By Mr. Montgomery:—

Q.—Who is Mr. Hummell?

A.—He was Assistant to Henry Thornton.

We said: “You had better find the money for it”. Sir Henry said: “Well, I have no money”. So, they “passed the buck” to me again, and said: “Can’t you find the \$50,000?” and I said to Sir
20 Henry: “You ought to be able to find it. It is your furniture. It is your house. You used to pay \$500 out of your salary to live in that house. Add \$21 more. Make it \$521 a month. You will not be worse off than before, and in ten years that will represent \$50,000 plus interest at 6%”, and if you calculate it you will find that is right. I said: “At the end of ten years, when the lease expires your \$50,000 will be repaid, the same as the house would have been brought down to what it was and the furniture will be yours”.

In the agreement which learned Counsel read a minute ago he did not read a clause which your Lordship has often seen in
30 disguised loans on moveables, which is something to this effect: “If during the term of this lease the lessee has paid his rent regularly he shall then be entitled to purchase what makes the object of this lease for \$1”.

That is what the lease says.

Q.—The exact terms which have relation to the explanation you have just given are in the agreement which forms part of Exhibit P-26:

40 “At the expiration of the present lease, and provided all its terms have been fully carried out, the said G. H. Seguin agrees to sell to Sir Henry Thornton, accepting, the furnishings purchased in accordance herewith, for \$1.”

A.—Yes.

Mr. Dussault:—I have no further questions to ask the witness.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

R. A. C. HENRY (for Plaintiff in Rebuttal) Exam. in chief.

DEPOSITION OF ROBERT A. C. HENRY

A witness examined on behalf of the Plaintiff in Rebuttal.

10 On this seventh day of March, in the year of Our Lord one thousand nine hundred and thirty five personally came and appeared Robert A. C. Henry of the City of Montreal, General Manager Beauharnois Light Heat & Power Company, aged 50 years, a witness produced and examined on behalf of the Plaintiff in Rebuttal, who being duly sworn, deposes as follows:—

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

20 Q.—I understand you were formerly Deputy Minister of Railways and Canals?

A.—I was Deputy Minister of Railways and Canals from April 4th, 1929, to March 9th, 1930.

Q.—As Deputy Minister of Railways and Canals were you a member of the Board of the Canadian National Railways?

A.—I was.

Q.—You resigned as Deputy Minister of Railways and Canals?

A.—Yes.

Q.—On what date?

30 A.—March 9th, 1930.

Q.—To accept, I understand, a much more remunerative position?

A.—That is correct.

Q.—But, the Government still retained you as a member of the Board of Directors, even though you had resigned as Deputy Minister?

A.—Yes.

Q.—And, you continued as a Director until the complete change of the Board, in December, 1930?

40 A.—I think it was December 24th, 1930.

Q.—I take it you were a Director, either as Deputy Minister of Railways and Canals, or in your personal capacity, during all the period covered by the Resolutions P-2 to P-6?

A.—Yes.

Q.—I have just shown you extracts from the Minutes, which have been furnished us by the Secretary of the Company, as bearing upon the provision of a residence for the President, the late Sir Henry Thornton, (Exhibits P-2 to P-6). You have examined them, have you not?

A.—Yes.

R. A. C. HENRY (for Plaintiff in Rebuttal) Exam. in chief.

Q.—The Exhibits open (Exhibit P-2) with a Meeting of the Executive Committee on September 17th, 1929. You are the Mr. Henry mentioned as having been present at that Meeting?

A.—That is correct.

10 Q.—The Resolution was confirmed, as appears by the extract, at a Meeting held September 23rd, 1929, at which you do not appear to have been present?

A.—I was not present. I was in Western Canada.

Q.—It probably came to your knowledge that at that same Meeting the renewal of Sir Henry's agreement was authorized?

A.—Yes.

Q.—We have it from Mr. Hobbs, that copies or drafts, of those Minutes were sent immediately afterwards to the Department of Railways and Canals at Ottawa?

20 A.—That is correct.

Q.—Those Meetings were usually held in Montreal?

A.—With one or two exceptions they were always held in Montreal.

Q.—If there were any bearing upon those particular Resolutions, you might mention them; otherwise we will take it they were all held in Montreal.

A.—That is correct.

30 Q.—What was the practice, as between yourself and your Minister, on your return to Ottawa from attendance at those Meetings?

A.—I always discussed with him what had transpired.

Q.—Would that apply equally to the transaction with residence for the late Sir Henry Thornton?

A.—It did.

Q.—Coming to the Minute of March 24th, 1930 (Exhibit P-4). I see you were present, and Mr. Smart was also present?

A.—I was no longer Deputy Minister then, but I was a Director.

40 Q.—Who was Mr. Smart?

A.—He was Deputy Minister.

Q.—He was your successor as Deputy Minister?

A.—He was.

Q.—And, he still is Deputy Minister?

A.—He still is, yes.

Q.—Then there are the two Resolutions, Exhibits P-5 and P-6 — the Meetings of June 16th, and August 7th, 1930. You appear to have been present at both those Meetings?

A.—Yes, I was.

R. A. C. HENRY (for Plaintiff in Rebuttal) Exam. in chief.

Q.—Consequently, you were aware of the arrangements made for the renting from Mr. George H. Seguin of the house No. 1415 Pine Avenue, and the rental to be paid for it?

A.—I was.

10 Q.—Were you aware of the fact that that had been Sir Henry Thornton's residence for a number of years?

A.—I was.

Q.—Were you aware of the method adopted for carrying out the transaction? And when I say "the method adopted" I have reference to the loan from the Montreal Trust Company, the lease to the Railway, and the pledging of the lease to the Montreal Trust Company as security.

20 A.—No, I was not aware of the loan from the Montreal Trust Company. I had no knowledge of that. I was aware of the arrangement made with Mr. Decary, through Mr. Seguin, but I had no knowledge of any loan from the Montreal Trust Company.

Q.—You did not know where the money was being obtained from?

A.—I had no knowledge of that.

Q.—You were aware, were you not, that there was a loan being made, and that the lease was being pledged to secure the loan?

A.—I was not aware of that.

30 Q.—How did you think the transaction was being financed?

A.—I did not know how Mr. Decary was finding the money.

Q.—In any event, you were aware that the lease was so drawn as to carry the charges on the purchase price?

A.—I was.

Q.—6½% interest, and 2% amortization?

A.—That was discussed at the Executive Committee.

40 Q.—So, whether Mr. Decary was securing the loan from the Montreal Trust Company, or from whomsoever he was securing it, it was being done upon the basis of a lease providing 6½% on the purchase price, and 2% amortization?

A.—That is correct.

Q.—What was the position of the Government as regards either the purchase or lease of a residence for Sir Henry Thornton?

A.—The opinion of the Minister of Railways and Canals — or, rather, the Acting Minister of Railways and Canals — was that he could not recommend the inclusion of an item in the Estimates to provide for the purchase of a residence, but that the

R. A. C. HENRY (for Plaintiff in Rebuttal) Exam. in chief.

leasing of a residence was a matter which was in the hands of the Directors, representing an operating expense, and, therefore, was something the Government was not directly interested in.

10 Q.—As regards the leasing of properties, apart from right of way, stations, and so on, is it a fairly common practice, as a matter of routine? I have, for instance, in mind that this same Railway had premises leased in the Bank of Toronto Building, in the Army Building, in the Insurance Exchange Building, and so on.

Mr. Cook:—I do not think my friend is putting to the witness cases analogous to the one now before your Lordship. I submit the witness should not be asked to testify on hypothetical cases, which may not be analogous to the present one.

20 His Lordship:—And, you are objecting to the question?

Mr. Cook:—Yes, my Lord.

His Lordship:—I will take the evidence under reserve of your objection, Mr. Cook.

Witness:—The Railway leased offices in various places: in Montreal, New York, and other places, in connection with the carrying on of the business of the Company.

By Mr. Montgomery, continuing,—

30 Q.—And, quite apart from any connection with the right of way, or anything immediately adjacent to the right of way?

A.—Yes.

Q.—For instances, they had offices in the Bank of Toronto Building, in Montreal?

A.—Yes.

Q.—And, in the Insurance Exchange Building?

A.—I believe they had.

40 Q.—And in the Army Building, in Montreal — which is uptown?

A.—Yes, for some time.

Q.—And, they had leased offices in New York, Detroit, and other places?

A.—Yes, that is correct.

Q.—And, as you told us, the Minister was of opinion that the lease was something which was a matter of routine, within the hands of the Directors?

A.—Yes.

Q.—And, that was the attitude of the Government?

A.—Yes.

R. A. C. HENRY (for Plaintiff in Rebuttal) Cross-examination.

Q.—At the time the Government signed the renewal of Sir Henry Thornton's engagement, on October 25th, 1929, the Acting Minister of Railways and Canals was aware of the Resolutions which had been passed on September 17th, 1929, and September 23rd, 1929?

10 A.—The Acting Minister of Railways and Canals was, yes.

Mr. Montgomery:—I have no further questions to ask the witness.

Cross-examined by Mr. Cook, K.C., of counsel for Defendant.

Q.—When did you cease to be Deputy Minister of Railways and Canals?

A.—March 9th, 1930.

20 Q.—After that date you had no personal knowledge, as Deputy Minister, of what papers were sent to the Government, or what information was given to the Government?

A.—That is correct. I had no knowledge after March 9th, 1930.

Q.—My friend Mr. Montgomery mentioned to you certain offices in Toronto, New York, and elsewhere, leased by the Canadian National Railway. Those would be leases of premises for the purposes of the Company, would they not? Such as ticket offices, express offices, and so on?

A.—Yes, that is so.

30 Q.—Is it customary for the Canadian National to lease houses for the use of its President or Directors?

A.—It had not been, up to that time.

Q.—It had never before leased a house for the President?

A.—No, sir.

40 Q.—The Deed of Sale by which Mr. Decary, or Mr. Seguin, acquired this property, and the Deed of Lease by Mr. Seguin to the Canadian National, contained an express provision that the property was not to be used for commercial purposes in any way. You are aware of that fact?

A.—I do not recall that clause.

Mr. Montgomery:—I think you may take it as admitted that there is a clause in the lease to that effect.

By Mr. Cook, continuing,

Q.—You knew that?

A.—I read the lease, so I must have known it.

Q.—So, under the terms of the Deed of Sale, and under the terms of the Deed of Lease, the property could not be used for the purposes of the Company?

R. A. C. HENRY (for Plaintiff in Rebuttal) Cross-examination.

Mr. Montgomery:—That is a question of law.

By Mr. Cook, continuing,—

10 Q.—You were aware that on September 23rd, 1929, Sir Henry's contract with the Railway was extended?

A.—I was.

Q.—And, at that time his salary was increased from \$50,000 a year to \$75,000 a year?

A.—From \$60,000 a year, I think, to \$75,000 a year.

I think the original contract was \$50,000.

Q.—And, you are aware that in that agreement it was stipulated that that was all he was to receive, plus his out of pocket expenses, whatever they might amount to?

20 A.—That is correct.

Q.—And, you are also aware of the terms of the Order in Council which was passed on October 23rd, 1929, providing for the engagement of Sir Henry Thornton with the Government?

A.—I am.

Q.—At a salary of \$75,000 per annum, plus his out of pocket expenses, and no more?

A.—That is correct.

Q.—And, you are aware the contract between Sir Henry and the Government was actually signed on October 25th, 1929, and contained the clauses I was just mentioned?

30 A.—I am not absolutely sure as to the date.

Q.—You may take it from me that is so. I am just trying to shorten your cross-examination because my friend Mr. Montgomery informs me you are a very busy man and would like to leave as soon as you possibly can.

A.—I will take it that your statement is correct.

Q.—Were the arrangements that were contemplated on September 23rd, 1929, in regard to the house in addition to the remuneration to which I have referred, which was covered by
40 the contract of the same day, September 23rd, 1929? Sir Henry Thornton was to be given a house on the terms we have been discussing?

A.—That was the intention.

Q.—That was the intention of the Directors?

A.—Yes.

Q.—And, that intention was persisted in in the manner which has been explained before the Court here?

A.—That is correct.

R. A. C. HENRY (for Plaintiff in Rebuttal) Cross-examination.

Q.—To your knowledge, was any Order in Council passed modifying, or attempting to modify, the formal agreements of September 23rd, 1929, and October 25th, 1929?

A.—Not to my knowledge.

10 Q.—I am informed that when Mr. Dunning was examined at Ottawa on this point he made the following statement:

“By the Hon. Mr. Chaplin...

Mr. Montgomery:—If my friend desired Mr. Dunning to testify as to what he said, he should have subpoenaed him.

20 Mr. Cook:—My friend is very ingenious in the manner in which he raises his objections. I am endeavoring to shorten my cross-examination of the witness as much as I possibly can, but I feel I should put this fact of Record.

Perhaps I can change the form of my question, to meet my friend's objection.

Mr. Montgomery:—For some reason Mr. Dunning was not subpoenaed. and my friend Mr. Cook is now trying to put of Record, by another witness, what Mr. Dunning may have said.

By Mr. Cook, continuing,—

Q.—The question by the Hon. Mr. Chaplin was:

30 “I have heard that you did approve of it personally, and as the Minister of Railways and Canals it has been stated that you approved of it, and I wanted to hear what you had to say with reference to the matter”.

And your answer was:

40 “Well, the approval of the Government, Mr. Chaplin, or the Minister, is given in only one way: it is given by Order In Council. I will stand by any official document which I signed that signifies approval. In the absence of any document signifying approval, I think that speaks for itself.”

At the time those agreements were passed Mr. Dunning was the Minister of Railways, was he not?

A.—At the time the agreement was signed, yes.

Q.—At the time the agreement was signed Mr. Dunning was the Minister of Railways?

A.—Yes.

Q.—Assuming Mr. Dunning had made the statement I have just read to you, would you, as Deputy Minister, consider that

R. A. C. HENRY (for Plaintiff in Rebuttal) Cross-examination.

statement correct? In other words, I ask you if the statement that the only way the approval of the Government can be obtained is by Order in Council is a correct statement?

10 Mr. Montgomery:—My friend is asking the witness to usurp your Lordship's privileges. If anything at all turns on this, it is a matter of law, regulated by Statute, and the question is not a proper one. It is improper, from three different points of view: in the first place, it is an attempt to introduce into the Record a statement made by Mr. Dunning, without examining him; in the second place, it refers to something between the Minister and somebody else; and, in the third place, it is a question involving a matter of law, as to how the approval of the Government, as a Government, is given.

20 By Mr. Cook: continuing,—

Q.—As a matter of fact, how is the approval of the Government obtained to a contract, under the terms of the Railway Act, as you understand it?

A.—By Order in Council.

Q.—To your knowledge, was there any Order in Council approving of this house transaction?

A.—No. It was not necessary.

Q.—You mean that in your opinion it was not necessary?

30 A.—Yes.

Q.—You were at those Meetings?

A.—I was at them all, but one.

Q.—I suggest there was some considerable discussion concerning the question of this house?

A.—There was.

Q.—And, I also suggest to you that Mr. Ruel objected very strenuously to the transaction.

Mr. Montgomery:—I object to the question. I did not ask the witness anything at all about that.

40 His Lordship:—Is Mr. Ruel here?

Mr. Montgomery:—He is in Toronto. If my friend wishes to have him as a witness, he is perfectly available.

By Mr. Montgomery:—

Q.—You were asked whether the lease of a private residence would be for the purpose of the Company. Do you happen to know anything about a lease of a house for the eastern representative of the Railway, at Moncton?

A.—I believe Mr. Appleton did live in a Company house.

R. A. C. HENRY (for Plaintiff in Rebuttal) Cross-examination.

Q.—Do you know about leases that were either made or discussed in regard to residences in Toronto?

A.—I have not a very clear recollection of that.

10 Q.—Was the house that was leased for Mr. Appleton at Moncton for the purposes of the Company?

A.—He was the General Manager of the Eastern Region.

Q.—And the Company leased a house, in which he lived?

A.—Yes.

Q.—I assume the element of goodwill plays an important a part, and even a more important part, in a railway, as compared with almost any other line of business?

A.—I believe so.

Q.—Was it represented to you that a residence for the President was required for purposes of entertaining, and so on?

20 A.—That was the opinion of a good many of the Directors.

Q.—Do you know whether or not, as a matter of fact, Sir Henry did entertain very extensively in connection with the affairs of the Railway?

A.—He did.

Q.—My friend asked you in regard to some evidence given by Mr. Dunning. I am informed Mr. Dunning said:

30 “The proposal to lease was never submitted to me. As a matter of fact, the Board of Directors were required to submit to the Minister a proposal to lease anything.”

Then he said he was informed by Mr. Robb upon his return of the proposition of leasing:

“This knowledge came to me, it would be in the month of October — about the month of October, 1929.”

It was in that month the agreement with the Government was signed?

A.—Yes.

40 Q.—You have already told us the Department was made aware of the decision of the Directors to lease a house?

A.—Yes.

Q.—“Mr. Robb was aware of the idea of leasing. I was made aware of it immediately on my return to duty”.

A.—Mr. Dunning was away sick, and Mr. Robb was the Acting Minister.

Q.—Does that tie in with your recollection of what took place?

A.—That is correct.

R. A. C. HENRY (for Plaintiff in Rebuttal) Cross-examination.

Cook: Q.—As bearing upon the question asked by my friend Mr.

10 “Mr. Robb naturally informed me of matters which had been going on in connection with the Railway Department during his period as Acting Minister, and among those matters was that the Directors of the Canadian National Railway were still of the opinion that a house should be provided, and that they were investigating the possibility of leasing a house, which was quite within their competence to do under the law. This only came to me about the month of October, 1929.’

20 Does that tie in with your recollection?

A.—That was about the time I got back.

By Mr. Cook:—

Q.—You spoke of the renting of house for employees of the Company. They were not houses for the Directors of the Company, were they?

A.—No. They were for officers.

Q.—But, not Directors?

30 A.—No.

By Mr. Montgomery:—

Q.—What was Mr. Appleton’s position?

A.—He was General Manager of the Eastern Region.

By Mr. Cook:—

Q.—He was not a Director?

40 A.—No.

And further deponent saith not.

J. H. Kenehan,
Official Court Reporter.

W. H. HOBBS (for Plaintiff in Rebuttal) Examination in chief.

DEPOSITION OF WILLIAM HENRY HOBBS (recalled)

A witness recalled on behalf of Plaintiff.

10 On this seventh day of March, in the year of Our Lord, one thousand nine hundred and thirty-five, personally came and appeared William Henry Hobbs, of the City of Montreal, Assistant Secretary of the Canadian National Railways, a witness already examined, now recalled on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

Examined by Mr. Montgomery, K.C., of counsel for Plaintiff.

20 Q.—You were asked the other day to produce a complete copy of the Minutes of the Directors of September 23rd, 1929. I understand that you now have a copy?

A.—Yes.

Q.—Will you produce it as Exhibit P-28?

A.—Yes.

No cross-examination.

And further deponent saith not.

30

E. W. Bush,
Official Court Reporter.

Mr. Montgomery:—I produce, my Lord, the subpoenae to Mr. J. G. Gardner to which is attached a letter from Mr. Gardner and a doctor's certificate stating that he is confined to bed suffering from influenza.

40 Subject to my right to make application for his examination should he be well enough to be examined before your Lordship finishes the delibere, and subject to my right to make a similar application for the examination of Lady Thornton, who was to have been here, but unfortunately had to go to California on a business trip, that completes the Plaintiff's enquete.

Mr. Cook:—I may say, my Lord, that I endeavoured to have further witnesses here, and I am in the same position as Mr. Montgomery, but I do not object to any order your Lordship may make, subject, of course, to our right to rebut any evidence that may be offered against us, should we think it proper to do so.

Part III — EXHIBITS

10 PLAINIFF'S EXHIBIT No. 5 AMENDED
ANSWER TO PLEA

*Copy of letter addressed by the late Sir Henry Thornton
to the Rt. Hon. George P. Graham.*

COPY

September 2nd 1925.

Dear Mr. Graham:

20 Since my conversation with the Prime Minister and you
yesterday a legal point has arisen with respect to any arrange-
ment which I might make for the continuance of my services in
Canada which will necessitate the execution of a contract between
myself and the government of Canada employing me as managing
head of the railways now owned or controlled by the government
or which may be so owned or controlled in the future. Such an
opinion has been given to me by Mr. Eugene Lafleur, K.C.

30 The contract to which I refer in this letter would be en-
tirely separate and apart from any contract which I might exe-
cute with the Board of Directors of the Canadian National Rail-
ways, although it would embody the same terms. In other words, in
Mr. Lafleur's opinion, the contract between myself and the fede-
ral government is essential to give effect to what the Prime
Minister, you and I decided upon in good faith at our last meet-
ing.

40 I have executed the contract with the Board of the Can-
adian National Railways on the understanding that the additional
contract herein mentioned will be immediately prepared and exe-
cuted by the government and myself.

I will be in Ottawa on Friday and I am hopeful that it
will be possible at that time for me to execute the contract.

Yours faithfully,

The Rt. Hon. Geo. P. Graham, P.C.,
Minister of Railways,
Ottawa.

PLAINTIFF'S EXHIBIT P-12 AT ENQUETE

*Certified copy of Order-in-Council No. P.C. 1532
with documents annexed.*

10

P.C. 1532

Certified copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 5th SEPTEMBER 1925.

The Committee of the Privy Council have had before them a report, dated 3rd September, 1925, from the Minister of Railways and Canals, representing as follows:

20

(a) That the Canadian National Railway Company pursuant to a Resolution, dated the Second day of September, 1925, of its Board of Directors (a certified copy of an extract from the Minutes of the meeting of the Board of Directors passing the said Resolution hereto attached marked "A") duly elected Major General Sir Henry Worth Thornton, K.B.E., President and Chairman of the said Company, for and during the period of five years from the Fourth day of October, 1925, at a fixed annual salary of sixty-five thousand dollars for services in such capacity, including such other services as may from time to time under agreement be allotted to him, and duly authorized the entering into of an agreement of engagement accordingly;

30

(b) That the Canadian National Railway Company. pursuant to the aforesaid Resolution, duly entered into an agreement of engagement, dated the Second day of September, 1925, (an original of which is hereto attached marked "B");

40

(c) That the election aforesaid of the said Major General Sir Henry Worth Thornton, K.B.E., President and Chairman of the Canadian National Railway Company, and his engagement as President and Chairman of the said Company with duties of office or offices under the agreement of engagement above referred to are both deemed expedient in the best interests of the several companies, works, undertakings and enterprises, under the said agreement of engagement to be served;

- 10 (d) That it is also deemed expedient in the best interests of the Government of Canada controlling or operating the several companies, works, undertakings and enterprises aforesaid, that the said Major General Sir Henry Worth Thornton, K.B.E., be engaged by and on behalf of the Government of Canada controlling or owning the said companies, works, undertakings and enterprises, as Managing Head thereof of the said Government, and that an agreement of engagement to this end be entered into by and on behalf of His Majesty with the said Major General Sir Henry Worth Thornton, K.B.E., in terms and conditions as in draft agreement attached hereto marked "C" set out and contained.

20 The Committee, on the recommendation of the Minister of Railways and Canals, advise that the agreement of engagement, dated the Second day of September, 1929, an original of which is hereto attached marked "B") be approved, sanctioned and confirmed;

Further, that authority be given for the entering into an agreement of engagement, in terms and conditions as in draft agreement hereto attached marked "C" set out and contained, by His Majesty represented therein by the Minister of Railways and Canals, and that authority be given the Minister of Railways and Canals to execute and deliver the agreement accordingly.

30

(Signed) E. J. Lemaire
E. J. Lemaire
Clerk of the Privy Council.

(SEAL)
Clerk of the Privy Council
Canada

The Right Honourable
The Minister of Railways and Canals.

40

Extract from Minutes of Meeting of Board of Directors of the Canadian National Railway Company, held on the second day of September, 1925.

THAT WHEREAS the system of the Canadian National Railway Company and the System of the Canadian Northern Railway Company together with such other railways, merchant marine, works, undertakings and enterprises owned or controlled by the Government of Canada, and entrusted pursuant to Statute

to the management and operation of the Canadian National Railway Company, are being managed and operated, co-ordinated the one with the other, as a national system;

10 AND WHEREAS Major General Sir Henry Worth Thornton, K.B.E., has assumed for the period of three years from the Fourth day of October, 1922, the duties of Managing Head of the co-ordinated system above referred to, and having been duly elected, has served the Canadian National Railway Company, as President and Chairman thereof, and has in the capacity as Managing Head of the co-ordinated system aforesaid and in the capacity of President and Chairman of the Canadian National Railway Company, rendered most satisfactory and efficient services, preserving, promoting and extending the interests concerned;

20 AND WHEREAS it is deemed expedient that in order to further preserve, promote, and extend the interests aforesaid the Major General Sir Henry Worth Thornton, K.B.E., be elected President and Chairman of the Canadian National Railway Company for a further period;

UNANIMOUSLY RESOLVED:—

30 (a) THAT Major General Sir Henry Worth Thornton, K.B.E., be elected and is hereby elected President and Chairman of the Canadian National Railway Company for and during the period of five years from the Fourth day of October, 1925, and that he be paid a fixed annual salary of sixty-five thousand dollars for services in such capacity, including such other services as may from time to time under agreement be allotted to him.

40 (b) THAT Canadian National Railway Company enter into an agreement of engagement of the said Major General Sir Henry Worth Thornton, K.B.E., as President and Chairman of the said company upon terms and conditions generally in effect as in draft agreement submitted herewith set out.

(c) THAT G. A. Bell, Director of the Canadian National Railway Company, and the Secretary thereof, be and are hereby authorized to execute the agreement of engagement, above referred to, for and on behalf of the said company.

CERTIFIED A TRUE COPY:

(SEAL)

Sgd. R. P. Ormsby
Secretary

AGREEMENT

DATED SEPTEMBER 2, 1925

between

10 THE CANADIAN NATIONAL RAILWAY COMPANY
and

MAJOR GENERAL SIR HENRY
WORTH THORNTON, K.B.E.
ré personal services, etc.

THIS AGREEMENT made this second day of September
A.D. 1925:

BETWEEN:

20 THE CANADIAN NATIONAL RAILWAY COMPANY,
hereinafter called the "National Company"

OF THE FIRST PART;

— AND —

MAJOR GENERAL SIR HENRY
WORTH THORNTON, K.B.E.
hereinafter called the "Managing Head",

OF THE SECOND PART.

30

WHEREAS the Managing Head has by appointment and
agreement assumed the direction as Managing Head, serving in
the capacity of President and Chairman for a period of three
years from the Fourth day of October 1922, of the Grand Trunk
Railway Company of Canada, now the Canadian National Rail-
way Company, the Canadian Northern Railway Company and of
the various constituent and subsidiary companies, comprising
the system of these respective railway companies, the Canadian
Government Merchant Marine Limited. operating various steam-
40 ships owned by individual companies, and of the Canadian Go-
vernment Railways; all being managed and operated as a na-
tional system or enterprise under the collective or descriptive
designation (Canadian National Railways) pursuant to the pro-
vision of the Statutes of Canada 1919, Chapter 13, "An Act to
incorporate Canadian National Railway Company and respect-
ing the Canadian National Railways", together with such other
works, undertakings and enterprises controlled or owned by the
Government of Canada as may from time to time pursuant to the
provisions of the said Act, be entrusted to the same management
and operation;

AND WHEREAS the period of service, as above referred to, of the Managing Head expires on the Third day of October 1925 and the National Company by resolution of its Board of Directors dated the Second day of September 1925, (copy hereto annexed marked "A") has duly elected the Managing Head President and Chairman of the Company and authorized the entering
10 into of an agreement on the part of the National Company with the Managing Head in terms and conditions as hereinafter set out and contained and the Managing Head has agreed with the National Company to accept such election on its part and to serve in the capacity aforesaid subject to the said terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto have agreed as follows:—

1. ENGAGEMENT. — The National Company hereby
20 agrees to employ or cause to be employed the Managing Head to serve as President and Chairman of the National Company and of the various constituent and subsidiary companies comprising its system, and in such capacity to serve as directing head of any and all railways, steamships and other works, undertakings and enterprises controlled or owned by the Government of Canada, that are now or may at any time hereafter during the continuance of this agreement be entrusted by Order of the Governor in Council to the management and operation of the National Company, and to serve in capacity of President and Chairman of any other
30 railway company or companies, system or systems owned or controlled by the Government of Canada, from time to time, concurrently with service as above of the National Company as the latter may from time to time direct, such other railway company or companies, system or systems so electing the Managing Head.

2. PERIOD OF ENGAGEMENT.—The period of engagement hereby entered into shall extend from five years from the Fourth day of October 1925, subject to earlier termination as hereinafter provided.

40

3. REMUNERATION.—The remuneration of the Managing Head for the full and entire services to be performed from time to time, and for the full period of employment under this agreement, shall be a fixed annual salary (irrespective of the magnitude or extent of the work or duties to be performed from time to time and without any extra fees or remuneration of any description) of sixty-five thousand dollars per annum payable in equal monthly installments on or about the first day of each month, but not in advance.

4. **EXCLUSIVE SERVICES.**—During the continuance of his employment the Managing Head shall devote his whole time exclusively to his duties as herein provided or as may from time to time be specified by the Board of Directors of the various companies owning or controlling the properties referred to in this agreement or as may from time to time be specified by the
10 Governor in Council.

5. **GENERAL DUTIES.** — The Managing Head shall diligently and faithfully perform to the best of his skill and ability all the duties that may devolve upon him by virtue of his agreement and shall use all reasonable means to preserve, promote and extend the interests entrusted to him.

6. **EXPENSES.** — The Managing Head, shall subject to the by-laws, rules and regulations, applicable, be entitled to be
20 paid all reasonable out-of-pocket expenses incurred in connection with the duties of his office or offices.

7. **RESTRAINTS.** — The Managing Head shall not, during the continuance of this agreement, directly or indirectly, hold any stock, share or interest in, nor be or become a director, partner or other officer in any company or firm for which,—for or on behalf of the National Company, or for or on behalf of any of its constituent or subsidiary companies, or for or on behalf of any works, undertakings or enterprises under the management or
30 operation of the National Company,—any materials, supplies or other commodities whatsoever are purchased or acquired; nor shall the Managing Head during the period aforesaid, directly or indirectly, hold any stock, share or interest in, or be or become a director, partner or other officer in any company or firm with which,—for or on behalf of the National Company, or for on behalf of any of its constituent or subsidiary companies, or for or on behalf of any works or enterprises under the management or operation of the National Company,—any contract for any work or services is entered into; nor shall he permit any such material,
40 supplies or other commodities to be purchased or acquired from, nor any contract to be entered into with any such company or firm while conditions above prohibited exist.

8. **TERMINATION OF AGREEMENT.** — This agreement may be terminated, upon notice in writing from the National Company to the Managing Head, for or on account of malfeasance of office on the part of the Managing Head without any right or claim whatever on the part of the Managing Head for any compensation by reason or on account of such termination; and this agreement may be terminated upon six months' notice in

10 writing from the National Company to the Managing Head, or vice versa, subject to compensation *in the first case* to the Managing Head (except in case of termination for or on account of malfeasance of office as aforesaid) determined at the rate of the fixed annual salary, hereunder payable to the Managing Head as and from the date of such termination for the then residue of the unexpired period of employment hereunder, and subject to compensation *in the second case* to the National Company as may be mutually agreed upon, or failing agreement as may be determined by a Board of three arbitrators, one to be appointed by each party hereto and the third by the two so appointed; but upon their failure to agree then such third arbitrator shall be appointed by the Chief Justice of the Supreme Court of Canada.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

20

SIGNED, Sealed and Delivered)
by the National Company in) Canadian National
the presence of) Railway Company
(SEAL) Sgd.G. A. Bell
Sgd. W. H. Hobbs Director
Sgd. R. P. Ormsby
Secretary

30 SIGNED, Sealed and Delivered)
by the Managing Head in the)
presence of)
Sgd. E. R. Decary

Sgd. H. W. Thornton.
(SEAL)

Extract from Minutes of Meeting of Board of Directors of the Canadian National Railway Company, held on the second day of September, 1925.

40 THAT WHEREAS the system of the Canadian National Railway Company and the system of the Canadian Northern Railway Company together with such other railways, merchant marine, works, undertakings and enterprises owned or controlled by the Government of Canada and entrusted pursuant to Statute to the management and operation of the Canadian National Railway Company, are being managed and operated, co-ordinated the one with the other, as a national system;

AND WHEREAS Major General Sir Henry Worth Thornton, K.B.E., has assumed for the period of three years

from the Fourth day of October, 1922, the duties of Managing Head of the co-ordinated system above referred to, and having been duly elected, has served the Canadian National Railway Company, as President and Chairman thereof, and has in the capacity as Managing Head of the co-ordinated system aforesaid and in the capacity of President and Chairman of the Canadian
10 National Railway Company, rendered most satisfactory and efficient services, preserving, promoting and extending the interests concerned;

AND WHEREAS it is deemed expedient that in order to further preserve, promote and extend the interests aforesaid that Major General Sir Henry Worth Thornton, K.B.E., be elected President and Chairman of the Canadian National Railway Company for a further period;

20 UNANIMOUSLY RESOLVED:—

(a) THAT Major General Sir Henry Worth Thornton, K.B.E., be elected and is hereby elected President and Chairman of the Canadian National Railway Company for and during the period of five years from the Fourth day of October, 1925, and that he be paid a fixed annual salary of sixty-five thousand dollars for services in such capacity, including such other services as may from time to time under agreement be allotted to him.

30 (b) THAT Canadian National Railway Company enter into an agreement of engagement of the said Major General Sir Henry Worth Thornton, K.B.E., as President and Chairman of the said company upon terms and conditions generally in effect as in draft agreement submitted herewith set out.

(c) THAT G. A. Bell, Director of the Canadian National Railway Company, and the Secretary thereof, be and are hereby authorized to execute the agreement of engagement, above referred to, for and on behalf of the said company.
40

CERTIFIED A TRUE COPY:

(SEAL)

Sgd. R. R. Ormsby
Secretary

THIS AGREEMENT made at Ottawa, in the Province of Ontario, this day of September, A.D. 1925.

BETWEEN :

10 HIS MAJESTY THE KING on behalf of the Dominion of Canada, herein represented by the Right Honourable, the Minister of Railways and Canals (acting by virtue of an Order in Council dated the day of September, A.D. 1925) hereinafter called “His Majesty”

OF THE FIRST PART;

— AND —

20 MAJOR GENERAL SIR HENRY WORTH THORNTON, K.B.E., hereinafter called the “Managing Head’

OF THE SECOND PART.

WHEREAS the Canadian National Railway Company pursuant to a resolution, dated the second day of September 1925, of its Board of Directors, duly elected the Managing Head, President and Chairman of the said company, for and during the period of five years, from the fourth day of October 1925, at a fixed annual salary of sixty-five thousand dollars for services
30 in such capacity including such other services as may from time to time under agreement be allotted to him; and duly authorized the entering into of an agreement of engagement accordingly;

AND WHEREAS the Canadian National Railway Company, pursuant to the aforesaid resolution, duly entered into an agreement of engagement dated the second day of September 1925 (the original of which is hereto annexed marked “A”) hereinafter referred to as the “Company’s Agreement of Engagement”;

40 AND WHEREAS His Majesty has by order of the Governor in Council dated the day of September 1925 duly approved, sanctioned and confirmed the company’s agreement of engagement, and authorized the entering into on behalf of His Majesty with the Managing Head of a further agreement of engagement in terms and conditions hereinafter set out and contained and the Managing Head has agreed accordingly;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto have agreed as follows:—

1. **ENGAGEMENT.** — His Majesty hereby agrees to employ or cause to be employed the Managing Head to serve and the Managing Head hereby agrees to serve, as the directing head
10 of the Canadian National Railway Company, the Canadian Northern Railway Company and the various constituent and subsidiary companies comprising the systems of these respective companies, and of the Canadian Government Merchant Marine Limited operating various steamships owned by individual companies, together with the Canadian Government Railways and together with such other works, undertakings or enterprises as may from time to time be controlled or owned by His Majesty and may by Order in Council be placed under the same management, but excepting any works, undertakings or enterprises which may
20 at any time be withdrawn by His Majesty by Order in Council from any such management.

2. **PERIOD OF ENGAGEMENT.** — The period of the engagement hereby entered into shall extend for three years from the fourth day of October, 1925, subject to earlier termination as hereinafter provided.

3. **REMUNERATION.** — The remuneration of the Managing Head for the full and entire services to be performed, from
30 time to time and for the full period of employment under this agreement, shall be a fixed salary (irrespective of the magnitude or extent of the work or duties to be performed from time to time and without any extra fees or remuneration of any description) of sixty-five thousand dollars per annum, payable monthly, but not in advance, less the annual remuneration payable monthly by the Canadian National Railway Company to and receivable by the Managing Head under the company's agreement of engagement during the continuance of the said agreement of
40 engagement; it being understood and agreed that the monthly payments, of the annual salary hereunder shall be deferred, each, for the period of one month, the first monthly payment, for the month ending the Fourth day of November, 1925, (being payable on or about the fourth day of the following month, the date of the final monthly payment being subject to adjustment at the end of the period of employment hereunder.

4. **EXCLUSIVE SERVICES.** — During the continuance of his employment, the Managing Head shall devote his

whole time, concurrently with the services rendered or to be rendered, to the Canadian National Railway Company under the company's agreement of engagement, exclusively to his duties as herein provided, or as may from time to time be specified by the Governor in Council.

10 5. GENERAL DUTIES. — The Managing Head shall diligently and faithfully perform to the best of his skill and ability all the duties that may devolve upon him by virtue of this agreement and shall use all reasonable means to preserve, promote and extend the interests entrusted to him.

20 6. EXPENSES. — The Managing Head shall, subject to statutory or other lawful authority, applicable, be entitled to be paid all reasonable out-of-pocket expenses incurred in connection with the duties of his office under this agreement, less out-of-pocket expenses payable by the Canadian National Railway Company to and receivable by the Managing Head under the company's agreement of engagement in connection with duties of office or offices thereunder performed concurrently with duties of office hereunder; it being understood and agreed that accounts of the Managing Head for out-of-pocket expenses incurred and payable in connection with duties of office hereunder shall be rendered from time to time at such periods for vouchering and payment as His Majesty's Officers in control of such matters may require.

30 7. RESTRAINTS. — The Managing Head shall not during the continuance of this agreement, directly or indirectly, hold any stock, share or interest in, nor be or become a director, partner or other officer in any company or firm from which — for or on behalf of the Canadian National Railway Company, or for or on behalf of the Canadian Northern Railway Company, or for or on behalf of any constituent or subsidiary company of either of the above named companies, or for or on behalf of the Canadian Government Merchant Marine Limited, or any of the
40 various steamship companies owning steamships operated by the last named company, or for or on behalf of the Canadian Government Railways, or for or on behalf of any works, undertakings or enterprises as may from time to time be controlled or owned by His Majesty and by Order of the Governor in Council placed under the same management — any materials, supplies or other commodities whatsoever are purchased or acquired; nor shall the Managing Head directly or indirectly hold any stock, share or interest in, or be or become a director, partner or other officer

in any company or firm with which — for or on behalf of the Canadian National Railway Company or for or on behalf of the Canadian Northern Railway Company, or for or on behalf of any constituent or subsidiary company of either of the above named companies, or for or on behalf of any of the steamship companies, railways, works, undertakings or enterprises in this clause
10 above named or referred to — any contract for any work or services is entered into; nor shall he permit any such materials, supplies or other commodities to be purchased or acquired from, nor any contract to be entered into with any such company or firm while conditions above prohibited exist.

8. TERMINATION OF AGREEMENT. — This agreement may be terminated, upon notice in writing from His Majesty to the Managing Head, for or on account of malfeasance of office on the part of the Managing Head without any right
20 or claim whatever on the part of the Managing Head for any compensation by reason or on account of such termination; and this agreement may be terminated upon six months' notice in writing from His Majesty to the Managing Head or vice versa; subject to compensation *in the first case* to the Managing Head (except in case of termination for or on account of malfeasance of office as aforesaid) determined at the rate of the fixed annual salary hereunder payable to the Managing Head as and from the date of such termination for the then residue of the unexpired period of employment hereunder; PROVIDED that com-
30 pensation exigible under this agreement or under the Company's agreement of engagement following cancellation of either of the said agreements upon six months' notice in writing to the Managing Head shall be reduced from time to time to the extent of any sum or sums of money from time to time received by the Managing Head by way of compensation or remuneration for the relevant period under either of the said agreements, the Managing Head hereby authorizing His Majesty to withhold and to apply moneys payable to the Managing Head under this agreement to protect the interests of the Canadian National Railway Com-
40 pany in the matter of off-set of such reductions of compensation, if any, and in so far only as under the provisions of the company's agreement of engagement the said Company may not be protected in respect of the making of such reductions; and subject to compensation *in the second case* to His Majesty as may be mutually agreed upon, or failing agreement as may be determined by a Board of three Arbitrators, one to be appointed by each party hereto and the third by the two so appointed; but upon their failure to agree then such third arbitrator shall be appointed by the Chief Justice of the Supreme Court of Canada.

This lease is thus made subject to the following stipulations, viz.:

1. That the said lessee shall make all repairs customarily made by tenants (réparations locatives) during the present lease, and at the termination thereof shall peacefully surrender
10 the said premises furniture & furnishings in the like condition as when taken possession of reasonable wear and tear excepted, loss by fire excepted.

2. That the said Lessee shall not make any alterations in the said premises without the consent of the lessor or his representatives, and in case such alteration should be made, the said Lessee shall be bound to put the said leased premises in the same state in which they were at the commencement of the
20 present lease, unless the said Lessor prefer that such alterations should remain, without any compensation being allowed to the said Lessee for such alterations.

3. That should any grosses réparations be deemed necessary in the said leased premises the said Lessee shall permit the same to be performed, without claiming any reduction in the said rent, damages, interest, or compensation; provided always, that the said repairs be indispensable and be finished within a reasonable time.

30 4. That the said Lessee shall protect from frost all the water, gas and drain pipes, water closets, sinks, baths, and the accessories thereof, in and about the said leased premises, and shall at all times keep the same free from any and all uncleanness and obstruction that might prevent the free working of the same; and shall also make and bear the cost of all repairs
40 needful or expedient to keep the said drains, pipes and other accessories in perfect working order, during the term of the present lease, on pain of all costs and damages, and without any recourse whatsoever against the Lessor.

5. That the said Lessee shall keep the roof, gutters and conductors clear of snow and ice, and for that purpose, shall use wooden implements only, and pay the sweeping of chimneys of said leased premises during the said rent.

7. That the said Lessee shall not make over his interest in the present lease, or sublet the whole or any part of the premises hereby leased without the consent of the lessor being first obtain in writing for that purpose.

8. That the said lessee obliges himself to pay the water tax which may be levied on the said premises for and during the said term and perform all the requirements of the Police and Fire Departments, to the complete exoneration of the lessor; and during the last three months of the present lease shall allow such person or persons as may be desirous of obtaining lease of the said premises to visit the same at reasonable hours; and shall also permit notices of such intended lease to be put on the premises.

9. That the said Lessee shall also pay any and all extra premiums levied in consequence of the business that may be carried on by him.

10. The Lessee shall take proper care of the summer blinds and double windows, and shall deliver same at the expiry of the present lease is as good condition as at the beginning of the period. reasonable wear and tear excepted. The Lessee shall replace any glass that may be broken, cracked or damaged in any manner (accidents by fire and force majeure excepted) during this lease with glass of the same description, size, thickness, quality and ornamentation.

11. The Lessor will not be responsible for damage or annoyance to the Lessee caused by the negligence or otherwise, of the occupants of any premises adjacent to, above or below the herein leased premises.

12. It is especially and distinctly understood and agreed by and between the parties that the furniture goods, chattels and effects, of every kind and description, belonging to the lessee shall be security for the payment of the rent for the entire term, and shall not be removed from the said leased premises, until the rent for the whole term be paid, even if not due, any law, usage, or custom to the contrary notwithstanding, for without this condition the present lease would not have been made; nothing herein contained to be deemed or construed as comminatory or evasive, but of rigour.

(13) The Lessee undertakes and agrees to retain the Lessor's butler, and pay him his wages of \$75.00. per month, this arrangement, however, to be contingent upon the said butler performing his duties in a manner reasonably satisfactory to the Lessee.

(14) The Lessee agrees to take over and pay for at current prices, the coal and wood stored in the house, and at the expiry of the term of the lease, the Lessor undertakes to reimburse the Lessee at then current prices for coal and wood left over.

10 (15) The Lessor is to retain for his use, for storage purposes, wine cellar, fur cupboard, one small servants room on top floor, and one small room over garage, and to have access to same when required, at the convenience of the Lessee.

(16) Telephone, light and gas to be paid by Lessee.

(17) It is agreed that should the property hereby leased, be sold, the Lessor shall have the right, to terminate this lease on giving the Lessee three months notice in writing. In that event, the
20 Lessee shall not claim or be entitled to any compensation.

This lease is further made in consideration of the sum of Eight Thousand, Five Hundred & Fifty (\$8,550.) Dollars current money of the Province, which the said Lessee binds and obliges himself to well and truly pay the said lessor or his lawful representatives in equal monthly payments of Four Hundred & Fifty (\$450.) Dollars, in advance the first payment whereof to be due payable on the First day of October next.

30 Signed in duplicate at Montreal this day of September in the year of our Lord one thousand nine hundred and twenty-six.

IN THE PRESENCE OF
W. H. Hobbs
Knublely

H. W. Thornton
F. N. Beardmore

PLAINTIFF'S EXHIBIT P-1 AT ENQUETE

Extracts By-Law Nos. 11 & 14.

10 CANADIAN NATIONAL RAILWAY COMPANY

BY-LAW No. 11

PASSED JUNE 13th, 1927.

Amending the Company's By-Law No. 1 relating to the formation and functions of an Executive Committee.

20 BE IT ENACTED by the Directors of the Canadian National Railway Company as a By-Law of the Company, as follows:—

Sections 28 to 36 inclusive of By-Law No. 1 relating to the formation and functions of an Executive Committee are hereby rescinded and cancelled and the following substituted therefor:

30 There shall be a Committee of the Board known as the Executive Committee to consist of six members, two of whom shall be the officers of the Company on the Board of Directors, one shall be the Deputy Minister of Railways and Canals and the other three shall be selected from the remaining directors.

The Chairman of the Board shall be the Chairman of the Executive Committee, or, in his absence, the Vice-President of the Company, or, in his absence, the Committee shall call to the chair such of its number as it may elect.

40 The quorum for a meeting of the Executive Committee shall be four.

The Secretary of the Company, or, in his absence, the Assistant Secretary, shall likewise be the Secretary of the Executive Committee.

Meetings of the Executive Committee shall be held on each Tuesday at the general offices of the Company in Montreal and at such other place and date as may be decided by the Chairman or Vice-President excepting when the regular meeting of the Boards falls in that week in which event the meeting of the Exe-

utive Committee shall be superseded. The Executive Committee shall have the right to alter the frequency of meetings and their dates as they may determine.

The President shall, at each meeting of the Executive Committee, lay before it such information as the Committee may
10 require.

The Executive Committee may exercise all the powers which the Directors are authorized to exercise, subject, however, as follows:—

That each resolution of the Executive Committee shall through and together with the full minutes of its meeting be submitted at and to its next following meeting and shall also be submitted at and to the next ensuing meeting of the Directors,
20

and each such resolution so submitted to a meeting of the Directors, with the exception of a resolution of the Executive Committee requiring in its opinion, as in the said resolution expressed, immediate carrying out and which has been so carried out, shall be subject to the approval or otherwise of the Directors; and any resolution passed by the Executive Committee with the exception of a resolution of the said Committee requiring in its opinion, as in said resolution expressed, the immediate carrying out and which has been so carried out, may be amended by a further resolution of the said Committee
30

and may also be amended by a resolution of the Directors, but no such amending resolution, whether passed by the Executive Committee or by the Directors, shall prejudicially affect the rights of other parties by reason of the carrying out of a previous resolution of the Executive Committee.

Subject to the foregoing the Executive Committee may make regulations regarding the holding of meetings and the procedure thereat.
40

The members of the Executive Committee shall in the first instance be as follows:—

Sir Henry W. Thornton, K.B.E.
Mr. Gerard Ruel, K.C.
Major Graham A. Bell, C.M.G.
Mr. Ernest R. Decary,
Mr. James Gill Gardner,
Mr. J. Stuart Rayside,

If vacancies occur in the Committee by reason of resignations or otherwise, such vacancies may be filled by the Directors of the Company.

With the exception of the Directors who are officers of the Company, every member attending a weekly meeting shall be paid a fee of Forty Dollars and travelling expenses incidental to such attendance.

10 This By-Law shall not be effective unless and until approved by order of His Excellency in Council.

Passed by the Directors of the Canadian National Railway Company this 13th day of June 1927.

Gerard Ruel
Vice-President.

R. P. Ormsby
Secretary.

(SEAL)

20 Canadian National Railway Company
Statutes Incorporated Canada
1919 C 13

Certified to be a true copy

Assistant Secretary

CANADIAN NATIONAL RAILWAY COMPANY

BY-LAW No. 14

30 By-Law No. 14, amending the Company's By-Law No. 11, relating to a quorum of the Executive Committee.

BE IT ENACTED by the Directors of the Canadian National Railway Company as a by-law of the Company as follows:

During the months of July, August and September in each year the quorum for a meeting of the Executive Committee shall be three, two of whom must be Directors who are not officers of the Company.

40 PASSED by the Directors of the Canadian National Railway Company this Twentieth day of August, 1928.

Gerard Rucl,
Vice-President.

Henry Philips,
Assistant Secretary

(SEAL)

CERTIFIED A TRUE COPY

Assistant Secretary

PLAINTIFF'S EXHIBIT P-2 AT ENQUETE

10 *Extract from Minutes of a Meeting of the Executive Committee
of the Directors of Canadian National Railway Company,
September 17th 1929 approved at Director's Meeting.*

Held in the Company's Offices in the City of Montreal on Sep-
tember 17th, 1929.

PRESENT:

20 SIR HENRY W. THORNTON
MR. HENRY
MR. DECARY
MR. RAYSIDE
MR. GARDNER

Mr. Philips acted as Secretary of the meeting.

30 WHEREAS in the opinion of the Executive Committee a
suitable residence in Montreal for the Chairman and President
of the Company is essential for the proper conduct of the Com-
pany's business, it was unanimously RESOLVED that the Exe-
cutive Committee should undertake to lease a suitable and pro-
perly equipped residence for the use of the Chairman and Presi-
dent of the Company under such terms and conditions as the
Committee may subsequently deem proper.

Submitted and approved at Director's Meeting,
September 23rd, 1929.

40 CERTIFIED to be a true Extract.
W. H. Hobbs
Assistant Secretary.

(SEAL)

Canadian National Railway Company
Statutes Incorporated Canada
1919 C-13

PLAINTIFF'S EXHIBIT P-13(F) AT ENQUETE

*Certified copy of letter from Defendant to Deputy Minister
of Railways and Canals.*

CANADIAN NATIONAL RAILWAYS
Secretary's Department

10

R. P. Ormsby, Secretary.

Montreal, Que.

R.A.C. Henry, Esq.,

September 18th, 1929.

Deputy Minister of Railways and Canals,
Ottawa, Ontario.

Dear Sir,

20

Enclosed for the information of the Minister is draft of
the Minutes of the Executive Committee held on September 17th.

Yours very truly,

Certified to be a true copy of
letter signed by R.P. Ormsby,
Secretary, or Henry Philips,
Assistant Secretary.

W. H. Hobbs

Assistant Secretary.

30

DEFENDANT'S EXHIBIT No. 2 WITH PLEA

*Copy of Agreement between Canadian National Railway Com-
pany and Sir Henry W. Thornton, to which is annexed extract
from Minutes of Meeting of Board of Directors,
Canadian National Railway Company,
held on the same day.*

40

THIS AGREEMENT made this 23rd day of September,
A.D. 1929:

BETWEEN:

THE CANADIAN NATIONAL RAILWAY COMPA-
NY, hereinafter called the "National Company",

OF THE FIRST PART:

— AND —

MAJOR GENERAL SIR HENRY WORTH THORN-
TON, K.B.E., hereinafter called the "Managing Head",

OF THE SECOND PART.

WHEREAS the Managing Head has by appointment and agreement assumed the direction as Managing Head, serving in the capacity as President and Chairman, for a period of three years from the fourth day of October, 1922, of the Grand Trunk Railway Company of Canada, now the Canadian National Railway Company, the Canadian Northern Railway Company and of
10 the various constituent and subsidiary companies comprising the system of these respective railway companies, the Canadian Government Merchant Marine, Limited, operating various steamships owned by individual companies, and of the Canadian National Railways; all being managed and operated as a National system or enterprise under the collective or descriptive designation "Canadian National Railways" pursuant to the provisions of the "Canadian National Railways Act", together with such other works, undertakings and enterprises controlled or owned
20 by the Government of Canada as may from time to time pursuant to the provisions of the said Act be entrusted to the same management and operation;

AND WHEREAS the period of service as above referred to expired on the third day of October, 1925, and the Managing Head was duly elected President and Chairman of the National Company for a further period of five years from the date of the expiration of services as above referred to, and thereupon has by appointment and agreement assumed the direction as Managing
30 Head, serving in like capacity as aforesaid, of the several companies, railways, works, undertakings and enterprises as aforesaid;

AND WHEREAS the National Company by Resolution of its Board of Directors dated the 23rd day of September, 1929, (copy hereto attached marked "A") has duly elected the Managing Head President and Chairman of the National Company and authorized the entering into of an agreement on the part of the National Company with the Managing Head in terms and
40 conditions as hereinafter set out and contained and the Managing Head has agreed with the National Company to accept such election on its part and to serve in the capacity aforesaid, subject to the said terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto have agreed as follows:—

1. ENGAGEMENT — The National Company hereby agrees to employ or cause to be employed the Managing Head to serve as President and Chairman of the National Company and

of the various constituent and subsidiary companies comprising its system, and in such capacity to serve as directing head of any and all railways, steamships and other works, undertakings and enterprises, controlled or owned by the Government of Canada, that are now or may at any time hereafter during the continuance of this agreement be entrusted by Order of the Governor in Council to the management and operation of the National Company, and to serve in capacity as President and Chairman of any other railway company or companies, system or systems, owned or controlled by the Government of Canada, from time to time, concurrently with the services as above, of the National Company as the latter may from time to time direct, such railway company or companies, system or systems so electing the Managing Head.

2. PERIOD OF ENGAGEMENT. — The period of engagement hereby entered into shall extend for five years from the fourth day of October, 1928, and thereafter from year to year subject to termination as hereinafter provided.

3. REMUNERATION. — The remuneration of the Managing Head for the full and entire services to be performed from time to time, and for the full period of employment under this agreement, shall be a fixed annual salary (irrespective of the magnitude or extent of the work or duties to be performed from time to time and without any extra fees or remuneration of any description) of Seventy-five Thousand Dollars (\$75,000.00) per annum, payable in equal monthly instalments on or about the first day of each month but not in advance; it being understood and agreed that the monthly payments of the fixed annual salary of Seventy-five Thousand Dollars (\$75,000.00), hereunder for the period beginning the fourth day of October, 1928, and ending the third day of October, 1929, having been made immediately before the delivery of this agreement, the receipt whereof is hereby acknowledge by the Managing Head.

4. GENERAL DUTIES. — The Managing Head shall diligently and faithfully perform to the best of his skill and ability all duties that may devolve upon him by virtue of this agreement, and shall use all reasonable means to preserve, promote and extend the interests entrusted to him.

5. EXPENSES. — The Managing Head shall, subject to the by-laws, rules and regulations applicable, be entitled to be paid all reasonable out-of-pocket expenses incurred in connection with the duties of his office or offices.

6. **TERMINATION OF AGREEMENT.** — This agreement may be terminated at any time during the period thereof upon notice in writing from the National Company to the Managing Head for or on account of malfeasance of office on the part of the Managing Head (without any right or claim whatever on the part of the Managing Head) for any compensation by
10 reason or on account of any such termination; and this agreement may be terminated effective on the Third day of October in any year, after the Third day of October, 1933, upon twelve months' notice in writing given in advance of the date of such termination from either party hereto to the other party hereto without any right or claim on the part of either such party against the other party for any compensation by reason or on account of such termination.

20 7. **SUPERSESION OF AGREEMENT DATED SEPTEMBER 2ND, 1925.**

The agreement dated the second day of September, 1925, made and entered into between the National Company and the Managing Head for the employment by the former of the latter to serve for and during the period of five years from the fourth day of October, 1925, as President and Chairman of the National Company and of the various constituent and subsidiary companies comprised in its system, and in such capacity to serve as the directing head of all railways, steamships and other works, undertakings and enterprises controlled or owned by the Govern-
30 ment of Canada is hereby cancelled and superseded as and from the fourth day of October, 1928, in as full force and effect between the parties thereto as if the said agreement in the first instance under the terms thereof terminated on the third day of October, 1928.

IN WITNESS WHEREOF the parties hereto have executed this agreement.

40 SIGNED, Sealed and Delivered) Canadian National
by the National Company in) Railway Company.
the presence of —)
) (Signed) E.R. Decary,
) Director.
Seal)
) (Signed) R.P. Ormsby,
) Secretary.
SIGNED, Sealed and Delivered)
by the Managing Head in the)
presence of —) (Signed) W.H. Thornton.
Seal.
(Signed) R.P. Ormsby.

Extract from Minutes of meeting of Board of Directors of the
Canadian National Railway Company, held on
the 23rd day of September, 1929.

10 THAT WHEREAS the system of the Canadian National
Railway Company and the system of the Canadian Northern
Railway Company together with such other railways, merchant
marine, works, undertakings and enterprises owned or controlled
by the Government of Canada and entrusted pursuant to the pro-
visions of the Canadian National Railways Act to the manage-
ment and operation of the Canadian National Railway Company,
are being managed and operated, co-ordinated the one with the
other, as a National system;

20 AND WHEREAS Major General Sir Henry Worth
Thornton, K.B.E., by appointment and agreement has assumed
for the period of three years from the Fourth day of October,
1922, the duties of Managing Head of the co-ordinated railway
system, above referred to;

30 AND WHEREAS Major General Sir Henry Worth
Thornton, K.B.E., was by resolution, of the Board of Directors
of the Canadian National Railway Company, passed at a meeting
of the said Board held on the Second day of September, 1925,
duly elected President and Chairman of the said Company for
and during the period of five years from the Fourth day of Oc-
tober, 1925, and thereupon by appointment and agreement has
assumed for the period of five years from the Fourth day of Oc-
tober, 1925, the duties of Managing Head of the co-ordinated
railway system, above referred to;

40 AND WHEREAS Major General Sir Henry Worth
Thornton, K.B.E., having been duly elected, has during the pe-
riod from the Fourth day of October, 1922, to the present time
served, and is still serving, the Canadian National Railway Com-
pany, as President and Chairman thereof and has in such capa-
city and in the capacity of Managing Head of the co-ordinated
railway system, above referred to, rendered most satisfactory and
efficient services, preserving, promoting and extending the in-
terests concerned, and it is deemed expedient that in order to
further preserve, promote and extend the interests above referred
to that Major General Sir Henry Worth Thornton, K.B.E., be
elected President and Chairman of the Canadian National Rail-
way Company for a further period than that for which he was
elected under the resolution, of the Board of Directors of the
Canadian National Railway Company, above referred to;

UNANIMOUSLY RESOLVED:

10 (a) THAT the election of Major General Sir Henry Worth Thornton, K.B.E, as President and Chairman of the Canadian National Railway Company for and during the period of five years from the fourth day of October, 1925, by a resolution, of the Board of Directors of the said Company, passed at a meeting of the said Board held on the Second day of September, 1925, is hereby confirmed and that Major General Sir Henry Worth Thornton, K.B.E., be elected and is hereby elected President and Chairman of the Canadian National Railway Company for and during the period of five years from the Fourth day of October, 1928, and thereafter from year to year subject to the termination of his office as President and Chairman, aforesaid, as may, by agreement between him and the said Company, be provided for. and that he be paid a fixed annual salary of Seventy-five Thousand Dollars (\$75,000.00) for services in such capacity, including such other services as may from time to time under agreement be allotted to him

30 (b) THAT Canadian National Railway Company enter into an agreement of engagement of the said Major General Sir Henry Worth Thornton, K.B.E., as President and Chairman of the said Company upon terms and conditions generally in effect as in the draft agreement submitted herewith set out and contained.

(c) THAT E. R. Decary, Director of the Canadian National Railway Company, and the Secretary thereof, be and are hereby authorized to execute the agreement of engagement, above referred to, for and on behalf of the said Company; and to have the said Company's corporate seal affixed thereto.

CERTIFIED to be a true Extract.

40 (Signed) R.P. Ormsby,
Secretary.

Seal.

PLAINTIFF'S EXHIBIT P-3 AT ENQUETE

*Extract from Minutes of a Meeting of the Board of Directors
of Canadian National Railway Company.*

10 Held in the Company's Offices in the City of Montreal on Sep-
tember 23rd, 1929.

PRESENT:

20 SIR HENRY W. THORNTON
MR. DECARY
MR. MOORE
COLONEL TALBOT
MR. McDOUGALD
MR. GARDNER
MR. RAYSIDE
THE HON. EDWARD BROWN
MR. RATTENBURY

Mr. Ormsby acted as Secretary of the meeting.

30 RESOLVED that in the matter of the leasing of a suitable
residence for the use of the Chairman and President of the Com-
pany in Montreal, the resolution adopted by the Executive Com-
mittee in this respect at its meeting on September 17th is approv-
ed, and the Committee is hereby authorized to lease a suitable
and properly equipped residence for the use of the Chairman and
President of the Company under such terms and conditions as the
Committee may subsequently deem proper.

CERTIFIED to be a true Extract.
W. H. Hobbs
Assistant Secretary.

40

(SEAL)

Canadian National Railway Company
Statutes Incorporated Canada
1919 C-13

PLAINTIFF'S EXHIBIT P-28 AT ENQUETE

*Certified copy of Minutes of Meeting of the Board of Directors
of the Defendant Company.*

10 MINUTES OF MEETING OF THE BOARD OF DIRECTORS
OF THE CANADIAN NATIONAL RAILWAYS

Held in the Company's Offices in the City of Montreal on Monday,
September 23rd, 1929, commencing at 10.30 a.m.

PRESENT:—

20 SIR HENRY THORNTON, President, in the Chair,
MR. DECARY
MR. MOORE
COLONEL TALBOT
MR. MCDUGALD
MR. GARDNER
MR. RAYSIDE
HON. EDWARD BROWN
MR. RATTENBURY

Mr. Ormsby acted as Secretary of the meeting.

30 The following Vice-Presidents attended the meeting:—
Mr. Hungerford, Mr. Vaughan and Mr. Grant.

The minutes of the Directors' Meeting held on August 19th
were submitted and approved. There were submitted to the meet-
ing minutes of the Executive Committee meetings held on Au-
gust 26th, September 4th, September 11th and September 17th.
The said minutes were in all respects confirmed and approved,
40 except the last resolution passed on September 11th which was
rescinded and eliminated from the minutes.

THE CANADIAN NORTHERN RAILWAY COMPANY

1. Resolution No. 1 passed by the Executive Committee
on September 4th regarding the transfer of eleven decimal six
two acres formerly comprising station grounds at Forward, Sas-
atchewan, is hereby adopted as a resolution of the Board of
Directors of this Company.

THE GRAND TRUNK PACIFIC RAILWAY COMPANY

2. Resolution No. 2 passed by the Executive Committee on September 4th approving of the sale of Lots 18 and 19, Block 1, Registered Plan 4770, Townside of Biggar, Saskatchewan, is hereby adopted as a resolution of the Board of Directors of this
10 Company.

CANADIAN NORTHERN SYSTEM TERMINALS LIMITED

3. Resolution No. 3 passed by the Executive Committee September 4th, 1929, approving of the sale of No. 85 Strachan Street East, Hamilton, Ontario, is hereby adopted as a resolution of the Board of Directors of this Company.

CANADIAN NORTHERN SYSTEM TERMINALS LIMITED

20

4. Resolution No. 3 passed by the Executive Committee on September 11th approving of the sale of No. 59 Imperial Street, Hamilton, Ontario, is hereby adopted as a resolution of the Board of Directors of this Company.

CANADIAN NATIONAL ELECTRIC RAILWAYS

5. Referring to resolution passed by the Directors on January 18th, 1927, authorizing the abandonment of the Company's line between Weston and Woodbridge, Ontario, and the
30 sale of its right-of-way, there was submitted to the meeting a memorandum dated August 15th from Colonel F.F. Clarke advising that an offer has been received from the Hydro Electric Power Commission of Ontario to purchase the disused right-of-way in Lots 27 and 28, Concession B. Township of Etobicoke, and Lots 11 and 12, Concession 6. Township of York, containing an area of five decimal four two acres, for the sum of Four Hundred Dollars.

40

IT WAS UNANIMOUSLY RESOLVED .

THAT the offer to purchase as referred to above may be accepted.

CANADIAN NATIONAL ELECTRIC RAILWAYS .

6. Mr. W.A. Kingsland was unanimously elected Vice-President in place of Mr. A. E. Warren transferred to Winnipeg.

CANADIAN NATIONAL RAILWAY COMPANY

7. With reference to the power canal under construction by the Beauharnois Light, Heat & Power Company, between Lake St. Francis and Lake St. Louis, there was submitted to the meeting a memorandum dated September 16th from Mr. Hungerford (a) stating that the proposed canal would cross the Alexandria Subdivision of the National Railways diagonally about six miles from Valleyfield and that as a crossing at right angles is required by the Government diversion of the railway will be required and will involve the raising of grade and the construction of a lift bridge and (b) recommending that an agreement be entered into with the Power Company covering the conditions under which the proposed diversion might be made and providing (among other things) that the Power Company shall pay all construction costs and maintain the bridge for all time.

IT WAS UNANIMOUSLY RESOLVED

THAT such an agreement may be entered into in form approved by the Vice-Presidents of Operation and of Legal Affairs.

CANADIAN NATIONAL RAILWAY COMPANY

8. There was submitted to the meeting a memorandum dated September 17th from Mr. Hungerford recommending the purchase at an estimated cost of Forty Thousand Dollars of certain properties on Canning and Albert Streets, Montreal, partly required in connection with the new Terminals the expectation being that the remainder can be sold for approximately Twenty Thousand Dollars. The purchase of said properties was unanimously authorized.

CANADIAN NATIONAL RAILWAY COMPANY

9. There was submitted to the meeting a memorandum dated September 23rd from Mr. Hungerford recommending that an agreement be made with the Imperial Oil Company, Limited, in connection with an easement to lay eight inch oil pipes on certain railway property in Hamilton, the agreement to be for twenty-one years, renewable for a further similar term. The execution of an agreement in the general form submitted to the meeting was approved.

CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK WESTERN RAILROAD SYSTEM

10 10. There was submitted to the meeting a memorandum dated September 20th from Mr. Grant recommending that approval be given for the application in payment of the balance due to the Western Union Telegraph Company, namely Two Hundred and Forty-two Thousand Six Hundred and Thirty Dollars, in connection with agreements recently authorized of Two Hundred Thousand Dollars in the 1929 budget for an office building at Winnipeg and Forty-two Thousand Six hundred and Thirty Dollars out of the Two Million Dollars included in the budget for the Vancouver Hotel, such amounts not being required this year for the intended purposes. Such application was unanimously approved subject to confirming order-in-council.

20 CANADIAN NATIONAL RAILWAY COMPANY

11. There was submitted to the meeting a memorandum dated September 20th from Mr. Hungerford, with temporary report as to the condition of the Kent Northern lines, recommending that Thirty-nine Thousand Dollars be expended immediately to ensure safe operation during the winter and the spring, the main items being for rails and ties. The expenditure of said amount was unanimously authorized.

30 CANADIAN NATIONAL RAILWAY COMPANY

12. There was submitted to the meeting a memorandum dated September 16th from Mr. Hungerford recommending expenditures (estimated at less than Ten Thousand Dollars) on the acquisition of lots in St. Lambert required in connection with the improvement of the South Shore facilities. Expenditure of not exceeding Ten Thousand Dollars for the purchase of land referred to was authorized.

40 CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK WESTERN RAILROAD SYSTEM

13. With reference to the resolutions of the Executive Committee passed on June 10th regarding the grading for a yard for the General Motors Truck Company at Pontiac, there was submitted a memorandum dated September 18th from Mr. Hungerford recommending that the balance of the yard construction be completed at an estimated cost of One hundred and Six Thousand Five Hundred and Twenty-eight Dollars, such amount to be provided from the budget. The expenditure of said amount was approved.

CANADIAN GOVERNMENT MERCHANT MARINE, LI-
MITED CANADIAN TRAPPER, LIMITED

14. The meeting was informed that an offer of Eighteen
Thousand Pounds has been received from the Compania Naviera
Amaya for purchase of the "Canadian Trapper" and that ten-
10 ders for the purchase of said boat have been invited for to-day.

IT WAS UNANIMOUSLY RESOLVED

THAT unless another higher tender is received the boat
may be sold to the above named Company; and otherwise to the
highest suitable tenderer.

CANADIAN NATIONAL RAILWAY COMPANY

20 15. There was submitted to the meeting a memorandum
dated September 12th from Mr. Hungerford asking for approval
to the purchase of a piece of property at the southwest corner of
Cunningham and Nicholas Streets in Ottawa from the Basker-
ville Estate for Twenty-five Thousand Five Hundred Dollars.
Such purchase was unanimously approved.

CANADIAN NATIONAL RAILWAY COMPANY

30 16. The President explained the general position in re-
gard to the purchase of properties adjoining the entrance into the
Union Station at Ottawa and suggested that no purchases of such
property be made to the north of Willbrod Street. This was
unanimously agreed to.

CANADIAN NATIONAL RAILWAY COMPANY

40 17. There was submitted to the meeting a memorandum
dated September 17th from Colonel Clarke regarding the pro-
posed sale to the Sheridan Equipment Company at Leaside for
five thousand five hundred dollars of about forty thousand square
feet. For reasons concurred in by the Traffic and Operating De-
partments such sale was unanimously approved.

CANADIAN NATIONAL RAILWAY COMPANY
CANADIAN GOVERNMENT RAILWAYS

18. There was submitted to the meeting a memorandum
dated September 21st from Mr. Hungerford in regard to the
house owned by A.E. Card, Moncton, prior to the removal of em-

ployees from there to Montreal in 1923 and which house after being taken over by the Company was sold to another employee who cannot complete his remaining payments of one thousand two hundred and fifty dollars in monthly instalments. Mr. Hungerford's recommendation that with the approval of said employee the house may be sold for one thousand dollars cash to Mr. A.F. Ralph was unanimously approved.

CANADIAN NATIONAL RAILWAY COMPANY

19. There was submitted to the meeting a memorandum dated September 18th from Mr. Hungerford recommending that the National Railways facilitate so far as may be considered reasonable the plans of the City of Quebec in regard to a bridge across the St. Charles River at Quebec and the road south of the Bridge. The position on the map was explained by Mr. Hungerford and authority was given him to negotiate with the City; the result of his negotiations to be reported to the Directors before action is taken.

CANADIAN NATIONAL RAILWAY COMPANY

20. There was submitted to the meeting a telegram to the President from the Chairman of the Tuberculosis Sanitarium Committee in Prince Edward Island requesting a contribution. In view of the practice of the Directors not to make such contributions the request was declined with regret.

CANADIAN NATIONAL RAILWAYS

21. On the recommendation of the President

IT WAS UNANIMOUSLY AGREED

That Express franking privileges be cancelled by the National Railways and that no passes for such free service be granted in the future.

CANADIAN NATIONAL RAILWAY COMPANY

22. The President referred to the general right-of-way of the Southern New England Line and to the convenience and improved prices which would probably result if sales could be made piecemeal, without having to obtain any authority from the Courts and that to that end it would be advisable for such right-of-way to be purchased on behalf of the Company en block for

say two hundred and sixty thousand dollars or less, with the result that the nominal purchaser would be able from time to time to make sales at suitable prices on such terms and conditions as might be approved. Such an arrangement was unanimously authorized.

10 CANADIAN NATIONAL RAILWAY COMPANY

23. The President referred to the request that he should become a Director of The Royal Bank of Canada and to discussions by him with various Ministers on the subject and to his acceptance of the Directorship, after concurrence by such Ministers and the Executive Committee. The feeling of the meeting was that it is in the interests of the Company that the President should accept such Directorships.

20 CANADIAN NATIONAL RAILWAY COMPANY

24. There was submitted to the meeting a memorandum dated September 16th from Mr. Hungerford recommending the immediate construction of certain fruit and express warehouse facilities between Lusignan and Seigneurs Street, immediately south of St. James Street, Montreal, also a re-arrangement and extension of certain trackage adjacent to Bonaventure Station (involving the purchase of certain lots) at a total estimated cost of seven hundred and twenty-four thousand five hundred dollars, the funds to be provided by a revision of the General Budget, subject to approval by order-in-council.

Mr. Hungerford's recommendations were unanimously approved.

CANADIAN NATIONAL (WEST INDIES)
STEAMSHIPS, LIMITED

25. The President referred to discussions and correspondence with Baring Bros. of London as to the issue in London of bonds by the Canadian National (West Indies) Steamships, Limited, and the possibility of a tender being made by Barings.

IT WAS CONSIDERED

THAT it would be in the interests of the National Railways to arrange such a sale in London.

CANADIAN NATIONAL RAILWAY COMPANY

10 26. There was submitted to the meeting a memorandum dated September 18th from Mr. Hungerford recommending that the Company, as successor by amalgamations of the Canada Atlantic Railway Company, in accordance with agreement dated August 28th, 1905, convey to the Board of Trustees of Public School Section No. 2, Townships of Murchison and Lyall, Ontario, for a nominal consideration, about half an acre of land required for school purposes. The meeting was informed that the said area is subject to the Canada Atlantic Railway Company Mortgage dated May 18th, 1905, securing 4% Consolidated First Mortgage Sterling Bonds guaranteed by the then Grand Trunk Railway Company of Canada.

IT WAS UNANIMOUSLY RESOLVED

- 20 (a) THAT the transfer of the said area is hereby authorized;
- (b) THAT in the opinion of the Directors it is no longer necessary or expedient to retain the said area for the operation, maintenance or use of the Company;
- 30 (c) THAT the Trustees under the said mortgage are hereby requested to concur with the Company in effecting the said transfer and that the officers of the Company are hereby authorized to sign such certificates and other documents as may be necessary in this connection.

CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK WESTERN RAILROAD SYSTEM

40 27. There was submitted to the meeting a memorandum dated September 18th from Mr. Hungerford recommending the construction by the Grand Trunk Western Railroad Company at an estimated cost of seventy thousand dollars of a building adjoining the station at Pontiac to provide for additional facilities for railway business and for the American Railway Express Agency, each Company to pay interest on the cost of the part of the building used by it plus share of taxes, insurance, etc. Mr. Hungerford's recommendation was unanimously approved.

CANADIAN NATIONAL RAILWAY COMPANY

28. There was submitted to the meeting a memorandum dated September 20th from Mr. Robb recommending that an

arrangement be made with the Holland Reformed Immigration Aid Society and the Holland America Steamship Company for the recruiting and transportation to Canada of Dutch immigrants, and the establishing by the Railway Company of a credit fund not exceeding ten thousand dollars in all, to cover cost of transportation of its lines of settlers designated by the Association.

- 10 On account of the reasons given in the memorandum the making of an arrangement outlined therein with the above Society and Steamship Company was unanimously authorized, upon the understanding that the Steamship Company would in regard to ocean transportation costs make corresponding advances to those made by the National Railways, on the same general basis as approved by the Directors on August 19th in regard to other steamship and immigration companies.

20 CANADIAN NATIONAL RAILWAY COMPANY

29. After discussion

IT WAS UNANIMOUSLY AGREED

THAT the President should advise the Vice-Presidents in regard to discussions of the Directors and the Executive Committee about the writing of articles and making of public addresses by the Company's junior officers after approval from the head of a department.

30

CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK WESTERN RAILROAD SYSTEM

30. The President, on request, explained to the meeting that the National Railways had been approached in regard to the construction of a raised speedway from Detroit for about nine miles towards Pontiac over the Grand Trunk Western right-of-way and referred to certain preliminary proceedings taken in the City of Detroit towards the obtaining of the approval of the City to such a speedway.
- 40

The feeling was that under such circumstances the construction of such a speedway might be assisted.

CANADIAN NATIONAL RAILWAY COMPANY

31. There was submitted to the meeting a memorandum dated September 20th from Mr. D.C. Grant asking that authority be given for an issue of not exceeding sixty million dollars of the Company's bonds required to provide for certain expenditures.

IT WAS UNANIMOUSLY RESOLVED

10 THAT for the purpose of providing not exceeding sixty million dollars (less discount on the sale of the bonds below referred to) there may be created and issued on or before December 31st, 1929, not exceeding Sixty Million Dollars principal amount of the Company's bonds to bear interest at not exceeding five per cent per annum, payable half-yearly, the principal amount to be payable not later than forty years from the date of issue, subject to possible provisions for redemption in whole or part at a premium before the maturity date; the intention being THAT on the basis of an issue of sixty million dollars principal amount the proceeds (or some of them) of such bonds will be used in connection with all or some of the ten matters below referred to and to amounts equal more or less in each case, to the sums set opposite such items.

Item	Purpose	Statutory Authority	Amount
20	1. Purchase of properties of Quebec, Montreal & Southern Railway Company.	Cap. 15, 1929	\$6,000,000.00
	2. Purchase of properties of Quebec Oriental and Atlantic, Quebec & Western Railway Companies	Cap. 16, 1929	3,500,000.00
	3. Purchase of properties of Inverness Railway and Coal Company.	Cap. 13, 1929	375,000.00
30	4. Purchase of properties of Kent Northern Railway Company.	Cap. 14, 1929	60,000.00
	5. Re Northern Alberta Railways	Cap. 48, 1929	3,300,000.00
	6. Toronto Viaduct Scheme ...	Cap. 70, 1924 Cap. 28, 1925 Cap. 51, 1928 Cap. 73, 1929	232,516.03
40	7. Montreal Terminals	Cap. 12, 1929	7,300,000.00
	8. Branch Lines 1927-30	Caps. 12 to 26 both inclusive, 1926-27 and Cap. 23, 1929	1,400,000.00
	9. Branch Lines 1929-32	Caps. 18 to 22, 24 to 30 and 32 to 36 inclusive, 1929	7,310,609.60
	10. Budget Requirements 1929	Caps. 3 and 64, 1929	30,521,874.37
			<u>\$60,000,000.00</u>

except that the amount of bonds issuable under Item 6 may not be more than \$232,516.03 and that if less than Sixty Million Dollars of bonds be issued, reductions in one or more of such sums will be made.

10 THAT the chief conditions under which such bonds are issued will be endorsed thereon and that no trust mortgage or trust agreement with any trustee or otherwise will be entered into in regard thereto;

THAT such bonds will not be issued until approval by order-in-council is given to such issue and to the unconditional guarantee by His Majesty the King in the right of the Dominion of Canada of payment of the principal and interest of the bonds.

IT WAS FURTHER UNANIMOUSLY RESOLVED

20

THAT Mr. D.C. Grant, Vice-President of Finance, is hereby authorized to invite tenders for the purchase of not exceeding Sixty Million Dollars of said bonds from such banks, companies, firms or financial institutions as he may think advisable;

30 THAT all or part of such bonds may be sold after invitation for tenders; with the right to any successful tenderer, in case of an original purchase of less than all said amount, to purchase an additional amount of said bonds within, say, thirty or sixty days from the date of the original purchase.

THAT all matters and details in connection with the issue of the said bonds not in the above resolutions specified, including the amounts to be sold in the first instance and thereafter, may be approved from time to time by the Executive Committee which is authorized to give all such authorities as may seem required in connection with the issue and sale or pledge of all or part of said bonds.

40

CANADIAN NATIONAL RAILWAYS

32. THAT WHEREAS the system of the Canadian National Railway Company and the system of the Canadian Northern Railway Company together with such other railways, merchant marine, works, undertakings and enterprises owned or controlled by the Government of Canada and entrusted pursuant to the provisions of the Canadian National Railways Act to the management and operation of the Canadian National Railway Company, are being managed and operated, co-ordinated the one with the other, as a National system;

AND WHEREAS Major General Sir Henry Worth Thornton, K.B.E., by appointment and agreement has assumed for the period of three years from the Fourth day of October 1922, the duties of Managing Head of the co-ordinated railway system, above referred to ;

10 AND WHEREAS Major General Sir Henry Worth Thornton, K.B.E., was by resolution, of the Board of Directors of the Canadian National Railway Company, passed at a meeting of the said Board held on the Second day of September, 1925, duly elected President and Chairman of the said Company for and during the period of five years from the Fourth day of October, 1925, and thereupon by appointment and agreement has assumed for the period of five years from the Fourth day of October, 1925, the duties of Managing Head of the co-ordinated railway system, above referred to ;

20 AND WHEREAS Major General Sir Henry Worth Thornton, K.B.E., having been duly elected, has during the period from the Fourth day of October, 1922, to the present time served, and is still serving, the Canadian National Railway Company, as President and Chairman thereof and has in such capacity and in the capacity of Managing Head of the co-ordinated railway system, above referred to, rendered most satisfactory and efficient services, preserving, promoting and extending the interests concerned, and it is deemed expedient that in order to
30 further preserve, promote and extend the interests above referred to that Major General Sir Henry Worth Thornton, K.B.E., be elected President and Chairman of the Canadian National Railway Company for a further period than that for which he was elected under the resolution, of the Board of Directors of the Canadian National Railway Company, above referred to ;

UNANIMOUSLY RESOLVED :

40 (a) THAT the election of Major General Sir Henry Worth Thornton, K.B.E., as President and Chairman of the Canadian National Railway Company for and during the period of five years from the Fourth day of October 1925, by a resolution, of the Board of Directors of the said Company, passed at a meeting of the said Board held on the Second day of September, 1925, is hereby confirmed and that Major General Sir Henry Worth Thornton, K.B.E., be elected and is hereby elected President and Chairman of the Canadian National Railway Company for and during the period of five years from the Fourth day of October, 1928, and thereafter from year to year subject to the termination

of his office as President and Chairman, aforesaid, as may, by agreement between him and the said Company, be provided for, and that he be paid a fixed annual salary of Thousand Dollars (\$) for services in such capacity, including such other services as may from time to time under agreement be allotted to him.

10

(b) THAT Canadian National Railway Company enter into an agreement of engagement of the said Major General Sir Henry Worth Thornton, K.B.E., as President and Chairman of the said Company upon terms and conditions generally in effect as in the draft agreement submitted herewith set out and contained.

20

(c) THAT E.R. Decary, Director of the Canadian National Railway Company, and the Secretary thereof, be and are hereby authorized to execute the agreement of engagement, above referred to, for and on behalf of the said Company; and to have the said Company's corporate seal affixed thereto.

CANADIAN NATIONAL RAILWAYS

30

33. WHEREAS Major General Sir Henry Worth Thornton, K.B.E., has acceptably and with fidelity executed the duties of Chairman and President of the Company for nearly seven years, and WHEREAS a new contract is about to be executed between the aforesaid Major General Sir Henry Worth Thornton, K.B.E., and the Company contemplating the retention of his services for a protracted period, and WHEREAS it is considered just and proper by the Board of the Canadian National Railway to make some provision for the maintenance of the said Major General Sir Henry Worth Thornton, K.B.E., upon his retirement from active services or in event of his physical disability, BE IT RESOLVED that this Board records its opinion that a pension allowance equivalent to a payment of Thirty thousand dollars per annum, in twelve equal monthly instalments, as and when such retirement or disability becomes operative, is fair and reasonable, such payments to continue during his lifetime.

40

CANADIAN NATIONAL RAILWAYS

34. RESOLVED that in the matter of the leasing of a suitable residence for the use of the Chairman and President of the Company in Montreal, the resolution adopted by the Executive Committee in this respect at its meeting on September

17th is approved, and the Committee is hereby authorized to lease a suitable and properly equipped residence for the use of the Chairman and President of the Company under such terms and conditions as the Committee may subsequently deem proper.

NOTE: Item 33 above was rescinded by resolution passed by
10 the Board of Directors on January 19th. 1932.

CERTIFIED A TRUE COPY

W. H. Hobbs
Assistant Secretary.

(SEAL)

Canadian National Railway Company
Statutes Incorporated Canada
1919 C 13

20

PLAINTIFF'S EXHIBIT P-13(A) AT ENQUETE

*Certified copy of letter from Defendant to Deputy Minister
of Railways and Canals.*

CANADIAN NATIONAL RAILWAYS
Secretary's Department

R. P. Ormsby, Secretary.

Montreal, Que.

30

September 25th, 1929.

RPO:WS.
1500-1-11.

R.A.C. Henry, Esq.,
Deputy Minister of Railways and Canals,
Ottawa, Ontario.

Dear Sir,

40

Enclosed please find for the information of the Minister draft of the minutes of the Directors' Meeting held on September 23rd, 1929.

Yours very truly,

Certified to be a true copy of letter signed by R.P. Ormsby, Secretary or Henry Philips, Assistant Secretary.

W. H. Hobbs
Assistant Secretary.

DEFENDANT'S EXHIBIT No. 3 WITH PLEA

Copy of an Order of the Governor-In-Council (P.C. 2144)
P.C. 2144.

10

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 23rd October, 1929.

The Committee of the Privy Council have had before them a Report, dated 22nd October, 1929, from the Minister of Railways and Canals, representing:—

20 (a) That the Canadian National Railway Company, pursuant to a Resolution of its Board of Directors, passed at a meeting of the said Board of Directors, held on the Twenty-third day of September, 1929, as set out in the certified copy of an Extract from the Minutes of the said meeting of the said Board of Directors passing the same Resolution, hereto attached marked "A", duly elected Major General Sir Henry Worth Thornton, K.B.E., President and Chairman of the Canadian National Railway Company for and during the period of five years, from the Fourth day of October, 1928, and thereafter from year to year, subject to termination of his office as President and Chairman, aforesaid,
30 as may, by agreement between him and the said Company, be provided for, at a fixed annual salary of Seventy-five thousand dollars (\$75,000.00) for services in such capacity, including such other services as may from time to time under agreement be allotted to him.

40 (b) That the Canadian National Railway Company, pursuant to the Resolution of its Board of Directors, passed at a meeting of the said Board of Directors held on the Twenty-third day of September, 1929, as set out in the certified copy of an Extract from the Minutes of the said meeting of the said Board of Directors passing the said Resolution, hereto attached Marked "A", duly entered into an Agreement of Engagement, dated the Twenty-third day of September, 1929, with the said Major General Sir Henry Worth Thornton, K.B.E., an original of which Agreement of Engagement is hereto attached marked "B".

(c) That the said Major General Sir Henry Worth Thornton, K.B.E., has from the Fourth day of October, 1922, served, and is at present serving, as President and Chairman of the Can-

adian National Railway Company with duties of office or offices like as under the Agreement of Engagement, an original of which is hereto attached marked "B", set out or referred to, and has, from the Fourth day of October, 1925, served, and is at present serving, as Managing Head of the several companies, works, undertakings, enterprises (named or referred to in the said Agreement of Engagement) controlled or owned by the Government of Canada, all in the best interests of the said several companies, works, undertakings and enterprises

(d) That the election, by the Board of Directors of the Canadian National Railway Company, of the said Major General Sir Henry Worth Thornton, K.B.E., as President and Chairman of the Canadian National Railway Company as aforesaid, and his engagement under the Agreement of Engagement, an original of which is hereto attached marked "B", as President and Chairman of the said Company, with duties of office or offices as under the said Agreement of Engagement set out or referred to, are both deemed expedient in the best interests of the several companies, works, undertakings and enterprises in the said Agreement of Engagement named or referred to.

(e) That the engagement, by His Majesty, represented by the Minister of Railways and Canals, of Major General Sir Henry Worth Thornton, K.B.E., as Managing Head of the several companies, works, undertakings and enterprises (named or referred to in the Agreement of Engagement an original of which is hereto attached marked "B") controlled or owned by the Government of Canada, for a further period under an Agreement of Engagement, in terms and conditions as in the draft Agreement of Engagement hereto attached marked "C" set out and contained, is deemed expedient in the best interests of the several companies, works, undertakings and enterprises, in the Agreement of Engagement, an original of which is hereto attached marked "B", named or referred to.

The Minister submits the above and, on the advice of the Deputy Minister of Railways and Canals, recommends that the Agreement of Engagement, an original of which is hereto attached marked "B" be approved, sanctioned and confirmed, and as effective from the date of the beginning of the period thereof therein set out, by Your Excellency in Council; that authority be given for the entering into, by His Majesty, represented by the Minister of Railways and Canals, of an Agreement of Engagement, in terms and conditions as in the draft Agreement of Engagement hereto attached marked "C" set out and contained, and

as effective from the date of the beginning of the period thereof therein set out, and that authority be given to the Minister of Railways and Canals to execute and deliver the Agreement of Engagement accordingly.

10 The Committee concur in the foregoing recommendation and submit the same for approval.

(Sgd.) E. J. Lemaire,
Clerk of the Privy Council.

The Honourable
the Minister of Railways & Canals.

DEFENDANT'S EXHIBIT No. 4 WITH PLEA

20 *Copy of Agreement between His Majesty the King
and Sir Henry W. Thornton.*

THIS AGREEMENT made at Ottawa, in the Province of Ontario, this twenty-fifth day of October, A.D., 1929:

BETWEEN:

30 HIS MAJESTY THE KING, on behalf of the Dominion of Canada, herein represented by the Honourable the Minister of Railways and Canals (acting by virtue of an Order of the Governor in Council, P.C. 2144, dated the 23rd day of October, A.D., 1929), hereinafter called "His Majesty",

OF THE FIRST PART:

—AND—

40 MAJOR GENERAL SIR HENRY WORTH THORNTON, K.B.E., hereinafter called the "Managing Head",

OF THE SECOND PART.

WHEREAS the Canadian National Railway Company pursuant to a Resolution, of the Board of Directors of the said Company, passed at a meeting of the said Board of Directors held on the Twenty-third day of September, 1929, confirmed the election of the Managing Head as President and Chairman of the Canadian National Railway Company for and during the period of five years from the Fourth day of October, 1925, under a Re-

10 solution, of the Board of Directors of the said Company, passed at a meeting of the said Board of Directors held on the Second day of September, 1929, and elected the Managing Head President and Chairman of the Canadian National Railway Company for and during the period of five years from the Fourth day of October, 1928, and thereafter from year to year, subject to termination of his office as President and Chairman, aforesaid, as may, by agreement between him and the said Company, be provided for, at a fixed annual salary of Seventy five thousand dollars (\$75,000 00) for services in such capacity, including such other services as may from time to time under agreement be allotted to him;

20 AND WHEREAS the Canadian National Railway Company, pursuant to the said Resolution, of its Board of Directors, passed at a meeting of the said Board of Directors held on the Twenty-third day of September, 1929, duly entered into an Agreement of Engagement, dated the Twenty-third day of September, 1929, an original of which Agreement of Engagement is hereto attached marked "A", hereinafter referred to as the "Company's Agreement of Engagement";

30 AND WHEREAS His Majesty has by Order of the Governor in Council (P.C. 2144), dated the twenty-third day of October, 1929, duly approved, sanctioned and confirmed the Company's Agreement of Engagement and authorized the entering into on behalf of His Majesty with the Managing Head of a further Agreement of Engagement in terms and conditions hereinafter set out and contained and the Managing Head has agreed accordingly;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto have agreed as follows:—

40 1. ENGAGEMENT. — His Majesty hereby agrees to employ or cause to be employed the Managing Head to serve and the Managing Head hereby agrees to serve, as the directing head of the Canadian National Railway Company, the Canadian Northern Railway Company and the various constituent and subsidiary companies comprising the systems of these respective companies, and of the Canadian Government Merchant Marine Limited operating various steamships owned by individual companies, together with the Canadian Government Railways and together with such other works, undertakings or enterprises as may from time to time be controlled or owned by His Majesty and may by Order in Council be placed under the same management, but ex-

cepting any works, undertakings or enterprises which may at any time be withdrawn by His Majesty by Order in Council from any such management.

10 2. PERIOD OF ENGAGEMENT. — The period of engagement hereby entered into shall extend for five years from the Fourth day of October, 1928, and thereafter from year to year, subject to termination as hereinafter provided.

20 3. REMUNERATION. — The remuneration of the Managing Head for the full and entire services to be performed, from time to time, and for the full period of employment under this agreement, shall be a fixed annual salary (irrespective of the magnitude or extent of the work or duties to be performed from time to time and without any extra fees or remuneration of any description) of Seventy-five thousand dollars (\$75,000.00)
30 per annum, payable monthly, but not in advance, less the annual remuneration payable monthly by the Canadian National Railway Company to and receivable by the Managing Head under the Company's Agreement of Engagement during the continuance of the said Agreement of Engagement; it being hereby understood and agreed that the monthly payments, of the fixed annual salary of Seventy-five thousand dollars (\$75,000.00), hereunder, for the period beginning the Fourth day of October, 1928, and ending the Third day of October, 1929, have been made immediately before the delivery of this agreement, the receipt whereof is hereby acknowledged by the Managing Head, and it being
40 further understood and agreed that the monthly payments of the fixed annual salary of Seventy-five thousand dollars (\$75,000.00), hereunder, from and after the Fourth day of October, 1929, shall hereafter be deferred, each, for the period of one month, the date of the monthly payment for the month ending the Third day of November, 1929, being payable on or about the Fourth day of the following month, the date of the final monthly payment being subject to adjustment at the end of the period of employment hereunder

4. GENERAL DUTIES. — The Managing Head shall diligently and faithfully perform to the best of his skill and ability all the duties that may devolve upon him by virtue of this agreement and shall use all reasonable means to preserve, promote and extend the interests entrusted to him.

5. EXPENSES. — The Managing Head shall, subject to statutory or other lawful authority, applicable, be entitled to be paid all reasonable out-of-pocket expenses incurred in connection

with the duties of his office under this agreement, less out-of-pocket expenses payable by the Canadian National Railway Company to and receivable by the Managing Head under the Company's Agreement of Engagement in connection with duties of office or offices thereunder performed concurrently with duties of office hereunder; it being understood and agreed that accounts
10 of the Managing Head for out-of-pocket expenses incurred and payable in connection with duties of office or offices hereunder shall be rendered from time to time at such periods for vouchering and payment as His Majesty's Officers in control of such matters may require.

6. TERMINATION OF AGREEMENT. — This agreement may be terminated at any time during the period thereof upon notice in writing from His Majesty to the Managing Head for or on account of malfeasance of office on the part of the
20 Managing Head without any right or claim whatever on the part of the Managing Head for any compensation by reason or on account of any such termination; and this agreement may be terminated effective on the Third day of October in any year after the Third day of October, 1933, upon twelve months' notice in writing given in advance of the date of such termination from either party hereto to the other party hereto without any right or claim on the part of either such party against the other party for any compensation by reason or on account of such termination.

30 IN WITNESS WHEREOF the parties hereto have executed this agreement the date and year first above written.

SIGNED, Sealed and delivered)
by His Majesty in the)
presence of —) "Chas. A. Dunning"
"Geo. W. Yates") Minister of Railways
and Canals
40 Seal) "J. W. Pugsley"
Secretary of the Department
of Railways and Canals
SIGNED, Sealed and Delivered)
by the Managing Head in the)
presence of —)
"E. B. Hawken") "H. W. Thornton"

PLAINTIFF'S EXHIBIT P-20 AT ENQUETE

*Copy of letter exchanged between the late Sir Henry Thornton
and F. N. Beardmore.*

10

COIRIER'S GRAND HOTEL
Valescure — St. Raphael, A.M.

Private

Nov. 29th 1929.

Dear Sir Henry:

20 Since writing you on Nov. 3rd, I have received other en-
quiries for our house, and after re-considering the matter we
have decided to sell, provided, of course, that we can get a fair
price, as it looks now as if we would spend most of our time over
here in future. I therefore cabled asking if you were still open to
buy, and have just received your reply in the affirmative.

I have been told that vacant land on Pine Ave., and Red-
path lots, have sold this year at \$3.50 per foot. My property, in
which the house stands, consists of about 25,000 feet. Figuring
the land at this price, and the house at cost, which is much less
than today's "replacement value", it works out as follows:

30

Land, 25,000 feet at \$3.50 per ft.	\$ 87,500
House, Tennis Court, Walls, Fencing	215,000
Carpets, Rugs, Curtains, Furniture, Fix- tures, including Piano, Billiard Table, excepting a few heirlooms which we wish to keep	10,000
	<hr/>
	\$312,500

40 I am willing to accept for the above \$250,000.

I also own the vacant lot on the east side of the house, —
it consists of 8,700 feet. About 6 months ago I also had an offer for
this. I am now willing to sell it at \$3.50 per ft. viz. \$30,450.

I am sorry you are only going to be on this side of the
water for such a short time, as I suppose there will be no chance
of our meeting.

With kindest regards to Lady Thornton and yourself from us both.

Yours sincerely,

F. N. Beardmore.

- 10 P.S. The articles referred to above for \$10,000 do not include pictures, mirrors, ornaments, books, glass, china, linen, cutlery, silver. etc. The pieces of furniture referred to as heirlooms are 2 work tables, poker table, black lacquer table, 3 fire screens, and perhaps a few other things which my wife may wish to keep, including the things we sent out from Italy this year.

F.N.B.

Filed by H. F.

Seen by G. S.

20

PLAINTIFF'S EXHIBIT P-25 AT ENQUETE

*Copy of a letter from E. R. Decary to the late
Sir Henry Thornton.*

January 28, 1930.

30 Sir Henry Thornton,
President,
Canadian National Railways,
Montreal.

Dear Sir Henry :

I enclose herewith a report received from John S. Archibald, Architect of Montreal, in connection with the Fred Beardmore house which you occupy.

- 40 Mr. Archibald has gone through the whole of the house, and was very thorough in his examination of the same, with the exception of the plumbing, which could not be looked into unless the floors were taken up.

As you will notice by his report, he is rather doubtful as to the general condition of the pipes.

Should you decide to buy this house the whole interior of it would have to be gone over, repainted and redecorated, which would entail quite an expense.

As to the land, I enclose herewith a small plan of the whole Redpath Crescent Subdivision. Mr. Beardmore, when he purchased his property in 1913 which was then the height of the real estate boom in Montreal, paid \$2.00 per foot. The same price was paid at that time by Mr. Lyman who owns Subdivision No. 86. The property remained inactive from 1915 until last winter, 10 when several sales were put through and quite a building program was carried out. The prices paid during the past year are as follows: Subdivisions 96, 97 & 98 sold to J. B. Fellows for \$2.00 per foot, Subdivision 99, being the last sale, sold to Charles T. Ballantyne for \$2.25 per foot, Subdivision 100 was bought by C. B. Fetherstonhaugh for \$2.00 per foot, Subdivisions 101 & 102 was bought by Dr. W. H. Chase for \$1.60 per foot and Lots 111, 112, 118 & 119 were bought by Mrs. C. A. Hodgson for \$1.50 per foot. No sale has taken place at a higher price.

20 Considering the original cost of Mr. Beardmore's house and its present state and the amount that you would have to spend to put it in liveable order, and, also, taking into consideration the price of \$2.00 per foot for the land, which is now the prevailing price in that district, I am of the opinion that \$150,000.00 is a very good price to offer for this property, and that should Mr. Beardmore accept the same you would be paying what I would consider full value for his property I do not consider that Beardmore's land is worth \$2.00 per foot, unless you could sell 30 it by small portions, and in that case the house would have to disappear. Moreover, the demand for that class of house is becoming less every day, and there are quite a few houses of that kind in that district which are now for sale, including Sir Mortimer Davis' house, and probably Sir Frederick Williams-Taylor's.

I may remind you that within the last two years Senator Raymond purchased Hon. Rodolph Forget's house, for which he paid \$110,000.00, including all the furnishings, which alone, cost 40 Mr. Forget more than \$75,000.00.

Yours very truly,

ERD/BMR.

President.

PLAINTIFF'S EXHIBIT P-17 AT ENQUETE

Copy of letter from F. N. Beardmore to Royal Trust Company.

Feb. 13th, 1930.

10

The Royal Trust Co.
Montreal.

Re: Pine Ave. House and Property

Dear Sirs,

Sir Henry Thornton wants to buy this property, he has been negotiating with me direct for some time, and I expected that the deal would have been closed over a month ago, but now it looks as if we might not be able to agree on the price; so I wish you to offer it for sale elsewhere, and I will put it in your hands on the condition and understanding that you may offer it to anyone except Sir Henry Thornton, and that if he makes enquiries you will refer him to me so that I can deal with him direct, and that if I sell to him you would not expect to get a commission — Sir Henry's lease expires August 1st, but in case of a sale I can get possession by giving him 3 months notice. The land on which the house stands consists of about 25,000 feet. It being a choice corner lot, next to Park property, which can never be built on, I consider is worth \$3.50 per foot.

30

A conservative valuation of the property is as follows:

Land 25000 feet at \$3.50 per foot	\$87,500.
House, tennis court, walls, fencing, etc	225,000.
Carpets, Rugs, Curtains ,furniture, fixtures, including piano, billiard table, etc. all furniture except a few pieces of old family furniture which we wish to keep	10,000.
	<hr/>
	\$322,500.

40

\$225,000. is the cost price of the house, etc. built in 1913—it could not be replaced today at anything near that figure — as there are steel beams, copper roof and first floor is all reinforced concrete.

Enclosed find picture and printed description of the house — it is the only one I have so please take care of it—
For all the above, viz.

House, land, furnishings, fixtures, etc. I am willing to take \$250,000.00 say — \$50,000. cash and \$200,000. on mortgage at 6%, but if it is impossible to get this figure I might be willing to accept a little less if it would make prompt sale. Therefore please submit by cable any reasonable offer you may get near this figure.

- 10 Also Town lots # 44 and 45 — the vacant land on East side between my house and the Colville's. It consists of about 8,700. feet — I am willing to sell this piece of land with the other property at \$3.00 per foot — say \$26,000. but I will not sell it without the other property or until the other property is sold and then I would ask \$3.50 per foot. Please bear this in mind and do not offer it separately until the other is sold.

I think it would be advisable to put up on the house at once, a sign board with "For Sale" on it—

20

On receipt of this letter or soon afterwards please cable me what your prospects are of making sale and price you think you can obtain.

Your prompt and careful attention to the above will greatly oblige.

Yours very truly,

(Signed) F. N. Beardmore

30

PLAINTIFF'S EXHIBIT P-18 AT ENQUETE

Copy of letter from Royal Trust Company to F. N. Beardmore.

THE ROYAL TRUST COMPANY
Executors and Trustees

40 Confidential
F.N. Beardmore, Esq.
Coirier's Hotel,
Valescure,
St. Raphael,
France.

Montreal, Fifth March 1930.

Dear Sir,

We acknowledge receipt of your letter of the 13th of February relative to your property on Pine Avenue the contents of which we have carefully noted.

As instructed we have erected an attractive 2' x 3' enamelled iron "For Sale" sign on the property and have informed several other responsible agents that the property is available for purchase. We will do our utmost to interest prospective purchasers in the property.

10 We are sorry we cannot express any definite opinion as to how soon a sale is likely to be effected, or what price is likely to be obtained. Real Estate in Montreal has been very quiet since the first of the year and while there is generally a fair demand for moderate priced houses the more valuable properties, such as yours, are not easily disposed of. As requested we cabled you our views to this effect.

20 The largest sale of residential property that has taken place recently is that of the J.K.L. Ross house on Peel Street to Mr. Killam of the Royal Securities Corporation. This house was valued by the Trustees at about \$500,000.00 but we understand that the sale went through to Mr. Killam at \$250,000.00.

30 There are at present quite a number of high-class houses offered for sale amongst them being the late Sir Mortimer Davis's house on Pine Avenue — Mrs. C. M. Hays' house on Mountain Street — the late F.W. Molson's house on Drummond Street — the late Andrew A. Allan's house on Stanley Street — the late Sir Edward Clouston's house on Peel Street, so that you will see at present the supply is much greater than the demand and the buyers for large houses such as these are very limited. The owners of some, if not all, of these houses will probably have to be satisfied to take considerably less than cost for them.

We believe the Sir Mortimer Davis house was valued at over \$500,000.00 and are led to believe that the Executors of the Estate would be glad to receive an offer of \$200,000.00 for it.

40 We do not wish to appear discouraging and will not lose any opportunity of interesting a buyer in your property, but merely wish to post you as fully as possible on the situation as it exists at present. It is quite true, however, that your house and property is more attractive to many people than the houses we have mentioned as being on the market for sale.

As mentioned in our letter of February 28th Mr. Russell Bell is no longer a prospect for your house as he has acquired the late Mrs. William Yuile's property on Redpath Street for \$90,000.00 cash and he plans rather extensive alterations and additions to it. You probably know that C.A. Hodgson purchased the Estate F. Howard Wilson's house on Macgregor Street in September last for \$150,000.00.

Yours faithfully,

L.S. Kelly
Sales Manager.

PLAINTIFF'S EXHIBIT P-1 AT ENQUETE

Extract by-law No. 15

CANADIAN NATIONAL RAILWAY COMPANY
BY-LAW No. 15

10

Entitled "A By-Law increasing the number of the Executive Committee from six to seven".

The Executive Committee shall, as and from this date, consist of seven members; and the Company's By-Law No. 11 is modified accordingly.

Passed and adopted as a by-law of the Canadian National Railway Company this 17th day of March, 1930.

20

WITNESS the seal of the Company.

GERARD RUEL
Vice-President.

(SEAL)
CERTIFIED A TRUE COPY

R.P. ORMSBY
Secretary

Assistant Secretary.

30

PLAINTIFF'S EXHIBIT P-4 AT ENQUETE

*Extract from Minutes of a Meeting of the Executive Committee
of the Directors of Canadian National Railways Company,
March 24th, 1930, approved at Directors' Meeting.*

Held in the Company's Offices in the City of Montreal on March 24th, 1930.

PRESENT:

40

SIR HENRY W. THORNTON
MR. RUEL
MR. HENRY
MR. DECARY
MR. RAYSIDE
MR. GARDNER
MR. SMART

Mr. Ormsby acted as Secretary of the meeting.

The President then left the meeting and reference was made to the resolution of the Directors passed on September 23rd,

1929, regarding the provision of an official residence for the President and to the unsuccessful efforts made to secure one.

IT WAS DECIDED

10 THAT in order to carry out the intention of the Directors as from the date of such resolution an adjustment should, when the residence is purchased, be made with the President in respect of rental, as of the date of his present contract.

Submitted and approved at Directors'
Meeting held April 28th, 1930.

CERTIFIED TO BE A TRUE EXTRACT.

W. H. Hobbs
Assistant Secretary.

(SEAL)

20 Canadian National Railway Company
Statutes Incorporated Canada
1919 C-13

PLAINTIFF'S EXHIBIT P-13(B) AT ENQUETE

*Certified copy of letter from Defendant to Deputy Minister
of Railways and Canals.*

CANADIAN NATIONAL RAILWAYS
Secretary's Department

30 R. P. Ormsby, Secretary.

Montreal, Que.
March 25th, 1930.

SSMcK/T.
1500-1-11.

V.I. Smart, Esq.,
Deputy Minister of Railways and Canals,
Ottawa, Ontario.

Dear Sir,

40 Enclosed. for the information of the Minister, please find draft of the Minutes of the Meeting of the Executive Committee held yesterday.

Yours very truly,

Enclosure.

Certified to be a true copy of letter
signed by R.P. Ormsby, Secretary, or
Henry Philips, Assistant Secretary.

W. H. Hobbs,
Assistant Secretary.

PLAINTIFF'S EXHIBIT P-19 AT ENQUETE

*Copy of letter from Royal Trust Company to F. N. Beardmore
with offer to purchase attached.*

10

EWING & EWING

Montreal April 15th, 1930.

The Royal Trust Company,
L.S. Kelly, Esq., Sales Manager,
Real Estate and Mortgage Dept.
Montréal.

Dear Sir:

20

re: 1415 Pine Avenue West
corner Cedar Avenue

We beg to advise you that we are authorized and hereby offer to purchase, subject to a good title, the property on which is erected the residence known as and bearing civic number 1415 PINE AVENUE WEST, with land and the buildings thereon erected, to include electric fixtures, bathroom fixtures, kitchen range, window shades, awnings, curtains poles and rods but without furniture contained therein. The lot forming PART CA-
30 DASTRAL 1755 ST. ANTOINE WARD, CITY OF MONTREAL, P.Q. and containing 25,000 square feet, more or less, at the price and on the following terms and conditions:

PRICE: \$155,000. (One hundred and fifty-five thousand dollars).

100,000. (One hundred thousand dollars payable in cash on execution of Deed of Sale.

40 55,000. (Fifty-five thousand dollars) payable within five years of date of Deed with interest on the unpaid balance at the rate of 6% per annum, payable semi-annually, said interest to commence from date of occupation.

The vendor shall allow the purchaser interest at the rate of 6% per annum on the cash payment from the date of deed to the date that occupation can be given.

- POSSESSION: on execution of Deed of Sale, with occupation not later than the 1st day of September next.
- ADJUSTMENTS: Taxes, general and special, if any, to be assumed by the purchaser from date of occupation.
- 10 COMMISSION: This offer is made subject to our sharing equally with you the usual commission of the Montreal Real Estate Board of the Montreal Board of Trade

This offer is made for prompt acceptance.

Very faithfully yours,

20 Ewing & Ewing
Per Royal H. Ewing

COPY

THE ROYAL TRUST COMPANY
Executors and Trustees

Montreal, Seventeenth April 1930.

30 Confidential
F.N. Beardmore, Esq.,
c/o Bank of Montreal,
Paris,
France.

Dear Mr. Beardmore,

40 We enclose a copy of an offer dated 15th April from Ewing & Ewing on behalf of a client of theirs to purchase your property No. 1415 Pine Avenue West for ONE HUNDRED AND FIFTY-FIVE THOUSAND DOLLARS (\$155,000.00) on the terms and conditions mentioned, and shall be obliged if you will let us know as soon as convenient whether, or not, this offer is acceptable to you. We do not know for whom Ewing & Ewing are acting and naturally they would not tell us. They have told us, however, that it is not Sir Henry Thornton.

You know the cost to you of the property and have your own ideas of its intrinsic worth as evidenced by the asking price and minimum price which you furnished to us. As, however, you have

been away from Montreal for some time it may interest you and assist you in arriving at a decision in this matter, if you intend to give a serious consideration to Ewing & Ewing's offer, to receive from us some information relative to the local real estate situation, particularly as it effects your property.

In our opinion there is no doubt that your house is situated in one of Montreal's best residential districts where prices are well established, but even this district is undergoing some changes which may effect values. Pine Avenue, which has been one of Montreal's finest residential streets, and which still is most attractive, is being used more and more to carry traffic from the North End of Montreal to Westmount and Notre Dame de Grace with the result that traffic on this street is increasing very much in volume and there is a demand for a bus service which may possibly be met at any time. This has a tendency to depreciate values on Pine Avenue at the present time and may be of even greater importance in the not distant future.

While the demand for moderate priced houses, centrally located, still keeps up, at the present time the supply of high priced residences such as yours exceeds the demand and offers-to-purchase as large as the one enclosed are few and far between. According to our information the following is a list of high priced houses in this district which are presently offered for sale with practically nobody, as far as we know interested as buyers.

Street	Owner	Assessed Value	Asking Price
3500 Drummond St.	Est. F.W. Molson	\$99,300.	\$125,000.
3481 do	Est. Lady H. Duff Reid	115,000.	125,000.
3526 Mountain St.	Mrs. C.M. Hays	79,000.	150,000.
3435 do	Est. A.J. Dawes	50,000.	65,000.
3560 Peel St.	Est. Sir Edward Clouston	100,000.	90,000.
516 Pine Avenue	Est. Sir Mortimer Davis	170,000.	300,000.
591 do	A.J. de Lotbiniere	48,000.	70,000.
3458 Redpath St.	Est. Mrs. G.W. Grier	88,000.	75,000.
3433 Stanley St.	Est. Andrew A. Allan	90,000.	115,000.
3531 Drummond St.	Est. J.M. McIntyre	389,505.	No price set
3554 do	Est. J.T. Davis	188,600	300,000.

Mr. I.W. Killam purchased some time ago vacant land running from Pine Avenue to Redpath Crescent, about opposite Mr. E.W. Beatty's house, and is now offering the Pine Avenue frontage for sale at \$1.25 per square foot.

The following are some of the sales which have been effected in this district within the last two or three years.

Street	Vendor	Purchaser	Assessed Value	Sold for
3471 Drummond St.	Lt. Col. K.M. Perry	M.W. Wilson	\$75,000.	\$99,000.
3421 do	Sir Wm. Stavert	Dr. Goodall	51,000.	40,000.
34 Macgregor St.	Est. Mrs. M.S. Adami	Edward Mackay	110,000.	75,000.
26 do	Est. F. Howard Wilson	C.A. Hodgson	70,000.	150,000.
148 McTavish St.	Est. Leslie H. Gault	G.H. Duggan	90,000.	81,000.
34 do	Mrs. M. Baumgarten	Sir Arthur Currie	114,000.	60,000.
706 Mountain St.	Mrs. G.R. Hooper	Mrs. F.L.C. Bond	44,000.	50,000.
704 do	Est. Chas. Fergie	Frank M. Ross	51,000.	50,000.
3561 Peel St.	D.C. Macarow	Robt. J. Magor	77,000.	62,500.
3490 do	Sir Lomer Gouin	L.O.P. Walsh	52,000.	45,000.
x3544 Peel St.	J.K.L. Ross	I.W. Killam	385,200.	250,000.
728 Pine Ave.	Gregor Barclay	Hugh Mathewson	30,000.	40,000.
540 do	Est. Mrs. E.H. Botterell	A.A. Morrice	47,500.	35,000.
15 Redpath Cres.	H.M. Marler	L.S. Colwell	45,000.	85,000.
3527 Redpath St.	Est. Mrs. Wm. Yuile	Russell D. Bell	75,000.	90,000.

xThis sale has not been completed. We understand it is virtually assured subject to negotiations as to some of the contents.

A sale of your property even at the price mentioned would benefit you from a revenue standpoint to the extent of about \$4500.00 per annum without taking into consideration any expenditure you may have to make in the matter of repairs, insurance, etc. This amount is arrived at as follows:—

Return from cash payment of \$100,000. if invested to yield say 5%			\$5,000.
6% interest on balance of sale \$55,000.			3,300.
			<u>\$8,300.00</u>
Present rental		\$6,000.00	
LESS			
Taxes	\$2,088.07		
The Royal Trust Co. fee for rent collection	120.00	2,208.07	3,791.93
NET GAIN			<u><u>\$4,508.07</u></u>

We are taking the liberty of making an inspection of your property in order to arrive at what we consider its present worth. Unfortunately this report will not be ready to accompany this

letter but will follow it shortly. We may say that our Valuation Department is making this valuation without any knowledge of the amount which is being offered for the property so that you may consider their report an independent and disinterested opinion which may be of value to you.

10 We have gone into the matter very carefully and at some length in the hope of being of assistance to you and we feel that the information in this letter may be useful whether or not you give consideration to the Ewing & Ewing offer.

With kind regards.

Yours faithfully,

Ross Clarkson
Assistant General Manager.

PLAINTIFF'S EXHIBIT P-20 AT ENQUETE

20 *Bundle of correspondence consisting of copies of Cables exchanged between the late Sir Henry Thornton and F. N. Beardmore.*

ANGLO-AMERICAN CABLEGRAM

Montreal May 19 1930

Henthorn
London

30 Please find out from Bank of Montreal Waterloo present address Fred N Beardmore and cable him following quote Will you consider \$175,000 cash for your house excluding lot next door Would appreciate favour of cable reply Am sending this message through our London office as dont know your immediate address end quote

Charge President's Office.
Canadian National Railways,
Montreal, Que.

Seen by G. S.

CANADIAN PACIFIC RAILWAY
COMPANY'S TELEGRAPH

40

TELEGRAM

May 22 1930

LCO Henthorn
Montreal

Will accept 175000 provided only you take furnishings previously offered at 10000 stop Royal Trust negotiating at higher price with definite prospect of sale therefore obliged to make this offer subject being unsold.

Beardmore

Seen by G. S.

ANGLO-AMERICAN CABLEGRAM

Montreal May 26 1930

10 Beardmore
Seldons Court
Sanderstead
Surrey

20 Answer your cable twenty second delayed account absence from
Montreal I accept your offer of one hundred and seventy five
thousand dollars for your property in Montreal excluding the lot
east of the house and ten thousand dollars additional for the fur-
nishings which I understand include furniture carpets rugs cur-
tains and hangings but exclude china glassware and silver and
30 personal articles I also understand there will be no charge for
dilapidations or reparations to the property and furnishings con-
tained therein I to be responsible only for breakages and loss of
china and silverware I have said nothing to Royal Trust and will
be obliged if you will indicate with whom I should deal here in
regard payments and details. There is no reason why you should
inconvenience yourself in hurrying back Canada to complete de-
tails unless you wish as I will be glad to meet your wishes in that
respect I will make immediate payment of entire sum involved
and if it would be more convenient for you to let things stand as
30 they are until early autumn it would suit me just as well as I
shall have to go west first July and will not be back until about
first September In other words what I mean is apart from main
question of payments and possession which will be arranged at
once you can suit yourself Kindest regards

40 Charge President's office,
Canadian National Railway,
Montreal Que

Thornton

Seen by G. S.

Deferred rate

Ottawa Ont May 27 1930

Beardmore
Seldons Court
Sanderstead
Surrey

10 I think we understand each other entirely in regard to Property
I will be in Ottawa for couple of days and immediately on my
return will close matter with Royal Trust

Thornton

Deferred rate.

20 Charge President's Office,
Canadian National Railways,
Montreal.

Seen by G. S.
Filed by H. F.

Croydon May 27 1930

Henthorn
Montreal

30 Cable received stop Dont understand what you mean by no
charge for dilapidations or reparations to property and furnish-
ings but I accept your offer assuming you take them in present
condition and nothing more for me to pay and that personal ar-
ticles include all indicated in my letter of November twenty ninth
stop Have advised Royal Trust stop Please take possession
immediately and pay Royal Trust stop Many thanks for
your very kind thoughtful offer allowing personal things to re-
main as they are until autumn Kindest regards

Beardmore

40 Seen by G. S.

PLAINTIFF'S EXHIBIT P-21 AT ENQUETE

Copy of letter from Royal Trust Company to E. R. Decary.

10

THE ROYAL TRUST COMPANY
Executors and Trustees

Montreal, 31st May 1930.

E. R. Decary, Esq., N.P.,
134 St. James Street,
Montreal.

re: F.N. BEARDMORE SALE TO
SIR HENRY THORNTON

Dear Sir,

20

Sir Henry Thornton has agreed to purchase Mr. Beardmore's property on Pine Avenue at a price of \$175,000. payable cash on the signing of the Deed of Sale. He has also agreed to purchase the contents at a price of \$10,000. However, certain articles are not to be included in the sale; these are referred to in a letter from Mr. Beardmore to Sir Henry Thornton, dated 29th November 1929, and the paragraph relative thereto reads as follows:—

30

“The articles referred to above for \$10,000. do not include pictures, mirrors, ornaments, books, glass, china, linen, cutlery, silver, etc. The pieces of furniture referred to as heirlooms are 2 work tables, poker table, black laquer table, 3 fire screens, and perhaps a few other things which my wife may wish to keep, including the things we sent out from Italy this year.”

40

Sir Henry Thornton advises us that he desires you to prepare the required Deed of Sale and we presume you will communicate with him in order to ascertain what his wishes are regarding a report on title.

For your information we enclose the following documents.

1. #10722 Acte de Depot by Mrs. K.M.D. Hustwayte of Power of Attorney from F.N. Beardmore to The Royal Trust Co., 20th March 1929, E.W.H. Phillips, N.P.
2. #13521 Signification of Transfer by J.J. Carrick to Lady C. Dow widow of Sir J. Hickson upon F.N. Beardmore. 13th January 1914, E. Cholette, N.P.

3. #10035 Partial Acquittance by F.R. Redpath, H. R. Drummond and G. Hyde to J.J. Carrick, 21st July 1911, H.M. Marler, N.P. Regd. 39150
4. #11493 Transfer by J.J. Carrick to Lady C. Dow widow of late Sir J. Hickson, 3rd October 1913, H. M. Marler, N.P. Regd. 156079
- 10 5. #5521 Transfer by J.J. Carrick to Lady C. Dow widow of late Sir J. Hickson, 29th December 1913, D.M. Rowat, N.P. Regd. 156520
6. #14524 Sale by Redpath Heights Ltd. to F.M. Beardmore, 14th December 1920, H.M. Marler, N.P. Regd. 167107
7. #9980 Sale by J.J. Carrick to F.N. Beardmore, 28th June 1911, H.M. Marler, N.P., Regd. 150961
8. #28986 Sale by F.R. Redpath et al to J.J. Carrick, 9th November 1910, W de M. Marler, N.P.
- 20 9. #14341 Sale from J.J. Carrick to Redpath Heights Ltd. 22nd March 1915, J.A. Cameron, N.P. Regd. 158485
10. #34096 Deed of Sale from J.J. Carrick to G.A. Grier, 3rd February 1914, R.A. Dunton, N.P., Regd. 156883
11. #14525 Release of Servitude by Redpath Heights Ltd. in favour of property of F.N. Beardmore, 14th December 1920, H.M. Marler, N.P. Regd. 167108
- 30 12. #5193 Signification of Transfer by J.J. Carrick to Lady C. Dow, widow of late F.N. Beardmore, upon F.N. Beardmore, 10th October 1913, D. M. Rowat, N.P.
13. Declaration by Redpath Heights Ltd. and F.N. Beardmore, H.M. Marler, N.P., #14526, 14th December 1920.
14. Report on title 27th October 1911
15. 3 Certificates of Search, 2nd March 1929, 2nd October 1913 and 3rd May 1919

40 It will be in order for you to have the certificate of search continued to date. All adjustments will be made as at the signing of the Deed of Sale. Among the documents forwarded herewith is an Acte of Depot of a Power of Attorney from Mr. Beardmore in our favour, dated 20th March 1929. Would you be kind enough to advise us immediately if this power is sufficient for present purposes.

Yours faithfully,

G. Stuart,
Assistant Manager,
Real Estate and Mortgage Dept.

DEFENDANT'S EXHIBIT No. 6

Certified Extract from the Minutes of a Meeting of the Executive Committee of the Directors of the Defendant.

10

Held in the Company's Offices in the City of Montreal on June 16th, 1930.

20

RESOLVED that the Company rent from GEORGE H. SEGUIN, for a term of ten (10) years, commencing on the first day of August, Nineteen hundred and thirty (1930), and expiring on the first day of July, Nineteen hundred and forty (1940), that certain house bearing No. 1415 Pine Avenue West, in the City of Montreal, for an annual rental of FIFTEEN THOUSAND SEVEN HUNDRED AND TWENTY-FIVE DOLLARS (\$15,725.00) payable quarterly on the first days of February, May, August and November of each year, the first payment to become due on the first day of November next (1930) and subject to the following conditions on the part of the Company, namely:—

To keep the house in good order of repairs during the entire term of the lease;

30

To use the premises as a private residence only, and for no other purposes;

To pay all taxes and assessments, general or special, or of any nature whatsoever which may be imposed on said property during the term of the lease.

CERTIFIED TO BE A TRUE EXTRACT
R. P. Ormsby,
Secretary.

40

(SEAL)
Canadian National Railway Company
Statutes Incorporated Canada
1919 C 13

PLAINTIFF'S EXHIBIT P-5 AT ENQUETE

*Extract from Minutes of a Meeting of the Executive Committee
of the Directors of Canadian National Railway Company,
June 16th, 1930, approved at Director's Meeting,
August 19th 1930.*

10 Held in the Company's Offices in the City of Montreal on June
16th, 1930.

PRESENT:

SIR HENRY W. THORNTON
MR. RUEL
MR. SMART
MR. HENRY
MR. DECARY
MR. RAYSIDE
MR. GARDNER

20

Mr. Ormsby acted as Secretary of the meeting.

RESOLVED that the Company rent from GEORGE H.
SEGUIN, for a term of ten (10) years, commencing on the first
day of August, Nineteen hundred and thirty (1930), and expir-
ing on the thirty-first day of July, Nineteen hundred and forty
(1940), that certain house bearing No. 1415 Pine Avenue West,
in the City of Montreal, for an annual rental of FIFTEEN
THOUSAND SEVEN HUNDRED AND TWENTY-FIVE
30 DOLLARS (\$15,725.00), payable quarterly on the first days of
February, May, August and November of each year, the first
payment to become due on the first day of November next (1930),
and subject to the following conditions on the part of the Com-
pany, namely:

To keep the house in good order of repairs during the
entire term of the lease;

To use the premises as a private residence only, and for
no other purpose;

40

To pay all taxes and assessments, general or special, or of
any nature whatsoever which may be imposed on said property
during the term of the lease.

Confirmed and approved at Directors'
Meeting held August 19th, 1930.

CERTIFIED to be a true Extract.
W. H. Hobbs,
Assistant Secretary.

(SEAL)
Canadian National Railway Company
Statutes Incorporated Canada
1919 C 13

PLAINTIFF'S EXHIBIT P-13(C) AT ENQUETE

*Certified copy of letter from Defendant to Deputy Minister
of Railways and Canals.*

CANADIAN NATIONAL RAILWAYS
Secretary's Department

10 R. P. Ormsby, secretary.

Montreal, Que.

June 17th, 1930.

SSMcK/T.
1500-1-11.

V.I. Smart, Esq.,
Deputy Minister of Railways and Canals,
Ottawa, Ontario.

Dear Sir,

20 Enclosed, for the information of the Minister, please find
draft minutes of the Executive Committee Meeting held on the
16th inst.

Yours very truly,

Enclosure.

P.S. You will remember our conversation regarding
one matter that came up at the meeting.

Certified to be a true copy of letter
signed by R.P. Ormsby, Secretary, or
Henry Philips, Assistant Secretary.

30

W. H. Hobbs,
Assistant Secretary.

DEFENDANT'S EXHIBIT D-2 AT ENQUETE

*Certified copy of a letter from E. R. Decary, President, The Title
Guarantee and Trust Corporation of Canada
to F. G. Donaldson.*

40 THE TITLE GUARANTEE AND TRUST CORPORATION
OF CANADA

134 St. James Street West

F. G. Donaldson, Esq.,
General Manager,
Montreal Trust Company,
Montreal.

Montreal, June 24, 1930.

Dear Mr. Donaldson:

Referring to our conversation of the other day in connec-
tion with the Beardmore property on Pine Avenue, I, or my no-

minee subject to my personal guarantee, will purchase the above property for \$185,000.00 cash, the property subsequently to be rented to the Canadian National Railways for ten years, at a price representing 8½% per year, net, outside of taxes of any kind, repairs and improvements.

10 You will make a loan for this amount of \$185,000.00 for ten years, at 6½%. the difference between the amount of interest paid and 8½% to be applied as a sinking fund on the amount of the loan. Your Company will be given a first mortgage on the property and an absolute transfer of the Canadian National lease as guarantee for the loan.

We should be in a position to complete this transaction during the first days of the month of July. Will you please advise if this is convenient to you, and oblige.

Yours truly,

20

(Signed) E. R. Decary,
President.

ERD:BMR.
Certified a true copy
Montreal Trust Company
W. J. Knublely,
Manager.

DEFENDANT'S EXHIBIT No. 5 WITH PLEA

Copy of letter from Mr. Decary to Montreal Trust Company.

30

(same as Defendant's exhibit D-2 at enquete see page 237)

DEFENDANT'S EXHIBIT D-3 AT ENQUETE

Copy of Mr. Donaldson's reply to Mr. Decary

HJK/EGB

June 25th, 1930

E. R. Decary, Esq.,
President,

40

The Title Guarantee and Trust Corporation of Canada,
134 St. James Street West,
Montreal, Que.

Dear Mr. Decary:

I have your letter of the 24th instant, in connection with the Beardmore property on Pine Avenue. The arrangement as outlined by you is quite satisfactory to us and we are prepared to make the loan for the amount stated, subject to satisfactory Title.

Yours faithfully,

F. G. Donaldson,
General Manager.

PLAINTIFF'S EXHIBIT P-16 AT ENQUETE

Copy of letter from E. R. Decary to L. V. Hummell.

July 4. 1930.

10 L. V. Hummell, Esq.,
Assistant to President,
Canadian National Railways,
Montreal.

Dear Mr. Hummell:

Will you have Sir Henry sign the attached letter, in case the Royal Trust Company, acting for Mr. Beardmore, insist that the sale be executed to Sir Henry as they are dealing with him.

20

Mr. Seguin is my nominee.

It is important that this letter should be signed by Sir Henry and returned to me within the next ten days.

Yours very truly,

ERD/BMR.

30

PLAINTIFF'S EXHIBIT P-15 AT ENQUETE

Letter from late Sir Henry Thornton to E. R. Decary.

Montreal, July 9th 1930.

E. R. Decary, Esq.,
134 St. James Street West,
Montreal.

40 Dear Sir:

I wish to advise you that I hereby transfer to George Henri Seguin all my rights in the option I have to purchase Fred N. Beardmore's property at No. 1415 Pine Avenue West, Montreal. and I would ask you to have the Deed of Sale made in the name of Mr. Seguin.

Yours truly,

H. W. Thornton

The Title Bond Guarantee and
Trust Company Ltd. of Canada
Received Jul. 14 1930

PLAINTIFF'S EXHIBIT P-22 AT ENQUETE

*Copy of letter from Royal Trust Co. to Messrs.
Meredith, Holden & Co.*

THE ROYAL TRUST COMPANY
Executors and Trustees

10 Montreal, Twenty-second, July 1930.

Messrs. Meredith, Holden, Heward & Holden,
215 St. James Street,
Montreal, Que.

Attention Mr. Ballantyne
RE: F.N. BEARDMORE—PROPOSED SALE
OF 1415 PINE AVENUE WEST

Dear Sirs:

20 Referring to our telephone conversation of this morning, we en-
close copy of a letter dated 9th July 1930, from Sir Henry Thorn-
ton to Mr. E.R. Decary transferring all his rights to purchase
the above mentioned property to Mr. George Henri Seguin.
We have been requested to grant the Deed of Sale to Mr. Seguin
and we wish to know if it would be in order for our client to
comply with this request on the strength of the attached letter.
We shall be glad to have your views at your early convenience.

Yours faithfully

30 GBtc/26
Enclosure

J.A. Sutherland.
Manager.
Real Estate & Mortgage Department.

PLAINTIFF'S EXHIBIT P-6 AT ENQUETE

*Extract from Minutes of a Meeting of the Executive Committee
of the Directors of Canadian National Railway Company,
August 7th, 1930, approved at Directors' Meeting,
August 19th, 1930.*

40 Held in the Company's Offices in the City of Montreal, August
7th, 1930.

PRESENT:

SIR HENRY W. THORNTON
MR. RUEL
MR. DECARY
MR. RAYSIDE
MR. HENRY

Mr. Philips acted as Secretary of the meeting.

IT WAS DECIDED that the approval of the Executive
Committee given on June 16th, 1930, to the lease to the Company

of a house (No. 1415 Pine Avenue West) as a residence for the President, as approved by the Directors September 23rd, 1929, be now entered in the minutes of the said meeting of June 16th, 1930.

10 Confirmed and approved at Directors' Meeting held August 19th, 1930.

CERTIFIED TO BE A TRUE EXTRACT.
W. H. Hobbs,
Assistant Secretary.

(SEAL)
Canadian National Railway Company
Statutes Incorporated Canada
1919 C 13

20

PLAINTIFF'S EXHIBIT No. 1 WITH
RETURN OF ACTION

Copy of Deed of Lease by G. Henri Seguin in favour of Canadian National Railway Company, Lionel Joron, N.P.

(SEAL)

30 ON THIS DAY, the eight of the month of August Nineteen hundred and thirty;

BEFORE M^{TR}E. LIONEL JORON, the undersigned Notary, duly admitted and sworn in and for the Province of Quebec, residing and practising in the City and District of Montreal; CAME AND APPEARED:—

G. HENRI SEGUIN, residing in the City of Montreal, Notary;

40

HEREINAFTER CALLED THE "LESSOR"

WHO doth hereby lease for the term of ten years (10) commencing on the first day of the Month of August, Nineteen hundred and thirty (1930), and expiring on the thirty-first day of July Nineteen hundred and forty (1940);

UNTO:—

CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated, having its Head Office in the City

of Montreal, herein acting and represented by Sir H.W. THORNTON, of the City of Montreal, President of the said Company, and R.P. ORMSBY, of the City of Montreal, its Secretary both hereunto duly authorized in virtue of a resolution of the Board of Directors of said Company passed at its meeting duly held at the City of Montreal on the fifteenth day of the month of March, Nineteen hundred and twenty-six (1926), copy of which resolution will remain annexed to the original hereof, after having been signed Ne Varietur by the undersigned Notary;

HEREINAFTER CALLED THE "LESSEE", hereto present and accepting for itself, its successors and assigns the following immoveable properties, namely:—

DESCRIPTION

20 "A" An emplacement fronting on Pine Avenue, in Redpath, in the City of Montreal, containing one hundred and fifty-five feet in width in Pine Avenue and being composed of:—

(a) Subdivisions forty-two and forty-three of original lot number one thousand seven hundred and fifty-five (1755-42 & 43), upon the official plan and book of reference of the St. Antoine Ward;

30 (b) The South-Westerly part of subdivision number forty-four of said original lot number one thousand seven hundred and fifty-five (1755-S.W. pt. 44), upon said official plan and book of reference, measuring twenty-five feet in width in front and in rear by the whole depth of said subdivision number forty-four, bounded in front, by Pine Avenue, in rear by subdivisions numbers eighty-one and eighty-two (81 & 82), on the North East side by the remainder of said subdivision forty-four and on the South-West side by subdivision forty-three of said official lot.

40 "B" An emplacement also situate in Redpath Crescent, in "Redpath", composed of:—

(a) The South-West portion of subdivision number eighty-one of said original lot number one thousand seven hundred and fifty-five (1755-S.W. pt. 81), containing twenty-three feet nine inches in front and six feet ten inches in width in rear by a depth of ninety-nine feet one inch in the South-West side line and one hundred and two feet eight inches in the North East side line, bounded in front by said Redpath Crescent, in rear by subdivision number forty-four of said original lot number one thousand seven

hundred and fifty-five, to the South-West by subdivision number eighty-two of said official lot and to the North-East by the remainder of said subdivision number eighty-one of said original lot number one thousand seven hundred and fifty-five;

- 10 (b) Subdivisions number eighty-two and eighty-three of said original lot number one thousand seven hundred and fifty-five, upon said official plan and book of reference, with the house thereon erected bearing civic No. 1415 of said Pine Avenue, whereof both gable walls are entirely built on the above described immoveables with which the Lessee declares itself content and satisfied.

CONSIDERATION

- 20 The present Lease is so made for and in consideration of the sum of one hundred fifty-seven thousand two hundred and fifty dollars (\$157,250.00) during the term of said lease to be accounted and reckoned from the first day of the month of August, Nineteen hundred and thirty (1930), and payable as follows:— Fifteen thousand seven hundred and twenty-five dollars (\$15,725.00) per year in and by forty quarterly, equal and consecutive payments of Three thousand nine hundred and thirty-one dollars and twenty-five cents (\$3,931.25) each payable on the first day of the months of February, May, August and November of each year, whereof the first payment will become due
30 on the first day of the month of November next (1930) and thus to continue up to and including the thirty-first day of the month of July Nineteen hundred and forty (1940).

CONDITIONS

The present Lease is so made subject to the following charges and conditions which are of the essence hereof and to the fulfilment whereof the Lessee binds and obliges itself, namely:—

- 40 1o. To pay the cost of this deed and a certified copy thereof for the Lessor;
- 2o. To pay the water tax and all other taxes and assessments general and special affecting said immoveables from this day and the proportion from this day of those for the current year as well as any and all instalments to become due from said date of any special assessments, payments whereof is spread over a term of years.

30. To execute all repairs of any nature whatever in the above described and presently leased premises and fire Insurance premiums.

10 40. To comply with the conditions and stipulations relative to the use of the premises as set forth in the title deeds of the Lessor, namely: "No building shall in any event be a tenement or apartment house, or be so constructed or divided within as to permit of its being occupied by two or more families having each a distinct portion of the building not communicating from within: Any building erected upon the said property must be used as a private residence only, or as the accessory of such, and not as a school, hospital, tavern or for any purpose of trade, business or manufacture, or for the purpose and business of any Corporation of a public character".

20 50. To leave and abandon the hereby leased premises at the expiration of the present lease in as good order and condition as they were at the time the Lessee took possession thereof.

30 60. To submit to all passive servitudes affecting the hereby leased property, with the right of exercising all active servitudes attached thereto, and generally to fulfill to the exoneration of the Lessor all obligations to which he may be bound under his deed of acquisition and to hold said Lessor harmless and indemnified in respect thereof.

WHEREOF ACTE:—

DONE AND PASSED at the said City of Montreal, and of record in the office of the undersigned Notary under the number fourteen thousand and sixty-nine of the Minutes of said Notary.

40 AND, AFTER DUE READING HEREOF the parties signed with and in the presence of the undersigned Notary.

(Signed) G.H. SEGUIN
" H.W. THORNTON President
" R.P. ORMSBY Secretary
" LIONEL JORON Notary

TRUE COPY of the original hereof remaining of record in my office.

Lionel Joron,
Notary.

Office of the Registration Division of Montreal

I, the undersigned, do hereby certify that this document was registered at full length, in this Office, at one o'clock fifty minutes, in the afternoon, on the fourteenth day of the month of August nineteen hundred and thirty, in Register D, Volume 242, Folio 34 under the number Two hundred fifty-four thousand, two hundred and fifty-three.

L. E. Larue
Deputy Registrar.

10

PLAINTIFF'S EXHIBIT No. 2 WITH
RETURN OF ACTION

*Copy of Deed of Loan by Montreal Trust Company in favour of
Georges Henri Seguin and Transfer of Lease by the latter
in favour of Montreal Trust Company,
Lionel Joron, N.P.*

20 (SEAL)

ON THIS DAY, the eight of the month of August Nineteen hundred and thirty.

BEFORE M^{TRE}. LIONEL JORON, the undersigned Notary, duly admitted and sworn in and for the Province of Quebec, residing and practising in the City and District of Montreal;
CAME AND APPEARED:—

30 MONTREAL TRUST COMPANY, a Corporation duly incorporated, having its Head Office in the City of Montreal, herein acting and represented by FREDERICK G. DONALDSON, residing in the City of Montreal, one of the Directors of the said Company, and by HENRY J. KNUBLEY, its Manager, both duly authorized for the purpose hereof, under By-Law Number twelve of the By-Laws of the said Company, certified true copy whereof will remain hereto annexed after having been signed "Ne Varietur" by the undersigned Notary and said F. G. DONALDSON, and HENRY J. KNUBLEY,

40

HEREINAFTER CALLED THE "LENDER",
OF THE ONE PART,

AND:—

GEORGES HENRI SEGUIN, residing in the City of Westmount, Notary,

HEREINAFTER CALLED THE "BORROWER"
OF THE OTHER PART,

WHO HAVE ENTERED INTO THE FOLLOWING AGREEMENT:—

ARTICLE FIRST:—The Lender hath agreed to lend to the Borrower the sum of One hundred and eighty-five thousand (\$185,000.00), which the Borrower acknowledges to have received from the Lender to his satisfaction, at the execution hereof, whereof quit.

10 ARTICLE SECOND:—This Loan shall bear interest from this day until repayment at the rate of six and one half per centum ($6\frac{1}{2}\%$) per annum.

ARTICLE THIRD:—The Borrower obliges himself to repay the said Loan to the Lender on the first day of the month of August Nineteen hundred and forty (1940), and not sooner, without the written consent of the Lender, and meanwhile to reduce the principal of the present Loan by repayments of not less than two per centum (2%) of the amount of the present loan; 20 such repayments to be made to the Lender half-yearly on the first day of the months of February and August in each year, whereof the first repayment shall become due on the first day of the month of February next (1931) with the interest payments and until such repayment to pay the interest thereon, to the Lender, half-yearly on the first day of the months of February and August of each year, the first payment of such interest to become due on the first day of the month of February next (1931).

ARTICLE FOURTH:—As security for the repayment of 30 the said sum of One hundred and eighty-five thousand dollars (\$185,000.00) and the interest thereon and also for the costs for the preservation or recovery of the debt, the Borrower affects and hypothecates, specially in favour of the Lender, the following property, to wit:—

“A” an emplacement fronting on Pine Avenue in “Redpath” in the City of Montreal, containing one hundred and fifty-five feet in width in Pine Avenue, and being composed:—

40 (a) Of subdivisions numbers forty-two and forty-three of the official subdivisions of lot number seventeen hundred and fifty-five, on the official plan and book of reference of the St. Antoine Ward, of the City of Montreal (1755-42 and 43), containing the said subdivision forty-two (42) a superficial area of five thousand four hundred and ten square feet and the said subdivision forty-three (43) a superficial area of six thousand one hundred and ninety-nine square feet, English Measure, and more or less.

(b) Of the South-Westerly twenty-five feet in width in front and in rear by the whole depth thereof of subdivision forty-four

of said official lot (1755-44), bounded in front by Pine Avenue, in rear by part of subdivisions eighty-one and eighty-two of said lot (1755-81 and 82) North-East by the remainder of said subdivision forty-four and south-west by subdivision forty-three of said official lot, and containing a superficial area of two thousand five hundred and one square feet.

10

“B” an emplacement in Redpath Crescent, in “Redpath”, in the City of Montreal, containing one hundred and forty-two feet nine inches in width in front, and one hundred and forty-seven feet five inches in width in rear, by a depth of eighty-four feet nine inches in the south-west side line and one hundred and two feet eight inches in the north-east side line, and containing a superficial area of thirteen thousand two hundred and three square feet, English Measure, and more or less, and being composed of:—

20

(a) The South-West portion of subdivision number eighty-one of the official subdivisions of lot number seventeen hundred and fifty-five (1755-81), on the official plan and book of reference of the St. Antoine Ward of the City of Montreal, containing twenty-three feet nine inches in width in front and six feet ten inches in width in rear, by a depth of ninety-nine feet one inch in the South-West side line and one hundred and two feet eight inches in the north-east side line, and containing a superficial area of fifteen hundred and twenty square feet; bounded in front 30 by Redpath Crescent, in rear by part of subdivision number forty-four of said lot number seventeen hundred and fifty-five, to the South-West by subdivision number eighty-two of said lot number seventeen hundred and fifty-five next immediately described, and to the North-East by the remainder of said subdivision number eighty-one,

40

(b) Subdivision number eighty-two of the official subdivisions of said lot number seventeen hundred and fifty-five (1755-82), on the said official plan and book of reference, containing sixty feet in width in front and fifty-five feet in width in rear, by a depth of ninety-one feet five inches in the south-west side line, and ninety-nine feet one inch in the north-east side line, and containing a superficial area of five thousand four hundred and thirty-three square feet; and

(c) Subdivision number eighty-three of the official subdivisions of said lot number seventeen hundred and fifty-five (1755-83), on the said official plan and book of reference, containing fifty-nine feet in width in front, and eighty-five feet seven inches in

width in rear, by a depth of eighty-four feet nine inches in the South-West side line and ninety-one feet five inches in the North-East side line, and containing a superficial area of six thousand two hundred and fifty square feet.

10 With the house thereon erected bearing civic No. 1415 of said Pine Avenue, whereof both gable walls are entirely built on the above described immoveables.

ARTICLE FIFTH:—Should any interest or principal payments remain unpaid at maturity the Lender may, at its option, exact the immediate reimbursement of the amount of the present loan, and in any event shall be entitled to interest thereon at the rate above mentioned from the date of maturity, said interest on overdue interest to be computed and compounded half-yearly as the interest on capital, as aforesaid, without any other notification or mise en demeure. The Lender shall, also, be entitled to
20 interest at the rate above stipulated upon any advances made by him for any purpose whatsoever.

ARTICLE SIXTH:—In the event of any anticipated reimbursement, voluntary or otherwise except such as are provided by Article Eighth, the Lender shall be entitled, as compensation, to an indemnity equal to six months interest on the amount reimbursed, at the rate stipulated for the Loan; but the Borrower renounces the right to make any such reimbursement before the
30 expiration of the term of the Loan.

ARTICLE SEVENTH:—Should the repayment be partial and made with monies borrowed for the purpose, the subrogated Creditor must acknowledge the priority of the debt of the present Lender for the portion not repaid.

All payments to be made hereunder shall be effected only in current money of Canada and not in paper or other representative of money (the benefit of which the Borrower formally renounces).
40

ARTICLE EIGHTH:—In case of a forced sale of the whole or any part of the hypothecated property, and as an indemnity for loss of interest from the date of adjudication to that of payment by Sheriff, Prothonotary, Syndic or Liquidator, the Lender will be entitled to an indemnity equal to six months interest at the above mentioned rate on the amount due at the time of the sale, in capital, interest costs and other accessories, as liquidated damages.

ARTICLE NINTH:—As security for the payment of the accessories of the Loan, such as insurance premiums, interest on overdue interest, advances made by the Lender and interest thereon, indemnity in case of prepayment, either voluntary or on account of forced sale, liquidated damages, costs and travelling expenses to attend judicial sale of property and any commission or percentage imposed by the Government, Sheriff or Syndic, which shall be borne by the Borrower, the Borrower specially hypothecates the above described property in favour of the Lender to the extent of the additional sum of Eighteen thousand five hundred dollars (\$18,500.00).

ARTICLE TENTH.—As additional security the Borrower obliges himself to insure against fire the buildings erected upon the hypothecary property in favour and in the name of the Lender, and to keep such insurance in force until the repayment of the Loan. This insurance shall be effected by the Lender, if the latter requires the same, with such Fire Insurance Company or Companies as it may name, and in any event shall be evidenced by the deposit with the Lender of the Policy or Policies, and each subsequent year by the delivery to the said Lender of the receipts for the renewal of such Insurance, at least twenty-four hours before the expiry thereof; the Policy or Policies of Insurance evidencing this insurance shall not have any co-insurance clause.

In any event, whether the Insurance be effected by the Borrower or by the Lender, the premium or premiums for the renewal of the insurance may be paid by the latter, and may in consequence, be added to the amount of the next interest payment, unless the Lender prefers to exact immediate payment thereof; And the Borrower covenants, binds and obliges himself to repay to the Lender all premiums of such insurance as the Lender may have paid to the insurance company or companies together with interest thereon at the rate of interest stipulated herein for the loan.

In case of loss by fire, the insurance money shall be paid to the Lender to the extent of its claim.

The Lender reserves the right to apply the Insurance money wholly or in part either in deduction of the debt or towards the reconstruction or repair of the hypothecated property, without, by the receipt of such monies, reducing or affecting its rights, claims, privileges and hypothecs in any way whatsoever.

ARTICLE ELEVENTH.—In the event of any tax being imposed by the Federal, Legislative or Municipal Authorities upon hypothecary debts, or the income thereof, the Borrower shall pay such tax in order that the Lender may receive the amount of its debt and the interest thereon, without any reduction.

10 ARTICLE TWELFTH.—For the execution of this Contract the lender elects domicile at its office in the City of Montreal, and the Borrower elects domicile at the office, in Montreal, of the Prothonotary of the Superior Court for said District.

This election of domicile shall be attributive of jurisdiction, in conformity with Article 85 of the Civil Code of Lower Canada; consequently, all notices, demands and suits in connection with this Loan may be given, made or taken at the covenanted domicile and before the Judge or Tribunal of such domicile. The Lender may also, without being bound thereto, serve
20 an additional copy of its demand at the known domicile of the Borrower at the latter's expense.

ARTICLE THIRTEENTH.—The amount of the present Loan shall be indivisible and may be claimed in its entirety from any heir, legatee, representative of the Borrower or subsequent purchaser in conformity with Article 1123 of the Civil Code of Lower Canada.

30 ARTICLE FOURTEENTH.—The title deeds of the hypothecated property shall remain in the hands of the Lender until complete repayment of the Loan.

The Borrower obliges himself to declare to the Lender, within the delay of one month from the date thereof, by supplying a duly certified copy thereof, any sale, total or partial, he may effect, of the hypothecated property, and on default of his thus making known such sale, as well as on default of the holder consenting in favour of the Lender an election of domicile in
40 conformity with Article Twelfth hereof, the Loan, in capital, interest, and indemnity, shall become exigible, at the option of the Lender. The loan shall also become exigible in the same manner should any hypothecary claims or rights be discovered other than those made known to the Lender prior in rank to the hypothec hereby created or should the Borrower or holder of any part of the hypothecated property permit it to deteriorate, or should he reduce the value thereof. The Lender is entitled to pay out of the present Loan all hypothecary claims or privileges prior to its

own, and for this purpose the amount of the present Loan is constituted a deposit in the hands of the Lender until the hypothecary situation is cleared.

ARTICLE FIFTEENTH.—The Borrower declares:—

10 (a) That he is purchasing for cash, free and clear of all encumbrances, the hereinabove described property from FREDERICK N. BEARDMORE and that his deed of acquisition will be registered forthwith.

(b) That his matrimonial status has not changed since he acquired the said immoveable; that he has married but once, and that his wife, JULIETTE BRODEUR, from whom he is separate as to property by contract of marriage passed before E.R. DECARY, Notary, is living.

20

ARTICLE SIXTEENTH —Should the Borrower or his representatives fail to pay at maturity, as hereinafter set forth, the taxes and assessments imposed against the hypothecated property, or to insure and keep insured, as hereinabove set forth, the buildings erected on said property, the Lender shall, in each case, have the right to exact, from the Borrower or his representatives, the amount of the said Loan then due in capital, interest and indemnity, without being bound to put the Borrower in default, and without any notification or mise en demeure.

30

ARTICLE SEVENTEENTH. — All acquittances and other documents in connection with the present Loan or incidental thereto, and to which the Lender may hereafter be required to become a Party, shall be executed before a Notary chosen by the Lender and at the Borrower's expense.

40

ARTICLE EIGHTEENTH. — The Borrower shall pay regularly all taxes and assessments, general and special, imposed on and affecting the hypothecated property and shall exhibit the receipts therefor to the Lender before the first day of the month of January, in each year.

ARTICLE NINETEENTH.—The Borrower shall pay all fees, legal and notarial, in connection with the present Loan, including a certified copy thereof for the Lender, registration costs and registration of notice of address of the Lender.

ARTICLE TWENTIETH.—Should the Borrower permit any privilege or liens of any nature to be registered against

the above described property, the present Loan shall become immediately exigible at the option of the Lender.

10 And, by these same presents, the Borrower, at the request of the Lender, doth hereby transfer to the latter, hereto present and accepting, as collateral security for the payment of said capital sum, interest thereon and accessories and the fulfilment of all his obligations hereunder, all his rights, title, privileges and actions under the terms of a Deed of Lease executed by him to CANADIAN NATIONAL RAILWAYS COMPANY, before LIONEL JORON, Notary, on the eighth day of August, Nineteen hundred and thirty, bearing No. 14069 of the Minutes of said Notary, with the right for said Lender more particularly, but without limiting the generality of the foregoing, to collect and receive all rents accruing therefrom from the first day of August, Nineteen hundred and thirty, full subrogation to that effect and to all rights existing in favour of said Borrower there-
20 under being hereby granted by the latter to said Lender as collateral security as aforesaid.

WHEREOF ACTE:—

DONE AND PASSED at the said City of Montreal and of record in the office of the undersigned Notary under the number fourteen thousand and seventy of the Minutes of said Notary.

AND, AFTER DUE READING HEREOF, the parties and the Intervenant signed with and in the presence of the un-
30 dersigned Notary.

(Signed) G. H. SEGUIN
“ Montreal Trust Company
“ F. G. DONALDSON Director
“ H. J. Knublely
Assistant General Manager
“ LIONEL JORON Notary

TRUE COPY of the original hereof remaining of record
40 in my office.

Lionel Joron,
Notary.

Office of the Registration Division of Montreal

I, the undersigned, do hereby certify that this document was registered at full length, in this Office, at twelve o'clock forty minutes in the afternoon, on the ninth day of the month of August nineteen hundred and thirty, in Register E, Volume 237, Folio 234 under the number two hundred fifty-three thousand eight hundred and ninety-six.

L. E. Larue,
Deputy Registrar.

DEFENDANT'S EXHIBIT D-1 AT ENQUETE .
*Certified copy of Deed of Sale by Frederick N. Beardmore
in favour of Georges Henri Seguin, Joron, N.P.*

10 ON THIS DAY, the eighth of the month of August Nineteen hundred and thirty.

BEFORE M^{RE}. LIONEL JORON, the undersigned Notary, duly admitted and sworn in and for the Province of Quebec, residing and practising in the City and District of Montreal.

CAME AND APPEARED:—

20 FREDERICK N. BEARDMORE, residing in the City of Montreal, Manufacturer, herein acting and represented by THE ROYAL TRUST COMPANY, a body corporate having its chief place of business in the City of Montreal, its duly appointed Attorney under Power of Attorney executed under private signature at Montreal on the fourth day of the month of May, Nineteen hundred and twenty-six (1926), and deposited of record amongst the Minutes of Edward W.H. Phillips, Notary, on the twentieth day of the month of March, Nineteen hundred and twenty-nine (1929), by Miss KATHERINE M.D. HUSTWAYTE, said THE ROYAL TRUST COMPANY herein acting and represented by ROSS CLARKSON residing in the City of Montreal, its Assistant General-Manager, and by GEORGE G.W. GOODWIN, residing in the City of Montreal, its Assistant-Secretary, both duly authorized to the effect hereof in virtue of By-Law Number fifteen (No. 15) of the By-laws of said Company, whereof a certified true extract remains hereto annexed as forming part hereof after having been signed NE VARIETUR by the said Officers and the undersigned Notary.

40 UNTO:—
HEREINAFTER CALLED THE "VENDOR"
Who doth hereby sell with legal warranty and clear of all encumbrances except the servitudes hereinbelow declared,

GEORGES HENRI SEGUIN, Notary Public, residing at No. 1010 Grosvenor Avenue, in the City of Westmount, herein acting and represented by HENRI DESCARY, of the Town of Dorval, Clerk, his Attorney duly authorized to the effect hereof as he hereby declares,

HEREINAFTER CALLED THE "PURCHASER"
hereto present and accepting for himself, his heirs and assigns the following immoveables, to wit:—

DESCRIPTION

10 “A” An emplacement fronting on Pine Avenue, in “Redpath” in the City of Montreal, containing one hundred and fifty-five feet in width in Pine Avenue, and being composed;

(a) Of Subdivisions Numbers forty-two and forty-three of the Official Subdivisions of Lot Number Seventeen hundred and fifty-five, on the Official Plan and Book of Reference of the St. Antoine Ward, of the City of Montreal (1755-42 and 43), containing the said Subdivision forty-two (42) a superficial area of five thousand four hundred and ten square feet and the said Subdivision forty-three (43) a superficial area of six thousand one hundred and ninety-nine square feet, English Measure, and
20 more or less.

(b) Of the South-Westerly twenty-five feet in width in front and in rear by the whole depth thereof of Subdivision forty-four of said Official Lot (1755-44), bounded in front by Pine Avenue, in rear by part of Subdivisions eighty-one and eighty-two of said lot (1755-Pt. 81 & 82) North-East by the remainder of said Subdivision forty-four (the property of the Vendor), and South-West by Subdivision forty-three of said Official Lot, and containing a superficial area of two thousand five hundred and one
30 square feet.

The Purchaser may, but at his own cost, cut back the face of the rock on which such passage exists to a distance of not more than twenty feet from Pine Avenue, and grade the part so cut away so as to gain access to the South-West side of said Subdivision forty-two, purchased by him. The grading of such part of said passage shall not however, confer any exclusive rights in said passage or in any part thereof to the Purchaser.

40 “B” An emplacement in Redpath Crescent in “Redpath”, in the City of Montreal, containing one hundred and forty-two feet nine inches in width in front, and one hundred and forty-seven feet five inches in width in rear, by a depth of eighty-four feet nine inches in the South-West side line and one hundred and two feet eight inches in the North-East side line, and containing a superficial area of thirteen thousand two hundred and three square feet, English Measure, and more or less, and being composed of:—

- 10 (a) The South-west portion of Subdivision Number eighty-one of the Official Subdivisions of lot number seventeen hundred and fifty-five (1755-81), on the Official Plan and Book of Reference of the St. Antoine Ward of the City of Montreal, containing twenty-three feet nine inches in width in front and six feet ten inches in width in rear, by a depth of ninety-nine feet one inch in the South-West side line and one hundred and two feet eight inches in the North-East side line, and containing a superficial area of fifteen hundred and twenty square feet; bounded in front by Redpath Crescent, in rear by part of Subdivision Number forty-four of said lot number seventeen hundred and fifty-five, to the South-West by Subdivision Number eighty-two of said Lot Number seventeen hundred and fifty-five next immediately described, and to the North-East by the remainder of said Subdivision Number eighty-one.
- 20 (b) Subdivision number eighty-two of the official Subdivisions of said lot number seventeen hundred and fifty-five (1755-82), on the said Official Plan and Book of Reference, containing sixty feet in width in front and fifty-five feet in width in rear, by a depth of ninety-one feet five in the South-West side line, and ninety-nine feet one inch in the North-East side line, and containing a superficial area of five thousand four hundred and thirty-three square feet; and
- 30 (c) Subdivision Number eighty-three of the Official Subdivision of said lot number seventeen hundred and fifty-five (1755-83), on the said Official Plan and Book of Reference, containing fifty-nine feet in width in front, and eighty-five feet seven inches in width in rear, by a depth of eighty-four feet nine inches in the South-West side line and ninety-one feet five inches in the North-East side line, and containing a superficial area of six thousand two hundred and fifty square feet.

40 With the house thereon erected bearing Civic No. 1415 of said Pine Avenue, whereof both gable walls are entirely built on the above described immoveables, and all the contents and furnishings found in the house at the date hereof excluding however the articles mentioned in a list marked "A" hereto annexed to form part hereof after having been signed "NE VARIETUR" by the Vendor and said Notary.

As the whole now is with all the rights, members and appurtenances thereunto belonging without any exception or reserve on the part of the Vendor, the Purchaser acknowledging to have viewed the property and is satisfied therewith, subject

to the passive servitudes affecting the same, as herein set forth, and with the right of exercising all active servitudes attached thereto. "The Purchaser shall have the right of passage in common with others in the passage-way shown on the Subdivision Plan of "Redpath" as Subdivision forty-one (1755-41), such right of passage shall be exercised on foot only unless the Vendor opens and grades such passage-way in a manner suitable for traffic with vehicles, in which case the Purchaser will have the right in common with others to use it for vehicular-traffic."

TITLE

The Vendor acquired the immovable "A" above described and presently sold under deed of sale to him by JOHN JAMES CARRICK and the immovable "B" above described and presently sold under deed of sale to him by REDPATH HEIGHTS LIMITED, both executed before H.M. Marler, Notary, respectively on the twenty-eight day of the month of June, Nineteen hundred and eleven (1911), and on the fourteenth day of the month of December, Nineteen hundred and twenty (1920), registered at the Registry Office for the Registration Division of Montreal West under the respective Numbers 150961 and 167107

POSSESSION

By virtue of these presents the Purchaser shall be the absolute owner of said immovables and shall take possession and occupancy thereof forthwith.

VENDOR'S DECLARATIONS

THE VENDOR DECLARES AND GUARANTEES:—

10. That the said immovables are held under the tenure of FRANC ALEU ROTURIER, having been duly commuted and the commutation price thereof having been paid;
- 40 20. That they are free and clear of all encumbrances whatsoever and also free and clear of all taxes and assessments, general and special affecting said immovables to the date hereof.
30. That the said F.N. BEARDMORE was married only once namely to Dame HELEN LOUISE GZOWSKI who is still living as appears by solemn declaration made by CASIMIR STANISLAS GZOWSKI and which remains annexed hereto form part hereof after having been signed Ne Varietur by the said ROSS CLARKSON, and GEO. G.W. GOODWIN and the undersigned Notary .

- 40 The Vendor declares that he shall, and he hereby undertakes
to grant to the Purchaser on demand, the right in favour
of the said Purchaser, his heirs and assigns, in perpetuity,
to have the balcony and openings on the extreme North-
Eastern part of the immoveable "A" above described over-
10 looking the North-Eastern part of Subdivision number forty-
four of said original lot number one thousand seven hundred
and fifty-five, also the property of the Vendor, provided,
however, that such balcony and openings shall not prevent the
Vendor from building up to the North-Eastern boundary line
of the immoveable above "A" described. The Vendor also
declares and guarantees that he shall hold the Purchaser in-
dennified of all expense not to exceed the sum of five hun-
dred dollars (\$500.00), incurred by said Purchaser or his
assignee in obtaining from the City of Montreal a lease of a
20 small part of the Mountain Park edged in green on a sketch
of the property hereto, annexed over which the driveway lead-
ing up to the house built on the hereby sold property en-
croaches and the ratification of said lease at the next session
of the Provincial Legislature.
50. That the immoveable above "B" described is affected by the
following servitude.

SERVITUDES

- 30 The immoveable above "B" described is affected by a
servitude created under that certain deed of sale passed before
R.A. Dunton, Notary, on the third day of the month of February,
Nineteen hundred and fourteen (1914), from JOHN JAMES
CARRICK to GEORGE A. GRIER, which reads as follows:—

40 "To use the said property only for the erection of de-
tached private residences and the usual accessories of private re-
sidences such as stables, coachman's house, garage, etc; any build-
ings, except residences, shall be erected back at least thirty-five
feet from the front line of said lots. All buildings shall be built
of brick or stone or such like solid material on solid foundations
and a single residence shall cost not less than ten thousand dol-
lars. No building shall, in any event, be a tenement or apartment
house or be so constructed or divided within as to permit of its
being occupied by two or more families having each a distinct
portion of the building not communicating from within. Any
building erected upon the said property must be used as a pri-
vate residence only or as the accessory of such and not as a

school, hospital, tavern or for any purpose of trade, business or manufacture or for the purpose or business of any corporation of a public character.”

10 This servitude was thus created in the said deed of sale by JOHN JAMES CARRICK to GEORGE A. GRIER, passed before R.A. Dunton, Notary, on the third day of the month of February, Nineteen hundred and fourteen (1914), in favour of the other subdivisions of said lot number one thousand seven hundred and fifty-five belonging to the said JOHN JAMES CARRICK and also in favour of the lots described in and sold under the terms of the above mentioned deed of sale from J.J. CARRICK to G.A. GRIER, such servitude to subsist until the first day of January, Nineteen hundred and forty-one (1941); and said immoveable above “B” described is also subject to the following servitude in favour of the said Lots described in and
20 sold under the terms of the said deed of sale from J.J. CARRICK to G.A. GRIER, in common with others to whom the said JOHN JAMES CARRICK has granted the same right, namely: To use a drain pipe which crosses the rear of the lots known as subdivisions seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two and eighty-three of said Original lot number seventeen hundred and fifty-five, with the right, for the Purchaser, to enter on said lots for the purpose of making necessary repairs to said drain pipe.

30

CONDITIONS

The present sale is so made subject to the following charges and conditions to the fulfilment whereof the Purchaser hereby binds and obliges himself, namely:—

10. To pay the cost of this deed and its registration.
20. To pay all taxes and assessments, general and special, affecting said immoveables from this date and his proportion from
40 this day of those for the current year as well as any and all instalments to become due from said date, payment whereof is spread over a term of years.
30. “To use said property above “A” described only for the erection of a detached private residence or residences, and the usual accessories of a private residence, such as stables, Coachman’s house, garage etc., and to build any such residence at least fifteen feet back from the line of Pine Avenue, and any residence shall be erected not nearer any side line of the

10 emplacement hereby sold than seven feet, but any of such accessories may be erected nearer the side lines than seven feet provided they be built wholly on the property sold. Any building except the residence shall be erected back at least thirty (30) feet from the front line. All buildings shall be built of brick or stone, or such like solid material on solid foundations: Any residence erected upon the said sold property shall cost not less than ten thousand dollars, no building shall in any event be a tenement or apartment house, or be so constructed or divided within as to permit of its being occupied by two or more families having each a distant portion of the building not communicating from within: Any building erected upon the said property must be used as a private residence only, or as the accessory of such, and not as a school, hospital, tavern, or for any purpose of trade, business or manufacture, or for the purpose and business of any corporation of a public character.” “And the Purchaser may impose on the property hereby sold a servitude containing conditions to the above effect and to extend it either perpetually or until the first day of January, Nineteen hundred and forty-one (1941), and the Purchaser agrees, on the demand of the Vendor, to execute any deed as may be necessary to impose said conditions as a servitude on said property, and to permit such servitude to be so imposed, such deeds shall be executed at the cost of the Vendor.”

- 20
- 30 40. To respect the existing lease and/or any transfer thereof which the present lessee may make or consent to.
50. To fulfill to the exoneration of the Vendor all obligations assumed by him and to which he may be bound under his Deeds of Acquisition above referred to, and to hold the Vendor harmless and indemnified in respect thereof.

PRICE

40 The present sale is so made for the price and sum of one hundred and seventy-five thousand dollars (\$175,000.00) for the immoveable properties above described and for the further sum of ten thousand dollars (\$10,000.00) for the contents and furnishings of the said house, which total sum of one hundred and eighty-five thousand dollars (\$185,000.00) the Purchaser has presently paid in cash to the Vendor who acknowledges the same, whereof quit forever.

WHEREOF ACTE:—

DONE AND PASSED at the said City of Montreal and of record in the office of the undersigned Notary under the Number fourteen thousand and sixty-eight of the Minutes of said Notary.

10 AND, AFTER DUE READING HEREOF, the Parties signed with and in the presence of the undersigned Notary.

(Signed) The Royal Trust Company (Seal)
Ross Clarkson, Assistant
General Manager

Geo. G.W. Goodwin,
Assistant Secretary.

“ Henri Descary
“ LIONEL JORON, NOTARY

20 TRUE COPY of the original hereof remaining of record in my Office.

Lionel Joron,
Notary.

PLAINTIFF'S EXHIBIT P-13(D) AT ENQUETE

Certified copy of letter from Defendant to Deputy Minister of Railways and Canals.

CANADIAN NATIONAL RAILWAYS
Secretary's Department

30 R. P Ormsby, Secretary.

Montreal, Que.

SSMcK/AG
1500-1-11.

August 9th, 1930.

V.I. Smart, Esq.,
Deputy Minister of Railways and Canals,
Ottawa, Ontario.

40 Dear Sir,

Enclosed, for the information of the Minister, is draft of the Minutes of the Meeting of the Executive Committee held on the 7th instant.

Very truly yours,

Enclosure.

Certified to be a true copy of letter signed by R.P. Ormsby, Secretary, or Henry Philips, Assistant Secretary.

W. H. Hobbs,
Assistant Secretary.

PLAINTIFF'S EXHIBIT P-13(E) AT ENQUETE

*Certified copy of letter from Defendant to Deputy Minister
of Railways and Canals.*

CANADIAN NATIONAL RAILWAYS
Secretary's Department

10 R. P Ormsby, Secretary.

Montreal, Que.

August 12th, 1930.

RPO:WS
1500-1-11.

V.I. Smart, Esq.,
Deputy Minister of Railways and Canals,
Ottawa, Ontario.

20 Dear Sir,

Now that the draft minutes of the Executive Committee Meeting held on June 16th are complete in form for confirmation if approved at the next Directors' Meeting, I enclose herewith pages 5 and 6 for substitution instead of page 5 previously sent you with the draft minutes of the above meeting. Please destroy the page 5 originally sent you.

Yours very truly,

Enclosure.

30

Certified to be a true copy of letter signed by R.P. Ormsby, Secretary, or Henry Philips, Assistant Secretary.

W. H. Hobbs,
Assistant Secretary.

DEFENDANT'S EXHIBIT D-16 AT ENQUETE

Statement of account, memorandum and resolution annexed.

132 St. James Street West

40

Montreal, October 1, 1930.

Canadian National Railways,
Montreal, P. Q.

To DECARY, BARLOW & JORON, Dr.
Notaries

1930.

Oct. 1 To amount paid to the Royal Trust Company
for rental of premises No. 1415 Pine Avenue
West for the months of June and July 1930; \$1,000.00

Paid

COPY

Montreal, October 9th, 1930.

Re: Pine Avenue House

10 Memorandum for Mr. W. H. Hobbs,
Secretary to the President.

Attached is a copy of a resolution of the Executive Committee passed on March 24th, 1930. The date of the President's present contract is September 23rd, 1929.

The minutes of the meeting held on March 24th were approved by the Directors on April 28th, 1930.

20

(Sgd.) R. P. O.

Enclosure
CC Mr. D. C. Grant

EXTRACT FROM MINUTES OF MEETING OF THE EXECUTIVE COMMITTEE OF THE DIRECTORS OF THE CANADIAN NATIONAL RAILWAY COMPANY

30 Held in the Company's Offices in the City of Montreal on March 24th 1930.

The President then left the meeting and reference was made to the resolution of the Directors passed on September 23rd, 1929, regarding the provision of an official residence for the President and to the unsuccessful efforts made to secure one.

IT WAS DECIDED

40 THAT in order to carry out the intention of the Directors as from the date of such resolution an adjustment should, when the residence is purchased, be made with the President in respect of rental, as of the date of his present contract.

CERTIFIED to be a true Extract

(Sgd.) R. P. Ormsby
Secretary.

PLAINTIFF'S EXHIBIT P-14 AT ENQUETE

Letter from E. R. Decary to the late Sir Henry Thornton.

THE TITLE GUARANTEE AND TRUST CORPORATION
OF CANADA

10 Real Estate Title
and
Mortgage Loan Insurance
134 St. James Stret West

Montreal, November 6, 1930.

Sir Henry Thornton,
President, Canadian National Railways,
Montreal.

Dear Sir Henry:

20 I enclose herewith agreement signed between G. H. Se-
guin and yourself in connection with the amount of \$50,000.00
which we have agreed to spend on your house on Pine Avenue,
also, cheque for \$30,000.00 to your order as a payment on ac-
count of said sum of \$50,000.00.

30 As you have asked me also, I hereby agree on behalf of the
owner of property 1415 Pine Avenue, which you now occupy, to
sell you this property at any time during the term of its lease
to Canadian National Railways, for the sum remaining due to
us on the advances of \$185,000.00 and \$50,000.00. In order, how-
ever, not to encumber my estate in any way this option would
have to be exercised within six months following my death should
I die before the expiry of your lease.

Sincerely yours,

(Sgd.) E. R. Decary.

ERD/BMR.

PLAINTIFF'S EXHIBIT No. 4 WITH ANSWER TO PLEA

40 *Copy of letter from Mr. E. R. Decary to the late
Sir Henry Thornton.*

(Same as exhibit P-14 at enquete see page 263)

~~PLAINTIFF'S~~
~~DEFENDANT'S~~ EXHIBIT No. 6

Copy of letter from E. R. Decary to Sir Henry Thornton.
(Same as Plaintiff's exhibit P-14 at enquete and No. 4 with
answer to Plea see page 263)

DEFENDANT'S EXHIBIT D-16 AT ENQUETE

*Cheque of Defendant in favour of Decary, Barlow & Joron
for \$1,000.00 with duplicate vouchers.*

Canada No. 44950
10 Inland Revenue
War Tax
Two Cents

CANADIAN NATIONAL RAILWAYS

Montreal. Que. Nov. 7 1930 C.B. Folio Nov. 7

To The Canadian Bank of Commerce, Montreal, Que.

Pay to the order of
Decary Barlow & Joron \$1,000.00

20 One Thousand and 00/100 Dollars

Countersigned

Chas. D. Cowie
For Vice-President

G. S. Cowie
Assistant Treasurer

Paid Nov. 8 1930

The Canadian Bank of Commerce
Montreal

ENDOS

30 Decary, Barlow & Joron
per P. A. Hogdson

For Deposit only
To my account
E. R. Decary

The Royal Bank of Canada
Received Nov. 8 1930
Cleared Nov. 11 1930
11/1 Montreal 20

CANADIAN NATIONAL RAILWAYS

VOUCHER

40

Montreal, Que., November 5th, 1930.

Audit 18039

Com Cheque No. 44950

To
Messrs. Decary, Barlow & Joron,
132 St. James Street, West,
Montreal, Quebec.

Secretary's Department Issuing
Dept. No. 2094

I certify that this is a true copy of an original account approved
by the proper officers, that the same has been examined, found

correct, registered and filed in the accounting department of the Company.

(Sgd.) S. L. Barnewman

In payment of attached account for rental of premises 1415 Pine Avenue West, occupied by Sir Henry Thornton, President, for the months of June and July, 1930, chargeable to Canadian National Railways under terms of resolution of Executive Committee of Board of Directors passed March 24th, 1930 \$1,000.00

OK R P O

Received One Thousand xx/100 Dollars \$1,000.00 in full settlement of the above account.

8 Nov. 1930

Decary, Barlow & Joron
Per P. A. H.

ENDOS

20 Nov. 1930
Received C. N. R.

Chg'd. Nov. 7-1930

A.M Nov. 7

Treasurer Headquarters

CANADIAN NATIONAL RAILWAYS

VOUCHER

Montreal, Que., November 5th, 1930

30

Secretary Department Issuing
Dept. No. 2094

Messrs. Decary, Barlow & Joron,
132 St. James Street, West,
Montreal, Quebec.

In payment of attached account for rental of premises 1415 Pine Avenue West, occupied by Sir Henry Thornton, President, for the months of June and July, 1930, chargeable to Canadian National Railways under terms of resolution of Executive Committee of Board of Directors passed March 24th, 1930 \$1,000.00

Audit No. 18039
Nov. 1930

451 General 1,000.00
Distribution Co
Compt. K11
Index MI 7

Correct W. H. Hobbs
Approved L. Kermine
Approved J. B. McLarin
Approved A. C. Egan

ENDOS

Asst. Comptroller
Nov. 11 1930
Disbursements

correct, registered and filed in the accounting department of the Company.

S. L. Barneware

10 In refund of amount paid for rental of residence 1415 Pine Avenue West, Montreal. October 1929 to May 1930, both months inclusive, at \$500.00 per month, chargeable to Canadian National Railways under terms of resolution of Executive Committee of Board of Directors passed March 24th, 1930 \$4,000.00

OK R P O

Received Four Thousand xx/100 Dollars \$4,000.00 in full settlement of the above account.

Nov. 10 1930

H. W. Thornton

ENDOS

20 Received C. N. R.

Chg'd Nov . 7 - 1930

A.M. Nov. 7

Treasurer Headquarter

PLAINTIFF'S EXHIBIT No. 6

30 *Copy of letter from Sir Henry Thornton to Hon. R. J. Manion, M.D., M.P., together with copy of the document referred to.*

November 20th, 1930.

Personal

Dear Doctor:

40 I had in my mind, the last two times I was in Ottawa, to say to you that it is my recollection I told you that in making the arrangement for the lease of the present house in Montreal there was an option to acquire the same at any time, but I found subsequently, through an oversight there was not included in the original document this privilege and upon bringing the matter to the attention of Mr. Decary he has caused Mr. Seguin, who represented him in the matter, to execute a document, copy of which I hereto attach. This document was for the purpose of permitting me to finance some repairs and alterations to the house, including fixing up the garden, amounting to \$20,000.00., the balance of the amount of \$50,000 being for refurnishing and equipment.

In order to clear up the omission in the original contract of the option to purchase, Mr. Decary, upon the matter being brought to his attention, said that the point had likewise escaped his notice and that it had always been his understanding that I or the company should have the right to purchase the property at any time before the expiration of the lease. To clear this point, he has written me a letter of which the attached is a copy. In event
10 of his death he asks that the option be exercised, if at all, within six months thereafter in order not to encumber his estate for a protracted period. However, inasmuch as he seems to be in good health, such a contingency is not likely.

As intimated before, I should have mentioned this matter to you earlier, but both you and I have been away so much and there was likewise much on my mind that it escaped my attention.

As far as concerns helping me to finance the \$20,000 which
20 has been put into the property by way of repairs and alterations, regarding which you will recall I think that my wife had some conversation with Mr. Bennett in London, it is only fair to say that she was at that time under the impression (as I was myself) that there was in existence an option to purchase. This explains the statement to that effect, as I would not like it to appear that she willingly made a mis-statement.

Yours sincerely,

(In handwriting)

30 The option to purchase which I have in my own name is, of course, assignable to any nominee of my own. I did not want to bother you again about this but still naturally wanted to be quite truthful.

The Hon. R.J. Manion, M.D., M.P.,
Minister of Railways and Canals,
Ottawa, Ont

40 THESE PRESENTS executed in duplicate,
BETWEEN:

G. HENRI SEGUIN, of the City of Montreal, Notary,
PARTY OF THE FIRST PART,

AND:

SIR HENRY THORNTON, of the City of Montreal,
President of CANADIAN NATIONAL RAILWAYS,

PARTY OF THE SECOND PART,

WITNESS:—

WHEREAS Mr. Seguin is the owner of the property bearing Civic No. 1415 of Pine Avenue, in the City of Montreal,

which he has leased to — CANADIAN NATIONAL RAILWAY COMPANY for a term of ten years to serve as a residence for Sir Henry Thornton;

10 WHEREAS Sir Henry Thornton has requested Mr. Seguin, as owner of said property, to make certain repairs thereto, and to add to the furnishings thereof, to the satisfaction of Sir Henry Thornton, but at a cost not to exceed Fifty thousand dollars (\$50,000.00);

AND WHEREAS, in consideration of the expenditure to be made, as aforesaid, Sir Henry Thornton has promised to pay to Mr. Seguin a rental of Five hundred and twenty-one dollars (\$521.00) per month during the whole term of said Lease over and above the rental already payable by CANADIAN NATIONAL RAILWAY COMPANY under said Lease.

20 WHEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:—

Mr. Seguin undertakes to make the repairs and to supply the furnishings requested, as aforesaid, by Sir Henry Thornton, and to that effect hereby appoints the latter his attorney to attend to the same, and has presently paid to Sir Henry Thornton the sum of Fifty thousand dollars (\$50,000.00) covering the cost of such repairs and furnishings, which sum Sir Henry Thornton acknowledges to have received for such purpose, agreeing to himself expend the same for such repairs and furnishings, to his satisfaction.

30 And in consideration of the above Sir Henry Thornton hereby binds and obliges himself to pay to Mr. Seguin a rental of Five hundred and twenty-one dollars (\$521.00) per month during the whole term of the Lease of said property granted, as aforesaid, to CANADIAN NATIONAL RAILWAY COMPANY over and above such rental as is already payable by said Company under said Lease.

40 IN TESTIMONY WHEREOF the parties have signed at the City of Montreal on the Thirty-first day of October, Nineteen hundred and thirty (1930).

(Signed) H. W. THORNTON.
G. H. SEGUIN.

SIGNED in the presence of:

At the expiration of the present lease & provided all its terms have been fully carried out the said G.H. Seguin agrees to sell to Sir Henry Thornton accepting all furnishings and purchased in accordance herewith for one dollar.

(Signed) H. W. T.
G. H. S.

DEFENDANT'S EXHIBIT D-4 AT ENQUETE

*Defendant's cancelled cheque to the order of Mis-en-Cause
for \$3,931.25 with voucher attached.*

No. 578

CANADIAN NATIONAL RAILWAYS

10

Canada Montreal, Que. Jan. 23 1931.
Inland Revenue To the
War Tax BANK OF MONTREAL
Two Cents Montreal, Que.

Pay to the order of
G. Henri Seguin

Thirty Nine Hundred and Thirty One 25/100 Dollars \$3931.25

Countersigned

20

R. MacKenzie For Vice-President G. Muir Treasurer

ENDOS

The Royal Bank of Canada (Sig.) Henri Seguin
Received Jan. 24 1931 For Deposit only
Cleared Jan. 26 1931 To my account
11/1 Montreal 20 R. Decary

CANADIAN NATIONAL RAILWAYS

30

VOUCHER

Montreal, Que. January 20th, 1931

Audit D22125

Montreal Cheque No. 578

Asst. Comptroller Disbts.

Mr. G. Henri Seguin
C/o Messrs. Decary, Barlow & Joran,
132 St. James Street, West,
Montreal, Que.

Department Issuing

Dept. No. 5646

40

I certify that this is a true copy of an original account approved
by the proper officers, that the same has been examined, found
correct, registered and filed in the accounting department of the
Company.

G. King

Date of Account

Amount

1931 To rent of 1415 Pine Avenue, West,
February 2nd. for 3 months ending January 31st,
1931, @ \$15,725.00 per annum, as per
agreement dated August 8th, 1930 ... \$3,931.25
"January Accounts"

Received Three Thousand, Nine Hundred and thirty One Dollars and 25/100 \$3,931.25 in full settlement of the above account.

27 Jan. 1931 (Sgd.) G. H. Seguin

Paid Jan. 23 1931

10 Pease receipt and return to treasurer
Canadian National Railways
360 McGill Street,
Montreal, Que.

ENDOS

Recived C.N.R.
P.M. Jan. 22
Treasurer Headquarters

20

DEFENDANT'S EXHIBIT D-5 AT ENQUETE

*Defendant's cancelled cheque to the order of Mis-en-Cause
for \$3,931.25 with voucher attached.*

No. 4057

CANADIAN NATIONAL RAILWAYS

30 Canada Montreal, Que. Apr. 24 1931
Inland Revenue To the
War Tax BANK OF MONTREAL
Two Cents Montreal, Que.

Pay to the order of
G. Henri Seguin

Thirty Nine Hundred and Thirty One 25/100 Dollars \$3931.25

Countersigned

R. MacKenzie
For Vice-President

Geo. S. Cowie
Assistant Treasurer

40 Accepted
Bank of Montreal
B of M \$3931.25 Apr. 25 31
Montreal

Ledger No.
Apr. 25 1931
B. of Montreal

ENDOS

The Royal Bank of Canada
Received Apr. 25 1931
Cleared Apr. 27 1931
11/1 Montreal 20

G. H. Seguin
For Deposit only
To my account
E. R. Decary

CANADIAN NATIONAL RAILWAYS
VOUCHER

10 Montreal, Que. April 18th, 1931

Mr. G. Henri Seguin
C/o Messrs. Decary, Barlow & Joran,
132 St. James Street,
Montreal, Que.

Audit No. D262267
Montreal Cheque No. 4057
Asst. Compt. Disbts,
Department Issuing
Dept. No. 5744

20 I certify that this is a true copy of an original account approved by the proper officers, that the same has been examined, found correct, registered and filed in the accounting department of the Company.

Date of Account	G. King Amount
1931 May 1st.	To rent of 1415 Pine Avenue, West, Montreal, for 3 months ending April 30th, 1931, @ \$15,725.00 per annum, as per agreement dated August 8th, 1930.
	\$3,391.25

30 "April Accounts"

Received Three Thousand, Nine Hundred and Thirty One Dollars and 25/100 \$3,931.25 in full settlement of the above account.

25 Apr. 1931
Paid Apr. 24 1931

G. H. Seguin

40 Please receipt and return to treasurer
Canadian National Railways
360 McGill Street,
Montreal, Que.

ENDOS

Received C. N. R.
A.M. Apr. 23
Treasurer Headquarters

DEFENDANT'S EXHIBIT D-6 AT ENQUETE

*Defendant's cancelled cheque to the order of Mis-en-Cause
for \$3,931.25 with voucher attached.*

10

No. 10351

CANADIAN NATIONAL RAILWAYS

Canada Montreal, Que. Aug. 3 1931.
Inland Revenue To the
War Tax BANK OF MONTREAL
Two Cents Montreal, Que.

Pay to the order of
G. Henri Seguin

20 Three Thousand Nine Hundred & Thirty One 25/100 Dollars
\$3931.25

Countersigned

R. MacKenzie
For Vice-President

Geo. S. Cowie
Assistant Treasurer

Accepted
Bank of Montreal
B of M \$3931.25 Aug. 04 31
Montreal

Ledger No. C
Aug. 4 1931
B. of Montreal

ENDOS

30

The Royal Bank of Canada
Received Aug. 4 1931
Cleared Aug. 5 1931
11/1 Montreal 20

G. Henri Seguin
(Sig.) Henri Seguin
For Deposit only
Decary, Barlow & Joron
Trust Acc.

CANADIAN NATIONAL RAILWAYS

VOUCHER

40

Montreal, Que. July 27th, 1931.

Mr. G. Henri Seguin
C/o Messrs. Decary, Barlow & Joron,
132 St. James Street,
Montreal, Que.

Audit No. D31463
Montreal Cheque No. 10351
Asst. Compt. Disbts.
Department Issuing
Dept. No. 5845

I certify that this is a true copy of an original account approved
by the proper officers, that the same has been examined, found

correct, registered and filed in the accounting department of the Company.

		G. King
	Date of Account	Amount
	1931 To rent of 1415 Pine Avenue, West,	
	August 1st. Montreal, for 3 months ending July 31st,	
10	1931, @ \$15,725.00 per annum, as per	
	agreement dated August 8th, 1930	\$3,931.25

“July Accounts”

Received Three Thousand, Nine Hundred and Thirty One Dollars and 25/100 \$3,931.25 in full settlement of the above account.

	Aug. 4th 1931	G. H. Seguin
	Paid Aug. 3 1931	
	Please receipt and return to treasurer	
20	Canadian National Railways	
	360 McGill Street,	
	Montreal, Que.	

ENDOS

Received C. N. R.
A.M. Jul. 31
Treasurer Headquarters

DEFENDANT'S EXHIBIT D-7 AT ENQUETE

30	<i>Defendant's cancelled cheque to the order of Mis-en-Cause for \$3,931.25 with voucher attached.</i>	No. 4073
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CANADIAN NATIONAL RAILWAYS

	Canada	Montreal, Que. Nov. 2 1931
	Inland Revenue	
	War Tax	THE CANADIAN BANK of COMMERCE
	Two Cents	Montreal, Que.

40	Pay to the order of	
	G. Henri Seguin	
	Three Thousand Nine Hundred & Thirty One 25/100 Dollars	
	\$3931.25	

Countersigned

R. MacKenzie	H. P. Howells
For Vice-President	For Treasurer

Paid Nov. 3 1931
The Canadian Bank of Commerce
Montreal

ENDOS

The Royal Bank of Canada	G. H. Seguin
Received No. 3 1931	For Deposit only
Cleared Nov. 4 1931	Decary, Barlow & Joron
11/1 Montreal 22	Trust Acc.

CANADIAN NATIONAL RAILWAYS
VOUCHER

10

Montreal, Que., October 26th, 1931.

Mr. G. Henri Seguin
C/o Messrs. Decary, Barlow & Joron,
132 St. James Street,
Montreal, Que.

Audit D35183
Commerce Cheque No. 4073
Asst. Compt. Disbts.
Department Issuing
Dept. No. 5925

20 I certify that this is a true copy of an original account approved by the proper officers, that the same has been examined, found correct, registered and filed in the accounting department of the Company.

Date of Account		G. King Amount
1931	To rent of 1415 Pine Avenue, West,	
November 2nd.	Montreal, for 3 months ending Oc- tober 31st, 1931 @ \$15,725.00 per an- num, as per agreement dated August 8th, 1930	\$3,391.25

30

“October Accounts”

Received Three Thousand, Nine Hundred and Thirty
One Dollars and 25/100 \$3,931.25 in full settlement of the above
account.

November 3rd 1931.

G. H. Seguin

Paid Nov. 2 1931
Canadian National Railways

40 Please receipt and return to treasurer
360 McGill Street,
Montreal, Que.

ENDOS

Received C. N. R.
P.M. Oct. 28
Treasurer Headquarters

DEFENDANT'S EXHIBIT D-8 AT ENQUETE

*Defendant's cancelled cheque to the order of Mis-en-Cause
for \$3,931.25 with voucher attached.*

10

No. 17095

CANADIAN NATIONAL RAILWAYS

Canada Montreal, Que. Feb. 3 1932.
Inland Revenue To the
War Tax BANK OF MONTREAL
Two Cents Montreal, Que.

20 Pay to the order of
G. Henri Seguin

Three Thousand Nine Hundred & Thirty One 25/100 Dollars
\$3931.25

Countersigned

30 Chas. D. Cowie
For Vice-President

Geo. S. Cowie
Assistant Treasurer

Ledger No. 6
Feb. 6 1932
B. of M., Montreal

ENDOS

40 Pay to the order of
E. R. Decary
G. H. Seguin

For Deposit only
To my account
E. R. Decary

Banque Canadienne Nationale
Feb. 6 1932
61- Montreal 2

CANADIAN NATIONAL RAILWAYS
VOUCHER

10 Montreal, Que. January 27th, 1932.

Mr. G. Henri Seguin
C/o. Messrs. Decary, Barlow & Joron,
132 St. James Street,
Montreal, Que.

Audit No. D39104
Montreal Cheque No. 17095
Asst. Compt. Disbts.
Department Issuing
Dept. No. 6022

20 I certify that this is a true copy of an original account approved by the proper officers, that the same has been examined, found correct, registered and filed in the accounting department of the Company.

Date of Account		G. King Amount
1932	To rent of 1415 Pine Avenue, West,	
February 1st.	Montreal, for 3 months ending Jan- uary 31st, 1932, @ \$15,725.00 per annum, as per agreement dated Au- gust 8th, 1930	\$3,931.25

30 "January Accounts"

Received Three Thousand, Nine Hundred and Thirty One Dollars and 25/100 \$3931.25 in full settlement of the above account.

Montreal Feb. 3rd 1932
Paid Feb. 3 1932
Please receipt and return to treasurer
40 Canadian National Railways
360 McGill Street,
Montreal, Que.

G. H. Séguin

ENDOS

Received C. N. R.
P.M. Jan. 29
Treasurer Headquarters

DEFENDANT'S EXHIBIT D-9 AT ENQUETE

*Defendant's cancelled cheque to the order of Mis-en-Cause
for \$3,931.25 with voucher attached.*

10

No. 7806

CANADIAN NATIONAL RAILWAYS

Canada Montreal, Que., May 3 1932
Inland Revenue
War Tax THE CANADIAN BANK of COMMERCE
Two Cents Montreal, Que.

20 Pay to the order of
G. Henri Seguin

Three Thousand Nine Hundred & Thirty One 25/100 Dollars
\$3931.25

Countersigned

S. B. Chalmers
For Vice-President

H. P. Howells
For Treasurer

30 Paid May 5 1932
The Canadian Bank
of Commerce
Montreal

The Canadian Bank
of Commerce
Accepted
May 4 1932
Montreal, Que. 16-1

ENDOS

The Royal Bank of Canada
Received May 4 1932
40 Cleared May 5 1932
Montreal, Que. 22

G. Henri Séguin
G. H. Séguin
For Deposit only
Decary Barlow, & Joron
Trust Acct.

CANADIAN NATIONAL RAILWAYS
VOUCHER

Montreal, Que. April 28th, 1932.

10

Mr. G. Henri Seguin,
C/o. Messrs. Decary, Barlow & Joron,
132 St. James Street,
Montreal, Que.

Audit No. D41814
Commerce Cheque No. 7896
Asst. Compt. Disbts.
Department Issuing
Dept. No. 6105

I certify that this is a true copy of an original account approved
by the proper officers, that the same has been examined, found
20 correct, registered and filed in the accounting department of the
Company.

G. King

Paid May 3 1932
Please receipt and return to treasurer
Canadian National Railways
360 McGill Street,
Montreal, Que.

ENDOS

30

Received C. N. R.
P.M. May 2
Treasurer Headquarters

Date of Account	Amount
1932	To rent of 1415 Pine Avenue, West, Mont-
May 2nd.	real, for 3 months ending April 30th, 1932, @ \$15,725.00 per annum, as per agreement dated August 8th, 1930
	\$3,931.25

40

“April Accounts”

Received Three Thousand, Nine Hundred and Thirty One
Dollars and 25/100 \$3,931.25 in full settlement of the above ac-
count.

May 4th 1932.

G. H. Séguin

DEFENDANT'S EXHIBIT D-13 AT ENQUETE

*Evidence of Mis-en-Cause before Select Standing Committee
on Railways and Shipping. (page 160 à 171)*

10

DEPOSITION OF G. HENRI SEGUIN
called and sworn May 3, 1932.

By the Chairman:

Q. What is your name, residence and occupation?—A.
G. Henri Séguin. 4960 Grosvenor avenue, Montreal, notary.

By Mr. McGibbon:

Q. What was your occupation in 1930?—A. I was Notary.

20 Joron. Q. In whose office were you?—A. Decary, Barlow and

Q. What was your position in that office?—A. Notary.

Q. Were you a partner?—A. I am a member of the firm.

Q. Were you a partner?—A. No, I am not a partner.

Q. Were you in 1930?—A. Yes sir.

Q. Were you a partner in 1930?—A. No, sir.

Q. You were not; were you employed?—A. Yes sir.

Q. You were employed in 1930 as a notary?—A. Yes
sir.

30 Q. I suppose at a reasonable salary that notaries get—I
do not want to ask you what you were getting?—A. I suppose so.

Q. In 1930 you drew a deal for a house on Pine Avenue,
1415 Pine Ave., Montreal?—A. Yes, sir.

Q.—How much did you pay for it?—A. \$185,000.

Q. How much money did you put up?—A. I did not put
up any personal money.

By the Chairman:

Q. Were you acting for yourself or for somebody else?—
A. I was asked by Mr. E. R. Decary—

40 Q. Who was he?—A. He was president of the Title
Guarantee and Trust Corporation of Canada.

Q. What other position did he occupy? A. I do not
know.

Q. Was he a director of the Canadian National Railways
at the time?—A. I do not know at the time. He was at one time.

Q. Was he a director, Sir Henry?

Sir Henry Thornton: Yes.

By Mr. McGibbon:

Q. Did you pay for the property?—A. Yes, sir.

Q. Did that include furniture?—A. Yes, sir.

Q. How much of it was allowed for the furniture?—A. \$10,000.

Q. Have you an inventory of the furniture?—A. There was a list of furniture annexed to the deed.

Q. There was a list of that annexed to the deed; and where did you borrow the money?—A. From the Montreal Trust.

10 Q. How much did you borrow?—A. \$185,000.

Q. That is, you borrowed 100 per cent, plus \$10,000 more for the furniture? A.—Yes, sir.

Q. You did?—A. Not plus \$10,000—\$185,000 altogether.

Q. That is what I said—\$175,000 for the property and \$10,000 for the furniture?—A. Yes, sir.

Q. You borrowed it all from what company?—A. Montreal Trust Company.

Q. What date was that?—A. The beginning of August.

20 Q. Now, what date was it? You know the date?—A. I do not know the exact date. I know the deeds were completed on the 8th of August.

Q. What do you mean by deeds?—A. The deed of sale and the deed of loan.

Q. That is to say you bought property, you mortgaged it and you leased it all on the one day?—A. Yes, sir.

Q. That was the day before the Right Hon. R. B. Bennett became Prime Minister. was it? What was the great hurry?—A. I do not know anything about it.

30 Q.—You were putting through the deal; you ought to know?—A. I did not put through the deal; I signed the deeds.

Q. You told me awhile ago you bought the property?—A. Under the deed of sale.

Q. You signed all the agreements?—A. I signed the deed of sale and the deed of loan.

Q. You were just a tool of Mr. Decary's, is that it?

The Chairman: You were an employee of Mr. Decary; put it that way.

Mr. McGibbon: He says he does not know anything about it.

40 Mr. Power: He was acting under instructions from Mr. Decary. That is not quite fair.

By Mr. McGibbon:

Q. You acted as an employee of Mr. Decary?—A. Yes.

Q. And how much did you get? What interest did you pay the Montreal Trust Company?—A. Six and one-half per cent.

Q. What did you get from the Canadian National Railways?—A. Eight and one-half per cent. We did not get interest; we got rent.

Q. What rent?—A. A rent equal to 8½ per cent.

Mr. Power: Is all this set forth in the deed?

The Chairman: I just had the document put in front of me. I do not know whether it is or not. If it is reduced to writing we ought to have the written evidence, of course; but the question is quite in order.

10 By Mr. McGibbon:

Q. Then there was a profit of 2 per cent?—A. The difference of 2 per cent was in reduction of the mortgage, because according to the deal—

The Chairman: The amortization of the principal?

The Witness: Yes.

By Mr. McGibbon:

Q. At the rate of 2 per cent a year?—A. Yes.

Q. Was the Canadian National Railway financing the whole thing and amortizing it to the extent of 2 per cent?—A.

20 Yes, sir.

Q. And paid for the furniture as well?—A. As far as I know, the Canadian National Railways pays the rent.

Q. Who owns the house?—A. I am the registered owner.

Q. In other words, you got a profit of 2 per cent on a deal of \$185,000.

The Chairman: He got a profit.

Mr. Power: I object to that way of putting it.

Mr. McGibbon: Call it "profit"; I would prefer the word "graft."

30 Mr. Power: It is not fair to this witness.

Mr. McGibbon: My point is this: There is no notary on earth who could finance that deal of \$185,000 and go to a trust company and get the whole thing and turn it over to the National Railways in the terms he has got.

By the Chairman:

Q. Let us ask the witness about that. Mr. Séguin did you conduct negotiations for the purchase of the house yourself?—A. No sir.

40 Q.—Who did?—A. I do not know. I was asked by Mr. Decary to purchase the property and signed the deeds and borrowed the money.

Q. So far as you know, it was Mr. Decary's child?—A. Yes sir.

Q. Of course, that is true; is it not?—A. Yes.

Q. Did you conduct negotiations with the Montreal Trust Company for the borrowing of the money?—A. No sir.

Q. Mr. Decary did that too, did he?—A. Yes sir.

Q. That is Mr. Decary's baby also, is it?—A. Yes.

Q. So that as far as you are concerned, you carried out your instructions?—A. Yes.

Q. And you took your instructions wholly from Mr. Decary?—A. Yes.

Q. And Mr. Decary gets the profit on this house, does not he?—A. Yes.

10 Q. You are just a trustee, we will call you that?—A. Exactly.

Q. Did you get anything privately, personally, out of this profit?—A. None of it.

Q. You got your salary and Mr. Decary gets any profit there is?—A. Yes.

Q. And at the time the deal was made Mr. Decary was a director of the Canadian National Railways?—A. I do not know exactly.

20 Q. Don't you know that? Everybody else knows it; and he did not cease to be a director until some weeks after the 8th of August, 1930, and he had been a director some years previous to the 8th of August, 1930?—A. Yes.

Q. So that Mr. Decary in his capacity as a director of the Canadian National Railways purchased the house and leased it to the railways out of which he has made a profit as a director. That is the fact of the matter, is it not?—A. I do not know.

Mr. Power: I think we will have to call Mr. Decary.

The Chairman: I do not care whether you do or not.

Mr. Power: I move that he be called.

30 The Chairman: I do not care anything about it. I would like the fun of cross-examining Mr. Decary.

By Mr. McGibbon:

Q. Who owns the house to-day?—A. I am the registered owner.

By the Chairman:

Q.—You are not the true owner?—A. No.

Q. Mr. Decary is the true owner, and you are the trustee for him?—A. Yes.

40 Mr. McGibbon: Sir Henry, are you a director of the Montreal Trust Company?

Sir Henry Thornton: I am now, but I was not at the time this transaction went through.

Mr. MacMillan: When did you become a director of the Montreal Trust Company?

Sir Henry Thornton: I could not tell you exactly. I would have to look that up.

Mr. MacMillan: Well, Sir Henry, in making the statement here the other day about this house you went into the matter at length—

Mr. Duff: Why not get through with the witness first and deal with Sir Henry afterwards.

The Chairman: If Mr. MacMillan wants to interject a question to the president, I see no great harm in that. Ordinarily, it would be out of order.

Mr. MacMillan: I am saying that Sir Henry made a statement in regard to the house deal and he quoted first the resolution of the Executive committee of the Canadian National directors of September 17, 1929, expressing the opinion that a suitable residence for the president of the company was essential for the proper conduct of the company's business, and resolving that the Executive committee should undertake to make such a lease under such terms and conditions as the committee may subsequently deem proper. On September 23, 1929, the directors approved the resolution of the Executive, and the lease was authorized on March 24, 1930. The minutes of the Executive meeting tell of the president leaving the meeting. Now, could we get a copy of those minutes?

Sir Henry Thornton: Why, certainly.

By Mr. McMillan:

Q. That was the situation in September, 1925. Can you tell me, Mr. Séguin, when the negotiations for the purchase of this house were entered into first?—A. I do not know at all. I did not make the negotiations.

Q. All you know about it is when the documents were presented to you to be signed?—A. Yes.

Q.—You know nothing else.

By the Chairman:

Q. The documents were passed before you as Notary?—A. They were not passed before me.

Q. The documents were passed before whom?—A. Notary Joron.

Q. Was he another Notary in your office?—A. Yes.

Q. You told us that the purchase price as disclosed by the documents for the house and furniture was \$185,000?—A. Yes.

Q. Was that the price that was actually paid?—A. Yes.

Q. Do you know that of your own knowledge?—A. Yes; because the cheque from the Montreal Trust and the loan was made to my order and was endorsed to me and turned over to the Royal Trust which was acting for the vendor.

Q. The Royal Trust got the money and got the full \$185,000?—A. Certainly, sir.

By Mr. McGibbon:

Q. You did not own the house before the 8th of August, 1930?—A. No sir.

Q. You had not house to rent previous to that to the Canadian National Railways?—A. No sir.

Q. Then when Sir Henry made the statement the other day that they had passed a resolution some months before that they were going to approve the renting of a house you had nothing to rent at that time?—A. I beg you pardon?

Q. You had nothing to rent at that date?—A. No sir.

The Chairman: Do you mean the date of the resolution?

Mr. Duff: Mr. Séguin, were you negotiating for the property before the 8th of August, 1930?

The Chairman: He just told me he had not negotiated at all; that Mr. Décary negotiated. He had nothing to do with it.

Mr. MacMillan: Sir Henry, about that time, I understand, from your statement, the directors offered you a bonus of \$100,000; is that right?

Sir Henry Thornton: I did not say in exactly that way. I said some of the directors had approached me with the view of offering me a bonus of that character.

Mr. MacMillan: Who were the directors?

Sir Henry Thornton: Mr. Gardiner was one.

Mr. MacMillan: Mr. Gill Gardiner?

Sir Henry Thornton: Yes, J. Gill Gardiner; and I think he spoke for some of the other directors with whom he had discussed the matter.

Mr. MacMillan: Was he the only one who spoke to you about it?

Sir Henry Thornton: I think that naturally going back so far one cannot always rely completely upon one's memory. I think, also, Mr. Décary knew of it. At any rate, Mr. Gardiner discussed the matter with me.

Mr. MacMillan: The matter of the \$100,000 bonus?

Sir Henry Thornton: Precisely.

Mr. MacMillan: So that in lieu of that you refused the overture in connection with the bonus of \$100,000?

Sir Henry Thornton: As I tried to explain in my statement—

Mr. MacMillan: Because you felt it would not be fair to the officers?

Sir Henry Thornton: I gave my reasons in my statement.

Mr. MacMillan: Is not that what you said?

Sir Henry Thornton: Yes, precisely.

Mr. MacMillan: It was in September, 1929, that the resolution you referred to in regard to the house was passed apparently. Then, we go along and nothing is done. The bonus is turned down, and nothing is done at all until two days or three days after the last election, then they buy the house; is that so?

The Chairman: Ten days.

10 Sir Henry Thornton: That is correct; although negotiations with respect to the acquisition of the house had been in progress for some little time.

Mr. MacMillan: Did you know about the negotiations?

Sir Henry Thornton: Oh, yes.

Mr. MacMillan: Did you know that Mr. Décaré was buying the house?

20 Sir Henry Thornton: Oh, yes. You remember that the original proposal was that the company should buy the house. Subsequently, after discussion, it was thought unwise or at least preferable the company should rent a house for a certain period in lieu of buying a house at that time, and when that conclusion—

Mr. MacMillan: Was there any other agreement that you know of in reference to the house other than the lease undertaken by the Canadian National Railways and Mr.—

Sir Henry Thornton: I know of no agreements with respect to the house except those that have already been presented to the committee.

30 Mr. MacMillan: The only agreement you know of is between — the rental agreement between the Canadian National Railways and Mr. Séguin; that is the only agreement you know of?

Sir Henry Thornton: That is the only agreement I know of, except what may be an implied agreement in the various resolutions that have been passed.

The Chairman: Sir Henry, the negotiations were all verbal except the lease, were they not?

40 Sir Henry Thornton: The situation there was this: After the original resolution was passed on September 17, 1929, I was asked to see what kind of a house could be procured. I entered into negotiations with the owner of the house.

Mr. MacMillan: You entered into negotiations?

Sir Henry Thornton: Yes, because it was thought better for me to conduct the negotiations and secure an option from the owner rather than the company.

Mr. MacMillan: Do you mean by the company, Mr. Décaré's company?

Sir Henry Thornton: I mean either the Canadian National Railways or anybody who would be connected with the

Canadian National Railways or associated with it in any way by inference or otherwise.

The Chairman: Sir Henry, then you went to work and leased a house from a member of your own board of directors who made the profit and who was occupying the position of trustee?

10 Mr. Power: There is nothing shown of his making a profit.

The Chairman: Yes, 2 per cent on the loan.

Mr. Power: That is amortization.

The Chairman: To whom does the profit accrue?

Sir Henry Thornton: I might explain that in this way—

The Chairman: I do not need any explanation on that part. There was a purchase made on the part of Mr. Décary.

Mr. MacMillan:—I want to proceed a bit.

Mr. Power: I think we ought to go into it more fully.

20 The Chairman: I am quite agreeable.

Mr. Power: Let us ask Sir Henry to explain this 2 per cent if he can. That is of more importance than Mr. MacMillan's question.

Mr. Geary: I suggest that we get from this witness what he has to tell us and then ask Sir Henry.

Mr. MacMillan: Have I the floor?

The Chairman: Yes, you have.

Mr. MacMillan: You learned gentleman please refrain from interrupting.

30 Mr. Power: I have as much right to talk on this committee as anybody and I propose to exercise it. The Chairman makes a statement about a man who holds a high position in Montreal. I do not know him. I do not suppose I would know Mr. Décary if I saw him on the street. I think before going any further we ought to inquire into that. The Chairman evidently thinks he has been guilty in a certain purchase of a house.

The Chairman: What else do you call it?

40 Mr. Power: That is a pretty broad statement to make of a man of Mr. Décary's standing. I think we have been making a lot of loose statements in this committee. I am proposing that Mr. Décary should come here.

Mr. MacMillan: I think it would be advisable to have a royal commission examine into this matter.

Mr. Power: You have a royal commission examining everything in connection with the Canadian National Railways, and that is a lot better than a lot of snooping down around the Canadian National railway offices.

Mr. McMillan: The question I was going to ask Sir Henry was: The position of the shareholders of the Canadian National Railways, the Canadian public, is simply this that to-day; I presume, you, Sir Henry, are living in a house rent free that cost \$185,000, and at the end of ten years we have paid for the house and Mr. Decary or someone else owns it, is that it?

10 Sir Henry Thornton: No, that is not quite the position, although in making any statement with respect to that aspect of it generally I think we would get it much better from Mr. Decary than from myself, because after I had secured the option or a substantial option on that house from the owner and turned the transaction for completion over to Mr. Decary, I have no personal knowledge of what went on between the Montreal Trust or the Royal Trust or anyone else. I was west. I left, I think, about the middle of June, the year in which the transaction was completed, 1930, and went west. I did not get back until early in August. Anything I would say to you or tell you in respect to that transaction is simply what I have heard second-hand; and if you want direct information you will have to go to the person who directly carried out the transaction; which is to say, Mr. Décaré. Now, I will tell you what I know—at least what I have been told as to the transaction, and I have no reason to doubt that when it came to the purchase of this property, Mr. Décaré negotiated alone with the Montreal Trust Company for \$185,000; and they presumably said to him, Well, the usual arrangement, when making a purchase of this sort, is to pay down 25 or 50 per cent in cash of the value of the property to be purchased. You are coming to us and asking us to loan the full value of the property. Now, it may appreciate or it may depreciate.—

20 Q. \$10,000 more than the full value?—A. I am speaking of \$185,000, the value of the property plus the furniture.

Q. The furniture which in ten years would be worn out?
—A. I daresay we will always find furniture in our houses which is serviceable after ten years, but, however,—

30 Q. Let me ask you this?—A. I am trying to make a statement.

40 Mr. Power: Sir Henry is trying to make a statement.

Mr. MacMillan: I do not want to speak.

Mr. Power: Well don't speak.

Sir Henry Thornton: They said, Well, this is a somewhat unusual arrangement for the reason that nothing is being paid on the purchase price of this property to be acquired, and, as I stated a minute ago, it may appreciate or it may depreciate; at any rate, as a trust company, as a banking institution loaning this money, we are entitled to some protection for the capital

that is invested, in lieu of part payment down in cash of the property. So presumably they said to Mr. Décary, We will loan you on this property \$185,000 at 6½ per cent interest, but we will have to ask that for the protection of our property it be depreciated at the rate of 2 per cent per annum,—

10 The Chairman: Are you giving evidence of what you know yourself?

Sir Henry Thornton: I prefaced my remarks,—

The Chairman: This is quite a different thing, and I suggest Sir Henry confine himself to facts of which he has any personal knowledge.

Mr. Power: Sir Henry comes here every day and we ask him questions about the Canadian National Railways,—

The Chairman: About which he knows.

20 Mr. Power: About which he knows through his officials. He cannot have personal knowledge of all the things of which we ask him.

The Chairman: But this is a little different, and I suggest that he confine himself to the facts of which he has personal knowledge.

Mr. Power: Do you not want the facts, or do you want to have it get out to the papers without any explanation?

The Chairman: That is quite uncalled for.

Mr. Power: Not more uncalled for than lots of things the Chairman has said since we started.

30 The Chairman: I think he is entitled to give us the facts of which he has personal knowledge.

Mr. Power: He has the same personal knowledge as in regard to things of which he has already given us information.

Sir Henry Thornton: I prefaced my remarks by the statement that the facts of which I was going to speak were not of first-hand knowledge. If you want me to proceed, I will. If you do not, I will not proceed.

Mr. Beaubien: The chairman is not running the committee. He is only the chairman of the committee.

The Chairman: That is uncalled for.

40 Mr. Power: Not any more uncalled for than the other remarks which have been made. You are supposed to be chairman to direct the committee.

Sir Henry: May I ask if you want me to go or to stop?

The Chairman: I think Sir Henry ought to make a statement of facts within his knowledge. If he does not know he ought not to give us hearsay on an important matter like this.

Sir Henry Thornton: You will agree, Mr. Chairman, that when I started my remarks I said it was entirely second-

hand information; and the only direct first-hand information which could be had in his transaction must come from Mr. Décary.

The Chairman: Very well. I think we had better get Mr. Décary's evidence. I think we must have him here.

10 Sir Henry Thornton: I would ask the committee's personal indulgence. I think there have been personal statements here made which considerably concern me, and which I feel ought to be definitely cleared up, and I want the fullest and most complete investigation of this whole transaction. I want all witnesses called who can speak of first-hand knowledge in connection with it.

The Chairman: If you have any witness you want called, he will be called. The committee will give you that undertaking right now.

20 Sir Henry Thornton: Then I would ask—I think Major Power has already suggested it—that Mr. Decary be called.

The Chairman: We will have him here to-morrow.

Mr. Power: Is there anybody else you want called?

Sir Henry Thornton: The only person who could give direct personal knowledge of the transaction is Mr. Decary.

By the Chairman:

Q. Mr. Seguin, with whom did you deal in the trust company?—A. I did not deal directly with them.

30 Q. Who handed you the cheque?—A. It was not handed to me because I was away at the time. It was handed over to Mr. Decary, and when I came back from the trip from my holidays, the cheque had been deposited in the bank and I went to the bank and endorsed it.

The Chairman: I think it would be wise to have somebody from the Montreal Trust, Mr. Donaldson or Mr. Greene—one or the other of those.

Q. I would like to ask you this question. On the 27th a resolution was read into our minutes, dated June 16, 1930:—

40 The Executive Committee of the Directors on June 16, 1930, passed the following resolution:—

Resolved that the company rent from George H. Seguin, for a term of ten (10) years, commencing on the first day of August, Nineteen hundred and thirty (1930) and expiring on the thirty-first day of July, Nineteen hundred and forty (1940), that certain house bearing No. 1415 Pine Avenue West, in the City of Montreal, for an annual rental of Fifteen Thousand Seven Hundred and Twenty-five Dollars, payable quarterly.

and so on. At that time you did own 1415 Pine Avenue? A. On what date was that?

Q.—On the 16th June, 1930.—A. Yes.

Q. You owned it at that time?—A. Not on the 16th June—I thought you said August.

Q. In June you did not own it?—A. No.

10 Q. Did you know anything about the transaction of the 16th June, 1930?—A. No.

Q. You had never heard of it?—A. No.

By Mr. Geary:

Q. You did not have any knowledge of it then?—A. No.

By Mr. MacMillan:

Q. And you did not have any house to rent at that time?

The Chairman: No, he has said that.

By Mr. MacMillan:

20 Q. Might I ask, Mr. Seguin, is there any adjacent land which was purchased together with the house, which was included in that deal? Did it include land other than that upon which the house is situate?—A. No, I do not think so.

Sir Henry Thornton: Would you like me to answer that?

By Mr. McMillan:

Q. The house is now an integral part of the purchase?—

A. Yes.

30 Sir Henry Thornton: There were approximately 22,000 square feet, and that is still part of the property. It may be a little more than 22,000 square feet, but that is roughly what I recall the area to be.

By the Chairman:

Q. What was the assessed value in 1930, Mr. Seguin?—

A. I do not know, sir.

Q. Did you make a search to ascertain?—A. No.

Q. Did you have an appraisal made?—A. No, sir.

Q.—An appraisal was never made by anybody?—A. Not that I know of.

Q. Did the trust company have an appraisal made?—A.

40 I do not know.

Q. What is the law in Quebec as to trust companies loaning on real estate mortgages? Can they loan up to 100 per cent of the value?—A. I do not know.

Q. Have you any knowledge of the law down east? In New Brunswick it is two-thirds.

Mr. MacMillan: It is 60 per cent, I think. Mr. Bell says it is 60 per cent, roughly.

By the Chairman:

Q. Trustees' funds, is it 60 per cent?—A. Yes, sir.

Q. What is the assessed value?—A. I do not know.

Mr. McGibbon: \$60,000—I have the figures.

By the Chairman:

Q. You had no appraisal made?—A. No, sir.

Q. As a matter of fact, you were not interested at all personally except as the channel through which the transaction passed?—A. No, sir.

10 Q. And none of the property is accruing to you?—A. No, sir.

Q. It all goes to Mr. Décary?—A. Yes.

Mr. Power: I would add all, if any. I am not interested in whether he made any profit on it or not. I think we had better ask Mr. Décary about it.

The Chairman: Yes. There is \$37,000 going to somebody, on paper at all events.

Mr. Power: Perhaps Mr. Décary can clear that up.

By Mr. Geary:

20 Q. Mr. Seguin, when did you first hear of this transaction?—A. The 1st day of August, 1930 — I do not know whether it was the 1st or the 2nd. I remember I went away around the 3rd or 4th, and I signed the deed and contract before going away on my holidays. They were completed, I believe, on the 8th, a while afterwards.

Q. There was nothing in the way of negotiating with you—you were just asked to take this over?—A. Yes.

Q. And you signed papers and went away and then the transaction was closed later?—A. Yes.

30 Q. May I ask you, did you endorse the cheque at all?—A. Yes, sir.

Q. Before you went away?—A. No, not before I went away. The cheque came after I went away, and when I came back I went to the bank and endorsed it.

Q. When did you come back?—A. I was away about two weeks. I know it was about the beginning of August I went away.

40 Q. And then, in consequence of something that was said to you, you went and got a cheque from the Montreal Trust Company?—A. The cheque was in the bank when I came back.

Q. And you endorsed the cheque?—A. I endorsed the cheque.

By the Chairman:

Q. At whose request?—A. Mr. Décary's request.

Q. When did you sign the mortgage?—A. All the papers were signed at the same time, around the 3rd or 4th August; I am not sure of the date.

Q. The lease bears date the 8th August?—A. It was completed on the 8th.

Q. But you need not necessarily have signed it on that day?—A. Oh, no.

Q. And you had previously signed the mortgage before you went away?—A. The mortgage and the lease.

10 The Chairman: Any other questions to be asked of Mr. Séguin?

Mr. Power: What is the use? The chairman won't let us ask a question.

The Chairman: I am inviting you to ask questions.

Mr. Duff: I think you ought to give the members an opportunity to ask questions. You have taken the questions out of our mouths. You stopped the Colonel here asking questions and took the words out of his mouth.

20 The Chairman: He is not complaining. Why are you?

Mr. Power: He is too indignant for utterance.

The Chairman: If he is, I will apologize to him.

By Mr. Geary:

Q. Is there any trust agreement? Do you hold this under any signed agreement as to what you are to do with the proceeds?—A. No.

Q. And when the cheque comes in for rent, does it come to you?—A. It comes to me and I endorse it.

Q. And you simply turn it over?—A. Yes.

By the Chairman:

30 Q. To whom do you turn it over?—A. To the Montreal Trust.

The Chairman: Any other questions to ask this witness?

Mr. Power: No.

Mr. Duff: We are content.

By Mr. Geary:

40 Q. May I ask just one more question, Mr. Séguin. Under what trust do you hold this? How do you know what trust you are holding this under?—A. I was just asked by Mr. Décary to buy the property, sign the papers and turn all the money over to the Montreal Trust.

Q. And should anything unfortunately happen to you, your estate will get what is coming?—A. I suppose Mr. Décary will protect me.

By Mr. McGibbon:

Q. When you rented this to the Canadian National Railways, it included taxes, interest and fire insurance?—A. I know the lease includes taxes. I do not about interest.

The Chairman: That is in the record now. It is all covered by the lease.

By Mr. MacMillan:

Q. Did you ever become a party to a deal similar to this before?—A. Oh, many times.

Q.—That is a usual practice, is it?—A. Yes, sir.

Mr. Power: Usual practice of notaries?—A. Yes.

By the Chairman:

10 Q. But you acted without any written trust?—A. Yes, sir.

Q. The deed contains a provision that the lessee will execute all documents of any nature whatever in the leased premises pay the fire insurance premiums—there is no question about it that the lessee has to pay that?—A. No.

Q. The lease further contains this provision:—

20 To lease and abandon the hereby leased premises at the expiration of the present lease in as good order and condition as they were at the time the lessee took possession thereof.

A. Yes, sir.

Q. Will you obtain and file with the committee a copy of the deed of sale to you?—A. Yes.

The Chairman: If there is any bill in relation to it, send it in to the secretary.

Any questions, gentlemen?

Mr. Bell: Is the lease going to be in record?

The Chairman: The lease is in the record now, I think.

30 Are there any more questions to be asked of this witness? You are discharged for the moment, Mr. Séguin. Do not leave until later.

Mr. Décary is to be called for to-morrow, if possible, and some officer of the Montreal Trust Company. Is that the will of the Committee?

Mr. MacMillan: Sir Henry expressed the wish that Mr. Décary be called.

40 Sir Henry Thornton: It was not my original suggestion. I want the fullest investigation, as long as my statement, which was not first-hand information, is not accepted; that someone who knows the facts first-hand be called.

Mr. Power: I will move that Mr. Décary be heard.

The Chairman: Will you include that some officer of the Montreal Trust be called?

Mr. Power: I am not interested in them. Certain accusations have been made against Mr. Décary and I think he should be heard.

Hon Mr. Chaplin: I will move that some representative of the Montreal Trust Company be called.

The Chairman: And Mr. Décary. Is that the will of the committee?

Carried.

Mr. Geary: Some gentleman who may be able to give us all the details—it may need two or three of them.

10 Mr. McGibbon: I might suggest that we have the one who signed the mortgage.

The Chairman: Mr. Séguin, do you know what officer of the Montreal Trust signed the mortgage?

Mr. Séguin: No, I do not, sir.

DEFENDANT'S EXHIBIT D-10 AT ENQUETE

20 *Defendant's cancelled cheque to the order of Mis-en-Cause for \$3,931.25 with voucher attached.*

No. 10174

CANADIAN NATIONAL RAILWAYS

Canada Montreal, Que. Aug. 1 1932.
Inland Revenue
War Tax THE CANADIAN BANK of COMMERCE
Two Cents Montreal, Que.

30 Pay to the order of
G. Henri Seguin

Three Thousand Nine Hundred & Thirty-one 25/100 Dollars
\$3931.25

Countersigned

H. G. Foreman
Assistant Vice-President

Geo. S. Cowie
Assistant Treasurer

40 Paid Aug. 4 1932
The Canadian Bank
of Commerce
Montreal

The Royal Bank of Canada
Accepted
Aug. 4 1932
Montreal, Que. No. 1

ENDOS

The Royal Bank of Canada
Received Aug. 4 1932
Cleared Aug. 5 1932
11/1 Montreal, Que. 20

G. Henri Séguin
For Deposit only
Décary, Barlow & Joron
Trust Acct.

CANADIAN NATIONAL RAILWAYS
VOUCHER

10 Montreal, Que., July 28th, 1932.

Mr. G. Henri Seguin,
C/o. Messrs. Decary, Barlow & Joron,
132 St. James Street
Montreal, Que.

Audit No. D44362
Commerce Cheque No. 10174
Asst. Compt. Disbts.
Department Issuing
Dept. No. 6198

20 I certify that this is a true copy of an original account approved by the proper officers, that the same has been examined, found correct, registered and filed in the accounting Department of the Company.

Date of Account	E. King	Amount
1932 August 1st.	To rent of 1415 Pine Avenue, West, Montreal, for 3 months ending July 31st, 1932 @ \$15,725.00 per annum, as per agreement dated August 8th, 1930	\$3,931.25

30 "July Accounts"

Received Three Thousand, Nine Hundred and Thirty One Dollars and 25/100 \$3,931.25 in full settlement of the above account.

4 Aug. 1932
Paid Aug. 1 1932

G. H. Séguin

40 Please receipt and return to treasurer
Canadian National Railways
360 McGill Street,
Montreal Que.

ENDOS

Received C. N. R.
A.M. Jul. 30
Treasurer headquarters

DEFENDANT'S EXHIBIT D-11 AT ENQUETE

*Defendant's cancelled cheque to the order of Mis-en-Cause
for \$3,931.25 with voucher attached.*

10

No. 25465

CANADIAN NATIONAL RAILWAYS

Canada
Inland Revenue
War Tax
Two Cents

Montreal, Que. Nov. 1 1932.

BANK OF MONTREAL
Montreal, Que.

20 Pay to the order of
G. Henri Seguin

Three Thousand Nine Hundred & Thirty-one 25/100 Dollars
\$3931.25

Countersigned

30 S. Wheelwright
For Vice-President

H. G. Foreman
Assistant Treasurer

Ledger No. 6
Nov. 2 1932
B. of M., Montreal

ENDOS

40 The Royal Bank of Canada
Received No. 7 1932
Cleared Nov. 2 1932
H/1 Montreal, Que. 20

G. Henri Séguin
For Deposit only
Decary, Barlow & Joron
Trust Acct.

CANADIAN NATIONAL RAILWAYS

VOUCHER

10

Montreal, Que., November 1st, 1932.

Mr. G. Henri Seguin,
C/o. Messrs. Decary, Barlow & Joron,
132 St. James Street,
Montreal, Que.

Audit No. D46278
Montreal Cheque No. 25465
Auditor of Disbursements
Department Issuing
Dept. No. 6267

20 I certify that this is a true copy of an original account approved by the proper officers, that the same has been examined, found correct, registered and filed in the accounting Department of the Company.

E. King

Date of Account	Amount
1932 November 1st.	To rent of 1415 Pine Avenue, West, Montreal, for 3 months ending Octo- ber, 1932, @ \$15,725.00 per annum, as agreement dated August 8th, 1930 .. \$3,931.25

30

“October Accounts”

Received Three Thousand, Nine Hundred and Thirty One Dollars and 25/100 \$3,931.25 in full settlement of the above account.

Nov. 1st. 1932

G. H. Séguin

40

Paid Nov. 1 1932

Please receipt and return to treasurer
Canadian National Railways
360 McGill Street,
Montreal Que.

ENDOS

Received C. N. R.
P.M. Nov. 1
Treasurer headquarters

DEFENDANT'S EXHIBIT D-12 AT ENQUETE

*Defendant's cancelled cheque to the order of Mis-en-Cause
for \$3,931.25 with voucher attached.*

10

No. 28977

CANADIAN NATIONAL RAILWAYS

Canada
Inland Revenue
War Tax
Two Cents

Montreal, Que., Jan. 26 1933.

THE CANADIAN BANK of COMMERCE
Montreal, Que.

20 Pay to the order of
G. Henri Seguin

Three Thousand Nine Hundred & Thirty-one 25/100 Dollars
\$3931.25

Countersigned

S. Wheelwright
For Vice-President

H. G. Foreman
Assistant Treasurer

30

Accepted
Bank of Montreal
B of M \$3931.25 Feb. 07 33
Montreal

Ledger No. 6
Feb. 7 1933
B. of M., Montreal

ENDOS

40 The Royal Bank of Canada
Received Feb. 7 1933
Cleared Feb. 8 1933
11/1 Montreal, Que. 20

Pay to E. R. Decary
G. H. Séguin
E. R. Decary
For Deposit only
Decary, Barlow & Joron
Trust Acct.

CANADIAN NATIONAL RAILWAYS

VOUCHER

Montreal, Que. January 18th, 1933.

10

Mr. G. Henri Seguin,
C/o. Messrs. Decary, Barlow & Joron.
132 St. James Street,
Montreal, Que.

Audit No. D48974
Montreal Cheque No. 28977
Auditor of Disbursements
Department Issuing
Dept. No. 6321

I certify that this is a true copy of an original account approved
by the proper officers, that the same has been examined, found
20 correct, registered and filed in the accounting Department of the
Company.

E. King

Date of Account	Amount	
1933	To rent of 1415 Pine Avenue, West,	
February 1st.	Montreal, for 3 months ending Jan- uary 31st, 1933, @ \$15,725.00 per an- num, as per agreement dated August 8th, 1930	\$3,931.25

30

“January Accounts”

Received Three Thousand, Nine Hundred and Thirty One
Dollars and 25/100 \$3,931.25 in full settlement of the above ac-
count.

Feb. 6th 1933

G. H. Séguin

40 Paid Jan. 26 1933
Please receipt and return to treasurer
Canadian National Railways
360 McGill Street,
Montreal Que.

ENDOS

Received C. N. R.
P.M. Jan. 25
Treasurer headquarters

PLAINTIFF'S EXHIBIT P-7 AT ENQUETE

Letter from Cook & Dussault to Mis-en-Cause.

10

COOK AND MAGEE
Advocates, Barristers, etc.

Montreal April 27th, 1933.

G. Henri Séguin, Esq.,
Messrs. Décary, Barlow & Joron,
Transportation Building,
Montreal.

20 Dear Sir:—

We are acting on behalf of Canadian National Railway Company and have advised our clients that for reasons with which you are familiar, the lease executed on the 8th of August, 1930, before Joron, N.P., between the Railway and yourself — acting for the benefit of Mr. Ernest Décary—is a nullity. Possession of the property covered by this lease will in consequence be surrendered on the 1st of May next and on behalf of our clients we ask you to accept this letter as a notification to this effect.

30

In view of the fact that the Railway has been occupying the premises in question, a cheque to your order for \$3,931.25 is enclosed. This payment is for the use and occupation of the premises by our clients up to the 1st of May next and is tendered in full settlement of all claims. The tender is not to be construed as any admission of liability on our client's part towards you or towards Mr. Décary by reason of the lease or otherwise, and is made under express reservation of all our client's rights.

40

Will you be good enough to acknowledge receipt of this letter and of the enclosed cheque. We are sending a copy of the letter to Mr. Décary for his information.

Yours faithfully.

John W. Cook
J. C. H. Dussault

PLAINTIFF'S EXHIBIT P-8 AT ENQUETE

Letter of Mis-en-cause to Cook & Dussault.

10

DECARY, BARLOW & JORON
Notaries

Montreal, May 1st 1933.

Mr. John W. Cook, K.C., and
Mr. J.C. H. Dussault, K.C.
c/o Messrs. Cook & Magee, Advocates,
507 Place d'Armes, Montreal.

20 Gentlemen,

I beg to acknowledge receipt of yours of the 27th of April last, with cheque enclosed.

Needless to say that I do not accept your view that the lease therein referred to is a nullity.

30 I intend to hold the Canadian National Railway Company to such lease.

However, as the cheque enclosed admittedly is for occupation of the premises which the Railway Company did have, and is also what, according to my view, is due under the lease, there can be no objection to my keeping it, without prejudice to the claim of either party.

40 I will continue to hold the Railway Company responsible for the care of the premises in accordance with the terms of the lease.

Yours truly,

(Sgd.) G. H. Séguin
G. H. SEGUIN

GHS/BT.

PLAINTIFF'S EXHIBIT P-9 AT ENQUETE

Letter of Cook & Dussault to Mis-en-Cause.

10

COOK AND MAGEE
Advocates, Barristers etc.
Aldred Building

Montreal May 1st. 1933.

G. Henri Séguin, Esq.,
Messrs. Decary, Barlow & Joron,
132 St. James Street, West,
Montreal.

20

Dear Sir:—

We have for acknowledgment your letter of to-day's date written by you in reply to the letter which we sent you on the 27th ultimo.

30 As you well understand, the lease to the Canadian National Railway Company on the 8th of August, 1930, is a nullity. The position of our clients has been clearly defined and the cheque for \$3,931.25, which we sent you with our letter of the 27th ultimo, was stated to be in full settlement of all claims. The payment was in addition made under express reservation of all our clients' rights. If, therefore, you accept this cheque, we will, in addition to all other defences, advance that of payment to any claim that you may see fit to make.

Yours faithfully.

40

John W. Cook
J. C. H. Dussault

PLAINTIFF'S EXHIBIT No. 3 WITH RETURN
OF ACTION

10 *Copy of Signification at the request of Montreal Trust Company
to and vs. Canadian National Railway Company,
Jean-Marie Trepanier, N.P.*

(SEAL)

ON THIS DAY, the twenty-sixth of the month of May,
Nineteen hundred and thirty-three.

AT THE SPECIAL REQUEST OF MONTREAL
TRUST COMPANY, a corporation duly incorporated, having its
20 head office in the City of Montreal,

I, JEAN-MARIE TREPANIER, the undersigned Notary,
duly admitted and sworn in and for the Province of Quebec, re-
siding and practising in the City and District of Montreal,

DID PROCEED to the office at civic No. 360 McGill
Street, in the City of Montreal, of CANADIAN NATIONAL
RAILWAY COMPANY, a corporation duly incorporated
30 having its head office in the said City of Montreal,

WHERE BEING AND SPEAKING TO ROBERT
PHIPPS ORMSBY, the Secretary of said CANADIAN NA-
TIONAL RAILWAY COMPANY I signified to the said CAN-
ADIAN NATIONAL RAILWAY COMPANY a duly certified
copy bearing the Registrar's certificate of registration of a Deed
of Loan executed by the said MONTREAL TRUST COMPANY
in favor of GEORGES HENRI SEGUIN and Transfer of
Lease by the latter in favor of the said MONTREAL TRUST
40 COMPANY, before LIONEL JORON, Notary, on the eight day
of August, Nineteen hundred and thirty (1930), under No. 14070
of his Minutes and registered at the Registry Office for the re-
gistration Division of Montreal, under No. 253896, notifying at
the same time the said CANADIAN NATIONAL RAILWAY
COMPANY to conform itself to all the clauses and conditions
of the said Deed of Loan & Transfer of Lease under all penalty
of law.

AND, in order that the said CANADIAN NATIONAL
RAILWAY COMPANY may not plead ignorance in the — pre-

I DECLARED as follows, in answer to a certain signification made at the request of said Montreal Trust Company by the ministry of JEAN-MARIE TREPANIER, Notary, on the twenty-sixth day of May, One thousand nine hundred and thirty-three.

10 THAT the legal advisers of the Requerant and on its
· behalf wrote to G. HENRI SEGUIN, c/o Messrs. Decary, Bar-
low and Joron, Transportation Building, Montreal, under date
the twenty-seventh day of April, One thousand nine hundred
and thirty-three, stating that in their opinion and for reasons
with which said G. Henri Seguin was familiar, the lease executed
on the eighth day of August, One thousand nine hundred and
thirty before Lionel Joron, Notary, between the Requerant and
Georges Henri Seguin — acting for the benefit of Mr. Ernest
Decary — was a nullity; which said lease is referred to in the
20 said signification of the twenty-six day of May last (1933).

 THAT in said letter the said G. Henri Seguin was notified
that the Requerant would surrender, on the first day of May,
One thousand nine hundred and thirty-three, the property cover-
ed by said lease. Enclosed in the letter was a cheque of the Re-
querant to the order of G. Henri Seguin for \$3,931.25 and in
said letter it was expressly declared as follows:—

30 “This payment is for the use and occupation of the pre-
mises by our clients up to the 1st May next and is tendered in
full settlement of all claims. The tender is not to be construed
as an admission of liability on our clients’ part towards you or
towards Mr. Decary by reason of the lease or otherwise, and is
made under express reservation of all our clients’ rights.”

 THAT the said letter bearing date the twenty-seventh day
of April last (1933), with the said cheque attached, was deliver-
ed to said G. Henri Seguin personally on the same day at about
40 half past ten o’clock in the forenoon, and at the same time a copy
of said letter was delivered to said Mr. Ernest Decary.

 THAT by letter bearing date the first day of May last
(1933), signed by said G. H. Seguin and addressed to said legal
advisers, the said G. Henri Seguin acknowledged receipt of the
said letter of the twenty-seventh day of April last (1933) and
the said cheque; in which said letter said G. Henri Seguin de-
clared that he intended to hold the Requerant to said lease and
further that he intended to keep the said cheque.

THAT said legal advisers, acting on behalf of the Requerant, thereupon wrote a letter to said G. Henri Seguin under date the first day of May, One thousand nine hundred and thirty-three, which letter reads in part as follows:—

10 “As you well understand, the lease to the Canadian National Railway Company on the 8th of August, 1930, is a nullity. The position of our clients has been clearly defined and the cheque for \$3,931.25, which we sent you with our letter of the 27th ultimo, was stated to be in full settlement of all claims. The payment was in addition made under express reservation of all our clients’ rights. If, therefore, you accept this cheque, we will, in addition to all other defences, advance that of payment to any claim that you may see fit to make.”

which said letter was delivered personally to said G. Henri Seguin on the second day of May last (1933) at about half past nine o’clock in the forenoon.

20 THAT the said cheque delivered to said G. Henri Seguin with the letter of the twenty-seventh day of April last (1933) has never been returned to the Requerant nor to its said legal advisers.

THAT the Requerant was not a party to the transfer of lease of Georges Henri Seguin in favour of said Montreal Trust Company referred to in said signification of the twenty-sixth day of May last (1933) and that the Requerant entered into an agreement or undertaking with said Montreal Trust Company

30 with respect to the rental and moneys payable under the terms thereof, and further that the said Requerant is under no liability or obligation whatever to said Montreal Trust Company in respect of said lease or the transfer thereof.

The present answer is thus made under the reserve of and without prejudice to the rights of the Requerant in the premises.

AND IN ORDER that the Montreal Trust Company may have no cause to plead ignorance in the premises I have, speaking as aforesaid, served it with a certified copy of these presents

40 for signification hereof.

THUS EXECUTED at the City of Montreal on the date first hereinbefore written and remains of record under the number Sixteen thousand six hundred and sixty-four of my original minutes.

And I have signed in testimony of the premises.

(Signed) Dakers Cameron, N.P.

A TRUE COPY of the original hereof remaining of record in my office.

Dakers Cameron, N.P.

PLAINTIFF'S EXHIBIT P-10 AT ENQUETE

Letter of Cook & Dussault to Mis-en-Cause.

COOK AND MAGEE
Advocates, Barristers etc.
Aldred Building

Montreal June 19th, 1933.

10 Georges Henri Seguin, Esq.,
Messrs. Decary, Barlow & Joron,
Transportation Building,
Montreal.

Dear Sir:—

Referring to our letter of the 27th of April last, on behalf
of our clients, Canadian National Railway Company, we beg to
hand you herewith the keys of the premises No. 1415 Pine Ave-
20 nue, West, possession of these premises, having been surrendered
by our clients on the 1st of May last.

Will you please acknowledge receipt.

Yours faithfully.

Enclosures.

John W. Cook
J. C. H. Dussault

30 PLAINTIFF'S EXHIBIT P-24 AT ENQUETE

Copy of letter from E. R. Decary to Messrs Cook & Dussault.

Mr. John W. Cook, K. C.,
& Mr. J. C. H. Dussault,
c/o Messrs. Cook and Magee,
Advocates,
Aldred Building,
Place d'Armes,
Montreal.

June 20th, 1933

40 Dear Sirs:—

I have your letter of the 19th instant enclosing the keys
of the premises No. 1415 Pine Avenue, West and beg to advise
you, as I have already done, that I do not agree to your right to
cancel the Canadian National Railways' lease for the above pre-
mises. I therefore return you the keys, advising you at the same
time that I am ready to discuss with you an arrangement for the
upkeep of the property, until such time as a decision shall have
been reached by the Court as to the validity of your claim to the
cancellation of such lease.

Yours truly.

ERD/GM.

PLAINTIFF'S EXHIBIT P-11 AT ENQUETE

Letter from Mis-en-Cause to C.N.R. with Statement attached

DECARY, BARLOW & JORON
Notaries

10

Montreal, August 21st 1933.

Canadian National Railway,
McGill Street,
Montreal.

Attention to Mr. R.P. Ormsby.

Dear Sir:—

20 I enclose cheque for \$3,931.25 which I received on or about
the 1st may last.

Accompanying this cheque was a letter from your lawyers,
which I advised you at the time, was not acceptable to me.

Will you therefore see that I am paid immediately of the
amount of rent due as per the enclosed statement as otherwise
I will be obliged to take legal action to recover same.

Yours truly,

30

(Signed) G. H. Séguin
G. H SEGUIN.

GHS/BT.
Canadian Notional Railway
Office of Secretary
Aug. 21 1933
Montreal

21 at. August, 1933.

Canadian National Railways,
C/O Mr. R. P. Ormsby, Secty.,

40

in account with

Mr. G. H. Seguin.

Re: BEARDMORE PROPERTY

To rent due 1st August 1933,	\$3,931.25
To arrears of rent due 1st May 1933,	3,931.25
	<hr/>
	\$7,862.50

DEFENDANT'S EXHIBIT D-18 AT ENQUETE

Statement prepared by Defendant Company's Accounting Department showing progressive amortization of property at 1415 Pine Avenue West under terms of lease and Mortgage.

EXHIBIT "B"

10 1415 PINE AVENUE WEST, MONTREAL
STATEMENT SHOWING PROPORTION OF MORTGAGE WHICH WOULD BE AMORTIZED, AT ITS DUE DATE, AUGUST 1, 1940, ON ACCOUNT OF THE SURPLUS OF RENTAL PAYMENTS, OVER THE INTEREST AT 6½% ON BALANCE OF MORTGAGE, BEING APPLIED IN REDUCTION OF MORTGAGE

20	Date	Proceeds of rental to be applied in payment of Interest and Reduction of Mortgage	Interest @ 6½% on Mortgage	Amounts of rent Available over Interest payments to reduce Mortgage	Balance of Mortgage
					185,000 00
	February 1, 1931	\$ 7,862.50	* 5,831.31	* 2,031.19	182,968.81
	August 1, 1931	7,862.50	5,946.49	1,916.01	181,052.80
	February 1, 1932	7,862.50	5,884.21	1,978.29	179,074.51
	August 1, 1932	7,862.50	5,819.92	2,042.58	177,031.93
	February 1, 1933	7,862.50	5,753.53	2,108.97	174,922.96
	August 1, 1933	7,862.50	5,684.99	2,177.51	172,745.45
30	February 1, 1934	7,862.50	5,614.22	2,248.28	170,497.17
	August 1, 1934	7,862.50	5,541.16	2,321.34	168,175.83
	February 1, 1935	7,862.50	5,465.72	2,396.78	165,779.05
	August 1, 1935	7,862.50	5,387.82	2,474.68	163,304.37
	February 1, 1936	7,862.50	5,307.39	2,555.11	160,749.26
	August 1, 1936	7,862.50	5,224.35	2,638.15	158,111.11
	February 1, 1937	7,862.50	5,138.61	2,723.89	155,387.22
	August 1, 1937	7,862.50	5,050.08	2,812.42	152,574.80
	February 1, 1938	7,862.50	4,958.68	2,903.82	149,670.98
	August 1, 1938	7,862.50	4,864.31	2,998.19	146,672.79
40	February 1, 1939	7,862.50	4,766.87	3,095.63	143,577.16
	August 1, 1939	7,862.50	4,666.26	3,196.24	140,380.92
	February 1, 1940	7,862.50	4,562.38	3,300.12	137,080.80
	August 1, 1940	7,862.50	4,455.13	3,407.37	133,673.43
		\$157,250.00	105,923.43	51,326.57	

*NOTE: Mortgage is dated August 8, 1930, therefore, first payment of Interest is reduced for the eight days, making larger the amount available for reduction of Mortgage.

CANADIAN NATIONAL RAILWAYS,
ACCOUNTING DEPARTMENT,
Montreal, October 2nd, 1934.

DEFENDANT'S EXHIBIT D-14 AT ENQUETE

Statement prepared by witness Stuart showing dealings by Royal Trust Company with Beardmore property.

10 MEMORANDUM

RE: Mr. F.N. BEARDMORE
1415 PINE AVENUE WEST
Company's Capacity — Agent.

- 23rd March 1926 Account opened up.
- 20 Property then known as 605 Pine Avenue, turned over to us; our duties being to pay taxes and insurance.
- We were advised that property was in the hands of Walter Molson & Co. for rent or sale exclusively.
- Asking price \$200,000.
- Asking rental \$500. per month.
- 30 We were instructed not to erect a for sale sign or do any advertising.
- Assessed value of property at that time — \$82,900.
- 17th Nov. 1926 (Note on trust sheet) Pine Avenue property rented by Walter Molson & Co. to Sir Henry Thornton from 1st October 1926 to 1st May 1928 at \$450. per month, furnished.
- 40 24th Oct. 1927 (Note on trust sheet) House leased to Sir Henry Thornton from 1st May 1928 to 1st September 1928 at \$500. per month.
- 29th. Jan. 1929 Letter from Sir Henry Thornton to The Royal Trust Company stating that lease had been extended by exchange of letters between Mr. Beardmore and himself until 1st June 1929.

Listed with The
Royal Trust Co.

- 10 13th Feb. 1930 Letter from Mr. F.N. Beardmore stating that Sir Henry wanted to buy property and had been negotiating with him for some time. Mr. Beardmore put property in our hands on the understanding that we could offer it to anyone except Sir Henry and if he made enquiries we were to refer him to Mr. Beardmore. Mr. Beardmore stated the lease expired on the 1st August 1930, but in case of a sale he could get possession on three months notice. He stated he would take \$250,000. for house, land, furnishings, fixtures, etc.
- 20 5th March 1930 Advised Mr. Beardmore our for sale sign had been erected and we had informed several other responsible agents that the property was available for purchase. We listed it at \$250,000. including furniture.
- 30 17th April 1930 Submitted to Mr. Beardmore, care of Bank of Montreal, Paris France, offer from Messrs. Ewing & Ewing on behalf of a client of theirs, to purchase 1415 Pine Avenue for \$155,000. payable \$100,000. balance on terms; sale to include certain fixtures, etc. but no furniture.
- 20th May 1930 Cable from Mr. Beardmore—"Refuse Ewing offer will accept \$200,000. including fixtures and furnishings excluding few small pieces, fixtures, mirrors and ornaments.
- 40 21st May 1930 We cabled Mr. Beardmore—"Ewing buyer will not compete with others but understand he will pay \$175,000. for property and contents if you will offer it at that figure for immediate acceptance."
- 21st May 1930 Cable from Mr. Beardmore—"Make offer subject being unsold stop Cable Ewing's reply immediately stop have offered elsewhere at \$200,000. with good prospects of sale."

- 22nd May 1930 Cable from Mr. Beardmore—"Refuse offer will accept \$195,000. subject being unsold on receipt of reply."
- 23rd May 1930 We cabled Mr. Beardmore "Ewing states his client no longer interested."
- 10 27th May 1930 The following cable received from F.N. Beardmore. "Have sold Thornton property excluding east lots for \$175,000 stop All furnishings excepting those indicated in my letter to him dated November 29th for \$10,000. stop Thornton will take immediate possession and pay all prompt cash stop Please transfer property immediately and place cash to my account."
- 20 We immediately attended at Sir Henry Thornton's office and obtained copies of cables and correspondence between Mr. Beardmore and Sir Henry.
- 31st May 1930 On instructions from Sir Henry Thornton we forwarded the title deeds to Notary E.R. Decary to enable him to prepare the Deed of Sale.
- 30 15th July 1930 Draft deed submitted to Messrs. Meredith, Holden, Heward and Holden.
- 18th July 1930 Draft Deed of Sale returned by us to Mr. E.R. Decary requesting him to make certain amendments.
- 22nd July 1930 We submitted to Messrs. Meredith, Holden, Heward & Holden copy of a letter dated 9th July 1930 from Sir Henry Thornton to Mr. E.R. Decary transferring all his rights to purchase the property to Mr. George H. Seguin and requesting them to let us know if it would be in order for our client to comply with this request on the strength of the above letter.
- 40 23rd July 1930 Messrs. Meredith, Holden, Heward & Holden informed us that the letter from Sir Henry Thornton was not in proper form, however

10 the difficulty might be overcome if we obtained an undertaking from someone with whose integrity and financial standing we were satisfied to the effect that he would hold Mr. Beardmore protected in respect of this arrangement. We immediately called Mr. Decary's office and obtained such an undertaking from him in writing.

25th July 1930 The draft deed was forwarded to Messrs. Meredith, Holden, Heward & Holden for final approval.

20 8th August 1930 The Deed of Sale to Mr. G.H. Seguin was executed before Mr. E.R. Decary, N.P., The Royal Trust Company acting as attorney for Mr. Beardmore under Power of Attorney, an Acte of Depot of which was dated 20th March 1929. The consideration price was as follows:-

30 House and land \$175,000.00
All furnishings with exception
of certain articles in accordance
with Mr. Beardmore's letter to
Sir Henry of 29th November
1929 10,000.00
\$185,000.00

40 Dimensions
155' x 171'4" on the southwest line
142'9" x 204' " " northeast line Area
27, 313'
Assessed value for 1930/31
Land \$31,800.00 Taxes
Buildings 52,500.00 \$84,300.00 \$2,163.94

G. S.

Montreal, 1st March 1935.
GS/8

DEFENDANT'S EXHIBIT D-15 AT ENQUETE

Statement prepared by Defendant Company's Accounting Department showing rental payment and other charges under lease from Mis-en-Cause to Defendant of 1415 Pine Avenue West.

"EXHIBIT A"

Statement showing payments of Rental and other charges under the lease dated August 8, 1930, effective August 1, 1930, for a period of ten years ending July 31, 1940 between G. Henri Seguin, Lessor and Canadian National Railway Company, Lessee, covering property with house thereon bearing civic number 1415 Pine Avenue West, Montreal.

Vo. No.	Actual date of Payment	Voucher in favour of	Period	Included in the Railway Accounts for the year				Grand Total	Cheque No. and Date	Bank	Endorsation on Cheques
				1930	1931	1932	1933				
RENT											
17766	Nov. 6/30	G.H. Seguin	Qtr. end. Oct. 31/30	\$ 3,931.25					44696-Nov. 4/30	Can. Bk. of Commerce	Pay to order of Decary, Barlow & Joron (G. H. Seguin), (Decary, Barlow & Joron) For deposit only to my account
18039	Nov. 8/30	Decary, Barlow & Joron	June & July 1930	1,000.00					44950-Nov. 7/30)	Can. Bk. of Commerce	E. R. Decary). (Decary, Barlow & Joron)
18040	Nov. 12/30	Sir H. W. Thornton	Oct./29 to May/30	4,000.00				44949-Nov. 7/30)			
22125	Jan. 24/31	G.H. Seguin	Qtr. end. Jan. 31/31		3,931.25				578-Jan. 23/31	Bank of Montreal	(G. H. Seguin) For deposit only to my account (E. R. Decary).
26267	Apr. 25/31	"	" " Apr. 30/31		3,931.25				4057 Apr. 24/31	"	—do—
31463	Aug. 4/31	"	" " Jul. 31/31		3,931.25				10351-Aug. 3/31	"	(G. H. Seguin) for Deposit only (Decary, Barlow & Joron Trust Acct.)
35183	Nov. 3/31	"	" " Oct. 31/31		3,931.25				4073-Nov. 2/31	Can. Bk. of Commerce	—do—
39104	Feb. 6/32	"	" " Jan. 31/32			3,931.25			17095-Feb. 3/32	Bank of Montreal	Pay to order E.R. Decary (G.H. Seguin) For deposit only to my account. (E.R. Decary)
41814	May 5/32	"	" " Apr. 30/32			3,931.25			7806-May 3/32	Can. Bk. of Commerce	(G.H. Seguin) For deposit only (Decary, Barlow & Joron Trust Acct.)
44362	Aug. 4/32	"	" " Jul. 31/32			3,931.25			10174-Aug. 1/32	"	—do—
46278	Nov. 1/32	"	" " Oct. 31/32			3,931.25			25465-Nov. 1/32	Bank of Montreal	—do—
48974	Feb. 7/33	"	" " Jan. 31/33				3,931.25		28977-Jan. 26/33	"	Pay to E.R. Decary (G.H. Seguin) (E.R. Decary) for deposit only (Decary, Barlow & Joron Trust
TOTAL RENT				\$ 8,931.25	15,725.00	15,725.00	3,931.25	44,312.00			
PROPERTY TAX											
15434	Sept. 30/30	Decary, Barlow & Joron	9 mos. ending Apr. 30/31	\$ 1,433.28					43058-Oct. 1/30	Can. Bk. of Commerce	For deposit only (Decary, Barlow & Joron Trust Acct.)
33455	Oct. 2/31	City of Mtl.	Yr. end. Apr. 30/32		2,228.43				13330-Oct. 3/31	Bank of Montreal	L.F. Philie, Treas., City of Montreal.
45937	Sept. 26/32	" " "	" " Apr. 30/33			1,983.30			24306-Sept. 30/32	"	—do—
TOTAL PROPERTY TAX				\$ 1,433.28	2,228.43	1,983.30		5,645.01			
WATER TAX											
45482	Oct. 4/32	City of Mtl.	Yr. end. Apr. 30/33			192.50			12174-Oct. 7/32	Can. Bk. of Commerce	—do—
TOTAL WATER TAX				\$		192.50		192.50			
INSURANCE											
14527	Oct. 3/30	Decary Barlow & Joron	(July 2/29 to July 2/32)	\$ 221.52					43477-Oct. 9/30	Can. Bk. of Commerce	For deposit only (Decary, Barlow & Joron Trust Acct.)
			(Aug. 28/30 to Aug. 28/33)	247.50					—do—	"	—do—
44900	Aug. 20/32	Title Guarantee & Trust Co.	July 2/39 to July 2/35			362.50			22694-Aug. 26/32	Bank of Montreal	For deposit only to the account of The Title Guarantee & Trust Co. of Canada.
TOTAL INSURANCE				\$ 469.02		362.50		831.52			
TOTAL CASH OUTLAY				\$10,833.55	17,953.43	18,263.30	3,931.25	50,891.53			

CANADIAN NATIONAL RAILWAYS,
ACCOUNTING DEPARTMENT,
Montreal, March 4th, 1935.

PLAINTIFF'S EXHIBIT P-26 AT ENQUETE

*Admission by the Parties regarding the "Manion letter"
with documents annexed.*

(see Admission by the Parties on this page)

10

PLAINTIFF'S EXHIBIT P-27 AT ENQUETE

*Admission by the Parties regarding "Graham letter"
with documents annexed.*

(See Admission by the Parties page 320)

ADMISSION BY THE PARTIES

20

1. That on the 20th November 1930, the late Sir Henry Thornton wrote to the Honourable Mr. Manion a letter which is hereunto annexed and marked (A). The original of the said letter is in the possession of the Department of Railways and Canals in the City of Ottawa, and it is agreed that the annexed copy avail as though it were the original thereof.

2. Annexed to the said letter of the 20th November 1930, were copies of the following:

- 30 (a) Copy of a letter of the 6th November 1920, alleged to have been written by E. R. Decary to the late Sir Henry Thornton;
- (b) Copy of Agreement between G. H. Seguin and the late Sir Henry Thornton, alleged to have been executed on the 31st October 1930.

3. The present admission is made on behalf of the Company-Defendant under express reserve of the legality and relevancy of the said documents, which is expressly denied by the
40 Defendant. The present admission is made by the Defendant merely for the purpose of saving expense and trouble.

Montreal, March 1st 1935.

Brown, Montgomery & McMichael,
Attorneys for Plaintiff.

John W. Cook,
J. C. H. Dussault,
Attorneys for Defendant.

Geoffrion & Prud'homme,
Attorneys for Mis-en-cause.

COPY

(A)

CANADIAN NATIONAL RAILWAYS
Office of the Chairman and President

10 Sir Henry W. Thornton, K.B.E.,
Chairman of the Boards of Directors and President

Montreal, Que., November 20th, 1930.

Personal

Dear Doctor:

I had in my mind, the last two times I was in Ottawa, to say to you that it is my recollection I told you that in making the
20 arrangement for the lease of the present house in Montreal there was an option to acquire the same at any time, but I found subsequently through an oversight there was not included in the original document this privilege and upon bringing the matter to the attention of Mr. Decary he has caused Mr. Seguin, who represented him in the matter, to execute a document, copy of which I hereto attach. This document was for the purpose of permitting me to finance some repairs and alterations to the house, including fixing up the garden, amounting to \$20,000, the
30 balance of the amount of \$50,000 being for refurnishing and equipment.

In order to clear up the omission in the original contract of the option to purchase, Mr. Decary, upon the matter being brought to his attention, said that the point had likewise escaped his notice and that it had always been his understanding that I or the company should have the right to purchase the property at any time before the expiration of the lease. To clear this point, he has written me a letter of which the attached is a copy. In
40 event of his death he asks that the option be exercised, if at all, within six months thereafter in order not to encumber his estate for a protracted period. However, inasmuch as he seems to be in good health, such a contingency is not likely.

As intimated before, I should have mentioned this matter to you earlier, but both you and I have been away so much and there was likewise much on my mind that it escaped my attention.

As far as concerns helping me to finance the \$20,000 which has been put into the property by way of repairs and alterations, regarding which you will recall I think that my wife had some conversation with Mr. Bennett in London, it is only fair to say that she was at that time under the impression (as I was myself) that there was in existence an option to purchase. This explains the statement to that effect, as I would not like it to appear that she willingly made a mis-statement.

Yours sincerely.

(Sgd.) H.W. Thornton.

The option to purchase which I took in my own name is, of course, assignable to any nominee of my own. I did not want to bother you again about this but still naturally wanted to be quite truthful.

20 The Hon. R.J. Manion, M.D., M.P.
Minister of Railways and Canals,
Ottawa, Ont.

COPY

THE TITLE GUARANTEE AND TRUST COMPANY
OF CANADA

134 St. James Street, West,

Montreal, November 6, 1930.

30 Sir Henry Thornton,
President, Canadian National Railways,
Montreal.

Dear Sir Henry:

I enclose herewith agreement signed between G.H. Seguin and yourself in connection with the amount of \$50,000.00 which we have agreed to spend on your house on Pine Avenue, also cheque for \$30,000.00 to your order as a payment on account of said sum of \$50,000.00.

As you asked me also, I hereby agree on behalf of the owner of property 1415 Pine Avenue, which you now occupy, to sell you this property at any time during the term of its lease to Canadian National Railways, for the sum remaining due to us on the advances of \$185,000.00 and \$50,000.00. In order, however, not to encumber my estate in any way this option would have to be exercised within six months following my death should I die before the expiry of your lease.

Sincerely yours.

(Signed) E.R. Decary.

COPY

THESE PRESENTS executed in duplicate,

BETWEEN:

10 G. HENRI SEGUIN, of the City of Montreal, Notary.
PARTY OF THE FIRST PART,
AND
SIR HENRY THORNTON, of the City of Montreal,
President of CANADIAN NATIONAL RAILWAYS,
PARTY OF THE SECOND PART,

WITNESS:—

WHEREAS Mr. Seguin is the owner of the property
bearing Civic No. 1415 of Pine Avenue, in the City of Montreal,
20 which he has leased to CANADIAN NATIONAL RAILWAY
COMPANY for a term of ten years to serve as a residence for
Sir Henry Thornton;

WHEREAS Sir Henry Thornton has requested Mr. Se-
guin, as owner of said property, to make certain repairs thereto,
and to add to the furnishings thereof, to the satisfaction of Sir
Henry Thornton, but at a cost not to exceed Fifty thousand dol-
lars (\$50,000.00);

30 AND WHEREAS, in consideration of the expenditure to
be made, as aforesaid, Sir Henry Thornton has promised to pay
to Mr. Seguin a rental of Five hundred and twenty-one dollars
(\$521.00) per month during the whole term of said lease over
and above the rental already payable by CANADIAN NATION-
AL RAILWAY COMPANY under said lease.

WHEREFORE THE PARTIES HAVE AGREED AS
FOLLOWS:

40 Mr. Seguin undertakes to make the repairs and to supply
the furnishings requested, as aforesaid, by Sir Henry Thornton,
and to that effect hereby appoints the latter his attorney to at-
tend to the same, and has presently paid to Sir Henry Thornton
the sum of Fifty thousand dollars (\$50,000.00) covering the cost
of such repairs and furnishings, which sum Sir Henry Thorn-
ton acknowledges to have received for such purpose, agreeing to
himself expend the same for such repairs and furnishings, to his
satisfaction.

And in consideration of the above Sir Henry Thornton
hereby binds and obliges himself to pay to Mr. Seguin a rental
of Five hundred and twenty-one dollars (\$521.00) per month

during the whole term of the Lease of said property granted, as aforesaid, to CANADIAN NATIONAL RAILWAY COMPANY over and above such rental as is already payable by said Company under said Lease.

10 IN TESTIMONY WHEREOF the parties have signed at the City of Montreal on the Thirty-first day of October, Nineteen hundred and thirty (1930).

(signed) H.W. THORNTON
(signed) G.H. SEGUIN

SIGNED in the presence of:

At the expiration of the present Lease and provided all its terms have been fully carried out the said G.H. Seguin agrees to sell to Sir Henry Thornton accepting all furnishings purchased in accordance herewith for one dollar.

20 (Initialled) H.W.T.
G.H.S.

ADMISSION BY THE PARTIES

30 The parties through their undersigned Attorneys hereby admit that on the 2nd day of September, 1925, the late Sir Henry Thornton addressed a letter to the Right Honourable George P. Graham, Minister of Railways, Ottawa, a copy of which has been filed as Exhibit No. 5; which letter was duly received.

That following upon said letter an Order-In-Council was passed authorising a Contract between the Government of Canada and Sir Henry Thornton, which Contract was subsequently executed.

40 This admission is made without in any way admitting the relevancy of the facts admitted and solely to save expense.

Montreal, March 1st, 1935.

Brown, Montgomery & McMichael,
Attorneys for Plaintiff.

John W. Cook,
J. C. H. Dussault,
Attorneys for Defendant.

Geoffrion & Prud'homme,
Attorneys for Mis-en-Cause.

COPY

September 2nd, 1925.

Dear Mr. Graham:

10 Since my conversation with the Prime Minister and you yesterday a legal point has arisen with respect to any arrangement which I might make for the continuance of my services in Canada which will necessitate the execution of a contract between myself and the government of Canada employing me as managing head of the railways now owned or controlled by the government or which may be so owned or controlled in the future. Such an opinion has been given to me by Mr. Eugene Lafleur, K.C.

20 The contract to which I refer in this letter would be entirely separate and apart from any contract which I might execute with the Board of Directors of the Canadian National Railways, although it would embody the same terms. In other words, in Mr. Lafleur's opinion, the contract between myself and the federal government is essential to give effect to what the Prime Minister, you and I decided upon in good faith at our last meeting.

30 I have executed the contract with the Board of the Canadian National Railways on the understanding that the additional contract herein mentioned will be immediately prepared and executed by the government and myself.

I will be in Ottawa on Friday and I am hopeful that it will be possible at that time for me to execute the contract.

Yours faithfully,

(Sgd.) H. W. Thornton

40 The Rt. Hon. Geo. P. Graham, P.C.,
 Minister of Railways,
 Ottawa.

Part IV -- JUDGMENT, &c.

10 Canada
Province de Québec
District de Montréal
No-F.125582

JUGEMENT DE LA COUR SUPERIEURE

Ce 20ième jour de septembre 1935

20 Présent: l'honorable juge Albert de Lorimier.

LA COUR: après avoir entendu les parties par leurs procureurs respectifs ainsi que leurs témoins sur le mérite de cette cause; après avoir examiné le dossier, la procédure, les pièces produites, et sur le tout murement délibéré:—

ATTENDU que la demanderesse réclame la somme de \$7862.50 et allègue:

30 By Deed of Lease passed before Lionel Joron, Notary Public, on the 8th day of August, 1930, the Mis-en-cause, Georges Henri Seguin, did let and lease for a term of ten years, commencing on the first day of August, 1930, unto the Defendant, the Canadian National Railway Company, the following immoveable properties, namely:

40 An emplacement fronting on Pine Avenue, in Redpath, in the City of Montreal, composed of subdivisions 42 and 43 of lot 1755, St. Antoine Ward; the South-Westerly part of subdivision 44 of lot 1755; an emplacement also situated in Redpath Crescent, in Redpath, composed of the South-West portion of subdivision No. 81 of lot 1755, St. Antoine Ward; subdivisions Nos. 82 and 83 of lot 1755 St. Antoine Ward with the house thereon erected bearing civic number 1415 of said Pine Avenue;

The said Lease was so made for and in consideration of the sum of \$157,250 payable at the rate of \$15,725 per year in and by equal quarterly instalments of \$3,931.25, payable on the

1st days of the months of February, May, August and November of each year — the whole as appears by copy of the said Lease herewith filed as Plaintiff's Exhibit No. 1;

By Deed of Loan passed before Lionel Joron, Notary Public, on the said 8th day of August, 1930, the Plaintiff,
10 Montreal Trust Company, loaned to the Mis-en-cause, Georges Henri Seguin, the sum of \$185,000., to bear interest at the rate of 6½% per annum, the said loan to be re-payable on the 1st day of August, 1940, in the meanwhile to reduce the principal of the said loan by re-payment of not less than 2% of the amount to the lender half-yearly on the first days of February and August of each year, the first re-payment to become due on the 1st day of February 1931 and the interest to be paid half-yearly on the 1st days of February and August in each year, the first
20 payment of interest to become due on the said 1st day of February, 1931;

As security for the re-payment of the said loan the Mis-en-cause, Georges Henri Seguin, hypothecated to Plaintiff, Montreal Trust Company, the property hereinabove described, and by the same Deed did transfer to the Plaintiff as collateral security for the payment of the capital sum, the interest thereon and accessories, all his rights, title privileges and actions under the terms of the Deed of Lease to the Defendant Company, hereinabove set forth, with the right to the Plaintiff to
30 collect and receive all rents accruing therefrom from the 1st day of August, 1930, with full subrogation into all the rights of the Mis-en-cause — the whole as appears by a copy of the said Deed of Loan and Transfer of Lease herewith filed as Plaintiff's Exhibit No. 2;

The leased premises were duly delivered to the Defendant Company which entered into possession of the same on or about the 1st day of August, 1930, and has ever since had peaceable
40 possession thereof and until the 1st day of May 1933 performed the obligations of the lease and paid the rent as stipulated to the Mis-en-cause, who in turn remitted the same to the Plaintiff;

The rental due on the 1st May, 1933, not having been paid, and there being other moneys due by the Mis-en-cause to the Plaintiff, the Plaintiff caused the Transfer of the Lease from the Mis-en-cause to itself to be served on the Defendant on the 26th day of May, 1933, through the ministry of Jean-Marie Tré-

panier, Notary Public — the whole as appears by a copy of the said Deed of Signification filed as Plaintiff's Exhibit No. 3;

10 There is now due, owing and unpaid by the Defendant to the Plaintiff the instalment of rental due on the 1st May, 1933, amounting to \$3,931.25 and a further instalment which fell due on the 1st day of August 1933, of a similar amount, namely, \$3,931.25, making a total of \$7,862.50, which the Defendant refuses to pay although thereunto duly requested;

ATTENDU que la défenderesse plaide ce qui suit:

20 Answering paragraph one of the Plaintiff's Declaration, the Defendant alleges that the document therein referred to speaks for itself and further alleges that for the reasons hereinafter given the pretended Lease is illegal, null and void and of no effect;

The document referred to in paragraph two of Plaintiff's Declaration speaks for itself and the Defendant reiterates its statement as to the illegality of this document;

Paragraph three of Plaintiff's Declaration is admitted;

30 Answering paragraph (4) of the Plaintiff's Declaration, the Deed therein referred to speaks for itself;

Paragraph (5) of the Plaintiff's Declaration is denied;

40 Paragraph (6) of the Plaintiff's Declaration as drawn is denied. The Defendant, however, admits that on the 26th day of May, 1933, it was served with the document filed as Plaintiff's Exhibit No. 3 and alleges that on the 15th of June, 1933, through the ministry of Dakers Cameron, N. P., an Answer was duly served, as will appear by a copy thereof herewith produced as Defendant's Exhibit No. 1;

Paragraph (7) of the Plaintiff's Declaration is denied;

AND THE DEFENDANT FURTHER PLEADS:—

The property hypothecated by the Mis-en-cause, Séguin, in favour of the Plaintiff, although registered in the name of

the Mis-en-cause, in reality belonged to Ernest R. Decary of Montreal, being held in the name of the Mis-en-cause for the benefit and advantage of the said Decary;

10 The loan by the Plaintiff to the Mis-en-Cause (Plaintiff's Exhibit No. 1) was a loan in reality made to the said Decary, at his request, for his benefit and advantage and to enable the said Decary to pay the purchase price of the said property and of the moveable effects therein contained sold by Frederick Beardmore to the said Décarv, although the title was given to the Mis-en-Cause by Deed of Sale made by the said Beardmore to the said Mis-en-Cause and passed before Joron, Notary, on the 8th of August, 1930;

20 The Lease referred to in Plaintiff's Declaration (Plaintiff's Exhibit No. 2) although a Lease ostensibly between the Company Defendant and the Mis-en-Cause was in reality a contract between the Company Defendant and the said Décarv for the profit of the said Décarv, and the Mis-en-Cause has not now and never has had any interest whatever in the said Lease or in the leased property;

30 The purchase of the property and of the moveable effects aboved mentioned and the execution of the Deed of Lease (Plaintiff's Exhibit Nos. 1 and 2) were arranged and negotiated by the said Décarv. in conjunction with the late Sir Henry Thornton, for their mutual benefit and advantage between and including the months of September, 1929, and the 8th of August, 1930;

40 During this period Sir Henry Thornton was the Chairman and President of the Defendant Company and the Chairman of its Executive Committee. The said Décarv during the period was a member of the Board of Directors of the said Defendant Company and also a member of its Executive Committee. The said Thornton was in addition a Director of the Company Plaintiff, having been elected as such on the 4th of April, 1930;

Prior to the month of September, 1929, certain suggestions had been made by some of the Directors to the Company Defendant as to the payment of \$100,000. as a bonus to Sir Henry Thornton. Later it was suggested that an official residence should be purchased for his use. Neither of these suggestions, however, received the approval of the Minister of Railways and both were accordingly abandoned;

During this period Sir Henry Thornton was negotiating with the Government on the subject of the renewal of his contract;

10 Notwithstanding the foregoing, on the 17th of September, 1929, the Executive Committee of the Company Defendant adopted a resolution to the effect that the Committee should endeavour to obtain “a suitable and properly equipped residence for the use of the Chairman and President” on such terms and conditions as the Committee should consider proper;

Sir Henry Thornton and the said Décarry took part in the deliberations of the Executive Committee and voted in favour of the said resolution;

20 On the 23rd of September, 1929, the Board of Directors of the Company Defendant adopted a resolution to the same effect and in the same terms;

The said Décarry took part in the Meeting of the Board of Directors and voted in favour of the resolution lastly referred to;

30 By a contract dated the 23rd of September, 1929, between Sir Henry Thornton and the Company Defendant, the Contract of the said Thornton with the said Company Defendant, as Managing-Head, was renewed, it being expressly stipulated, in regard to the remuneration, or salary of the said Sir Henry Thornton, as follows:—

40 “REMUNERATION. — The remuneration of the Managing Head for the full and entire services to be performed from time to time, and for the full period of employment under this agreement, shall be a fixed annual salary (irrespective of the magnitude or extent of the work or duties to be performed from time to time and without any extra fees or remuneration of any description) of Seventy-five Thousand Dollars (\$75,000.00) per annum, payable in equal monthly instalments on or about the first day of each month but not in advance; it being understood and agreed that the monthly payments of the fixed annual salary of Seventy-Five Thousand Dollars (\$75,000.00), hereunder for the period beginning the fourth day of October, 1928, and ending the third day of October, 1929, having been made immediately before the delivery of this agreement, the receipt whereof is hereby acknowledged by the Managing Head.”

The Contract of the 23rd of September, 1929, between Sir Henry Thornton and the Company Defendant was approved by an Order-In-Council of His Excellency the Governor General passed on the 23rd of October, 1929, in accordance with which, on the 25th of October, 1929, a further Contract between His Majesty The King and Sir Henry Thornton was duly executed, 10 this Contract containing a clause as to remuneration similar to the one above quoted;

A copy of the Agreement of the 23rd of September, 1929, above referred to, between the Company Defendant and Sir Henry Thornton is herewith produced as Defendant's Exhibit No. 2;

A copy of the Order-In-Council of the 23rd of October, 1929, is herewith produced as Defendant's Exhibit No. 3, and a 20 copy of the Contract of the 25th of October, 1929, between His Majesty The King and Sir Henry Thornton is herewith produced as Defendant's Exhibit No. 4;

Neither the Contract of the 23rd of September, 1929, the Order-In-Council of the 23rd of October, 1929, nor the Agreement of the 25th of October 1929, contained any clause permitting the leasing of a residence for Sir Henry Thornton and the effort of the said Thornton and the said Décary and of the Board of Directors so to do was contrary to the terms of the said 30 Agreements and in addition utterly illegal;

That notwithstanding the terms of the said Contracts and of the Order-In-Council in question, all of which were thoroughly known to Sir Henry Thornton, to the said Décary and to the other Directors of the Company Defendant, Sir Henry Thornton, in conjunction with the said Décary, endeavoured to find a residence that might be leased by the Company Defendant for his personal use and that of his family;

40 That for some considerable time prior to the 8th of August, 1930, Sir Henry Thornton had been occupying a property on Pine Avenue, in the City of Montreal, owned by one, Frederick Beardmore. The said property was in the first place rented to the said Thornton by the said Beardmore, for the sum of \$500.00 per month, which later was increased to \$600.00 per month, or an annual rental of \$7,200.00;

In or about the month of November, 1929, Sir Henry Thornton started negotiations with the said Beardmore with the

idea of purchasing the said house and subsequently arranged for the purchase of the same for a price of \$175,000, payable in cash, plus an additional \$10,000 for certain furniture therein;

10 As a result of the aforesaid negotiations, all of which had taken place with the knowledge, consent and approval of the said Décary, an Option of purchase was given by Beardmore to Thornton in May, 1930, and subsequently, in July, 1930, was transferred by the said Thornton to the Mis-en-Cause, Séguin. By this Option, Beardmore was to receive the sum of \$175,000 for the property and an additional sum of \$10,000 for certain moveable effects therein contained, or a total of \$185,000;

20 At the same time the said Décary entered into negotiations with the Company Plaintiff to borrow the sum of \$185,000, necessary to pay the purchase price, and contracted with the Company Plaintiff that the property should be purchased by him, in his name, or in the name of a person whom he should designate; that it should be leased to the Company Defendant for a term of ten (10) years, at an annual rental of $8\frac{1}{2}\%$ of the price of acquisition of the property, the Company Defendant in addition paying the taxes and assessments, repairs, improvements, assurances, etc; that the Plaintiff should loan the said sum of \$185,000 for a term of ten years; that re-imbursement of the loan should be guaranteed by a First Hypothec on 30 the property, by the transfer of the Lease and by the personal undertaking of the said Décary; that the loan of \$185,000 should bear interest at $6\frac{1}{2}\%$, the difference between the amount of interest paid and $8\frac{1}{2}\%$ to be applied as a Sinking Fund on the amount of the loan; the whole as will more fully appear by a letter written by the said Décary to the Company Plaintiff on the 24th of June, 1930, the original of which is in the possession of the Plaintiff, who is called upon to produce the same. A copy of the said letter is filed herewith as Defendant's Exhibit No. 5; 40

The Company was from the outset fully aware of all the details of the transaction in question and as a result of the said arrangements that were made, it was agreed that the said Décary, a Director of the Company Defendant, should, at the termination of the lease, be the owner, at a cost to him of \$135,000, of a property for which \$185,000 had, to the knowledge of the Plaintiff, been paid, — all of which was illegal and improper;

On the 16th of June, 1930, a resolution was adopted by the Executive Committee of the Company Defendant, by which it was resolved that the Defendant should lease from the Mis-en-Cause, for the term of ten (10) years, the property above referred to, for an annual rental of \$15,725, payable quarterly and that the Defendant should in addition pay the taxes and assessments generally and specially and should keep the property in a good state of repair during the entire continuation of the lease, the said property to be exclusively reserved as a private residence;

All the transactions hereinabove referred to were completed on the 8th of August, 1930, when the Contract for the sale of the property to the Mis-en-Cause, the Deed of Loan by the Plaintiff to the Mis-en-Cause and the Lease by the Mis-en-Cause to the Company Defendant were executed;

All the agreements set out in the preceding paragraph were executed by the Mis-en-Cause solely for the benefit and advantage of the said Décary and of the said Thornton and in no way for the benefit and advantage of the Mis-en-Cause, the latter having acted simply for the said Décary and as his *prête-nom*, as both the said Décary and the said Séguin acknowledged when examined under oath before a Committee of the House of Commons entitled "Select Standing Committee on Railways and Shipping," which sat at Ottawa in the month of May, 1932;

The said Contracts had in addition, the effect of illegally and improperly conferring on the said E. R. Décary, a Director of the Company Defendant an illegal profit of over \$50,000, in addition to the rental of the property paid and enuring to the benefit of the said Décary;

The lease forming the basis of the present action, made with Séguin, a person interposed and with no interest whatever in the matter, is in reality a Lease for the benefit and advantage of two of the Directors of the said Company Defendant, namely, the said Décary and the said Sir Henry Thornton and as such was prohibited by law and was and is illegal, null and void;

That the Company Plaintiff had at all times a full and complete knowledge of all the transactions and arrangements hereinabove recited and in every way acquiesced in and consented thereto, although the said Company Plaintiff was well aware that the said transactions were utterly illegal, null and void;

That, in addition, the arrangements considered as a whole were grossly improvident, illegal and improper. The fiduciary relationship existing between Sir Henry Thornton and the Company Defendant (Defendant's Exhibits Nos. 2, 3 and 4,) made it improper and illegal for the parties to enter into any such undertakings as those hereinabove outlined. In like manner, the fiduciary position of the said Thornton and the fiduciary position of the said Décary, as Directors of the Company Defendant, and the fiduciary position of the said Thornton, as a Director of the Trust Company, Plaintiff, incapacitated them from entering into, or from in any way, directly or indirectly, profiting by such engagements and undertakings. Finally, the purchase by Décary of the property, the placing of the same by him in the name of Séguin, the obtaining of a rental of \$15,725 per annum from the Company Defendant for this property, previously rented to the said Thornton for the sum of \$7,200 per annum and the giving to Décary, a Director of the Company Defendant, on the termination of the lease, a personal profit of \$50,000, entitles the Company Defendant to demand, as it now demands, that the present claim by the Plaintiff be declared illegal, null and void and be dismissed;

The Company Defendant reserves its rights to recover from the Company Plaintiff and / or the Mis-en-Cause and / or the said Décary, all monies paid in the premises to them or any of them or for their account and prays acte of its said reservation;

Et conclut :

Wherefore the Company Defendant, under reserve as aforesaid, prays that it be declared that the Deed of Lease on the 8th of August, 1930, between the Mis-en-Cause and the Company Defendant is and always has be an illegal, null and void and of no effect, and if need be, that the said Deed of Lease be set aside; that the pretended Transfer of the Lease by the said Mis-en-Cause to the Plaintiff on the 26th of May, 1933, be also declared to be illegal and of no effect; and that the action of the Plaintiff be dismissed, with costs distracts to the undersigned Attorneys;

ATTENDU que la demanderesse a répondu ce qui suit au susdit plaidoyer :

As to paragraph 1 of Defendant's Plea Plaintiff denies the same;

As to paragraph 2 plaintiff joins issue with Defendant;

As to paragraph 3 Plaintiff prays acte of the admissions contained therein;

As to paragraph 6 Plaintiff prays acte of the admissions
10 contained therein;

As to paragraph 8 Plaintiff denies the same, and in particular denies that the same was held for the benefit and advantage of the said Décary;

As to paragraph 9 Plaintiff denies the same, and in particular denies that the same was held for the benefit and advantage of the said Décary;

20 As to paragraph 10 Plaintiff denies the same, and in particular that the said lease was in reality a contract for the profit of the said Décary;

As to paragraph 11 Plaintiff denies the same, and in particular that the said contract was arranged and negotiated by the said Décary for his benefit and advantage;

As to paragraph 12 Plaintiff admits the same;

30 As to paragraphs 13 and 14 Plaintiff declares its ignorance;

As to paragraph 15 Plaintiff admits the same;

As to paragraph 16 Plaintiff denies the same and alleges that the resolution therein referred to was adopted unanimously without any detailed vote being taken;

40 As to paragraph 17 the same is admitted;

As to paragraph 18 Plaintiff denies the same and alleges that the resolution therein referred to was adopted unanimously without any detailed vote being taken;

Moreover the Minister of Railways and Canals was represented at all meetings and took part in the deliberations and copies of the Minutes of all meetings were duly transmitted to the Department of Railways and Canals for their information;

As to paragraph 19 Plaintiff says that the contract therein referred to speaks for itself, but that the contract was approved and authorized by the Board of Directors of the Company Defendant on the same day and at the same meeting as the resolution referred to in paragraph 17 of Defendant's Plea was adopted, and that the two have to be read together;

10

As to paragraph 20 Plaintiff admits that a further contract was made between His Majesty the King and Sir Henry Thornton, as alleged in said paragraph, but denies that any approval by Order-in-Council was required of the contract of the 23rd September, 1929, between Sir Henry Thornton and the Company Defendant, and alleges that the contract between His Majesty the King and Sir Henry Thornton was entirely an independent matter with which the Company had nothing to do;

20

The Plaintiff is furthermore advised that when the late Sir Henry Thornton was first engaged as managing head of the Canadian National Railway Company in the month of October, 1922, the only contract of engagement which was passed was between the Railway and the said Thornton, and that there was no second contract with the Crown; furthermore that on the 2nd September, 1925, at the time that he was re-engaged by the Railway Company a contract bearing that date was executed between himself and the Railway Company. The said Thornton, having been advised by the late Mr. Lafleur that there was no (sic?) doubt as to the power of the Railway Company to engage him as managing head to act as President and Chairman of the Company for more than one year, requested that a contract in similar terms be executed between the Government of Canada and himself, the whole as appears by a letter addressed by the late Sir Henry Thornton to the Rt. Hon. George P. Graham, then Minister of Railways, dated September 2nd, 1925, copy of which is hereby produced as Plaintiff's Exhibit No. 5;

30

40

Pursuant to the said request and for the protection of the said Thornton an agreement in the same terms as that made between the said Thornton and the Railway was executed between the said Thornton and the Government, and in the year 1929 when the engagement with the said Thornton came up for renewal the same procedure was followed, a second independent agreement being made with the Government to ensure the validity of the engagement of the said Thornton for the said term

of five years, but such agreement did not otherwise affect the power of the Railway, through its Directors, to engage the said Thornton or to make any terms with him that they saw fit either as to providing him with a residence or otherwise;

10 As to paragraphs 21 and 22 Plaintiff says that the contracts and Order-in-Council therein referred to speak for themselves;

As to paragraph 23 Plaintiff denies the same and says that the contract and agreements speak for themselves, and that it was entirely unnecessary for the said lease to be referred to in either of said contracts, the same having been authorized quite independently by the Board of Directors of the Company Defendant;

20 As to paragraph 24 Plaintiff admits that pursuant to the resolutions of the Executive Committee of the Company Defendant of the 17th September, 1929, and of the Board of Directors of the Company Defendant of the 23rd September, 1929, the late Sir Henry Thornton did endeavour to obtain "a suitable and properly equipped residence for the use of the Chairman and President", but otherwise the said paragraph is denied;

30 As to paragraph 25 Plaintiff admits that for some considerable time Sir Henry Thornton had been occupying a property on Pine Avenue in the City of Montreal owned by one Frederick Beardmore, but is ignorant to the balance of the said paragraph;

As to paragraph 26 Plaintiff admits the same, the said negotiations having been conducted pursuant to the resolutions hereinabove referred to;

40 As to paragraph 27 Plaintiff admits the option of purchase therein referred to and the transfer of the said option to the Mis-en-Cause, otherwise the said paragraph is denied;

As to paragraph 28 Plaintiff says that the letter therein referred to and produced as Defendant's Exhibit No. 5 speaks for itself; except in so far as the said paragraph corresponds with the said letter the same is denied;

As to paragraph 29 the same is denied;

As to paragraph 30 Plaintiff declares its ignorance and calls upon the Defendant to produce a copy of the resolution of the 16th June, 1930, therein referred to;

As to paragraph 31 Plaintiff admits that the several contracts and deeds therein referred to were executed on the 8th
10 day of August, 1930, otherwise the said paragraph is denied;

As to paragraphs 32, 33, 34, 35 and 36 Plaintiff denies the same ;

Plaintiff further avers that although Plaintiff was unaware of the fact at the time it is now informed that the late Sir Henry Thornton had in fact been occupying the premises on Pine Avenue, herein, referred to, or some time prior to the year 1930 under a temporary lease at a nominal rental but that he
20 had been advised that the property was to be sold and he would have to vacate, and it was pursuant to the resolution of the Executive Committee of the Board of Directors referred to by the Defendant;

The late Sir Henry Thornton having acquired the said option, informed Mr. Décary of the fact and enquired from him whether he would be able to arrange for the financing of the purchase;

30 That thereupon Mr. Décary approached Mr. Donaldson, the Manager of the Company Plaintiff, to enquire whether the Company Plaintiff would make the necessary loan, to be guaranteed by a first mortgage on the property, by the transfer of the lease to the Canadian National Railways and by the personal guarantee of him, the said Décary, and following the letter, produced by Defendant as Exhibit No. 5, the Company Plaintiff agreed to make the loan;

40 The Plaintiff is further informed that the said Mr. Décary had no personal interest in the purchase and the same was not made for his benefit, profit or advantage and that in fact the said Mr. Décary agreed with the late Sir Henry Thornton to turn the property over to him at any time for whatever balance might remain outstanding on the said loan, which agreement was confirmed by a letter from the said Mr. Décary to the said late Sir Henry Thornton dated November 6th, 1930, copy of which is hereby filed as Plaintiff's Exhibit No. 4;

That the said transaction was entered into by Plaintiff in the ordinary course of its business and in good faith and the Company Defendant is in bad faith in attempting to repudiate the said lease and the resolutions of its own Executive Committee and Board of Directors authorizing the same;

10 ATTENDU que contestation a été liée par une réplique à la réponse amendée de la défenderesse et par une réplique à la susdite réplique ;

 ATTENDU que le mis-en-cause, après avoir admis certains faits et nié d'autres, a contesté le plaidoyer de la défenderesse et dit ce qui suit :

 Paragraphs 1 and 2 of the plea are denied;

20 Paragraphs 8 and 9 as drafted are denied;

 Paragraphs 10 and 11 are denied;

 Paragraph 12 is admitted except that mis-en-cause does not know if said Sir Henry Thornton was a director of Company Plaintiff;

 Paragraph 32 is denied as drafted;

 Mis-en-cause is ignorant as to paragraph 14;

30 In answer to paragraphs 15 and 17, mis-en-cause says that the resolutions therein mentioned speak for themselves; otherwise said paragraphs are denied;

 Paragraphs 16 and 18 are admitted except that there was no vote taken, the resolutions were unanimous;

 As to paragraph 19, mis-en-cause says that the contract therein referred to speaks for itself, that such contract was approved by the directors of defendant at the same meeting as the
40 resolution referred to in paragraph 17 of the plea and that the two have to be read together;

 As to paragraph 20, mis-en-cause admits that a further contract was made between His Majesty and Sir Henry Thornton but denies that any approval by order in council was required of the contract of the 23rd September, 1929 between Sir Henry Thornton and the Company defendant and alleges that the contract between His Majesty and Sir Henry Thornton was an independent matter with which the company had nothing to do;

The documents mentioned in paragraph 21 and 22 speak for themselves;

Paragraph 23 is denied;

10 Paragraph 24 is denied except that it is admitted that Sir Henry Thornton, pursuant to the above resolutions, did endeavour to obtain a suitable and properly equipped residence for the use of the chairman and president of Defendant;

As to paragraph 25, mis-en-cause admits that Sir Henry Thornton had been occupying for a time the property therein mentioned but is ignorant as to the balance of the paragraph;

Paragraph 26 is admitted;

20 As to paragraph 27, mis-en-cause admits the option of purchase and its transfer to mis-en-cause; otherwise the paragraph is denied;

As to paragraph 28, mis-en-cause says that the letter therein referred to speaks for itself; otherwise the paragraph is denied;

Paragraph 29 is denied;

30 The documents referred to in paragraphs 30 and 31 speak for themselves; otherwise the paragraphs are denied;

Paragraphs 32, 33, 34, 35 and 36 are denied;

40 At all meetings of either the executive committee or the board of directors of defendant-company and more particularly at the various meetings referred to in the plea, the Minister of Railways for Canada was represented by his deputy-minister and the general counsel for the company was present and they concurred in the resolutions which were adopted unanimously;

Copies of all the minutes of such meetings were sent to the Minister immediately after they were held;

The company-defendant was willing to lease the house in question for Sir Henry Thornton; the owner insisted on selling and plaintiff was willing to entirely finance the purchase prov-

ided it was secured by a lease in terms such as the one in issue and more particularly for a rental providing for interest and sinking fund as therein stipulated, and by a guarantee of said Ernest Décary;

10 The said Ernest Décary, to permit of the transaction that all the parties were desirous of making being effected, agreed to cause his partner, the mis-en-cause, to buy the house and furniture with the monies advanced by plaintiff, securing the advance by a transfer of the lease entered into by the Company-Defendant and by the personal guarantee of the said Ernest Décary who also guaranteed his partner;

20 It was then agreed and the said Ernest Décary subsequently gave a letter evidencing such agreement, that the Company or Sir Henry Thornton would have an option during the term of the lease, but subject to termination in the event of the said Ernest Décary, dying, within six months of his death, to buy the said property and furniture at its cost at the date of the exercise of such option;

30 Under the circumstances, the said Ernest Décary merely has pledged his personal credit to permit of this transaction desired by the defendant-company being effected, with no chance of profit and with a risk of loss; and mis-en-cause prays that the plea be dismissed with costs;

ATTENDU que la défenderesse a répondu à ladite contestation du mis-en-cause ce qui suit:

The Defendant prays acte of the admission contained in paragraph 4 of the Contestation by Mis-en-Cause;

40 The defendant prays acte of the admissions contained in paragraph 8 of the Contestation by Mis-en-Cause; otherwise the said paragraph is denied;

Paragraph 9 of the Contestation by Mis-en-Cause is denied save insofar as the same accords with paragraphs 19 of Defendant's Plea;

The Defendant denies paragraph 10 of the Contestation by Mis-en-Cause save insofar as the same accords with paragraph 20 of Defendant's Plea;

The Defendant prays acte of the admissions contained in paragraphs 13, 14, 15 and 16 of the Contestation by Mis-en-Cause;

The Defendant denies paragraph 21 of the Contestation by Mis-en-Cause, save insofar as the same accords with paragraphs 1, 16, 17, 18 and 30 of Defendant's Plea;

The Defendant denies paragraph 22 of the Contestation by Mis-en-Cause;

The Defendant denies the allegations of paragraphs 23 and 24 of the Contestation by Mis-en-Cause, save insofar as the same agree with the allegations of Defendant's Plea;

Paragraph 25 of the Contestation by the Mis-en-Cause is false and is denied, as in the authenticity and relevancy of the pretended letter of the 6th of November, 1930, mentioned therein, (Plaintiff's Exhibit No. 4.) The Mis-en-Cause is called upon to produce the original of this letter and is put to the strictest proof in regard thereto;

The Defendant in addition alleges that in any event no agreement between the said Décary and the said Thornton, if any such existed, which is expressly denied, could in any way affect the legal rights of the Company Defendant or the legal obligations of the said Décary and the said Thornton as Directors thereof. The letter of the 6th of November, 1930, referred to in paragraph 25 of the Contestation by the Mis-en-Cause (Plaintiff's Exhibit No. 4) even if authentic and relevant, which is expressly denied, is a mere self-serving document, prepared and delivered long after the execution of the transfer of the property to the Mis-en-Cause, the Deed of Loan by the Plaintiff to the Mis-en-Cause and the Lease by the Mis-en-Cause to the Company Defendant, all of which agreements were completed on the 8th of August, 1930;

Paragraph 26 of the Contestation by the Mis-en-Cause is false and is denied and Defendant alleges that the transaction therein referred to for the reasons set out in Defendant's Plea is utterly illegal, null and void and of no effect and that the said transaction was desired and effected by the said Décary and by the said Thornton for their own personal convenience, gain and profit;

The Contestation by Mis-en-Cause is unfounded in fact and in law;

CONSIDERANT que la preuve tant écrite que verbale, il ressort ce qui suit :

10 Le 8 août 1930, F. N. Beardmore a vendu la propriété, dont il est question en cette cause, à Georges Henri Séguin, par acte portant le numéro 14068 passé devant le notaire Lionel Joron, enregistré le 9 août 1930, sous le numéro 253895, pour le prix, payé comptant, de \$175,000.00 pour l'immeuble et \$10,000.00 pour les meubles qu'y s'y trouvaient (exhibit D-1 de la défenderesse);

20 A la même date (8 août 1930) Séguin a donné ladite propriété à bail, à la défenderesse, pour le terme de dix ans, à partir du 1er août 1930, au loyer de \$157,250.00, payable \$15,725.00 l'an, par quatre versements de \$3,931.25 chacun (exh. No. 1 de la demanderesse);

Le même jour aussi, 8 août 1930, Montreal Trust Company, la demanderesse, a prêté, au taux de 6½% par année et aux autres conditions du prêt, la somme de \$185,000.00 à Séguin; ce dernier lui a transporté tous les droits qu'il avait dans le bail ci-dessus mentionné (exh. No. 2 de la demanderesse);

30 La demanderesse a fait signifier à la défenderesse, lesdits actes de prêt et transport de bail, par acte de signification du 26 mai 1933, par Jean-Marie Trépanier, notaire (exh. No. 3 de la demanderesse);

40 Il est établi que Mtre Ernest R. Décary est notaire, formant partie de la société Décary, Barlow et Joron; que le mis-en-cause Georges Henri Séguin, pratiquant comme notaire dans son bureau, lui a servi de prête-nom dans cette affaire et notamment dans les actes ci-dessus mentionnés;

Avant, pendant et après tout ce temps, Décary était directeur de la compagnie défenderesse;

Mais monsieur Décary avait-il le droit d'en agir ainsi ?
Non.

D'après la loi spéciale qui gouverne ce cas, le seul contrat que Décary, comme directeur, avait le pouvoir et le droit

de faire, dans l'espèce, pour la compagnie défenderesse, était un acte d'achat de terrains nécessaires à la construction de son chemin de fer ou à ses voies ferrées; on sait que des voies ferrées sont faites de rails, traverses, etc, sur lesquels roulent les locomotives et wagons (voir S. R. C. version française, chapitre 170, section 2, paragraphes 3 et 5 et section 121);

10

Voici comment se lit la section 121 du S. R. C. version française, chapitre 170, qui gouverne notre cas: "Nulle personne qui est un directeur de la Cie ne peut contracter, ni être directement ou indirectement, pour son propre compte et bénéfice, intéressé dans un contrat conclu avec la compagnie autre qu'un contrat se rattachant à l'acquisition des terrains nécessaires au chemin de fer, et cette personne ne peut être, ni devenir associé ou caution d'un entrepreneur de la compagnie."

20

Mais, dans la présente cause, il ne s'agit pas de terrains nécessaires au chemin de fer, mais d'une résidence que M. Décary a, par son prête nom Séguin, le 8 août 1930, acquise du susdit Beardmore, pour M. Thornton alors président de la défenderesse;

30

Il s'ensuit que M. Décary ne pouvait agir comme directeur pour faire l'acquisition de cette résidence pour la défenderesse parce que la loi spéciale ci-dessus mentionnée n'accorde à un directeur que le droit d'acquérir des terrains nécessaires au chemin de fer;

40

Il est donc constant que le seul contrat que M. Décary pouvait, comme directeur, passer pour la défenderesse, était un contrat d'acquisition de terrains nécessaires à la construction de voies ferrées et nullement pour l'achat d'une résidence, qu'en sorte que le susdit acte de louage ou bail du 8 août 1930, produit comme exhibit numéro un de la demanderesse, est nul d'une nullité absolue étant donné qu'il était défendu et prohibé à un directeur d'acquérir pour la défenderesse autres immeubles que des terrains vacants comme dit ci-dessus;

Cette interprétation de la section 121 du Statut Révisé du Canada est non seulement vraisemblable, mais raisonnable, sage, juste et légale;

Pour les raisons ci-dessus mentionnées par cette Cour et celles données par la défenderesse dans son factum, la demanderesse n'a pas fait sa cause et la défenderesse a établi sa défense;

Quant à ce qui regarde la contestation du plaidoyer de la défenderesse par le mis-en-cause, elle est mal fondée et renvoyée avec dépens;

10 Par ces motifs, déclare illégal, nul, annulé et de nul effet, le susdit bail du huitième jour du mois d'août mil neuf cent trente (8 août 1930), ainsi que le transport du bail fait par le mis-en-cause au demandeur, le vingt-sixième jour du mois de mai mil neuf cent trente-trois (26 mai 1933), et renvoie l'action avec dépens.

Albert de Lorimier,
J. C. S.

CONSENT AS TO CONTENTS
OF JOINT CASE IN APPEAL.

20 The parties hereto by the undersigned their respective Attorneys of record hereby consent that the joint case in appeal to the Court of King's Bench (appeal side) shall consist of the following documents only:—

- | | | |
|--------------|-----|--|
| | 1. | Pleadings: (Case heading and description of parties to be omitted). |
| Document No. | | |
| 2 | (a) | Plaintiff's Declaration; |
| 8 | (b) | Defendant's Plea; |
| 47 | (c) | Plaintiff's amended answer to Plea; |
| 30 21 | (d) | Contestation by Mis-en-cause of Defendant's Plea |
| 57 | (e) | Defendant's reply to Plaintiff's amended answer to Plea; |
| 24 | (f) | Answer to Contestation by Mis-en-Cause; |
| 42 | (g) | Plaintiff's answer to Defendant's reply; |
| | 2. | All Exhibits, with the Exception of Plaintiff's Exhibit No. 1 at enquete (Document No. 50) of which only By-Laws No. 11, 14, 15 and 17 shall be printed. |
| 40 | 3. | The written admissions of the parties. |
| | 4. | All Depositions of witnesses. |
| | 5. | The Judgment appealed from. |
| | 6. | The present Consent. |

MONTREAL, January 29th, 1936.

Brown, Montgomery & McMichael,
Attorneys for Appellants.

John W. Cook,
J. C. H. Dussault,
Attorneys for Respondent.

Canada
—
Province of
Quebec
—
District of
Montreal

Court of King's Bench
(IN APPEAL)

10 On appeal from a Judgment of the Superior Court, sitting for the District
of Montreal, rendered by the Honourable Mr. Justice Delorimier
on the 20th day of September, 1935.

Montreal Trust Company,

(Plaintiff in the Superior Court),

20

— and —

Georges Henri Seguin,

(Mis-en-Cause in the Superior Court),

30

APPELLANTS.

— vs —

Canadian National Railway Company,

(Defendant in the Superior Court),

40

RESPONDENT.

APPELLANT'S FACTUM

This is an appeal from a Judgment rendered the 20th September, 1935, by the late Honourable Mr. Justice deLorimier annulling a lease from the Appellant Seguin to the Respondent, and the transfer of the said lease from the Appellant Seguin to the Appellant Montreal Trust Company, and dismissing the Appellant Montreal Trust Company's action for \$7,862.50 and the Appellant Seguin's contestation, both with costs.

1. THE FACTS

In the year 1929 Sir Henry Thornton, President, Chairman of the Board and Managing Director of the Respondent
10 Company was occupying and had for some years been occupying a house on Pine Avenue, in the City of Montreal, bearing the civic number 1415, which he rented from Mr. Frederick N. Beardmore under a lease dated September, 1926, and reproduced at page 183 of the case, which lease was renewed annually by letter. This lease was for a year only and under it Mr. Beardmore reserved the right to sell the property and terminate the lease on three months' notice.

Mr. Beardmore had gone to live in England and was anxious
20 to sell the house. This arrangement whereby the President and Chairman was likely to be obliged to vacate on three months' notice was unsatisfactory to him and since he was obliged, owing to his position, to do considerable entertaining, he felt that the Respondent Company should make provision to ensure him the use of a suitable residence.

On September 17, 1929, the Executive Committee of the Respondent Company met in Montreal and passed the following resolution (case p. 190):

30 "WHEREAS in the opinion of the Executive Committee a suitable residence in Montreal for the Chairman and President of the Company is essential for the proper conduct of the Company's business, it was unanimously RESOLVED that the Executive Committee should undertake to lease a suitable and properly equipped residence for the use of the Chairman and President of the Company under such terms and conditions as the Committee may subsequently deem proper."

40 The above resolution was approved at a meeting of the Board of Directors of the Respondent Company on September 23rd of the same year. At the same meeting the renewal of Sir Henry Thornton's contract with the Railway was discussed and a resolution was passed authorizing the reengagement of Sir Henry Thornton as President and Managing Director of the Respondent Company for a term of five years (case pp. 208 et seq.) Following the record in the Minutes of this resolution is that of another resolution providing for a pension for Sir Henry, and then appears the following resolution (case P. 210):

“34. RESOLVED that in the matter of the leasing of a suitable residence for the use of the Chairman and President of the Company in Montreal, the resolution adopted by the Executive Committee in this respect at its meeting on September 17th is approved, and the Committee is hereby authorized to lease a suitable and properly equipped residence for the use of the Chairman and President of the Company under such terms and conditions as the Committee may subsequently deem proper.”

On the same day the Respondent Company, as authorized by the provisions of the above-mentioned resolution respecting Sir Henry Thornton's contract entered into a contract with Sir Henry Thornton re-engaging him as President and Managing Director for a period of five years. (case p. 191). Following this there was also passed an Order-in-Council dated October 23rd, 1929, confirming the re-engagement, and a formal contract between His Majesty the King and Sir Henry Thornton in exactly similar terms was duly signed on October 25th, 1929 (case p. 214).

During the winter of 1929-1930 Mr. Beardmore continued his efforts to sell his house and put it definitely into the hands of the Royal Trust Company for sale by a letter dated 13th February 1930 (case p. 221). The President was naturally anxious, if possible, to continue residing in this same house, but the Minister of Railways and Canals was unwilling to provide for a purchase in the estimates, although willing to lease a house for the President (case p. 161, evidence of Mr. Rayside).

At a meeting of the Executive Committee of the Respondent Company held on 24th March 1930, reference was made to the unsuccessful efforts which had been made to secure an official residence for the President and it was decided to make an adjustment with him in respect to the rental which he was himself paying (case p. 224). Following this meeting, Mr. Decary, one of the members of the Executive Committee, and a man of long experience in real estate transactions was asked by the Executive whether he could arrange the financing of the purchase of Mr. Beardmore's house to enable the Respondent Company to obtain a lease of it and allow its President to continue to occupy it. As an accommodation to the Respondent Company, Mr. Decary agreed to endeavour to do this (case p. 141, evidence of Mr. Decary, pp. 117-118, evidence of Rayside).

Finally, the President, who had personally been carrying on negotiations with Mr. Beardmore, asked Decary whether he

thought that he could arrange the financing of the purchase of the Beardmore house at \$175,000 and Decary agreed to endeavour to do so (case p. 141, evidence of Mr. Decary).

10 Following an exchange of cables with Mr. Beardmore (case pp. 230-232) Sir Henry on May 27th, 1930, agreed to buy the house and land for \$175,000 and the furniture therein for an additional \$10,000, making a total price of \$185,000.

On June 16th, 1930, the Executive Committee of the Respondent Company passed the following resolution (case p. 236):

20 “RESOLVED that the Company rent from GEORGE H. SEGUIN, for a term of ten (10) years, commencing on the first day of August, Nineteen hundred and thirty (1930), and expiring on the thirty-first day of July, Nineteen hundred and forty (1940), that certain house bearing No. 1415 Pine Avenue West, in the City of Montreal, for an annual rental of FIFTEEN THOUSAND SEVEN HUNDRED AND TWENTY-FIVE DOLLARS (\$15,725.00), payable quarterly on the first days of February, May, August and November of each year, the first payment to become due on the first day of November next (1930), and subject to the following conditions on the part of the Company, namely:

30 “To keep the house in good order of repairs during the entire term of the lease;

“To use the premises as a private residence only, and for no other purpose;

“To pay all taxes and assessments, general or special, or of any nature whatsoever which may be imposed on said property during the term of the lease.”

40 The George H. Seguin, one of the present Appellants, mentioned in this resolution was, to the knowledge of all the Directors present, a notary in the office of Decary and not at that time the owner of the property mentioned in the resolution. It was understood that this resolution was merely for the purpose of enabling Decary to carry out the Board's request that he finance the purchase of the Beardmore house. The rental of \$15,725.00 mentioned in the resolution represented interest at 6½% on the sum of \$185,000 plus 2% for reduction on the principal of that sum (case pp. 75-76, evidence of Decary; p. 118, evidence of Ray-side).

Mr. Decary had previously, pursuant to the request of the Board of Directors of the Company, approached Mr. Donaldson of the Appellant Montreal Trust Company with a view to financing the purchase of the Beardmore house (case p. 43, evidence of Donaldson). Following the above meeting which passed the resolution authorizing the lease, he again approached Donaldson
10 who agreed to lend the full amount of the purchase price against an assignment of the lease to the Respondent Company, a hypothec on the house and a personal guarantee of Decary. The conditions are set forth in the letter written by Decary to Donaldson on June 24th (case p. 237). Sir Henry, at Decary's suggestion, then transferred his right to purchase the Beardmore property to the Appellant Seguin by a letter dated July 9th, 1930 (case p. 239). The transactions were completed on August 9, 1930, by three notarial contracts passed before Lionel Joron, N. P. One was a Deed of Sale of the house in question from F. N. Beard-
20 more to the Appellant Seguin for the price of \$185,000 (case p. 253). Another was a lease of the same house from the Appellant Seguin to the Respondent Company under the terms outlined in the resolution of June 16 (case p. 241). The third was a loan of \$185,000 from the Appellant Montreal Trust Company to the Appellant Seguin, which loan was to bear interest at 6½% and to be repaid at the end of ten years, and the principal of which was to be reduced by 2% annually (case p. 245). As security for this loan the Appellant Seguin hypothecated the property he had just purchased to the Appellant Company and assigned to them
30 the lease of the said property to the Respondent Company.

It had originally been intended to include in the lease an option under which the Respondent Company could purchase the property leased at any time by paying the lessor the balance owing by him on the purchase price, but this clause was unintentionally omitted (case p. 149, evidence of Decary; p. 317, letter dated November 20th, 1930, from Sir Henry Thornton to the Honourable Dr. Manion). Sir Henry was anxious to refurnish the house and effect certain repairs and arranged with Decary
40 personally to advance \$50,000 on Sir Henry's own account for this purpose. The advance was made in the form of an agreement between Sir Henry and the Appellant Seguin dated 31st October, 1930, under which the money was to be repaid at the rate of \$521 per month (case p. 319). Decary's attention having been drawn to the omission from the lease of the option to the Respondent Company, he remedied this by a letter to Sir Henry Thornton dated November 6, 1930 (case p. 318) in which the following passage occurred:

10 “As you asked me also, I hereby agree on behalf of the owner of Property 1415 Pine Avenue, which you now occupy, to sell you this property at any time during the term of its lease to Canadian National Railways, for the sum remaining due to us on the advances of \$185,000.00 and \$50,000.00. In order, however, not to encumber my estate in any way this option would have to be exercised within six months following my death should I die before the expiry of your lease.”

Sir Henry Thornton wrote a letter to Dr. Manion, the Minister of Railways and Canals, enclosing a copy of his agreement with the Appellant Seguin and of the above-mentioned letter from Decary (case p. 317).

20 For several years (August 9th, 1930 to April 27th, 1933) Respondent performed all its obligations under the lease without protest.

In the fall of 1932 Sir Henry Thornton resigned as President of the Respondent Company and died in March, 1933.

30 On April 27, 1933, Messrs. Cook and Dussault, counsel for the Respondent wrote a letter to the Appellant Seguin stating that the lease was a nullity, and enclosing a cheque for \$3931.25 in payment of rental up until the 1st May, 1933, (case p. 301). On the 1st May the Appellant Seguin wrote back announcing his intention of holding the Respondent to the terms of the lease. Counsel for Respondent answered again asserting that the lease was null and that if the Appellant Seguin retained the cheque he would be considered to have accepted it in full settlement of all claims under the lease (case p. 303). The cheque was never cashed and was returned to Counsel for Respondent on August 21, 1933 (case p. 309).

40 On May 26, 1933, the Appellant Montreal Trust Company served a notarial protest upon the Respondent calling upon it to perform its obligations under the lease (case p. 304). Respondent made answer on June 15 in notarial form re-asserting the nullity of the lease (case p. 305). The keys to the house in question were during all this time in the hands of the Respondent who had full power to make use of the house. They were finally sent back to the Appellant Seguin on the 19th June, 1933, and returned by him to the Respondent the following day (case p. 308-309).

Owing to the persistent refusal of the Respondent to recognize the validity of the lease, the Appellant Montreal Trust Company was obliged to take action for the rental due May 1st and August 1st amounting to \$7,862.50. The Appellant Seguin was called in as mis-en-cause.

10

2. THE JUDGMENT

It is respectfully submitted that the judgment from which appeal is made is erroneous in that:

1. It treats the contracts annulled as though they were entered into directly by Decary.

2. It neglects the fact that the contracts were not for Decary's "own use and benefit".

20

3. It neglects the fact that Decary's participation in the transaction was not only with the knowledge of but at the express request of the Respondent Company which is estopped from taking advantage of its own act as a ground for alleging nullity.

4. It adopts an unduly narrow interpretation of the phrase "land necessary for the railway".

5. It neglects the fact that Respondent actually occupied
30 the premises in question during the period in respect of which rent is claimed.

6. It fails to take into account the fact that the Respondent the Montreal Trust Company, Plaintiff in the court below, is in the position of an innocent third party in relation to the contracts annulled.

3. THE ARGUMENT

40

1. The contracts annulled in this case are notarial contracts entirely regular on their face. The burden of proof was, therefore, upon Respondent to show cause why it should not carry out its obligations under the contracts. Article 1203 C.C.:

"The party who claims the performance of an obligation must prove it.

On the other hand he who alleges facts in avoidance or extinction of the obligation must prove them; subject nevertheless to the special rules declared in this chapter."

2. The learned trial judge annulled the contracts on the ground that there was a violation of section 121 of the Railway Act, R.S.C. ch. 170, which reads as follows:

10 “No person who is a director of the company shall enter into, or be directly or indirectly, for his own use and benefit, interested in any contract with the company other than a contract which relates to the purchase of land necessary for the railway, nor shall any such person be or become a partner of or surety for any contractor with the company.”

3. There appears to be only one reported case decided under this section, *MacDonald vs. Riordon*, 8 Q.B. 555. The facts in that case in no way resemble those in the present one. The president of a railway company, who was also a director, entered
20 into a secret partnership with a construction company which was to build the railway. After the construction company had been paid, he sued for his share of the profits under the secret agreement. The courts very properly dismissed the action. Nothing could be more different from the facts in the present case, which are characterized throughout by complete good faith and full knowledge on the part of all interested parties.

4(a). It is clear from the contracts themselves that Decary was not directly a party to them. It was, therefore, necessary
30 for Respondent to prove that he was “directly or indirectly for his own use and benefit” interested in these contracts. It is respectfully submitted that Respondent has entirely failed to show this.

The situation in 1929 and 1930 was that Mr. Beardmore, the owner of the house which Sir Henry Thornton was occupying, was unwilling to grant a lease of the house which would give the lessor any security of occupation because he was extremely
40 anxious to sell, V. evidence of Decary, p. 75:

Q.—Was the report made to you that the owner Beardmore was willing to sell or to lease?

A.—Oh no. If I understand right the owner had threatened that he had a buyer for the property, and he would put Sir Henry Thornton out of his premises.

Q.—In other words, he was unwilling to lease?

A.—Yes.

Q.—That is what I referred to a moment ago, he was unwilling to lease, but willing to sell.

A.—He was unwilling to lease. He wanted to sell.

The government, on the contrary, had no objection to the lease of this house, but was unwilling to make the appropriation necessary for the purchase. V. evidence of Mr. Henry, at one time Deputy Minister of Railways and Director of the Respondent Company, p. 161-172:

10 Q.—What was the position of the Government as regards either the purchase or lease of a residence for Sir Henry Thornton?

A.—The opinion of the Minister of Railways and Canals or, rather, the Acting Minister of Railways and Canals—was that he could not recommend the inclusion of an item in the Estimates to provide for the purchase of a residence, but that the leasing of a residence was a matter which was in the hands of the Directors, representing an operating expense, and, therefore, was something the Government was not directly interested in.

20

If Sir Henry was to remain in possession of this house, it was, therefore, necessary for the house to be bought by some third party who would be willing to lease it to Respondent. Mr. Decary, the President of the Title Guarantee and Trust Corporation and a man of long experience in real estate, agreed at the Board's request to arrange this as an accommodation to Sir Henry Thornton and the Respondent, v. evidence of Rayside, p. 117-118:

30 Q.—Do you recall what led up to passing a Resolution about a lease from George H. Seguin?

A.—After the Meeting in March, when they were not able to negotiate that—at least, Sir Henry was not able to renew his lease for the house, Mr. Decary was notified by the Executive to go ahead and see if we could not acquire it, after he got a price, and if he could find the money; he was practically given full authority along with Mr. Ruel. In anything he did, he consulted Mr. Ruel.

40 Q.—Mr. Ruel being the general legal adviser of the Railroad?

A.—Yes.

Q.—And they were authorized to see what they could do in the way of acquiring, and financing, is that the idea?

A.—Financing the thing. We had the approval of the Minister—I mean, the Government did not want to buy the house, but it was advised of anything they did, and that was submitted with the approval of the Minister.

Evidence of Decary (case p. 70):—

Q.—And am I right in saying that you expressed the opinion to Sir Henry that if the property could be obtained at a reasonable price that you would attend to the financing of it?

10 A.—Not exactly that way. I was asked by the directors, not by Sir Henry, if such a deal could be financed, and I told them I would try. I told them that insofar as our Company was concerned we would finance anything of that kind.

Q.—But you are again getting away from my question, Mr. Decary. Did you suggest to Sir Henry Thornton that you would attend to the financing?

A.—No. I was asked to by the Board.

20 Far from urging the Respondent to enter into this transaction, Decary seems to have agreed to it against his own better judgment, as is proved by the letter which he wrote to Sir Henry Thornton on 28 January, 1930 (case p. 219) and his own evidence at p. 141:

A.—Sir Henry came to me, and said: “Mr. Decary, I want this house; the Railway wants it; we all want it. You say it is worth \$150,000. Do you think you could finance it at \$175,000?” I was getting sick and tired of the thing, and I said: “All right, go ahead and offer \$175,000.” And the offer was accepted.

30 (b) Decary acted throughout in the most perfect good faith, and all interested parties had full knowledge of the nature of the transaction, of the relations between Decary and the Appellant Seguin, and of the basis on which the rent stipulated in the lease was calculated, evidence of Rayside, p. 118-119:

40 Q.—What I want to get from you (and I want to get it without leading you) is, as to whether or not the whole transaction was one which was explained to, and understood by the Board, by the Deputy Minister and every one, that his house should be leased on terms which would take care of the loan and provide the purchase price of the lease, as security for the loan? Was that transaction thoroughly well understood by the Board?

A.—It was all understood by the Board.

Q.—And as to whom Mr. Seguin was?

A.—Mr. Seguin was in Mr. Decary's office. As far as that is concerned it may have been any other name.

Q.—It was understood that Mr. Seguin was just Mr. Decary's prete nom?

A.—Yes.

Q.—And all this was done by Mr. Decary at the request of the Board?

A.—At the request of the Board.

10 Q.—There was nothing secret about Mr. Decary's arrangements or anything of that kind?

A.—Absolutely not.

Q.—The whole transaction was thoroughly well understood and approved?

A.—The whole transaction was thoroughly well understood and approved.

Q.—Not only by yourself personally, but by the Deputy Minister who was present at the Meeting? Did you sit near him?

20 A.—I was immediately to the left of the Deputy Minister, and I, of course, asked him if that met with the approval of the Government.

Q.—And all your Minutes were transferred the following day usually to Ottawa, where they not?

A.—I understand they were.

Q.—Did you ever heard of any protest from the Government as to this transaction?

A.—No.

and the evidence of Decary, p. 75-76:

30 Q.—When the Company was informed the property was in Seguin's name, did they know who the real holder of the title was?

A.—Yes.

Q.—Did they know it was your prete nom?

A.—They knew.

Q.—Were they told the purchase price?

A.—Oh yes, sure.

Q.—And of you requiring from the Montreal Trust the two per cent amortization?

40 A.—Yes.

The Deputy Minister of Railways, at first Mr. Henry, later Mr. Smart, was present at all meetings at which the contracts were discussed and copies of the Minutes of these meeting were invariably sent to the Minister of Railways and Canals. V. Exhibits P 13a-P 13f; evidence of Henry, p. 159-160, especially at p. 160:

Q.—What was your practice, as between yourself and your Minister, on your return to Ottawa from attendance at those Meetings?

A.—I always discussed with him what had transpired.

Q.—Would that apply equally to the transaction with residence for the late Sir Henry Thornton?

A.—It did.

Evidence of Hobbs, Assistant Secretary of the Respondent Company, pp. 26-31, especially at p. 31:—

10

Q.—You are not aware of any criticism of the transaction referred to in these Minutes, having been received from Ottawa?

A.—No, I am not aware of any.

Q.—You found nothing in the files that would indicate there had been any criticism of these Minutes referring to this transaction?

A.—No.

20 (c) So anxious was Sir Henry to be sure that the nature of the transaction was understood by everyone that after the elections in the summer of 1930 he discussed the matter with Honourable Dr. Manion, who was then expected to be appointed and was later appointed Minister of Railways and Canals, evidence of Decary, p. 79:

30

It was my understanding, and Mr. Ruel's understanding, that Sir Henry, on his way back from the West stopped at Fort William the day before, or two days before, and advised Mr. Manion, who was then slated as the Minister of Railways, and he reported that to the Meeting.

40 (d) Decary had no intention of entering the transaction "for his own use and benefit". It was in fact intended that the lease from the Appellant Seguin to the Respondent should contain a clause giving Respondent the right to purchase the property at any time on payment of any balance remaining due on the sum borrowed by Appellant Seguin from the Appellant the Montreal Trust Company to purchase the property. Such a clause was, however, unintentionally omitted, evidence of Decary, p. 133:

A.—When the property was purchased by Seguin and leased to the C. N. R., it was always understood that the C. N. R. could at any time purchase that property and for the actual balance remaining due on the mortgage, taking advantage of the two per cent depreciation. Unfortunately, it had not been incorporated in the lease, and when it was

discovered I was asked to make good, which I did by that letter.

and at p. 149:—

10 Q.—So, up to the time of Lady Thornton's visit to Europe, at the end of October, there had been no question of an option to anybody?

A.—I do not say that. Because it was the intention that the option should be in the lease; but, it was omitted. As a matter of fact, I had a discussion with Seguin after I came back to my office. He insisted it was in the lease, but I said it was not since my people did not find it

Q.—The option was omitted from the lease?

A.—Yes.

20 This is made quite clear by the letter which Sir Henry Thornton wrote to the Honourable Dr. Manion dated November 20, 1930, case p. 317.

When the omission of this option was brought to the attention of Decary, he immediately rectified it by the letter dated November 6, 1930, which he wrote to Sir Henry and which is quoted above. While in its form the option was to Sir Henry personally, it was the intention of all parties that it should be equally available to Respondent, (v. Sir Henry's letter to Dr. 30 Manion.) There is not now and never has been any question of Decary's entire willingness to allow Respondent to exercise this option. Even had the transaction been a profitable one, Decary did not stand to benefit by it.

(e) It is, moreover, established by the uncontradicted evidence of several witnesses that there was no chance for any one to make a profit out of the transaction in question.

40 The rent paid by Respondent was only enough to provide for the interest on the loan which Decary was obliged to guarantee in order to accommodate Respondent together with 2 per cent of the purchase price of the house to be applied to the reduction of the capital of the principal of the loan. This 2 per cent was not sufficient to cover normal physical depreciation on the house, and less than the usual allowance for this (v. evidence of Ross, p. 104:)

Q.—Apart from the general depreciation which you tell us takes place in property of that class and in that district, do you happen to know what rate of depreciation is generally allowed — and I may say particularly, allowed by the Income Tax Department — on buildings of that class?

Mr. Cook:—Same objection.

10 His Lordship:—Under reserve of the objection.

A.—The Federal Income Tax Department allows you to deduct 2½% per annum.

Q.—And, they allow that regardless of how well you try to maintain the property?

A.—Yes.

and evidence of Bruneau, p. 125:

20 The physical depreciation that is generally recognized on properties of that nature, both in this country and in other countries is two and a half per cent.

30 It is necessary to allow for this depreciation no matter how well the property is maintained. There is, moreover, in houses generally, and especially in large houses such as the one in question, which can be occupied only by very wealthy men, a steady deterioration due to obsolescence. This is made clear by the evidence of Mr. Ross, an experienced real estate broker, and Mr Bruneau, an experienced real estate appraiser and valuer. (V. evidence of Ross, especially at pp. 99 and 104, and of Bruneau at p. 125). Apart from this deterioration and obsolescence, the price paid Mr. Beardmore was clearly in excess of that which could be expected to be realized on a resale, (V. evidence of Ross generally, evidence of Bruneau p. 125-26). Many large houses in the same district have in recent years been demolished for lack of a purchaser (V. Bruneau at p. 128-129).

40 In their cross-examination of these witnesses, Counsel for Respondent laid some stress on the fact that by an agreement posterior to the lease, Sir Henry was to spend some \$20,000 on repairs. The witnesses both made it clear that this did not alter their views as to the unprofitable nature of the transaction with regard to the Appellant Seguin and Decary (V. Ross, p. 112 et seq., Bruneau, p. 130).

Further evidence of the impossibility of realizing a good price on the property in question even in 1930 is furnished by the letters written on March 5, 1930 and April 15, 1930 by the Royal Trust Company to Mr. Beardmore (case p. 222-226). In

the second of these letters Mr. Clarkson, the Assistant General Manager of the Royal Trust Company, discusses at some length the difficulty of disposing of large houses in that district at any price, and advises Mr. Beardmore to accept an offer of \$155,000, \$30,000 less than the price later paid by the Appellant Seguin.

10 Decary himself did not think the transaction could be a profitable one. V. evidence p. 133-134:

Q.—Quite apart from the fact that the property could be taken away from you at any time, if there was an increase in value, by simply refunding you the amount you had spent, what have you to say as to whether that two per cent amortization in the condition as it stood in 1930 represented a prospective profit to you at the end of the lease?

20 A.—I do not understand the question.

Q.—In other words, would there be a profit of \$51,000.00 or could you look forward to a profit of even fifty cents in the matter?

A.—I honestly believe, and I am quite sure, that that property in ten years from now could not be sold for more than \$130,000 odd. It was paid at its very full price, a very good price when it was bought.

30 He considered that \$150,000 was the most that the property was worth in 1930 (V. letter to Sir Henry Thornton of January 28, 1930, above-cited, especially at p. 220)

40 Considering the original cost of Mr. Beardmore's house and its present state and the amount that you would have to spend to put it in liveable order, and, also, taking into consideration the price of \$2.00 per foot for the land, which is now the prevailing price in that district, I am of the opinion that \$150,000.00 is a very good price to offer for this property, and that should Mr. Beardmore accept the same you would be paying what I would consider full value for his property. I do not consider that Beardmore's land is worth \$2.00 per foot, unless you could sell it by small portions, and in that case the house would have to disappear. Moreover, the demand for that class of house is becoming less every day, and there are quite a few houses of that kind in that district which are now for sale including Sir Mortimer Davis' house, and probably Sir Frederick Wililams-Taylor's.

I may remind you that within the last two years Senator Raymond purchased Hon. Rodolph Forget's house, for which he paid \$110,000.00, including all the furnishings, which alone, cost Mr. Forget more than \$75,000.00.

and his evidence at p. 141 already quoted.

10

(f) It is worthy of note that had Decary expected to make a profit out of the transaction, he would scarcely have proceeded on a mere verbal understanding with the Appellant Seguin, in whose name the property stands. However much faith he may have had in the Appellant Seguin personally, he must have realized that had the Appellant died or gone into bankruptcy he would have had considerable difficulty asserting his rights in the property. Mr. Decary is an experienced businessman who would certainly not proceed in this manner in a transaction out of which he expected to make a profit. It is clear that he considered that there was no chance of the Appellant Seguin's heirs or creditors even desiring to retain the property, charged as it was, or of his wishing to assert his right in it.

20

5. It was, incidentally, urged by Counsel for the Respondent in their factum that the contract was also null because it was for the use and benefit of Sir Henry Thornton, a Director of the Respondent Company. The learned trial Judge does not deal with this point in his judgment and it is respectfully submitted that it is clear that section 121 of the Railway Act is not intended to cover this case. It is true that the contract was quite openly for the benefit of Sir Henry, but he was not directly or indirectly a party to it.

30

6. If section 121 of the Railway Act be given the narrow interpretation desired by Respondent, then it was illegal to pay Sir Henry a salary as President, Mr. Ruel fees for legal advice, or any of the directors any compensation for their services, apart from directors' fees.

40

7. (a) Even if the contracts were for Decary's "own use and benefit" they would still be valid if they related "to the purchase of land necessary for the railway". Since the greater always includes the less, it is clear that a lease of land necessary for the railway would likewise be valid. In his judgment the learned trial Judge gives a very narrow interpretation to this phrase which he defines (case p. 340) as "un contrat d'acquisition de terrains nécessaires à la construction de voies ferrées". The definition of "railway" given in the act itself is much broader, section 2, sub-section 21:

10 “21 ‘railway’ means any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorized to construct; and, except where the context is inapplicable, includes street railway and tramway.”

This definition is a very broad one covering property real or personal and works connected with the Railroad. Moreover, the judges of what “is necessary for the railway” must surely be the Directors of the Railway acting bona fide.

20 (b) This is in accordance with the generally accepted principles of Company Law. See for example, the judgment of the Privy Council in *Montreal and St. Lawrence Power Co. vs. Robert*. 1906 A. C. 196, at p. 200:

30 “Whatever may be the sphere of the Company’s operations as described in the Act of 1898, it is clear that the Company was empowered to acquire and hold, for the purpose of its business, real or immoveable estate not exceeding a specified sum in yearly value in any part of the Province outside the prohibited district. *The Company acting bona fide must be the sole judge of what is required for the purpose of its business.*”

(c) It is clear that the Directors did consider Mr. Beardmore’s house “necessary for the railway”. Thus, in the resolution of September 17 (case p. 190) it is said, “In the opinion of the Executive Committee a suitable residence is essential for the proper conduct of the Company’s business”. A man in Sir Henry’s position was, in the interest of the Company, required to do considerable entertaining (V. evidence of Henry at p. 167:)

40 Q.—I assume the element of good will plays as important a part, and even a more important part, in a railway, as compared with almost any other line of business?

A.—I believe so.

Q.—Was it represented to you that a residence for the President was required for the purpose of entertaining, and so on?

A.—That was the opinion of a good many of the Directors.

Q.—Do you know whether or not, as a matter of fact, Sir

Henry did entertain very extensively in connection with the affairs of the Railway?

A.—He did.

(d) It was not in fact unusual for the Respondent Company to provide certain of its officials with residences. Thus, a house was provided for Mr. Appleton, the eastern representative of the Respondent Company, at Moncton (V. evidence of Henry, p. 166-167).

8.(a) The Respondent Company had actual possession of the property leased and performed its obligations under the lease without protest until April 27, 1933. Even after this date, it retained control of the house and did not return the keys until June 19, 1933. Even if it be held that the lease is null, Respondent should be condemned to pay rental for the periods February 1st to May 1st and May 1st to August 1st, during which time it had possession of the house.

(b) It is a settled principle of Corporation Law that a corporation that has benefited from a contract cannot afterwards escape liability on a technicality, (V. *Bernardin vs. Municipality of North Dufferin*, 19 S.C.R., 581):

“The Court, it is submitted, based their Judgment in that case (*SANDERS vs GUARDIANS*—8 Q.B. 810) upon a sound and rational principal, equally applicable to the case of every Corporation and not limited to trading Corporations only, namely, that where work has been executed for a Corporation under a parol contract, which work was within the purposes for which the Corporation was created, and it has been accepted and adopted and enjoyed by the Corporation after its completion, it would in such case be fraudulent for the Corporation, while enjoying the benefit of the work, to refuse to pay for it upon the ground that the contract in virtue of which it has been executed was invalid for want of the corporate seal, and that reason and justice required that they should not be permitted to commit such a fraud; that they cannot be permitted in fact to appeal to the rule of common law so as to enable them to commit a manifest fraud.”

and *Rolland vs. Caisse d'Economie*, 24 S.C.R. 405:

“If Langlais had leased a house from the Bank, he could not refuse to pay the rent on the ground that the Bank is

not, by its Charter empowered to own Real Estate, supposing that to be so. And even where by its Charter a Corporation is not empowered to contract but under seal, where a contract, within the purposes for which it has been created has been executed and the corporation has received the benefit of it, it is not permitted to claim exemption from liability upon the ground that the contract was not under the corporate seal (*BERNARDIN VS NORTH DUFFERIN*—supra).”

9(a) It is respectfully submitted that even were the Appellant Seguin to take action under the lease, he would be entitled to succeed, but Respondents are not justified in raising against the Appellant Montreal Trust Company, the Plaintiff in the Court below, technical defenses which might conceivably be available against the Appellant Seguin.

(b) The Appellant Montreal Trust Company advanced the money necessary for the purchase of Mr. Beardmore's house in good faith and relying on the lease of the property to the Respondent Company. The Respondent Company's Board of Directors armed Decary with the resolution authorizing the lease with the express purpose of enabling him to finance the purchase of the property, (V. evidence of Decary, p. 75, 76, and evidence of Rayside, p. 118).

(c) The resolution of the Executive Committee passed June 16, 1930, could in fact have had no other purpose, since the members of the Committee were well aware of the fact that the Appellant Seguin was not at that time the owner of the property and that he was acting for Mr. Decary, who was acting at their request.

(d) The Appellant Montreal Trust Company having loaned money on the strength of this lease, procured by Decary with the knowledge and at the instigation of the Respondent Company, it is wholly unequitable that the Respondent Company should now seek to have the lease annulled and the Appellant Montreal Trust Company deprived of its security on grounds of alleged illegality induced by the Respondent Company's own acts.

Had it not been for the lease, the Appellant Montreal Trust Company would not have considered advancing the entire purchase price of the house. Thus, Mr. Donaldson, the General Manager of the Appellant Company, says in his evidence at p. 45:

“The loan would never have been made without the lease as security.”

(V. also evidence of Decary at p. 142):

10 Q.—And the method by which the transaction was to be financed was fully known?

A.—Absolutely.

Q.—I include in that method the fact that the loan was being made largely on the strength of the lease, which was to be assigned as security?

A.—Absolutely. Otherwise it would have been a crazy loan.

Q.—Without that least would it have been possible to have financed the purchase?

A.—I leave it to your judgment. Who could lend 100% of an inflated value?

20

(e) It was established in the case of *Royal British Bank vs. Turquand*, 6 E & B 327, that outsiders are not to be affected by irregularities in the indoor management of a company, following the maxim *omnia praesumuntur rite esse acta*. See also the decision of the Privy Council in *Montreal and St. Lawrence Power Co. vs. Robert* already cited at p. 203:

30

“There was nothing to put Robert on enquiry. The officials of the Company, the President, the Secretary, and the Notary furnished him with a copy of a Resolution which purported to be a Resolution of the Directors duly and regularly passed. On the faith of that representation Robert altered his position and parted with his property. The Company cannot now be heard to say to the Vendor: ‘You should not have given credit to what our people told you’. If such a plea were listened to, no one would be safe in dealing with a Company having private regulations of its own inaccessible to the outside world to which appeal could be made, in case of need, to relieve it from solemn

40 *ford Mining Company*, 7 H.L. 869 at p. 894:

See also the remarks of Lord Hatherly in *Mahony vs. East Holyford Mining Company*, 7 H.L. 869:

“When there are persons conducting the affairs of the Company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal

management of the Company. They are entitled to presume that that of which only they can have knowledge, namely, the external acts, are rightly done, when those external acts purport to be performed in the mode in which they ought to be performed....”

10 The case which perhaps most resembles the present one is *Webb vs. Herne Bay Commissioners*, L. R. 5 Q.B. 642. In this case the Commissioners, a municipal corporation, bought goods from one of their numbers and issued debentures in payment. These debentures were later transferred to a third party who sued in respect of them. It was urged in defense that the issue of the debentures was illegal because individual Commissioners were prohibited from dealing with the Commissioners as a body. Plaintiff's action was nevertheless maintained. Cockburn C.J. says at p. 649:

20

“It is said that the transaction, in respect of which the debentures were issued, was illegal under s. 10 of the local Act, inasmuch as by that section any person acting as a commissioner is prohibited from entering into any contract with the commissioners; and that, therefore, the sale of the bricks by Halket to the commissioners, he himself being a commissioner, was an illegal transaction. It may be that the effect of this section was to render the transaction illegal as regards the contract between the commissioners and Halket. But as the commissioners have had the benefit of the contract, the question would be whether or not Halket could recover in *indebitatus assumpsit* for goods sold. I do not think it necessary to decide that question. I proceed entirely upon the ground that the defendants are estopped from disputing the validity of the debentures in question.”

30

This case was followed in *re Hercules Insurance Co.* L. R. 19 Eq. 302. In this case a company issued a bond under illegal circumstances. This bond was not on the face of it negotiable but was in fact assigned by the person to whom it was issued to a third party who gave notice of the assignment to the company. Before the bond fell due, the company went into liquidation. The holder of the bond sought to have his claim admitted and was met by a defense alleging the illegality of its issue. Sir R. Malins, V. C., admitted the claim following *Webb vs. Herne Bay Commissioners* and holding that the fact the instrument was not assignable at law was immaterial. Referring to the above case, he says at p. 313:

40

“And, therefore, that is a decision which warrants me in coming to the conclusion that, whatever equities the company might set up against Mr. Sheridan, their conduct has precluded them from setting them up against his assignee, and that is also in consonance with what I am now about to decide.”

10

It is clear that in the present case the Respondent Company not merely knew that the lease might be assigned, but intended that it should be so assigned and had knowledge of the assignment. The lease and the assignment were, together with the Deed of Sale from Beardmore to the Appellant Seguin, passed on the same day before the same Notary.

10. On the whole, it is respectfully submitted that the judgment of the Superior Court should be reversed and the Respondent the Montreal Trust Company's action maintained with costs in both courts.

Montreal, 13th December 1937.

Brown, Montgomery & McMichael,
Attorneys for Appellants.

30

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Canada
—
Province of
Quebec
—
District of
Montreal

Court of King's Bench

(APPEAL SIDE)

10

Montreal Trust Company,

(Plaintiff in the Superior Court)

— AND —

Georges Henri Seguin,

(Mis-en-cause in the Superior Court)

APPELLANTS,

20

— AND —

Canadian National Railway Company,

(Defendant in the Superior Court)

RESPONDENT.

30

RESPONDENT'S FACTUM

40

This is an Appeal from a Judgment of the Superior Court (Honourable Mr. Justice de Lorimier) rendered on the 20th day of September, 1935. By the said Judgment the action of the Appellant, Montreal Trust Company, and the contestation of the Defendant's Plea by the Appellant, Georges Henri Seguin as a *Mis-en-cause*, were dismissed with costs against the Appellants in each instance in favour of the Respondent. The said Judgment also declared as illegal, null, cancelled and without effect, a Lease dated August 8th, 1930, and a Transfer thereof from the Appellant, Georges Henri Seguin, to the Appellant, Montreal Trust Company, under date May 26th, 1933.

THE FACTS

In and prior to the year 1919, His Majesty, on behalf of the Dominion of Canada, acquired control of a number of railways which it was decided should be consolidated and operated together as a national railway system. For this purpose the Dominion Statute 9-10, Geo. V. Chapter 13, was enacted. It was assented to on the 10 6th of June, 1919, and in virtue thereof the Respondent, Canadian National Railway Company, was incorporated. The said Statute is embodied in the Revised Statutes of Canada, 1927, as Chapter 172. By its terms it was provided that the nomination of directors to the number of not less than five nor more than fifteen should be made by the Governor in Council. No stock ownership was necessary to qualify a director. Directors were to hold office from one annual meeting to another or until their successors were appointed unless removed by the Governor in Council for cause. They were to be paid by the Respondent for their services as directors. Provision 20 was also made for the passing of by-laws to provide for an executive committee of the Board of Directors. The Governor in Council was authorized to declare that the company should have a capital stock, all of which, until otherwise ordered, was to be vested in the Minister of Finance on behalf of His Majesty.

Section 11 of the said Statute (originally Section 9) reads as follows:—

30 “Whenever under the provisions of the Railway Act,
“or any other statute or law, the approval, sanction or con-
“firmation by shareholders is required, such approval, sanction
“or confirmation may be given by the Governor in Council.”

The Respondent, being controlled by the Dominion Government, its shareholders were represented by the Governor in Council.

All the provisions of the Railway Act 1919 (9-10 Geo. V. Chapter 68) were declared to apply to the Respondent excepting those provisions which were inconsistent with its act of incorporation.

40 On the 4th of October, 1922, Mr. Ernest R. Decary and Sir Henry Thornton, along with certain other gentlemen, were named directors of the Respondent. A few days later, on the 10th of October, 1922, Thornton was appointed President and Chairman of the Respondent, which positions and offices he held until his resignation as of the 31st July, 1932. Thornton was also Chairman of the Executive Committee of its Board of Directors (Case p. 26). Mr. Decary ceased to act as a director of the Respondent on the 24th of December, 1930. On the 4th of April, 1930, Thornton was appointed as a director of the Appellant Montreal Trust Company.

Both Thornton and Decary received such remuneration as directors as they were entitled to by reason of their holding the offices aforesaid.

Mr. Robert A. C. Henry was made a director of the Respondent on February 4th, 1929. He continued to act as such until December 24th, 1930 (Case p. 159). During the interval between 4th April, 10 1929, and 9th March, 1930, he was also Deputy Minister of Railways and Canals. Mr. Gerard Ruel, who was chief legal adviser of the Respondent, and one of its Vice-Presidents, was also a director. He was appointed on October 4th, 1929, and resigned as of the 30th of September, 1932 (Case pp. 28 and 69). Thornton, Decary, Henry and Ruel were all members of the Executive Committee of the Directors of the Respondent.

Mr. Ernest R. Decary is a Notary Public by profession whose principal occupation is that of President of the Title Guarantee and 20 Trust Corporation, a company dealing chiefly in real estate in the City of Montreal and loans and guarantees of title relating thereto. He admits that he is well versed in real estate affairs in the said City of Montreal. He is also head of the firm of Notaries practising at Montreal as "Decary, Barlow & Joron" to which office the Appellant Seguin was attached as an employee of Decary (Case p. 281).

It will appear therefore, that at all times material to the present action, Sir Henry Thornton and Mr. Ernest R. Decary held the offices and appointments aforementioned and that the Appellant Seguin was 30 attached to the Notarial office and firm conducted by said Decary.

On the 23rd of September, 1929, the matter of the renewal of the engagement of Sir Henry Thornton by the Respondent was discussed at a Meeting of its Board of Directors at which said Mr. Ernest R. Decary was present and Sir Henry Thornton presided as Chairman (Exhibit P-28, Case p. 198). The Meeting resolved unanimously that Sir Henry be elected President and Chairman of the Respondent during the period of five years from the 4th of 40 October, 1928, and thereafter from year to year subject to the termination of his office as President and Chairman as might be provided for by agreement between the parties (Case p. 209) and that he be paid a fixed annual salary for his services in such capacity. It was agreed that the Respondent enter into an agreement upon the terms of a draft agreement which was submitted to the Meeting and said Decary, as a Director of the Respondent and the Secretary thereof were authorized to execute such an agreement of engagement on behalf of the Respondent. Pursuant to the authorization of the Board of Directors of the Respondent, an Agreement, providing for an increase in remuneration to Sir Henry Thornton, was duly signed and executed

between the parties on the said 23rd of September, 1929 (Defendant's Exhibit No. 2, with Plea,—Case p. 191). The clause in the said Agreement regarding Sir Henry Thornton's remuneration is particularly important and reads as follows:—

10 “The remuneration of the Managing Head for the full
“and entire services to be performed from time to time, and
“for the full period of employment under this agreement, shall
“be a fixed annual salary (irrespective of the magnitude or
“extent of the work or duties to be performed from time to
“time and without any extra fees or remuneration of any
“description) of Seventy-five thousand dollars (\$75,000)
“per annum, payable in equal monthly instalments on or
“about the first day of each month but not in advance; it
“being understood and agreed that the monthly payments of
“the fixed annual salary of Seventy-five thousand dollars
20 “(\$75,000) hereunder for the period beginning the fourth
“day of October, 1928, and ending the third day of October,
“1929, having been made immediately before the delivery of
“this agreement, the receipt whereof is hereby acknowledged
“by the Managing Head.”

There was a further clause regarding reimbursements of “reasonable out-of-pocket expenses”

30 “The Managing Head shall, subject to the by-laws,
“rules and regulations applicable, be entitled to be paid all
“reasonable out-of-pocket expenses incurred in connection
“with the duties of his office or offices.”

40 On the 23rd of October, 1929, the matter of Sir Henry's
contract with the Respondent was considered at a Meeting of the
Committee of the Privy Council at which the resolution of the Board
of Directors of the Respondent, passed at its Meeting on the 23rd day
of September, 1929, authorizing the Agreement with Sir Henry was
confirmed and approved. The original of Sir Henry's Agreement of
Engagement, referred to in the said resolution, was examined and
approved by the Committee which recommended that the action of
the Board of Directors of the Respondent with regard thereto be
sanctioned and confirmed. The Committee also recommended the
execution by His Majesty the King, on behalf of the Dominion of
Canada represented by the Honourable the Minister of Railways and
Canals, of a confirmatory agreement whereby the remuneration to be
received by Sir Henry was expressly limited to the sum of \$75,000,
the amount fixed as an annual salary by the Board of Directors in
accordance with the contract of the 23rd September, 1929. The said
recommendations of the Committee of the Privy Council were

approved by His Excellency the Governor General on October 23rd, 1929, when the formal Order in Council, P.C. 2144 was passed (Defendant's Exhibit No. 3, Case p. 212). The confirmatory agreement thereby authorized between His Majesty the King and Sir Henry Thornton was duly executed two days later (Defendant's Exhibit No. 4, Case p. 214).

10 Insofar as the Respondent was concerned, the position of Sir Henry Thornton from and after the 23rd of September, 1929, as the President, Managing Head and one of the directors of the Respondent, and the remuneration which he was to receive for his services to it, were definitely and specifically fixed by the terms of the Agreement of the 23rd September, 1929. Thornton's position with respect to the Government of the Dominion of Canada and any services which he might render to it and his remuneration therefor were likewise clearly set forth and defined by the terms of the aforementioned Order-in-Council of the 23rd of October, 1929, and the said Confirma-
20 tory Agreement executed pursuant thereto on the 25th of October, 1929. Under no circumstances was Thornton to receive anything more from the Respondent and the Government than the definitely stipulated fixed annual salary of \$75,000, together with his actual out-of-pocket expenses, without any extra fees or remuneration of any description whatsoever.

 From the 1st of October, 1926, Thornton had been the lessee of a residence then bearing No. 605 Pine Avenue West in the City of Montreal (later known as 1415 Pine Avenue West, Case p. 311) be-
30 longing to one Frederick N. Beardmore, which was occupied by Thornton and his family. Thornton paid a monthly rental of \$450 and the water taxes (Case p. 186), from the 1st October, 1926, until the end of April, 1928, at which time the rental was raised to \$500 per month. This last sum Thornton continued to pay until the 9th of August, 1930 (Case p. 38), when the house was sold to the Appellant Seguin. By the terms of the Lease with Beardmore the latter was entitled to terminate the Lease at any time upon giving three months notice in writing to Thornton. For approximately a year prior to the sale of Beardmore's house to Seguin, Thornton carried on negotiations
40 with Beardmore to purchase the property (Case p. 38). As Beardmore was in the old country and on the continent most of the negotiations were carried on by cable through the Royal Trust Company which was acting as Beardmore's Attorney. On November 29th, 1929, Beardmore wrote to Thornton offering to sell the property, together with certain furniture and equipment for the sum of \$250,000 (Case p. 218). Thornton consulted Decary regarding the purchase of Beardmore's property and was advised as to the price which should be paid therefor. On the 28th of January, 1930, Decary wrote at some length to Thornton regarding the property,

commenting upon its condition and value, and with his letter was a report which he had obtained from Mr. J. S. Archibald, Architect of Montreal. Decary's letter read in part as follows:—

10 “I am of the opinion that \$150,000 is a very good price
“to offer for this property and should Mr. Beardmore accept
“the same you would be paying what I would consider full
“value for his property. I do not consider that Beardmore's
“land is worth \$2 per foot, unless you could sell it by small
“portions, and in that case the house would have to disap-
“pear.” (Case p. 220.)

20 Negotiations continued during the spring of 1930 when
Thornton, after again consulting Decary, made a definite offer to
Beardmore of \$175,000 (Case p. 146, p. 230 and p. 231). Beardmore
agreed to accept the offer provided Thornton would take certain
furnishings, furniture and fixtures previously offered at a sum of
\$10,000. On the 26th of May, 1930, Thornton agreed to Beardmore's
counter-offer (Case p. 231). On the following day the Royal
Trust Company, Beardmore's Agent, was advised by him by cable
that the property had been sold to Thornton (Case p. 313). On the
31st May Thornton instructed the Royal Trust Company to forward
the title deeds to Decary to enable him to prepare the Deed of Sale.

30 Prior to Thornton's offer being accepted by Beardmore,
Decary had undertaken to find the purchase price provided the
property could be obtained at a reasonable figure (Case p. 71).
Decary discussed the financing of the purchase with the Manager of
the Appellant Montreal Trust Company, Mr. F. G. Donaldson. in
the early spring of 1930, while playing billiards in the Montreal Club
(Case p. 42). Mr. Donaldson testified to the incident as follows:—

40 “One day some months prior to June, 1930, during a
“game of life pool in the Montreal Club, Mr. Decary mentioned
“to me, as well as I can remember, that Sir Henry Thornton
“contemplated buying a house; and he (Mr. Decary) asked me
“if the Montreal Trust Company would advance the amount
“necessary to purchase the property.”

 After Thornton's offer to Beardmore had been accepted
Decary again spoke to Mr. Donaldson who testified to the second
interview as follows:—

 “About two months after, I met Mr. Decary; I think it
“was on St. James Street. He stopped me, and said he was
“ready to go ahead with the proposition about which he had
“spoken to me in the Montreal Club. I had really forgotten

“about it, and I said to him. ‘Well, you had better put the
“‘matter in writing. Write me a letter and give me all the
“‘details, and I will consider it.’ At the same time I said:
“‘You know all about this matter. Will you guarantee the
“‘proposition?’ and he said ‘Yes, I will.’” (Case p. 43.)

Decary’s letter of the 24th of June, 1930 (Case p. 237), out-
10 lines the manner in which the Beardmore property is to be purchased.
As it is most significant it is cited in full for the convenience of the
Court as follows:—

“THE TITLE GUARANTEE AND TRUST CORPORATION OF
“CANADA,

“134 St. James Street West,

“Montreal, June 24, 1930.

20 “F. G. DONALDSON, Esq.,
“General Manager,
“Montreal Trust Company,
“Montreal.
“Dear Mr. Donaldson:

30 “Referring to our conversation of the other day in
“connection with the Beardmore property on Pine Avenue, I,
“or my nominee subject to my personal guarantee, will pur-
“chase the above property for \$185,000 cash, the property
“subsequently to be rented to the Canadian National Railways
“for ten years, at a price representing $8\frac{1}{2}\%$ per year, net,
“outside of taxes of any kind, repairs and improvements.

“You will make a loan for this amount of \$185,000 for
“ten years, at $6\frac{1}{2}\%$, the difference between the amount of
“interest paid and $8\frac{1}{2}\%$ to be applied as a sinking fund on
“the amount of the loan. Your Company will be given a
“first mortgage on the property and an absolute transfer of
“the Canadian National lease as guarantee for the loan.

40 “We should be in a position to complete this transaction
“during the first days of the month of July. Will you please
“advise if this is convenient to you, and oblige,

“Yours truly,

“(Signed) E. R. DECARY,
“President.”

Upon receipt of Decary’s letter, the Manager of the Appellant
Montreal Trust Company immediately replied that the arrangement

outlined by Decary was satisfactory and that the loan would be made (Case p. 238). On the 4th of July, 1930, Decary wrote to Thornton's assistant, one L. V. Hummell, notifying him that the Appellant Seguin was Decary's nominee and requesting him to obtain Thornton's signature to an attached letter. The letter, which was signed by Thornton, is as follows:—

“Montreal, July 9th, 1930.

10 “E. R. DECARY, ESQ.,
“134 St. James Street West,
“Montreal.

“Dear Sir:

“I wish to advise you that I hereby transfer to George
“Henri Seguin all my rights in the option I have to purchase
“Fred N. Beardmore's property at No. 1415 Pine Avenue
“West, Montreal, and I would ask you to have the Deed of
“Sale made in the name of Mr. Seguin.

20

“Yours truly,

“(Signed) H. W. THORNTON.”

Arrangements having accordingly been made between Thornton and Decary for the interposition of the Appellant Seguin as Decary's nominee or *prete nom*, a Deed of Sale covering the said property was prepared. It was completed on the 8th of August, 1930, before Notary Lionel Joron, another member of Decary's
30 Notarial firm (Case p. 284). Although Seguin had no interest whatsoever in the transaction or in the property purchased from Beardmore; took no part in any of the negotiations to acquire the property or in the borrowing of the necessary capital to pay for it, and was altogether unaware of any of the transactions with respect thereto until he was requested to sign the several Notarial Deeds in issue (Case p. 48) the property was placed in his name as purchaser. The Deed of Sale (Case p. 253) provides for a price of \$175,000 for the immovable and a further sum of \$10,000 for the contents and furnishings of the house, making a total of \$185,000 which was paid in
40 cash to Beardmore.

The said Deed recites that the immovable in question is affected by a servitude and under the heading of “Servitudes” appears the following:—

“To use the said property only for the erection of
“detached private residences and the usual accessories of
“private residences such as stables, coachman's house, garage,
“etc.; any buildings, except residences, shall be erected back

10 “at least thirty-five feet from the front line of said lots. All
“buildings shall be built of brick or stone or such like solid
“material on solid foundations and a single residence shall cost
“not less than ten thousand dollars. No building shall, in any
“event, be a tenement or apartment house or be so constructed
“or divided within as to permit of its being occupied by two
“or more families having each a distinct portion of the building
“not communicating from within. Any building erected upon
“the said property must be used as a private residence only or
“as the accessory of such and not as a school, hospital, tavern
“or for any purpose of trade, business or manufacture or for
“the purpose or business of any corporation of a public char-
“acter.” (Case p. 257.)

20 On the same day that the aforesaid Deed of Sale was com-
pleted the Appellant Seguin (Case p. 241) purported to lease the
property so acquired to the Respondent for a period of ten years from
30 the 1st of August, 1930. The consideration for the said lease was a
total sum of \$157,250 payable \$15,725 per year in and by forty
quarterly equal consecutive instalments of \$3,931.25 each. By the
terms of the said Lease the Respondent was obligated to pay “the
water tax and all other taxes and assessments general and special
affecting said immoveables as well as any and all instalments
to become due from said date of any special assessments, payments
whereof is spread over a term of years.” The Respondent was like-
wise bound “to execute all repairs of any nature whatever in the above
described and presently leased premises and fire insurance premiums.”
40 The use which the Respondent might make of the premises was like-
wise expressly restricted in conformity with the servitude affecting the
property. This restriction is stated as one of the conditions whereby
the lessee was bound. It reads as follows:—

40 “40. To comply with the conditions and stipulations
“relative to the use of the premises as set forth in the title
“deeds of the Lessor, namely: “No building shall in any
“event be a tenement or apartment house, or be so construct-
“ed or divided within as to permit of its being occupied by
“two or more families having each a distinct portion of the
“building not communicating from within; Any building
“erected upon the said property must be used as a private res-
“idence only, or as the accessory of such, and not as a school,
“hospital, tavern or for any purpose of trade, business or
“manufacture, or for the purpose and business of any Cor-
“poration of a public character.”

Concurrently with the execution of the Deed of Sale and the
Lease above mentioned, the Appellant Seguin executed a further

Deed (Case p. 245) whereby the property by him acquired on behalf of Decary was hypothecated in favour of the Appellant Montreal Trust Company in return for a loan of the sum of \$185,000. This was the capital required to pay the purchase price to Beardmore. By the terms of the said Deed it was stipulated that the loan should bear interest at the rate of 6½% until repayment which was to be made on the 1st of August, 1940. The loan was effected in accordance with the arrangement previously made by Decary with the Manager of the Appellant Montreal Trust Company as set forth in his aforesaid letter to the said Manager of the 24th of June, 1930. Pending repayment the Appellant Seguin obliged himself—

“to reduce the principal of the present loan by
“repayment of not less than Two per centum (2%) of the
“amount of the present loan; such repayments to be made to
“the lender half-yearly on the 1st day of the months of Febru-
“ary and August in each year.”

20

As collateral security for the payment of the capital sum, interest thereon, accessories and the fulfilment of all obligations under the said Deed of Loan, the Appellant Seguin transferred and assigned all his rights in the above mentioned Deed of Lease with the Respondent. The Deed of Loan and Transfer of Lease executed by the two Appellants was likewise passed before Decary's partner, Notary Joron. The three said Deeds bear consecutive numbers in the Minutes of the said Notary.

30

The entire financing of the purchase price of the Beardmore property was arranged and engineered by Decary and Thornton. Seguin merely acted in accordance with the instructions of his employer Decary, the senior member of the firm of Notaries with which he was connected. The cheque from the Appellant, Montreal Trust Company, for the amount of the loan was handed to Decary who subsequently requested the Appellant Seguin to attend at the Bank where it had been deposited and to endorse it. (Case p. 290.)

40

From and after the 8th of August, 1930, all sums received from the Respondent in payment of rent under the terms of the alleged Lease were paid by cheques to the order of the Appellant Seguin which were endorsed by him and handed to Decary for deposit to the latter's account or to the credit of his Notarial firm, Decary, Barlow and Joron Trust Account (Case p. 33). These payments were made quarterly pursuant to the terms of the Lease up to and including the 7th of February, 1933.

On the 27th of April, 1933, the late John W. Cook, K.C., and J. C. H. Dussault, K.C., as Attorneys of the Respondent, notified the

Appellant Seguin that the Respondent had been advised by them that the Lease between it and said Appellant Seguin—acting for the benefit of Decary—was a nullity; and that possession of the property covered thereby would be surrendered on the 1st of May, 1933. (Case p. 301.) A cheque to the order of the Appellant Seguin for \$3,031.25, in payment for the use and occupation of the premises until that date, was tendered in full settlement of all claims without
10 any admission of liability on the part of the Respondent towards said Appellant Seguin or Decary and under express reservation of all the Respondent's rights. A copy of the said letter was forwarded to Decary for his information.

An exchange of letters between the said legal advisers of the Respondent and the Appellant Seguin followed, after which, on the 26th of May, 1933, the Appellant Montreal Trust Company by Notarial signification served the Respondent with a copy of the Deed of Loan and Transfer executed between the Appellants on the 8th of
20 August, 1930 (Case p. 304). In its turn, the Respondent, through the agency of Notary Cameron, served an Answer upon the Appellant Montreal Trust Company (Case p. 305).

On the 13th of October, 1933, after the second unpaid instalment of rent would be owing were the said Lease valid, the action, which is the subject of the present Appeal, was served, the Appellant Montreal Trust Company claiming thereby payment of the sum of \$7,862.50 with interest and costs.

30 The immoveable property in question occupied by Thornton and his family and which was the object of the several deeds executed between the Appellants and one of them and Beardmore on the 8th of August, 1930, is situated in a high-class residential district in the City of Montreal at a considerable distance from the right-of-way of the Respondent and nearly three-quarters of a mile from any of its operating properties or offices. It could in no way be considered as land necessary for the railway of the Respondent and by reason of the servitude affecting it it was expressly restricted to use and occupation as a residence (Case p. 58).

40

During the period that the Respondent paid and discharged the obligations ostensibly imposed upon it by the terms of the alleged Deed of Lease of the 8th of August, 1930, a total sum of \$50,891.53 was disbursed. These monies went to the Appellant Seguin as *prete nom* of Decary and Thornton, respectively director and director and officer of the Respondent and was for rental, taxes and insurances as follows:—

	1930	1931	1932	1933	Total
Total Rent	8,931.25	15,725.00	15,725.00	3,931.25	44,312.50
Total Property Tax	1,433.28	2,228.43	1,983.30	—	5,645.01
10 Total Water Tax	—	—	192.50	—	192.50
Total Insurance	469.02	—	362.50	—	831.52
<hr/>					
Total Cash outlay	10,833.55	17,953.43	18,263.30	3,931.25	50,981.53

20 (Case p. 315.)

Prior to the agreement which was entered into on the 23rd of September, 1929, between the Respondent and Thornton regarding his engagement as President and Chairman of the Respondent, at a Meeting of its Executive Committee, held on the 17th of September, 1929, at which Thornton and Decary were present and apparently voted, said Committee recorded as its opinion that a suitable residence in Montreal for Thornton was "essential for the proper conduct of the Company's business." And the Committee unanimously passed the
30 following resolution:—

"RESOLVED that the Executive Committee should
"undertake to lease suitable and properly equipped residence
"for the use of the Chairman and President of the Company
"under such terms and conditions as the Committee may
"subsequently deem proper."

The said resolution was submitted and approved at the Meeting of the Directors of the Respondent held on the 23rd September,
40 1929, at which Thornton and Decary were also present, deliberated and voted. Curiously enough, however, no reference whatsoever to the said resolution, which, were it put into force, would have the effect of increasing the remuneration which Thornton was authorized to receive in return for his services, was made when the matter of the engagement of Thornton was referred to the Governor in Council on the 23rd of October, 1929.

The matter of an official residence for Thornton was next discussed at a Meeting of the Executive Committee of the Respondent

held on the 24th of March, 1930, when it was reported that efforts to secure a residence had been unsuccessful and the directors, including Decary, passed the following resolution:—

10 “THAT in order to carry out the intention of the Directors as from the date of such resolution an adjustment should, when the residence is purchased, be made with the President in respect of rental, as of the date of his present contract.”

20 A further Meeting of the Executive Committee was held on the 16th of June, 1930; Thornton and Decary who were present thereat deliberated and voted. The Executive Committee purported to authorize the Respondent to lease from the Appellant Seguin, a property of which he was not then the owner and which he only acquired approximately two months later, on the 8th of August, 1930. This is the first Meeting of the Executive or the Board of Directors of the Respondent whereat reference was specifically made to the Beardmore house. The terms upon which it was agreed the said property should be leased are, in substance, identical with those contained in the Deed of Lease which was ultimately completed as above mentioned. The alleged approval of the Executive Committee given on the 16th of June, 1930, of the leasing of the Beardmore house as a residence for Thornton had not in fact been entered in the Minutes of the said Meeting of the 16th of June, 1930, until after a further Meeting on August 7th, 1930. The following rather curious resolution was passed at this last Meeting, with Thornton and Decary again deliberating and voting:—

30 “IT WAS DECIDED that the approval of the Executive Committee given on June 16th, 1930, to the lease to the Company of a house (No. 1415 Pine Avenue West) as a residence for the President, as approved by the Directors September 23rd, 1929, be now entered in the Minutes of the said Meeting of June 16th, 1930.”

40 At the said Meeting of the 7th of August, 1930, the alleged approval of the Executive Committee given on the 16th of June, 1930, was accordingly ordered to be entered in the Minutes of the Meeting as of the date last mentioned.

 None of the aforesaid resolutions of the Executive Committee or the Board of Directors of the Respondent which, in the ordinary course of events, would have had the effect of altering Thornton's contract with the Respondent and the Canadian Government, and of increasing his remuneration thereunder, were submitted to the Governor in Council. No Order-in-Council authorizing the modification of Thornton's said contracts was ever made.

Practically three months after the Appellant Seguin had acquired the property in question under the circumstances above set forth, Decary wrote a letter to Thornton under date November 6th, 1930, regarding a further sum of \$50,000 which Decary, through his *prete nom* the Appellant Seguin, had agreed to advance to Thornton. This sum was to be used to make certain repairs and to add furnishings to the property which the latter was then occupying. In the
10 same letter Decary agreed to sell the property to Thornton at any time during the term of the ten year lease with the Respondent. It is noteworthy that the said letter was never in the possession of the Respondent. During the course of the trial it was secured from the private files of Thornton and was produced by the Appellant Decary (Case p. 132). Annexed to the said letter was a formal agreement covering the aforesaid advance to Thornton of \$50,000. Later, on the 20th of November, 1930, Thornton wrote a letter to the then
20 Minister of Railways and Canals, the Honourable R. J. Manion, whereby the Minister was advised that Thornton had an option in his own name to purchase the property at any time. He wrote in part as follows:—

“The option to purchase which I took in my own name
“is, of course, assignable to any nominee of my own. I did
“not want to bother you again about this but still naturally
“wanted to be quite truthful.” (Case p. 318.)

The foregoing are the facts on which the present action turns.

30

THE PLEADINGS

By its Declaration dated October 13th, 1933, the Appellant Montreal Trust Company as Plaintiff, claimed from the Respondent the sum of \$7,862.52, with interest, as rental owing by the Respondent under the Deed of Lease of the 8th of August, 1930, ostensibly existing between the Respondent and the Appellant Seguin who was summoned as *Mis-en-cause* to hear the judgment. The Appellant
40 Montreal Trust Company alleged that the said Lease had been transferred to it by the Appellant Seguin as collateral security to guarantee the loan of \$185,000 made by it to him. It was also alleged that the leased premises had been delivered to the Respondent on or about the 1st of August, 1930, and that peaceable possession thereof had been had ever since. A further allegation was that the Respondent had at all times until the 1st of May, 1933, performed its obligations under the Lease and paid the rent therein stipulated to the Appellant Seguin who in turn remitted it to the Appellant Montreal Trust Company.

For defence to the said action, the Respondent pleaded that the pretended Lease was illegal, null and void and of no effect. The Respondent, at considerable length, detailed the reasons for its said contentions. Briefly they are as follows:—

10 The leased property, although registered in the name of the Appellant Seguin, in reality belonged to Decary for whose benefit and advantage the loan of \$185,000 had been made to enable him to pay the purchase price of the said property to Beardmore; that while the lease in question was ostensibly between the Respondent and the Appellant Seguin, it was in reality between the Respondent and one of its directors, Decary, and for the latter's benefit, as the Appellant Seguin at no time had any interest in the said lease or the property thereby covered. The Respondent pleaded that the purchase of the said property had been arranged and negotiated by Thornton and Decary for their mutual benefit and advantage between the month of September, 1929, and the 8th of August, 1930. During this
20 period Thornton was Chairman and President of the Respondent and Chairman of its Executive Committee and was, in addition, a director of the Appellant Montreal Trust Company. Decary, in the same interval, was a director and member of the Executive Committee of the Respondent.

The Plea recited that, prior to the month of September, 1929, the suggestion had been made by some of the directors of the Respondent that a bonus of \$100,000 should be paid to Thornton and later it was suggested that an official residence should be purchased
30 for his use. Both suggestions failed to receive the approval of the Minister of Railways and were abandoned. It was at or about this time that Thornton was negotiating with the Government regarding the renewal of his contract. Despite the failure to obtain the approval of the Minister of Railways, the Executive Committee of the Respondent adopted a resolution on the 17th of September, 1929, that the Committee should endeavour to obtain "a suitable and properly equipped residence for the use of the Chairman and President." Thornton and Decary deliberated and voted on the resolution which was later adopted in the same terms by the Board of Directors of the
40 Respondent at its Meeting on the 23rd of September, 1929. At this Meeting Decary also took part in the deliberations and voted.

The Respondent further alleged, as part of its Plea, that under Thornton's contract with it of the 23rd of September, 1929, his remuneration for his full and entire services was definitely fixed at the sum of \$75,000 per annum "without any extra fees or remuneration of any description." The clause referred to was cited at length. The contract in question was, moreover, approved by an Order-in-Council of His Excellency the Governor General passed on the 23rd

of October, 1929, pursuant to the terms of which a confirmatory contract between His Majesty the King and said Thornton was duly executed on the 25th of October, 1929. The said Order-in-Council and the said Confirmatory Agreement ratified and confirmed the contract of the 23rd of September, 1929, thereby specifically limiting Thornton's remuneration to the amount and in the manner therein stated.

10

The Respondent pleaded that inasmuch as there was no clause permitting the leasing of a residence for Thornton in the said Contract, nor in the said Order-in-Council, nor in the later Confirmatory Agreement with His Majesty, the efforts so to do of Thornton and Decary and of the Board of Directors of the Respondent were contrary to the terms of the said Agreements and utterly illegal. Notwithstanding the terms of said Contracts, which were well known to the Respondent's Board of Directors and to Thornton and Decary, the latter tried to find a residence that might be leased by the
20 Respondent for the personal use of Thornton and his family.

The Respondent's Plea recited that, prior to the 8th of August, 1930, Thornton had been occupying and paying rent for Beardmore's house; that in or about November, 1929, Thornton endeavoured to arrange for the purchase thereof and subsequently managed to do so for a price of \$185,000 which included certain furniture valued at \$10,000. Decary was fully aware of all Thornton's negotiations. In May, 1930, Thornton obtained an option from Beardmore for the price above mentioned and transferred the said option to the Appel-
30 lant Seguin in July, 1930. At or about this time Decary started negotiations with the Appellant Montreal Trust Company to borrow the full amount of the purchase price. He contracted with it that the property should be purchased by him in his name or in that of his nominee; that it should be leased to the Respondent for a period of ten years at an annual rental of $8\frac{1}{2}\%$ of the price of the acquisition of the property, in addition to which it was to be arranged that the Respondent should pay all taxes, assessments, repairs, etc.; that the Appellant Montreal Trust Company in return for its loan of \$185,000 should be guaranteed by a first hypothec on the said property and the
40 transfer to it of the lease to the Respondent in addition to a personal undertaking of guarantee by Decary.

The Respondent alleged that the Montreal Trust Company knew all details of the transaction from the outset and that as a result thereof Decary, a Director of the Respondent, should "at the termination of the lease, be the owner, at a cost to him of \$135,000, of a property for which \$185,000 had, to the knowledge of the Plaintiff, been paid—all of which was illegal and improper." The Plea then recited that on the 16th of June, 1930, the Executive Committee and

the Respondent had purported to agree to lease the property in question from the Appellant Seguin at an annual rental of \$15,725 in addition to the payment by the Respondent of all taxes, assessments and repairs “the said property to be exclusively reserved as a private residence.”

10 On the 8th of August, 1930, the sale was made to the Appellant Seguin. On the same day said Seguin executed a Deed of Loan in favour of the Appellant Montreal Trust Company and forthwith, after the lease in question had been completed, transferred it to the Appellant Montreal Trust Company.

20 In all the said Agreements, alleged the Respondent, the Appellant Seguin had no personal interest. He acted solely as the *prete nom* and for the benefit of Decary and Thornton and thereby illegally and improperly conferred upon Decary—a Director of the Respondent—an illegal profit of over \$50,000 in addition to the rental which the property brought and which inured to the benefit of the said Decary.

The Respondent moreover pleaded that the Appellant Seguin was a person interposed with no interest whatever in the lease which was in reality for the benefit and advantage of two of its Directors. As such, the lease was prohibited by law and was illegal, null and void.

30 The Respondent alleged that all details of the several transactions were known to the Appellant Montreal Trust Company at all times and that it “in every way acquiesced in and consented thereto, although” it “was well aware that the said transactions were utterly illegal, null and void.”

In Paragraph 36 of its Plea the Respondent fully characterized the impropriety of the transactions in question:—

40 “(36) That, in addition, the arrangements considered “as a whole were grossly improvident, illegal and improper. “The fiduciary relationship existing between Sir Henry Thornton and the Company Defendant (Defendant’s Exhibits “Nos. 2, 3 and 4) made it improper and illegal for the parties “to enter into any such undertakings as those hereinabove outlined. In like manner, the fiduciary position of the said “Thornton and the fiduciary position of the said Decary, as “Directors of the Company Defendant, and the fiduciary “position of the said Thornton, as a Director of the Trust “Company, Plaintiff, incapacitated them from entering into, “or from in any way, directly or indirectly, profiting by such “engagements and undertakings. Finally, the purchase by

10 “Decary of the property, the placing of the same by him in
“the name of Seguin, the obtaining of a rental of \$15,725 per
“annum, from the Company Defendant for this property,
“previously rented to the said Thornton for the sum of \$7,200
“per annum and the giving to Decary, a Director of the Com-
“pany Defendant, on the termination of the lease, a personal
“profit of \$50,000, entitles the Company Defendant to demand,
“as it now demands, that the present claim by the Plaintiff be
“declared illegal, null and void and be dismissed.”

The Respondent, praying reserve of its rights to recover any monies paid to the Appellants and/or Decary, concluded for the dismissal of the action of the Appellant Montreal Trust Company and prayed:—

20 “that it be declared that the Deed of Lease executed on
“the 8th of August, 1930, between the *Mis-en-cause* and the
“Company Defendant is and always has been illegal, null and
“void and of no effect, and if need be, that the said Deed of
“Lease be set aside; that the pretended Transfer of the Lease
“by the said *Mis-en-cause* to the Plaintiff on the 26th of May,
“1933, be also declared to be illegal and of no effect.”

30 The Appellant Seguin as *Mis-en-cause*, contested the Respondent's Plea, pretending that the Contract between His Majesty and Thornton was an independent matter with which the Respondent was not concerned; that the Minister of Railways for Canada was represented at all Meetings of the Respondent whereat the various resolutions in question were adopted; that copies of all the Minutes of such Meetings were sent to the said Minister who concurred therein as did the General Counsel for the Respondent who was present thereat.

40 The said Appellant alleged that the Respondent was willing to lease the house in question for Thornton and, in substance, that Decary merely intervened personally and through the Appellant Seguin, his nominee, for the purpose of permitting “this transaction desired by the Defendant Company being effected with no chance of profit and with the risk of loss.” It was also alleged that the Respondent or Thornton had been given an option by Decary to acquire the property and furniture during the term of the lease at its cost at the date of the exercise of such option.

The Respondent joined issue with the said Contestation. It denied the allegations thereof, asserting that they were unfounded in fact and in law; and it averred that for the reasons set out in its Plea, the transaction therein referred to was null and void and that it

“was desired and effected by the said Decary and by the said Thornton for their own personal convenience, gain and profit.”

The Respondent averred, moreover, that the pretended option alleged to have been given by Decary could not “in any way affect the legal rights of the Company Defendant or the legal obligations of the said Decary and the said Thornton as Directors thereof”; and
10 that the said option “even if authentic and relevant, which is expressly denied, is a mere self-serving document prepared and delivered long after the execution. . . .” of the Agreements in issue, all of which were completed on the 8th of August, 1930.

The Appellant Montreal Trust Company, by its Amended Answer to the Respondent's Plea, made allegations similar to those in the Contestation of the Appellant Seguin. It then proceeded to review the various Contracts regarding the engagement of Thornton by the Respondent from the outset of his connection with it. The
20 said Order-in-Council and the Confirmatory Agreement with His Majesty were averred to be matters independent of the powers of the Respondent which was entitled, through its Directors, to engage Thornton and to make any terms which it might see fit to provide him with a residence or otherwise. After reciting the various proceedings which resulted in the acquisition by it of the rights of Seguin, and alleging that it entered into the matter in good faith, it prayed for the dismissal of the Respondent's Plea.

The Respondent joined issue by a Reply in somewhat similar
30 terms to that filed as an Answer to the Contestation of the Appellant Seguin.

THE JUDGMENT

On the 20th of September, 1935, Judgment was rendered dismissing the action of the Appellant Montreal Trust Company and the Contestation of the Appellant Seguin with costs. The learned
40 Trial Judge, the Honourable Mr. Justice de Lorimier, maintained the defences of the Respondent and declared the alleged Lease of the 8th of August, 1930, and the pretended Transfer thereof of the 26th of May, 1933, to the Appellant Montreal Trust Company by the Appellant Seguin to be illegal, null and void.

The Trial Judge found that the Appellant Seguin had acted as the *prete nom* of Decary throughout the whole transaction and particularly in the three Deeds of the 8th of August, 1930—the Deed of Sale from Beardmore to Seguin, the Deed of Lease from Seguin

to the Respondent and the Deed of Loan and Transfer of Lease between the Appellants. The learned Judge held that Decary, as a Director of the Respondent Company, by reason of the special law which applies, was precluded from contracting with it in the circumstances in issue, the interposition of his employee and *prete nom* the Appellant Seguin notwithstanding.

10

THE ARGUMENT

On behalf of the Respondent we submit that the Judgment appealed from is correct and should be confirmed because:—

(a) The Contract of Lease between Decary (acting by his *prete nom*, the Appellant Seguin) and the Respondent, was made in violation of Article 121 of the Railway Act;

20

(b) The exception contemplated by Article 121 of the said Railway Act has no application in the present case;

(c) Quite apart from the specific prohibition contained in the Railway Act, the Contract of Lease invoked by the Appellants is null and void as having been made in contravention of the well-established legal principles which prohibit persons standing in fiduciary capacity from making any profit therefrom directly or indirectly or from placing themselves in a situation where their duty as fiduciaries and their personal interest conflict;

30

(d) The Contract of Lease is illegal because it breaches the Agreements between Thornton and the Respondent and Thornton and the Government of Canada in that it purports to confer advantages upon Thornton which are directly prohibited by the said Agreements;

(e) The alleged knowledge of the Deputy Minister of Railways and the possibility that the Minister of Railways may have been aware thereof, cannot justify the transaction;

40

(f) The Appellants cannot pretend that they are innocent third parties unaffected by defects in the Contract of Lease resulting from the fiduciary positions held by Thornton and Decary; such innocence, even had it been established, would confer no rights upon the Appellants as against the Respondent, the said Contract of Lease being absolutely null and void from its inception.

(a) THE CONTRACT OF LEASE BETWEEN DECARY
(ACTING BY HIS *PRETE NOM*, THE APPELLANT SEGUIN)
AND THE RESPONDENT, WAS MADE IN VIOLATION OF
ARTICLE 121 OF THE RAILWAY ACT:

10

The powers of the Directors of the Respondent are strictly limited by its Charter—the Act whereby it was incorporated—(See 1927 R.S.C., Chapter 172). As has already been stated, the consistent provisions of the Railway Act apply. Article 121 of the Railway Act R.S.C., 1927, Chapter 170 prohibits the Lease between Decary and the Respondent. It reads as follows:—

20

“121. No person who is a director of the company
“shall enter into, or be directly or indirectly, for his own use
“and benefit, interested in any contract with the company
“other than a contract which relates to the purchase of land
“necessary for the railway, nor shall any such person be or
“become a partner of or surety for any contractor with the
“company.”

This Article covers two cases and provides that:—

30

(1) No person who is a Director of the Company shall enter into any contract with the Company other than a contract which relates to the purchase of land necessary for the Railway, nor shall any

(2) No person who is a Director of the Company shall be directly or indirectly, for his own use and benefit, interested in any contract with the Company other than a contract which relates to the purchase of land necessary for the Railway

40

In the first case, any contract made between a Director and the Company is forbidden unless such contract relates to land necessary for the Railway. It is not necessary that the Director who so contracts shall acquire any advantage or benefit from the contract. Whether the contract is beneficial or the reverse, it is a nullity, being expressly prohibited.

In the second case, such a contract is likewise forbidden when a Director is interested therein directly or indirectly for his own use and benefit. In such a case also the contract is without effect, being an absolute nullity—subject always to the exception of the purchase of land necessary for the Railway.

The term "Railway" is defined by Sub-section 21 of Article 2 of the Railway Act (*supra*) as follows:—

10 " 'Railway' means any railway which the company has
" authority to construct or operate, and includes all branches,
" extensions, sidings, stations, depots, wharves, rolling stock,
" equipment, stores, property real or personal and works con-
" nected therewith, and also any railway bridge, tunnel or
" other structure which the company is authorized to con-
" struct; and, except where the context is inapplicable, in-
" cludes street railway and tramway";

And the distinction between the words "railway" and "company" is made clear by a reference to Sub-section 4 of Article 2 of the Railway Act which reads as follows:—

20 " 'Company' includes a person, and where not other-
" wise stated or implied means 'railway company,' unless
" immediately preceded by 'any,' 'every' or 'all,' in which
" case it means every kind of company which the context will
" permit of; and 'railway company' or 'company' when it
" means or includes 'railway company'."

The terms of the resolution of the Executive Committee passed on the 17th of September, 1929 (Plaintiff's Exhibit P-2 at Enquete, Case p. 190), should here be considered;

30 " Whereas in the opinion of the Executive Committee, a
" suitable residence in Montreal for the Chairman and Presi-
" dent of the Company is essential for the proper conduct of
" the Company's business."

This clearly is not a resolution relating to "the purchase of land necessary for the railway" as contemplated by Section 121 of the Railway Act. The express prohibition of the Statute has in no way been affected and can in no way be affected by its terms or by any similar resolutions which are of record.

40 From the prohibition contained in Section 121 aforesaid flow the following propositions of law:—

- (1) Prohibitive Laws import nullity (C.C. 14);
- (2) Any contract made in violation of any such law is radically null;
- (3) Such contract being null from its inception produces no legal effects whatever;

(4) The nullity is absolute and perpetual. It may be invoked by any interested party and at any time;

(5) The nullity affecting such a contract being absolute is affected neither by time nor by ratification. It is an incurable nullity.

10 The following authorities support the said propositions:—

Article 14 C.C.

“Prohibitive laws import nullity, although such nullity
“be not therein expressed.”

Bernatchez vs. Sohier, 38 K.B., p. 179:—

20 “La vente d’un immeuble, effectuée en violation d’une
“loi d’ordre public, est radicalement nulle et ne produit aucune
“obligation de garantie.”

The Honourable Mr. Justice Tellier expresses himself as follows, at
p. 181:—

“Comme on le voit, la vente des lots octroyés en vertu
“de la loi des douze enfants était prohibée par la dite loi elle-
“même.

30 “C’est donc en violation de la dite loi que le dit Alfred
“Bernatchez a vendu son lot au demandeur. Que valait le
“contrat de vente fait dans ces circonstances? Il était nul,
“radicalement nul. C’est ce qui est décrété à l’art. 14 C. civ.

“Les lois prohibitives emportent nullité, quoiqu’elle n’y
“soit pas prononcée.

40 “Le dit contrat n’ayant jamais eu d’existence légale
“n’a pas pu produire d’effet. Il s’ensuit que le demandeur n’est
“pas propriétaire du lot qu’il revendique et que, d’un autre
“côté, l’obligation de le garantir n’existe pas en loi.”

Dalloz Répertoire pratique, VIII, p. 397—Vo.—*Nullité*:—

“Actes nuls de plein droit: 1o 2o. Les actes
“faits en violation d’une prescription ou d’une prohibition
“formelle de la loi, bien que la nullité n’en soit pas expressément
“prononcée. Toute personne intéressée est autorisée à se
“prévaloir de la nullité de ces actes: c’est ce qu’on exprime
“en disant que la nullité en pareil cas est *absolue*. D’autre
“part, elle n’est pas susceptible d’être couverte ni par une
“ratification, ni par la prescription.”

5. *Mignault, Droit Civil*, Vol. 5, p. 237:—

10 “Le contrat nul n’a aucune existence; il a manqué de se
“former; c’est le néant, un simple fait desitué de tout effet
“civil. Personne ne peut l’invoquer, et il ne peut être opposé
“à personne. Rien, ni le temps ni la volonté expresse des
“parties, ne peut lui donner la force d’une convention obliga-
“toire; on ne ratifie point le néant. Nul aujourd’hui, il le sera
“toujours. Et, puisque la nullité dont il est frappé ne se peut
“couvrir ni par la ratification, ni par la prescription, je n’ai
“aucun intérêt à l’attaquer dans un certain délai et à en faire
“prononcer la nullité en justice. Il est possible qu’en fait il
“me soit opposé; mais, à quelque époque que l’on me l’oppose,
“je serai recevable à prouver qu’il est nul et sans effet.”

At p. 239:—

20 “En résumé, le contrat nul n’a aucune existence légale;
“la nullité est ici absolue et perpétuelle. Absolue, car toute
“personne intéressée peut l’invoquer. Perpétuelle, car elle
“peut être invoquée à toute époque. Rien ne peut le purger
“du vice qui l’infecte, ni le temps, ni la ratification.

30 “Il y a une différence pratique importante entre l’action
“fondée sur un contrat nul et celle qui réclame l’exécution d’un
“contrat annulable. Dans le premier cas, le défendeur peut se
“contenter d’alléguer la nullité du contrat et conclure au ren-
“voi de l’action. Dans le second cas, au contraire, il doit dans
“ses conclusions, demander que le contrat soit annulé.”

Macdonald vs. Riordan, 8 K.B., p. 555.

Held:—

40 “2. Where a contract is prohibited by statute, such
“contract is void, although the statute itself does not state
“that it is so, and only imposes a penalty on the offender.”

This Judgment was confirmed generally by the Supreme Court
of Canada, 30 S.C.R., p. 619.

Brown vs. Moore, 32 S.C.R., p. 93.

Sir Henry Strong, Chief Justice, at page 97, remarks:—

“It is settled law that contracts entered into in the face
“of a statutory prohibition are void.”

Verdun Auto Exchange Limited vs. Sauve, 63 S.C., p. 143.

Poisson vs. Fortin, 37 K.B., p. 178:—

Jugé:—

10 “1. La vente de terres publiques sous billet de location, effectuée en contravention à l'article 1572 S. ref. (1909) et amendements, est radicalement nulle; et l'acheteur a droit de répéter du vendeur ce qu'il a payé sur le prix, en faisant constater la nullité de la vente par le tribunal.

“2. Est également nulle une convention qui aurait pour objet d'é luder la loi, en faisant indirectement ce que la loi prohibe de faire directement.”

20 (b) THE EXCEPTION CONTEMPLATED BY ARTICLE 121 OF THE SAID RAILWAY ACT HAS NO APPLICATION IN THE PRESENT CASE:

The property acquired by Decary from Beardmore was not “land necessary for the railway.” This is clearly established by the evidence of Mr. Bond, General District Superintendent of the Respondent, and by the definition of the words “railway” and
30 “company” as appearing in Sub-sections 4 and 21 of Article 2 of The Railway Act (*supra*).

The evidence of Mr. Bond on this point appears at pp. 58-59 of the Joint Case as follows:—

40 “Q.—Can the property bearing the civic number 1415 Pine Avenue West serve any purpose necessary for the Railway as defined by that section?”

Mr. Geoffrion, K.C., of counsel for Plaintiff objects to this question as a question of law.

The Court reserves the objection.

“A.—No, I cannot conceive of it serving any purpose.”

“Q.—I would also draw your attention to Section 121 of the Railway Act which reads as follows:—

“No person who is a director of the Company shall enter into, or be directly or indirectly, for his own use and benefit interested in any contract with the Company other than a contract which relates to the purchase of land necessary for the Railway, nor shall any such person be or become a partner of or surety for any contractor with the Company.”

10

“Bearing in mind that last definition I have read, I would ask you whether the property bearing the civic number 1415 Pine Avenue West is, in your opinion, land necessary for the railway?”

Same objection.

Same reserve.

20

“A.—My answer would be no.”

“Q.—Will you amplify your answer a little, Mr. Bond, and say why you give ‘no’ as your answer?”

Witness: “As to whether the house 1415 Pine Avenue West is necessary for the Railway?”

Counsel: “Yes.”

30

“A.—So far as operating is concerned it would be very difficult, if not impossible, to conceive of any use to which it might be put, and for the purposes for which it was used it could not be called necessary as there are other houses in Montreal which might be used for the same purpose.”

“Q.—Is it near the right-of-way of the Railway?”

40

“A.—No. The nearest point of the right-of-way would be the tunnel. It would be over half a mile from the tunnel station, but it would be at such a different elevation there would be no serviceable connection between the two.”

By the Court:—

“Q.—What tunnel do you refer to?”

“A.—The tunnel going under the mountain. That, I think, would be the nearest to the property under discussion.”

By Mr. Cook:—

“Q.—Is the property in question near the offices of the Railway, or in proximity to them?”

10 “A.—No. It would be, I should say, pretty nearly three-quarters of a mile from any of our operating properties in that category used as offices.”

“Q.—What sort of district is this house in?”

“A.—It is a high-class residential district.”

20 The property is a private residence, in a residential district, in no proximity to the Railway, and of no possible value to the Railway. Moreover, by the terms of the sale from Beardmore to Seguin (Decary) its use for any other purpose than as a private residence was forbidden, a servitude and restriction to this effect being imposed upon the purchaser. The same servitude or restriction was contained in the Lease, and the resolution of the 16th of June, 1930, by which the Lease was authorized, contains the same prohibition, which is in the following terms:—

“To use the premises as a private residence only and
“for no other purpose.”

30 (c) QUITE APART FROM THE SPECIFIC PROHIBITION CONTAINED IN THE RAILWAY ACT, THE CONTRACT OF LEASE INVOKED BY THE APPELLANTS IS NULL AND VOID AS HAVING BEEN MADE IN CONTRAVENTION OF THE WELL-ESTABLISHED LEGAL PRINCIPLES WHICH PROHIBIT PERSONS STANDING IN A FIDUCIARY CAPACITY FROM MAKING ANY PROFIT THEREFROM DIRECTLY OR INDIRECTLY OR FROM PLACING THEM-
40 SELVES IN A SITUATION WHERE THEIR DUTY AS FIDUCIARIES AND THEIR PERSONAL INTEREST CONFLICT:

In support of these contentions Respondent relies upon the following:—

Aberdeen Railway Company vs. Blaikie Brothers, 1 Scotch Appeal Cases (Macqueen) p. 461.

The principles discussed in that case are analogous to those involved in the present instance. They are fairly summarized in the headnote which reads as follows:—

10 “The Director of a Railway Company is a Trustee; and,
“as such, is precluded from dealing, on behalf of the Company,
“with himself, or with a firm of which he is a partner.

“It is a rule of universal application that no trustee
“shall be allowed to enter into engagements in which he has, or
“can have, a personal interest, conflicting, or which may
“possibly conflict, with the interests of those whom he is
“bound by fiduciary duty to protect.

20 “So strictly is this principle adhered to, that no
“question is allowed to be raised as to the fairness, or unfair-
“ness, of the transaction; for it is enough that the parties
“interested object.

“It may be that the terms on which a Trustee has
“attempted to deal with the trust estate, are as good as could
“have been obtained from any other quarter. They may
“even be better. But so inflexible is the rule that no inquiry
“into that matter is permitted.

30 “It makes no difference whether the contract relates to
“real estate, or personality, or mercantile transactions; the
“disability arising, not from the subject matter of the con-
“tract, but from the fiduciary character of the contracting
“party.

“The law of Scotland and the law of England are the
“same upon these points: both coming from the Roman law,
“itself bottomed in the plainest maxims of good sense and
“equity.”

40 *Snell's Principles of Equity*—(21st Ed., 1934), at p. 158:—

“A Trustee or Executor, or other person standing in a
“fiduciary position, is not entitled to make a profit by the
“Trust, either directly or indirectly; he is not allowed to put
“himself in a position where his duty and interest conflict.

“These rules apply, not only to express Trustees and
“Executors and Administrators, but also to all persons who
“stand in a fiduciary position, whether agents, solicitors,
“guardians, partners, directors of companies.”

Wegenast—“*The Law of Canadian Companies*,” at p. 266:—

“*Disability from Interest.*”

10 “A contract made between directors or other agents of
“a company on the one hand, and the company on the other,
“may be vitiated by reason of the disability of agents resulting
“from the relation existing between them and the company.
“This depends on the general principle of equity that a Trustee
“cannot enter into engagements in which his personal interest
“may conflict with his duty as Trustee. It has been held that
“where there would be no quorum but for the presence of a
“director who is disqualified from interest, he cannot be
“counted for the purpose of making a quorum; and if several
“directors are interested in what is virtually one transaction,
“a quorum cannot be obtained by splitting the resolution into
“parts and taking a vote on each part separately.”

20

Broughton vs. Broughton (De Gex, Macnaghten & Gordon 3-6)
English Reports, 43 Chancery p. 831:—

The Lord Chancellor at p. 833:—

30 “The rule applicable to the subject has been treated at
“the Bar as if it were sufficiently enunciated by saying, that a
“trustee shall not be able to make a profit of his trust, but that
“is not stating it so widely as it ought to be stated. The rule
“really is, that no one who has a duty to perform shall place
“himself in a situation to have his interests conflicting with
“that duty; and a case for the application of the rule is that
“of a trustee himself doing acts which he might employ others
“to perform, and taking payment in some way for doing them.
“As the trustee might make the payment to others, this Court
“says he shall not make it to himself; and it says the same in
“the case of agents, where they may employ others under
“them. The good sense of the rule is obvious, because it is
“one of the duties of a trustee to take care that no improper
40 “charges are made by persons employed for the estate. It has
“been often argued that a sufficient check is afforded by the
“power of taxing the charges, but the answer to this is, that
“that check is not enough, and the creator of the trust has a
“right to have that, and also the check of the trustee. The
“result therefore is, that no person in whom fiduciary duties
“are vested shall make a profit of them by employing himself,
“because in doing this he cannot perform one part of his trust,
“namely, that of seeing that no improper charges are made.”

North-West Transportation Company, Limited and James Hughes Beatty vs. Henry Beatty—Law Reports, 12 Appeal Cases, 1887, p. 589.

The opinion of the Judicial Committee of the Privy Council was rendered by Sir Richard Baggallay who remarked in part as follows:—

10

at p. 593:—

“ a director of a company is precluded from
“ dealing, on behalf of the company, with himself, and from
“ entering into engagements in which he has a personal interest
“ conflicting, or which possibly may conflict, with the interests
“ of those whom he is bound by fiduciary duty to protect;
“ and this rule is as applicable to the case of one of several
“ directors as to a managing or sole director. ”

20

Cape Breton Cold Storage Co. vs. Rowlings, 1929, S.C.R. p. 505.

The Supreme Court of Canada, in this case, followed the principles laid down in the judgments above cited which went considerably further than is necessary to maintain the contentions of the Respondent in the present action. In the Rowlings case there was no direct prohibition on the director who also acted as the Solicitor of the Company and rendered services which were of value to it. The Court held that Rowlings, because of his fiduciary capacity as a
30 Director, had no right to come before the Court and ask for remuneration for his services rendered to the Company as its Solicitor.

In the present instance, the Railway Act specifically forbids dealings with the Company by any Director saving only in the exceptional case provided by Section 121.

The contract was clearly made for the benefit and advantage of Decary and Thornton, both Directors of the Respondent.

40 Let us consider the advantages accruing to Decary. These were as follows:—

(1) The interest on the loan personally due by him to the Trust Company was being paid for a period of ten years for his account by the Respondent. This undoubted benefit he, himself, by his actions, had secured;

(2) The liability of Decary with regard to the taxes, insurance, upkeep and repairs of his property was to be paid

for a period of ten years by the Respondent. This also had been arranged by Decary, a Director of the Company Respondent.

10 (3) Should the Lease be maintained, Decary's debt of \$185,000 to the Plaintiff will have been reduced to \$133,673, by the partial amortization out of rental, according to the Statement produced as Exhibit D-18 (Case p. 310). If we assume that the price of \$185,000 paid for the property on the 8th of August, 1930, was a "right price" at that time and that the obligations of the Railway with regard to the property, undertaken by the Lease of the 8th of August, 1930, have been fulfilled, this means that upon the termination of the Lease Decary will own the property at a price of \$133,673 or at a price of \$51,327 less than the purchase price.

20 (4) Decary attempted to prove that there would be no profit in the transaction for himself, but that, on the contrary, the sum of \$51,327 shown on Exhibit D-18 (Case p. 310) would not cover the depreciation which would be suffered by the property during the term of the Lease and that he would be unable at its expiry to resell the property otherwise than at a loss. This the Respondent denies. The suggestion in any event is quite irrelevant. Even if relevant and even if true that at the expiry of the Lease the sum of \$51,327 would be insufficient to cover the depreciation, it is none the less true that Decary would have made the Respondent pay a large portion of the said depreciation. This cannot be considered
30 otherwise than as a substantial profit to Decary, who, in addition, has had the gratification of conferring a benefit upon Thornton by ensuring to the latter the property free of rent and charges.

40 (5) In order to show that Decary was interested in the contract it is unnecessary to point out that during the term of the Lease or at its expiry he would make a real profit in excess of the price actually paid by him or for his account. We point out, however, that on the 1st of February, 1933, the date of the last payment of rent, the debt of Decary towards the Montreal Trust Company under the terms of the Deed of Loan had been reduced to \$174,922 (Exhibit D-18, Case p. 310) and that he himself has never paid one dollar to that company.

The interests of Sir Henry Thornton in the Contract of Lease and the advantages which he was deriving from the transactions of which we complain are as follows:—

1. The reimbursement of the sum of \$5,000 for rental paid by him to Mr. Beardmore for the occupation of the house in question during the period from the 1st of October, 1929, to the 31st of July, 1930.

2. The payment by the Respondent of Sir Henry Thornton's rental of \$6,000 per year.

10

3. Sir Henry Thornton's Lease from Mr. Beardmore was terminable at any time on three months notice. The transaction ensured to Thornton the occupancy of the property without the fear of ejection.

All of these advantages resulted from the Contract of Lease and were conferred upon Sir Henry Thornton at the expense of the Respondent and notwithstanding the express terms of his Contracts of the 23rd of September, 1929, with the Respondent and the 25th of October, 1929, with the Government. As pointed out, these contracts provided for a fixed annual salary to Thornton of \$75,000 and nothing more.

20

Decary pretended that it was impossible for him to draw any profit or advantage from the transaction because he had acted at the request of the Directors of the Respondent and that by his letter of the 6th of November, 1930, addressed to Sir Henry Thornton (Plaintiff's Exhibit No. 14), he was exposed to having the property taken from him by the Respondent upon a mere payment of the then balance owing to the Plaintiff. This pretension is altogether contrary to the terms of the letter.

30

The pretended Option (P-14, Case p. 263) to purchase the property, which was given by Decary a long time after the transaction had been completed, was in favour of Sir Henry Thornton personally and was for the latter's own advantage and benefit. Thornton's letter of the 20th of November, 1930 (Exhibit P-26, Case p. 317), to the Honourable Mr. Manion, Minister of Railways, expressly so declares. The pretended Option of the 6th of November, 1930, involves a payment, not merely of any balance that may be due on the purchase price of \$185,000 but also the payment of a further loan of \$50,000 made by Decary to Thornton under the terms of the Agreement of the 31st of October, 1930 (Exhibit P-26).

40

The obligation contained in the letter of the 6th of November, 1930, to sell the property to Sir Henry Thornton for the sum remaining due to Decary and to his *prete nom* Seguin, upon the advances of

\$185,000 and \$50,000 respectively, expressly contradict the statements of Decary.

The words "for the sum remaining due to us on the advances of \$185,000 and \$50,000" imposed upon Sir Henry Thornton an obligation to pay to Decary the balance of these amounts. When Decary was giving evidence he appears to have regretted the existence
10 of the words "remaining due to us" and would appear to have preferred that they should read "remaining due by us," which would have put an altogether different aspect on the matter.

Even, however, were a profit of \$51,327 realized through the progressive amortization provided for under the Lease to the Respondent as shown by Exhibit D-18 (Case p. 310) ultimately to have gone to Sir Henry Thornton by reason of the Option of the 6th of November, 1930, and the previous Agreements, the Contract of Lease, which is the basis of this suit, would still be null, being
20 prohibited by law, as having been made by the Company for the benefit of a Director.

(d) THE CONTRACT OF LEASE IS ILLEGAL BECAUSE IT BREACHES THE AGREEMENTS BETWEEN THORNTON AND THE RESPONDENT AND THORNTON AND THE GOVERNMENT OF CANADA IN THAT IT PURPORTS TO CONFER ADVANTAGES UPON THORNTON WHICH ARE
30 DIRECTLY PROHIBITED BY THE SAID AGREEMENTS:

From and after the 23rd of September, 1929, the position of Thornton with respect to the salary which he was to receive from the Respondent and the Government of Canada was definitely fixed. It was clearly defined by the Contract of the 23rd September, 1929 (Defendant's Exhibit No. 2, Case p. 191). The Order-in-Council of the 23rd of October, 1929 (Defendant's Exhibit No. 3, Case p. 212)
40 and the Confirmatory Agreement of the 25th of October, 1929 (Defendant's Exhibit No. 4, Case p. 214). Thornton was to receive a fixed yearly salary of \$75,000 and no more, except his actual out-of-pocket expenses. No other extras were allowable. It is therefore quite obvious that the purported attempt to give the Beardmore house rent free to Thornton during the term of his office as a Director and President of the Respondent was in breach of the aforementioned Agreements and of the said Order-in-Council; they were in breach of Thornton's duty as President and a Director of the Respondent, and also in breach of the terms of Sections 113 and 121 of the Railway

Act. The Agreements between Thornton and the Respondent and between Thornton and the Government contain similar provisions as to remuneration.

10 “3. *REMUNERATION*.—The remuneration of the
“Managing Head for the full and entire services to be per-
“formed, from time to time, and for the full period of employ-
“ment under this agreement, shall be a fixed annual salary
“(irrespective of the magnitude or extent of the work or
“duties to be performed from time to time and without any
“extra fees or remuneration of any description) of Seventy-
“five thousand dollars (\$75,000) per annum, payable monthly
“.....”

20 Notwithstanding this, it would appear from the evidence,
and the documents of records show that, from the outset, the majority
of the Directors of the Respondent, including Decary, were endeavour-
ing, in conjunction with Thornton, to breach the aforementioned
Agreements. A casual examination of Exhibit D-15 (Case p. 315),
and the evidence of the witness Brangam (Case p. 61 and following)
make it evident that over and above the said annual salary of \$75,000,
Thornton was given additional remuneration of as much as \$18,263.30
in one year. The house which he had been living in prior to his
contract with the Respondent of the 23rd of September, 1929, for
which he himself paid \$6,000 rental per annum, was given to him free
at a cost to the Respondent in the year 1930, of \$10,833.55; in the year
1931 of \$17,953.43, and in the year 1932 of \$18,263.30. In other
30 words, at a cost to the Respondent of nearly three times what Thorn-
ton had been paying for it as a private citizen. These monies were
charged to and paid by the Respondent for a house which, owing to
the servitude affecting it, could not be used by the Respondent and
which, in any event, was never intended for the business carried on
by it. It is submitted that, in view of the terms of Thornton's
Contracts of Engagement, the transaction cannot be justified and is
illegal.

40 It cannot be contended that the matter relating to the Con-
tract of Lease in question, with the advantages resulting therefrom,
was a matter for the exercise of any discretion on the part of the
Directors of the Company-Respondent. When once the terms and
conditions of the engagement of Sir Henry Thornton had been sub-
mitted by the said Directors to their Principals, the shareholders,
that is the Government of the Dominion of Canada, represented by
the Governor in Council, and they had been considered and approved,
the Directors were without power to confer upon Thornton any greater
benefits and remuneration than those specifically mentioned in the
Contracts of the 23rd of September, 1929, and the 25th of October, 1929.

Had the said Directors desired to increase the remuneration therein specifically provided for they must needs have submitted the matter anew to the shareholders. Any discretion which they might have pretended to have had was eliminated when once they received specific instructions from their said Principals, the Appellants contentions to the contrary notwithstanding.

10

(e) THE ALLEGED KNOWLEDGE OF THE DEPUTY MINISTER OF RAILWAYS AND THE POSSIBILITY THAT THE MINISTER OF RAILWAYS MAY HAVE BEEN AWARE THEREOF, CANNOT JUSTIFY THE TRANSACTION:

20 The fact that the Deputy Minister of Railways, Mr. R. A. C. Henry, was a Director of the Respondent Company, and that he apparently favoured the transaction, and the fact that the Minister of Railways may have been aware thereof by his Deputy Minister and possibly made no formal protest, cannot justify such a transaction or constitute its approval.

The transaction is, we submit, *ab initio* null and void. The approval of the Minister of Railways can only be given by Order-in-Council. This is quite apparent by the terms of Section 21 of the Canada Evidence Act (1927 R.S.C., Chapter 59).

30

Mr. Henry testified that there was no Order-in-Council in the present instance. His evidence at p. 165 of the Joint Case is as follows:—

“Q.—To your knowledge, was any Order-in-Council passed modifying, or attempting to modify, the formal agreements of September 23rd, 1929, and October 25th, 1929?”

“A.—Not to my knowledge.”

40

When the Respondent makes a contract which, according to the Railway Act or any other law, requires the approval or confirmation of the shareholders, the said approval is given by the Governor in Council as is provided in Article 11 of The Canadian National Railways Act (R.S.C., 1927, Chapter 172). This Article reads as follows:—

“Whenever under the provisions of the Railway Act, “or any other statute or law, the approval, sanction or con-

“firmation by shareholders is required, such approval, sanction
“or confirmation may be given by the Governor in Council.”

This was made quite clear by Mr. Henry (Case p. 166).

By Mr. Cook: continuing:—

10 “Q.—As a matter of fact, how is the approval of the
Government obtained to a contract, under the terms of the
Railway Act, as you understand it?”

“A.—By Order-in-Council.”

20 It is in the present case, in addition, submitted that even an
Order-in-Council could not nullify the express prohibition contained
in Section 121 of the Railway Act. Without express legislation no
alteration of the terms of this section is possible.

30 (f) THE APPELLANTS CANNOT PRETEND THAT
THEY ARE INNOCENT THIRD PARTIES UNAFFECTED
BY DEFECTS IN THE CONTRACT OF LEASE RESULTING
FROM THE FIDUCIARY POSITIONS HELD BY THORNTON
AND DECARY; SUCH INNOCENCE, EVEN HAD IT BEEN
ESTABLISHED, WOULD CONFER NO RIGHTS UPON THE
APPELLANTS AS AGAINST THE RESPONDENT, THE SAID
CONTRACT OF LEASE BEING ABSOLUTELY NULL AND
VOID FROM ITS INCEPTION:

40 In the light of the evidence of record herein, particularly the
testimony of the witness Donaldson (Case p. 42 *et seq.*), Manager of
the Appellant Montreal Trust Company, and the letter to him from
Decary of the 24th of June, 1930 (Case p. 237), it cannot be pre-
tended that the said Appellant is an innocent third person which was
unaware of the fiduciary positions occupied by Thornton and Decary
with respect to the Respondent. On the contrary, it is an immediate
and interested party. It has no greater rights against the Respondent
than has Decary. The fact that it dealt with him through a person
interposed, the Appellant Seguin, cannot affect the position which was
fully disclosed to the said Appellant Montreal Trust Company
through its Manager by Decary. It knew thoroughly the personal
interest which Decary had in the property purchased by him with
the monies advanced by it upon the security, among other things,

of Decary's own personal guarantee. The Appellant Montreal Trust Company was well aware that Thornton and Decary were the paid mandatories of the Respondent by reason of the positions of trust held by them as officers and directors of the Company-Respondent. It must be held to have been aware in fact, and it was bound with knowledge in law, that the interposition by Decary of his employee and *prete nom* the Appellant Seguin, both in the loan agreement and the alleged Contract of Lease, which was transferred as security to guarantee the loan, was an attempt by said Decary to do indirectly something which the Railway Act forbade his doing directly and thereby to benefit himself chiefly at the expense of the Respondent. The said Appellant is presumed to know the Statutes and Public Acts which govern the present matter (Article 10 C.C.; Interpretation Act, 1927, R.S. Chapter 1, Section 13). In the premises in the present instance therefore, whether or not it had in fact such knowledge, is wholly immaterial.

20 The Appellant Montreal Trust Company, as Assignee of the Appellant Seguin, only obtained from him such rights as he had, and by reason of the illegalities which taint them, the transaction in question is null and void.

Apart altogether from the legal aspects of the matter, which we have endeavoured to demonstrate from an impersonal point of view, we suggest that, on the facts, the impropriety and the gross improvidence of the entire transaction should be noticed. It is fully set forth in the defences of the Respondent, every allegation of which
30 has been established. The situation was fairly summarized in Paragraph 36 of the Respondent's Plea to which the Court is respectfully referred.

CONCLUSION

For all of the foregoing reasons, as well as those referred to and set out in the Judgment appealed from, the Respondent respectfully
40 submits that the present Appeal should be dismissed with costs and the Judgment rendered in the Superior Court should be confirmed.

MONTREAL, November 30th, 1937.

J. C. H. DUSSAULT,

A. A. MAGEE,

Attorneys for Respondent.

CANADA

Province of Quebec

No. 1115

THE FORMAL JUDGMENT OF THE
COURT OF KING'S BENCH

10

(Appeal Side)

MONTREAL, Wednesday, the fourteenth day of December, one thousand nine hundred and thirty-eight (1938):
PRESENT:

In the
Court of
King's Bench
(Appeal Side)
—
The Formal
Judgment of
the Court of
King's Bench,
Appeal Side,
dismissing the
Appellants'
Appeal
14 Dec. 1938

The Honourable Mr. Justice Letourneau,
“ “ Bond,
“ “ Galipeault,
“ “ St-Jacques,
“ “ Barclay.

20

THE COURT having heard the parties by their respective Counsel upon the merits of the present appeal, examined the record and proceedings in the Court below, and deliberated:

CONSIDERING that there is no error in the *dispositif* of the judgment appealed from, to wit: the judgment rendered by the Superior Court sitting at Montreal, in the district of Montreal, on the twentieth day of September, one thousand nine hundred and thirty-five (1935);

30

Without adopting all the reasons assigned — DO TH AFFIRM the same with costs to the Respondent against the Appellants.

W. L. Bond,
J.K.B. 40



NOTES DU JUGE LETOURNEAU

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
Letourneau

A l'audition de la cause comme aussi au début du délibéré, j'ai douté que l'article 121 de la Loi des chemins de fer dût avoir l'étendue et toute la portée que suggère la Compagnie-Intimée, à savoir que la prohibition qui s'y trouve dût avoir pour sanction la nullité du contrat.

10

Il est à noter en effet que la disposition tend moins à "prohiber" le contrat qu'à interdire au directeur d'y prendre part; et si l'on tient compte d'une sanction particulière édictée par cette même loi (art. 44) contre tout "directeur"... "qui commet, fait commettre ou permet de commettre une chose ou un acte contraire aux dispositions de la présente loi...", on peut encore se demander si cette sanction particulière ne tend pas à exclure celle de l'article 14 de notre Code Civil. D'autant, je le répète, que la disposition sous examen (l'article 121) ne "prohibe" pas le contrat, du moins en termes exprès et de façon formelle.

20

Toutefois, il me serait impossible de passer outre à ce qui a été décidé par notre Cour, confirmé sur le point par la Cour Suprême dans McDONALD vs RIORDON ET AL (8 B.R., 555, 30 S.C.R., 619).

Il s'agissait là, il est vrai, d'un contrat véritablement intéressé, secret même, et qui bien plus que celui que nous avons à envisager, répugnait à une reconnaissance. Mais en face des raisons apportées et des autorités invoquées, il m'est impossible de distinguer; s'est substantiellement la même disposition que l'on avait à appliquer dans cet autre cas, et la Cour en est venue à cette conclusion d'une *nullité* du contrat.

30

Tant que la Cour Suprême n'aura pas indiqué un changement d'avis sur le point, je me crois lié par l'interprétation qu'elle a ainsi donnée à l'article en question de la Loi des chemins de fer.

Comme mes collègues qui s'en sont exprimés, je suis d'avis qu'en tout ceci, le directeur E. R. Décary a eu en vue et pour mobile, moins sont intérêt personnel — d'après la preuve, cet intérêt personnel peut difficilement se concevoir—, que ce que voulaient de lui ses co-directeurs. Mais la situation n'en reste pas moins la même, du point de vue d'une nullité du contrat, puisqu'à mon sens l'Intimée est fondée à prétendre que cet article 121 de la loi prohibe non seulement à raison d'un intérêt direct ou indirect, mais

40

In the
Court of
King's Bench
(Appeal Side)
—
Notes
of the Hon.
Mr. Justice
Letourneau
(Continued)

encore et de façon absolue toute participation (enter into) à un contrat qui n'en serait pas un "se rattachant à l'acquisition des terrains nécessaires au chemin de fer".

Dans ces circonstances, je ne puis que confirmer, du moins quant au dispositif, le jugement qui nous est soumis.

Séverin Letourneau,
J.C.B.R.

10

NOTES OF THE HONOURABLE MR. JUSTICE BOND

In the
Court of
King's Bench
(Appeal Side)
—
Notes
of the Hon.
Mr. Justice
Bond

This is an appeal by the Plaintiff Company and the Mis-en-cause in the Superior Court from a judgment rendered on the 20th 20
September 1935 (de Lorimier, J.) annulling a lease from the Appellant Seguin to the Respondent and the transfer of the said lease from the Appellant Seguin to the Appellant Montreal Trust Company, and dismissing the Appellant Montreal Trust Company's action for \$7,862.50, with costs.

The action was one instituted by the Appellant, the Montreal Trust Company, to recover two instalments of rental alleged to be due by the Respondent in virtue of a Lease of a property on Pine Avenue, in the City of Montreal, as a residence for the late Sir Henry Thornton, then President, Chairman of the Board, and Managing Director of the Respondent Company, which Lease had been made between the Mis-en-cause Seguin and the Respondent on the 8th day of August, 1930, for a period of ten years, and which Lease had been assigned to the Appellant Company as collateral security for a loan of \$185,000 also entered into on the said 8th day of August, 1930. 30

By its Plea, which contained 37 paragraphs, the Respondent raised various grounds of defence in this action, but all substantially leading to the contention that the Lease in question was null and void, and it reserved its rights to recover such sums of money as it had paid to the Appellant in respect thereof. 40

The Appellant Company answered this Plea, also at length, and the Mis-en-Cause likewise contested the Plea: the issues being joined by a Reply on the part of the Respondent.

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
Bond
(Continued)

The facts necessary to an understanding of the issues involved may be resumed as briefly as possible as follows:

In the year 1929 Sir Henry Thornton was occupying, and had for some years been occupying, a house on Pine Avenue, in the City of Montreal, (civic number 1415), which he had rented from Mr. F. N. Beardmore in September 1926.—This Lease was for one year only, and was renewed annually by letter; but the Lease contained a clause whereby it was provided that Mr. Beardmore reserved the right to sell the property at any time, and terminate the Lease on three months' notice. Mr. Beardmore went Abroad to live and was anxious to sell the house, but up to that time had not succeeded in obtaining an offer acceptable to him. 10

Sir Henry disliked the precarious nature of his Lease, and appears to have felt that the Respondent Company should provide him with a suitable residence from which he could not be summarily ejected. 20

On September 17th 1929 the Executive Committee of the Board of Directors of the Respondent Company, at a meeting held in Montreal, passed the following resolution:

WHEREAS in the opinion of the Executive Committee a suitable residence in Montreal for the Chairman and President of the Company is essential for the proper conduct of the Company's business, it was unanimously RESOLVED that the Executive Committee should undertake to lease a suitable and properly equipped residence for the use of the Chairman and President of the Company under such terms and conditions as the Committee may subsequently deem proper. 30

At this meeting of the Executive Committee there were present Sir Henry Thornton, Mr. R. A. C. Henry, Mr. E. A. Decary, N.P. Mr. Rayside and Mr. Gardner. (CASE p. 190). 40

On September 23rd 1929, at a meeting of the Board of Directors, it was resolved as follows:

RESOLVED that in the matter of the leasing of a suitable residence for the use of the Chairman and President of the Company in Montreal, the resolution adopted by the Executive Committee in this respect at its meeting

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—
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(Continued)

On September 17th is approved and the Committee is hereby authorized to lease a suitable and properly equipped residence for the use of the Chairman and President of the Company under such terms and conditions as the Committee may subsequently deem proper.

At this meeting among those present were, Sir Henry Thornton 10
and Mr. Decary. (CASE p. 197).

On the same day, i.e. the 23rd September 1929, the same Board of Directors entered into an Agreement of Engagement with Sir Henry Thornton for a period of five (5) years from the 4th day of October 1928, wherein the remuneration of the said Thornton was provided for as follows:

The remuneration of the Managing Head for the full and entire services to be performed from time to time, 20
and for the full period of employment under this agreement, shall be a fixed annual salary (irrespective of the magnitude or extent of the work or duties to be performed from time to time and without any extra fees or remuneration of any description) of Seventy-five Thousand Dollars (\$75,000.00) per annum. (CASE pp. 193 & 216).

— This Agreement with Thornton, including the terms of his remuneration, was approved by Order-in-Council dated the 23rd 30
October 1929.

On the 24th March 1930, at a meeting of the Executive Committee of the Board of Directors, reference was made to the resolution of the Directors passed on the 23rd September 1929 (*supra*) regarding the provision of an official residence for the President and to the unsuccessful efforts made to secure one; and it was decided —

THAT in order to carry out the intention of the Directors as from the date of such resolution an adjustment 40
should, when the residence is purchased, be made with the President in respect of rental, as of the date of his present contract.

— It should be observed, here, that at this meeting both Sir Henry Thornton and Mr. Decary were present, but the Minutes state that at this juncture, that is to say prior to the above resolution, the President left the meeting. — (CASE pp. 224 & 225).

In the
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Bond
(Continued)

From the foregoing it would thus appear that on the same day that the Directors sanctioned an Agreement providing for the engagement of Sir Henry at an inclusive salary or remuneration of \$75,000, they undertook to provide a suitable residence for him; and at a subsequent meeting made this undertaking retroactive so as to involve the reimbursement to Sir Henry of the rental that he had paid or was paying pending the securing of the residence. 10

I draw attention to this at the moment, because the Respondent Company attaches considerable importance to this discrepancy or departure from the terms of the engagement sanctioned by the Order-in-Council, limiting his remuneration to \$75,000 in all.

Sir Henry and Mr. Decary had been in communication in regard to the acquisition from Mr. Beardmore of the house in which Sir Henry was then residing, and where he desired to continue to reside. Mr. Decary was at that time, and still is, the President of the Title Guarantee & Trust Corporation of Canada, and was recognized as having had considerable experience in real estate matters, as well as being head of a firm of Notaries known as Decary, Barlow & Joron. 20

Sir Henry had succeeded in obtaining from Mr. Beardmore an option to purchase the property in question for the sum of \$175,000 plus \$10,000 for the furniture and contents, and Sir Henry took up with Mr. Decary the question of how the matter could be financed, for the acquisition by purchase of the property by the Respondent Company did not at that time appear practicable. 30

Mr. Decary took the matter up with the Manager of the Montreal Trust Company, and on the 24th June 1930 wrote to him as follows:

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
Bond
(Continued)

THE TITLE GUARANTEE AND TRUST
CORPORATION OF CANADA

134 St. James Street West

Montreal, June 24, 1930.

10

F. G. Donaldson Esq.,
General Manager,
Montreal Trust Company,
Montreal.

Dear Mr. Donaldson :

Referring to our conversation of the other day in connection with the Beardmore property on Pine Avenue, I, or my nominee subject to my personal guarantee, will purchase the above property for \$185,000.00 cash, the property subsequently to be rented to the Canadian National Railways for ten years, at a price representing 8½% per year, net, outside of taxes of any kind, repairs and improvements. 20

You will make a loan for this amount of \$185,000.00 for ten years, at 6½%, the difference between the amount of interest paid and 8½% to be applied as a sinking fund on the amount of the loan. Your Company will be given a first mortgage on the property and an absolute transfer of the Canadian National lease as guarantee for the loan. 30

We should be in a position to complete this transaction during the first days of the month of July. Will you please advise me if this is convenient to you, and oblige,

Yours truly,

(signed) E. R. DECARY, 40
President.

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—
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of the Hon.
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Bond
(Continued)

(CASE pp. 237 238).

On the 25th June 1930 the Montreal Trust Company replied to Mr. Decary as follows:

HJK/EGB. June 25th 1930.
E. R. DECARY Esq., 10
President,
The Title Guarantee and Trust
Corporation of Canada,
134 St. James Street West,
Montreal, Que.

Dear Mr. Decary:

I have your letter of the 24th instant, in connection with the Beardmore property on Pine Avenue. The arrangement as outlined by you is quite satisfactory to us and we are prepared to make the loan for the amount stated, subject to satisfactory Title. 20

Yours faithfully,

F. G. Donaldson,
General Manager.

(CASE p. 238) 30

In the meanwhile, the matter had been taken up by the Executive Committee for, on the 16th June 1930, at a meeting of the Executive Committee, at which both Sir Henry and Mr. Decary, among others, were present, the following resolution was adopted:

RESOLVED that the Company rent from GEORGE H. SEGUIN, for a term of ten (10) years, commencing on the first day of August, Nineteen hundred and thirty (1930), and expiring on the thirty-first day of July, Nineteen hundred and forty (1940), that certain house bearing No. 1415 Pine Avenue West, in the City of Montreal, for an annual rental of FIFTEEN THOUSAND SEVEN HUNDRED AND TWENTY-FIVE DOLLARS (\$15,725.00), payable quarterly on the first days of February, May, August and November of each year, the first payment to become due on the first day of November next (1930), and subject to the following conditions on the part of the Company, namely: 40

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(Continued)

To keep the house in good order of repairs during the entire term of the lease;

To use the premises as a private residence only, and for no other purpose;

To pay for all taxes and assessments, general or special, or of any nature whatsoever which may be imposed on said property during the term of the lease. 10

(CASE p. 236).

It must be remembered in this connection that at that time neither Seguin nor Decary owned the property, though Sir Henry had acquired an option in his own favour. This resolution to which I have just referred was not then entered in the Minutes of the meeting, apparently, for it was not until the 7th August 1930 that the Executive Committee decided to insert the foregoing resolution in the Minutes of the meeting that had been held on the 16th 20

June. (CASE p. 261).

The explanation offered by Mr. Decary in this respect was, that there was at that time an election pending. (CASE p. 79).

This resolution to lease the property was only approved by the Directors at a meeting held on the 19th August 1930, but on the 8th August the Deed of Sale from Beardmore to Seguin and Transfer of Lease from Seguin to the Respondent Company were executed, (CASE pp. 253 & 241), and in this connection it is important to notice the testimony of Mr. Rayside, one of the Directors: 30

Q.—Do you recall what led up to passing a Resolution about a lease from George H. Seguin?

A.—After the meeting in March, when they were not able to negotiate that — at least, Sir Henry was not able to renew his lease for the house, Mr. Decary was notified by the Executive to go ahead and see if we could not acquire it, after he got a price, and if he could find the money; he was practically given full authority along with Mr. Ruel. In anything he did, he consulted Mr. Ruel. 40

Q.—Mr. Ruel being the general legal adviser of the Railroad?

A.—Yes.

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of the Hon.
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Bond
(Continued)

- Q.—And they were authorized to see what they could do in the way of acquiring, and financing, is that the idea?
- A.—Financing the thing. We had the approval of the Minister — I mean the Government did not want to buy the house, but it was advised of anything they did, and that was submitted with the approval of the Minister.
- Q.—Was the Deputy Minister present at the meeting at which Mr. Smart, as well as Mr. Henry? 10
- A.—Yes.
- Q.—And was he thoroughly *au fait* with the transaction which was being carried out?
- A.—Well, there was no objection at all.
- Q.—What I want to get from you (and I want to get it without leading you) is, as to whether or not the whole transaction was one which was explained to, and understood by the Board, by the Deputy Minister and every one, that his house should be leased on terms which would take care of the loan and provide the purchase price of the lease, as security for the loan? Was that transaction thoroughly well understood by the Board? 20
- A.—It was all understood by the Board.
- Q.—As to who Mr. Seguin was?
- A.—Mr. Seguin was in Mr. Decary's office. As far as that is concerned it may have been any other name.
- Q.—It was understood that Mr. Seguin was just Mr. Decary's *prête nom*?
- A.—Yes. 30
- Q.—And all this was done by Mr. Decary at the request of the Board?
- A.—At the request of the Board.
- Q.—There was nothing secret about Mr. Decary's arrangements or anything of that kind?
- A.—Absolutely not.
- Q.—The whole transaction was thoroughly well understood and approved?
- A.—The whole transaction was thoroughly well understood and approved. (CASE pp. 117 & 118) 40

It should be noted here that at all the relevant time Sir Henry and Mr. Decary were Directors of the Respondent Company and members of the Executive Committee of the Board of Directors, and, further, that on the 4th April 1930 Sir Henry also became a Director of the Montreal Trust Company.

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(Continued)

On the same date, 8th August 1930, the Montreal Trust Company loaned to Mr. Seguin the sum of \$185,000 which was used to pay Mr. Beardmore, in cash, the price of his house and its contents. This loan bore interest at the rate of six and one half per centum per annum ($6\frac{1}{2}\%$) and there was a stipulation that the borrower should reduce the principal of the loan by repayments of not less than two per cent of the loan, such repayments to be made half-yearly; and the loan was further secured by a Transfer of the Lease to the Railway Company executed on the same day. 10

The rental stipulated in the Lease was \$15,725. per year, which appears to have been calculated as an amount required to meet the interest at $6\frac{1}{2}\%$ on the loan by the Montreal Trust Company to Seguin, plus 2% amortization as stipulated, and a statement is filed as Exhibit D-18 (CASE p. 310) showing that as a result of this amortization the proportion of the mortgage which would be amortized on the 1st August 1940, the date of the expiration of the Loan and the Lease, would amount to \$51,326.57, that is to say, that at the expiration of that period the balance remaining due on the Loan would be \$133,673.43, and it is one of the contentions of the Respondent Company that Mr. Decary would then benefit as a result of the transaction by owning the property which had originally cost \$185,000, subject only to the payment of the balance then remaining due, *i.e.*, \$133,673.41, being, as I have already pointed out, a reduction of \$51,326.57, and this the more so seeing that the Respondent Company as lessee had undertaken to pay all the taxes and repairs during that period. 20 30

Sir Henry continued to reside in this same house for which he had been paying \$6,000 a year; but it must be remembered that while paying a rental of \$6,000 a year he was liable to being ejected at any time upon three months' notice.

The rental stipulated payable by the Respondent Company was duly paid for the quarter ending the 31st October 1930, and up to the quarter ending the 31st January 1933, and the Respondent Company also paid to Sir Henry the sums of \$4,000 and \$1,000, covering rental for ten months from November 1929 to August 1930 at the rate of \$500 per month, as provided for by the resolution agreeing to make an adjustment for the period that had elapsed before the new Lease was made. (CASE p. 62). 40

The Respondent Company having failed to pay the instalment of rental due on the 1st May 1933 and a further instalment falling due on the 1st August 1933, forming a total of \$7,862.50,

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—
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(Continued)

the Montreal Trust Company instituted the present proceedings to recover that sum from the Respondent, and the latter contested the action on the grounds I have already outlined but which amount substantially to a repudiation of the Lease as being invalid.

Such being the facts revealed by the evidence in the record, I now turn to a consideration of the pretensions of the parties as to the legal effects. 10

The Respondent invokes the nullity of the Lease which the Appellant Company seeks to enforce, and relies, in the first place, upon section 121 of the Railway Act, (R.S.C., 1927, ch. 170). The Railway Act, subject to certain qualifications, applies to the Respondent Company. The section in question reads as follows:

121. No person who is a director of the company shall enter into, or be directly or indirectly, for his own use and benefit, interested in any contract with the company other than a contract which relates to the purchase of land necessary for the railway, nor shall any such person be or become a partner of or surety for any contractor with the company. 20

It appears to me that this section includes two express prohibitions, namely,

(1) No person who is a director of the *company* shall enter into...any contract with the *company* other than a contract which relates to the purchase of land necessary for the *railway*... 30

(2) No person who is a director of the company shall be directly or indirectly, for his own use and benefit, interested in any contract with the *company* other than a contract which relates to the purchase of land necessary for the *railway* ...

In the first case, any contract made between a director and the *company* is prohibited unless such contract relates to land necessary for the *railway*. 40

It is not necessary that the director who so contracts shall acquire any advantage or benefit from the contract. The mere fact that he is a director brings him within the prohibition.

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(Continued)

The second case provides that a contract is likewise forbidden when a director is interested therein, directly or indirectly, for his own use and benefit. Where such is the case the contract is prohibited, subject, again, to the exception of the purchase of land necessary for the *railway*.

The term “railway” is defined by sub-section 21 of section 2 of the Railway Act as follows: 10

“railway” means any railway which the company has authority to construct or operate, and includes all branches, extensions, sidings, stations, depots, wharves, rolling stock, equipment, stores, property real or personal and works connected therewith, and also any railway bridge, tunnel or other structure which the company is authorized to construct; and, except where the context is inapplicable, includes street railway and tramway; 20

Again, for the purpose of distinction, reference should be made to sub-section 4 of section 2 of the Railway Act defining the word “company”, which reads:

“company” includes a person, and where not otherwise stated or implied means “railway company” unless immediately preceded by “any”, “every” or “all”, in which case it means every kind of company which the context will permit of; and “railway company” or “company” when it means or includes “railway company”; 30

The Respondent submits that the Contract of Lease now in question violates the first of the two prohibitions above referred to, inasmuch as it was a contract entered between a director (Mr. Decary) and the company, and as such expressly prohibited. This view was adopted by the learned Trial Judge, who in consequence dismissed the action and annulled the Lease upon which the action was based. 40

The first question that arises, then, is whether the contract was one between Mr. Decary — admittedly a director of the company respondent — and the company respondent?

On this point I should say that there can be no doubt. Mr. Seguin, the nominal lessor, was a Notary employed by the firm of Notaries of which Mr. Decary was the head. He was not a member of the firm, but he was in the employ of the firm; and Mr. Seguin

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(Continued)

testifies, quite frankly, that he had no interest whatever in the matter. (CASE pp. 48, 49, & 282). The respondent company was fully aware of this, and that Mr. Decary was merely using Mr. Seguin as a *prête-nom*. (CASE pp. 75, 118 & 137). Mr. Decary, himself, admits this:

Q.—You obtained from Mr. Donaldson of the Montreal Trust the financial undertaking, and you obtained one of your employees, Mr. Seguin? 10

A.—And put the property in his name.

Q.—And you guaranteed both the Montreal Trust and your employee?

A.—I did not guarantee my employee. It was tacit.

Q.—Well you said very clearly before that he was your *prête-nom* as distinct from your trustee, whatever the difference is.

A.—Whatever you call it. 20

D.—Did the Company know of your relationship with Seguin?

A.—Oh yes.

Q.—You said before that you had frequently used Mr. Seguin's name for Company deals as well as for your own deals?

Mr. Dussault:—I object to this as having no reference at all to the case.

30

THE COURT reserves the objection.

A.—Yes.

By Mr. Geoffrion.

Q.—When the company was informed the property was in Seguin's name, did they know who the real holder of the title was? 40

A.—Yes.

Q.—Did they know it was your *prête-nom*?

A.—They knew.

Q.—Were they told the purchase price?

A.—Oh yes, sure. (CASE pp. 75 & 76).

Moreover, the rental when paid was turned over to Mr. Decary and deposited in his own personal account. (For examples,

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see CASE pages 271 & 276). This fact was also known to the Montreal Trust Company, the Appellant herein, in view of the letter from Mr. Decary to it, to which I have referred above. (CASE p. 237).

Mr. Decary at all times treated the property as his own, and even agreed, in writing, to turn it over to Sir Henry at any time on payment of the balance then remaining due. 10

I repeat, therefore, that the contract, even if thinly disguised, was clearly a contract between a director of the company and the company, and as such prohibited by the Railway Act.

The second question then follows, namely, did such contract fall within the saving clause "other than a contract which relates to the purchase of land necessary for the railway"? 20

A number of reasons can be adduced in support of the contention that it does not.

First: It is a contract of lease and not one of purchase; though if it stood alone, I would not consider this a very strong point.

Second: The resolutions authorizing the lease do not purport to say that the land was necessary for the railway; they content themselves with saying, that in the opinion of the Executive Committee a suitable residence in Montreal for the Chairman and President of the Company is essential for the Company's business. 30

There is, to my mind, a marked distinction between "land necessary for the railway" and "a suitable residence for the Chairman and President" as essential for the *Company's business*. In the latter case there would be a wide discretion allowable to the directors to determine what might be essential for the proper conduct of the Company's business in the way of a suitable residence for the Chairman and President: but in the former case we are faced with a statutory provision, restrictive in its terms, and relating only to "land necessary for the railway", and hence the discretion of the directors is closely restricted by those words. The words are, "Necessary for the railway", not, "essential for the company's business", or, "the enterprise". 40

There is a clear distinction made by the Railway Act between "the railway" and "the company", as I have already pointed out in the definitions above set forth. But there is more to it

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(Continued)

than that in the present instance, for what it was intended to lease by the contract in question was a private residence, comparatively remote from any physical portion of the railway in any sense of that word; and, moreover, while the residence necessarily stood upon land, the land in question was subject to a servitude whereby it could not possibly be used for railway purposes but only as a residence, which might conceivably be essential for the company's purposes. The Deed of Sale from Beardmore contains the following restriction: 10

To use the said property only for the erection of detached private residences and the usual accessories of private residences such as stables, coachman's house, garage, etc.; any buildings, except residences, shall be erected back at least thirty-five feet from the front line of said lots. All buildings shall be built of brick or stone or such like solid material on solid foundations and a single residence shall cost not less than ten thousand dollars. No building shall, in any event, be a tenement or apartment house or be so constructed or divided within as to permit of its being occupied by two or more families having each a distinct portion of the building not communicating from within. Any building erected upon the said property must be used as a private residence only or as the accessory of such and not as school, hospital, tavern or for any purpose of trade, business or manufacture or for the purpose or business of any corporation of a public character. 20 30

(CASE p. 257).

—This condition is reproduced in the present Lease (CASE p. 244). So that, while the property in question may be essential in the opinion of the directors as a residence for the Chairman, this is not what is contemplated by the section of the Act, which relates only to the purchase of land necessary for the railway.

It is urged, strongly, that such a construction is a harsh and narrow one: but I feel obliged to apply the prohibitive provisions of the Act strictly, in view of the obvious intention of Parliament to prevent a conflict of interest arising in the case of one who occupies a position of director, with his own personal interest; and in order to avoid even the appearance of such an evil, highly restrictive terms are used. 40

In the
Court of
King's Bench
(Appeal Side)
—
Notes
of the Hon.
Mr. Justice
Bond
(Continued)

In the case of *Aberdeen Railway Company & Blaikie, Brothers* (1 Macq. page 461) it was held in the House of Lords as follows:

The Director of a Railway Company is a Trustee; and, as such, is precluded from dealing, on behalf of the Company, with himself, or with a Firm on which he is a partner. 10

It is a rule of universal application that no Trustee shall be allowed to enter into engagements in which he has, or can have, a personal interest, conflicting, or which may possibly conflict, with the interests of those whom he is bound by fiduciary duty to protect.

So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness, or unfairness, of the transaction; for it is enough that the parties interested object.... 20

It makes no difference whether the contract relates to real estate, or personalty, or mercantile transactions; the disability arising not from the subject matter of the contract, but from the fiduciary character of the contracting party.

The law of Scotland and the law of England are the same upon these points; — both coming from the Roman law, itself bottomed in the plainest maxim of good sense and equity. 30

— These principles were referred to, and applied, in the case of *In re Thomson* (1930) 1 Ch. 203. —

Nor is this construction unreasonable, for it should be observed that in the sections of the Act granting powers of expropriation to a railway company similar words are used, — “necessary for the railway” (section 189, “required for the railway” (section 216), — and it would be a very disquieting thought for proprietors of residences in the neighbourhood of a Railway to be told that they were liable to be compulsorily dispossessed of their residence because, in the opinion of the directors, such residence was essential as a residence for an official of the company. 40

In the
Court of
King's Bench
(Appeal Side)
—
Notes
of the Hon.
Mr. Justice
Bond
(Continued)

Again, the question whether lands are “necessary for the railway” is a mixed question of law and fact. It is not sufficient for the directors to simply pass a resolution declaring such lands to be necessary: they must in fact be necessary, and a resolution of the directors cannot serve to make that necessary which, in fact and in law, is not necessary.

CRAIES on Statute Law, 4th Edition, at page 246, refers to a decision of Lord Hatherley in *Campbell's Trustees v. Leith Police Commissioners* (1870) L.R. 2 H.L. (Sc. 1: 10

In all matters regarding their jurisdiction they are, of course, allowed to exercise the powers given to them according to their judgment and discretion; but where they exceed those powers they are immediately restrained by the Courts of law, who hold a strict hand over those to whom the Legislature has entrusted large powers, and take care that no injury is done by an extravagant assertion of them. 20

Again, the same author puts the matter as follows: (page 252)—

If the Legislature gives a public company power to take certain lands, which are specially described in their Act, for the purpose of their undertaking, it is true that, as Lord Cranworth said in *Stockton etc. Ry. v. Brown* (1860, 9 H.L.C. 246, 256), “it constitutes them the sole judges as to whether they will or will not take these lands, provided only that they take them *bonâ fide*, with the object of using them for the purpose authorized by the Legislature, and not for any sinister or collateral purpose”. But it is not sufficient for the company to make a mere statement that the purposes for which they are about to exercise their power of taking lands are within the contemplation of the Act; they must do more than this, they must be prepared with satisfactory evidence to prove this to a Court of justice if they are called upon to do so. 30 40

In the case now under consideration, there is no evidence adduced to support the statement contained in the resolution of the Executive Committee. — On the other hand, there is positive evidence by the General Superintendent, Montreal District, Canadian National Railways, that the property in question cannot serve any purpose necessary for the Railway owing to its being distant over half a mile from the nearest point of the right of way of the Railway and the difference in elevation (CASE p. 58) — This physical fact can scarcely be disputed.

In the
Court of
King's Bench
(Appeal Side)
Notes
of the Hon.
Mr. Justice
Bond
(Continued)

It may be urged that the directors were in a better position to form an opinion than was the General Superintendent, but, on the other hand, it must be remembered that the directors were concerned with obtaining a suitable residence for the Chairman, while the General Superintendent was concerned with the section of the Act dealing with "land necessary for the railway", in which latter case, only could a director be a party.

10

In my opinion, nothing in the record serves to establish the essential condition to the validity of the contract, namely, that it relates to the purchase of land necessary for the railway, and accordingly the saving clause is of no avail.

There still remains to be considered the result flowing from the foregoing conclusions.

The Respondent contends that such contract being prohibited, it is in consequence an absolute nullity.

20

The Appellant submits that as the Railway Act contains no sanction to the section in question it is inoperative.

As the contract now under consideration was entered into in the Province of Quebec, one of the parties thereto being a resident of the Province of Quebec, and the subject matter being immovable property in the Province, there is good ground for contending, as the Respondent contends, that the law of the Province of Quebec, that is to say the civil law, should be applied notwithstanding the fact that a statute of the Dominion of Canada is involved

30

Some support for this contention can be found in the case of *In re Ross: Hutchison v. Royal Institution for the Advancement of Learning*, (50 K.B. 107), a decision of this Court, which was later affirmed by the Supreme Court (1932 S.C.R. 57).

The law on the subject in this Province is contained in article 14 of the Civil Code, which provides as follows:

40

Prohibitive laws import nullity, although such nullity be not therein expressed.

Reference may also be had to C.C. 986:

Those legally incapable of contracting are:

.

In the
Court of
King's Bench
(Appeal Side)
—
Notes
of the Hon.
Mr. Justice
Bond
(Continued)

Those who, by special provision of law, are prohibited from contracting by reason of their relation to each other, or of the object of the contract.

— See also C.C. 13, 989, 990, 1062.

In the case of *Macdonald & Riordan* (8 K.B. 555) it was held by this Court, confirming a judgment of the Court of Review, — 10

Where a contract is prohibited by statute, such contract is void, although the statute itself does not state that it is so, and only imposes a penalty on the offender.

— This judgment was affirmed by the Supreme Court. — A similar holding can be found in the case of *Bernatchez v. Sohler* (38 K.B. 179). Reference may also be had to *MIGNAULT 5 Droit Civil*, page 237. 20

I find it unnecessary, however, to express any final decision as to whether the civil law or the Common Law should prevail, for on this point, at least, they seem to be identical.

In the case of *Brown v. Moore* (32 S.C.R. 93), a case originating in the Province of Nova Scotia where the Common Law prevails, Sir Henry Strong, C.J., said (at page 97),— 30

It is settled law that contracts entered into in the face of a statutory prohibition are void.

Again, BEALE—*Cardinal Rules of Legal Interpretation*—3rd ed. page 487, says:

Prohibitory statutes prevent the doing of that which formerly was lawful.

Where an act of transaction is prohibited by statute, it is immaterial to consider whether the means resorted to have a direct or indirect tendency to defeat the object of the statute. Each is equally obnoxious and void. 40

It is urged that section 444 of the Railway Act provides the only sanction, namely, a fine imposed upon the directors involved. — But in my opinion the imposition of a fine does not cure the invalidity of a prohibited contract. That point was expressly dealt

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
Bond
(Continued)

with in the case of *Macdonald & Riordan (supra)*. In that case, Wurtele, J., in rendering the judgment of this Court said (at page 574),—

Subsection 4 of section 27 declares that every violation by any person of any of the provisions of the act for which no punishment or penalty is provided, is a misdemeanour and should be punishable accordingly. 10

Subsection 16 of section 19 prohibits and makes unlawful every contract relating to a railway company entered into by a director for his benefit or by which he became a partner of any contractor of such company, and the effect of such a prohibition is to render such a contract illegal and void, although the statute itself does not state that it is so and only imposes a penalty on the offender. Our civil code, in article 14, declares that prohibitive laws import nullity although such nullity is not expressed. Article 989 declares that a contract with an unlawful consideration has no effect, and the next article declares that the consideration is unlawful when it is prohibited by law or is contrary to public order, and article 1062 states that the object of an obligation must be something which is not forbidden by law. Then the public law of the realm wills that all contracts which are made to further or carry out any undertaking or thing which is contrary to public policy, forbidden by statute or declared criminal, to be unlawful and null, and that such contracts must not be enforced by the Courts. In the present case the contracts were entered into in transgression of the provisions of the Consolidated Railway Act of 1879 which prohibited the appellant from entering into such contracts and which declared his act in becoming a party to them a misdemeanour and they are therefore void and without effect. 20 30

It has however been contended that the Consolidated Railway Act of 1879, does not annul such a contract, but merely inflicts a penalty on the offender. It is true that the act itself does not state such contracts to be null and void, but it declares that every violation of the act shall constitute a misdemeanour; and the execution therefore of the contracts in question would be in contravention to the criminal law of the land and to public policy and, as before stated, they certainly cannot be enforced by the courts. 40

In the
Court of
King's Bench
(Appeal Side)
—
Notes
of the Hon.
Mr. Justice
Bond
(Continued)

The effect of these enactments is in the first place, that the appellant by entering into the contracts in question committed a misdemeanour for which he became liable to be prosecuted and punished, and in the next place, that the contracts so entered into are illegal and void and cannot be enforced.

The appellant contends that the only incapacities created by the laws in force in this province are those contained in articles 985 and 986 of the Civil Code. By the constitution of the country however the right to make laws is divided between Parliament and the Legislatures, and when acting within their respective powers and limitations each of them has the right to create incapacities; and while Parliament has this right, any incapacity so created by it is recognized in article 986 of the Civil Code of our province which declares those to be legally incapable of contracting who by special provisions of law are prohibited from contracting by reason of their relation to each other or of the object of the contract. In the present case, an incapacity has been created by a law enacted by Parliament, and under the special provisions of this law, the relation between the appellant and the persons he contracted with was that the one was a director and the president of the company whose railway the other parties had contracted to build, and the object of such contract, in the profits of which the appellant was to share was the construction of a railway for a company with respect to which the appellant should have no adverse interest.

On the whole, I reach the conclusion that the Lease, now in question constitutes a violation of the prohibition contained in section 121 of the Railway Act, and is consequently null and void, and should be so declared.

— As a logical sequence, the assignment of such invalid Lease can have no effect, and can confer no rights upon the transferee herein, the Montreal Trust Company. —

The Appellant Company submits, finally, that in any event it is an innocent third party, and should not be charged with the defect in the Lease between the original parties thereto.

I am unable to accept this contention: *Quod Nullum est nullum effectum producit.*

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
Bond
(Continued)

Moreover, in my opinion, it is impossible to treat the Appellant Company as an innocent third party in the eyes of the law. The letter of Mr. Decary to that Company (CASE pp. 237 & 238) clearly set out the whole transaction, and that Company must be held to the knowledge that Mr. Decary was a director of the Respondent Company — if for no other reason than by reason of the fact that sir Henry Thornton was at the time one of the directors of the Appellant Company; and the Railway Act being a public Act, the Appellant Company must be held to have had notice of it. 10

In addition to the foregoing ground of defence with which I have dealt at length, the Respondent Company also invokes the second prohibition contained in section 121 of the Act, contending that, in any event, Mr. Decary, a director of the Respondent Company, was interested, directly or indirectly, for his own use and benefit, in a contract with the company other than a contract relating to the purchase of land necessary for the railway. 20

In view of the conclusion that I have already reached on the first ground of nullity, it becomes unnecessary for me to consider this second ground of nullity.

In my opinion, the judgment appealed from is right, and should be AFFIRMED.

W. L. Bond,
J.K.B. 30

NOTES DE L'HONORABLE JUGE GALIPEAULT

In the
Court of
King's Bench
(Appeal Side)

Opinion of
Mr. Justice
Galipeault

Je me rends à l'avis de mes collègues; je confirmerais le jugement quant au dispositif. 40

Paul Galipeault,
J.C.B.R.

NOTES DE L'HONORABLE JUGE ST-JACQUES

In the
Court of
King's Bench
(Appeal Side)
—
Notes
of the Hon.
Mr. Justice
St. Jacques

Il est admis que le mis en cause n'a agi que comme prête-nom du notaire Décary, qui était l'un des directeurs de la Compagnie des chemins de fer nationaux à laquelle a été consenti le bail annulé par le jugement de la Cour supérieure.

10

Il est certain que la Cour fait erreur lorsqu'elle dit que monsieur Décary ne pouvait agir comme directeur pour *faire l'acquisition* de cette résidence pour la défenderesse parce que la loi spéciale n'accorde à un directeur que le *droit d'acquérir* des terrains nécessaires au chemin de fer.

Ce n'est pas ce qui a eu lieu. Le prête-nom Séguin n'a pas acheté cette propriété pour la compagnie; il l'a achetée pour Décary personnellement et il l'a ensuite louée à la compagnie.

20

Décary n'a pas été partie à un contrat d'acquisition de terrains pour la compagnie. Il n'est pas, non plus, partie à un contrat de vente auquel la compagnie apparaît comme acquéreur. Il est partie, par son prête-nom, à un contrat de louage à la compagnie d'un immeuble alors occupé comme résidence par le président de la compagnie qui a l'intention de continuer à l'occuper comme telle.

30

Les motifs sur lesquels s'appuie le jugement sont erronés. Il n'en résulte pas nécessairement que le dispositif de ce jugement en soit affecté.

La défenderesse a allégué que le notaire Décary avait un intérêt personnel dans ce contrat de louage et devait en tirer un profit.

40

Sur ce point, la Cour supérieure, s'est abstenue de se prononcer, et, quant à moi, je suis d'avis que la preuve produite à ce sujet par la compagnie ne justifie pas l'allégation qu'elle a faite.

Il ne reste donc, pour décider cette cause, qu'à envisager la portée véritable de l'article 121 de la loi des chemins de fer, car la compagnie intimée est soumise à cette loi, sauf quant aux dispositions qui sont incompatibles avec son acte d'incorporation.

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
St. Jacques
(Continued)

L'article 113 de la loi édicté que :

“No persons who holds any office, place or employment in the company, or who is concerned or interested in any contract under or with the company, or is surety for any contractor with the company, shall be capable of being chosen a director, *or of holding the office of director*”.

10

Il est donc manifeste à la lecture de cet article que la loi veut empêcher qu'une personne, qui a déjà un intérêt personnel pouvant venir en conflit avec celui de la compagnie, soit choisie comme membre de son bureau de direction ou continue d'en exercer la charge.

A l'article 121, la même disposition est de nouveau édictée avec une exception seulement, à savoir : qu'un directeur peut vendre à la compagnie des terrains nécessaires au chemin de fer.

20

L'intérêt personnel qu'a un directeur dans une telle vente ne fait pas obstacle à la validité du contrat. Le législateur a sans doute cru qu'il pouvait se présenter des cas où, à cause de l'intérêt du chemin de fer, une compagnie serait mise dans l'obligation d'acquérir d'un de ses directeurs des terrains dont il est propriétaire. La loi a donc fait une exception pour ce cas particulier, et, pour cette raison, il faut, je crois, donner à l'article 121 une interprétation absolument restrictive.

30

Les directeurs de la compagnie n'ont pas prétendu que la location de cet immeuble, comme résidence privée pour le président, était nécessaire ou même utile au chemin de fer.

La seule preuve qui est faite à ce sujet l'a été par le major Bond qui, se plaçant au point de vue technique, affirme que l'acquisition de cette propriété n'était pas nécessaire au chemin de fer.

Pourrait-on soutenir que la violation de cette disposition de la loi par un directeur entraîne comme seule sanction la déchéance de sa charge et peut-être aussi les pénalités stipulées à l'article 444 ?
La jurisprudence est allée plus loin.

40

L'arrêt de la Cour suprême, confirmant la décision de la Cour d'appel de cette province, *re: Macdonald v. Riordon* (8 B.R., p. 555, et 30 S.C.R., p. 619), bien que portant sur des faits essentiellement différents de ceux que révèle la preuve dans la cause actuelle, pose le principe formel que les sanctions particulières prévues par cette loi n'empêchent pas de conclure à la nullité du contrat qui viole les dispositions de la loi des chemins de fer.

Le raisonnement qui a prévalu dans la cause de *Aberdeen Railway Company v. Blaikie Brothers* (1 Scotch Appeal Cases, Macqueen, 461) me paraît irrésistible.

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
St. Jacques
(Continued)

En présence des dispositions exceptionnelles de l'article 121, les tribunaux ne peuvent tenir compte de la bonne foi des directeurs et des motifs qui les ont inspirés pour donner leur adhésion à ce contrat de louage fait à la compagnie par l'un de ses directeurs. 10

Je confirmerais le dispositif du jugement et rejetterais l'appel avec dépens.

St-Jacques,
J.C.B.R.

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NOTES OF THE HONOURABLE MR. JUSTICE BARCLAY

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
Barclay

I concur in the opinion of Mr. Justice Bond in this case. I would merely add a word regarding the interpretation to be given to section 121 of the Railway Act.

In his notes Mr. Justice Bond says that this section includes two express prohibitions, namely: 30

1. No person who is a Director of the Company shall enter into... any contract with the Company other than a contract which relates to the purchase of land necessary for the railway....

2. No person who is a Director of the Company shall be directly or indirectly, for his own use and benefit, interested in any contract with the Company other than a contract which relates to the purchase of land necessary for the Railway.... 40

If one looked merely at the English version of the Act, I would be inclined to the view that that was the proper interpretation, but any doubt which might exist in my mind would be dispelled by a reference to the French version of that same section, which is an official text of the law. The French version reads as follows:

In the
Court of
King's Bench
(Appeal Side)

Notes
of the Hon.
Mr. Justice
Barclay
(Continued)

“Nulle personne qui est un directeur de la compagnie, ne peut contracter, ni être, directement ou indirectement, pour son propre compte et bénéfice, intéressée dans un contrat conclu avec la compagnie autre qu'un contrat se rattachant à l'acquisition des terrains nécessaires au chemin de fer, et cette personne ne peut être ni devenir associée ou caution d'un entrepreneur de la compagnie.”

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I would dismiss this appeal with costs.

Gregor Barclay,
J.K.B.

MOTION ON BEHALF OF APPELLANTS TO ALLOW AN APPEAL TO HIS MAJESTY IN HIS PRIVY COUNCIL AND TO FIX DELAY TO FURNISH SECURITY.

20

TO ANY OF THE HONOURABLE JUDGES OF THE COURT OF KING'S BENCH SITTING IN APPEAL IN AND FOR THE DISTRICT OF MONTREAL.

In the
Court of
King's Bench
(Appeal Side)

Motion
for leave
to appeal
to the Privy
Council and
to fix delay
to furnish
security
29 Déc. 1938

WHEREAS this Honourable Court, by judgment rendered on the 14th day of December, 1938, dismissed with costs, the appeal of the Appellants from the judgment, *a quo*, which dismissed the Appellant Montreal Trust Company's action for rent and annulled the lease from the Appellant Seguin to the Respondent and a transfer of this lease from the Appellant Seguin to the Appellant Montreal Trust Company;

30

WHEREAS the value of the lease sued on was the rent and consideration of One hundred and fifty-seven thousand two hundred and fifty dollars (\$157,250.00) payable at the rate of Fifteen thousand seven hundred and twenty-five dollars (\$15,725.00) per year for ten years in and by equal quarterly instalments, for two of which instalments and interest and costs the Appellant Montreal Trust Company brought suit reserving its right to further proceedings.

40

WHEREAS the case relates to rent, and concerns titles to lands or tenements, annual rents, and matters in which the rights in future of the parties may be affected;

WHEREAS the Appellants believe themselves to be aggrieved by the judgment of this Honourable Court and are desirous of appealing therefrom to His Majesty in his Privy Council, and hereby respectfully do so appeal;

In the
Court of
King's Bench
(Appeal Side)

Motion
for leave
to appeal
to the Privy
Council and
to fix delay
to furnish
security
29 Dec. 1938
(Continued)

THAT the Appellant's appeal to His Majesty in his Privy Council from the judgment rendered herein by this Honourable Court on the 14th day of December, 1938, be allowed and that the Appellants be permitted to appeal therefrom and that pending such appeal the execution of the said judgment may be suspended; and that a delay be fixed by this Honourable Court within which the Appellants shall furnish good and sufficient security as required by law, effectively to prosecute the said appeal and to pay such costs as may be awarded by His Majesty in his Privy Council in the event of said judgment being confirmed. 10

Montreal, December 29th, 1938.

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(Signed) Montgomery & McMichael,
Attorneys for Appellants.

AFFIDAVIT

I, HENRY JAMES KNUBLEY, of the Town of Hampstead, District of Montreal, in the Province of Quebec, being duly sworn do depose and say: 30

1. That I reside at No. 5569 Queen Mary Road in the said Town of Hampstead.

2. That I am assistant General Manager of the Appellant Montreal Trust Company in the present case.

3. That I have read the foregoing Motion and that the facts therein alleged are to the best of my knowledge and belief true. 40

AND I HAVE SIGNED

(Sgd) H. J. KNUBLEY

In the
Court of
King's Bench
(Appeal Side)

Motion
for leave
to appeal
to the Privy
Council and
to fix delay
to furnish
security
29 Dec. 1938
(Continued)

SWORN to before me at the City of
Montreal, in the Province of
Quebec, this 29th day of December,
1938.

(Sgd.) J. P. ANGUS
A Commissioner of the Superior Court
for the District of Montreal.

10

NOTICE

20

To

J. C. H. Dussault, Esq., K.C.,
and
A. A. Magee, Esq., K.C.,
Attorneys for Respondent.

Sirs:

TAKE NOTICE of the foregoing motion with the affida- 30
vit attached and that it will be presented for allowance to one of
the Honourable Judges of the Court of King's Bench sitting in
appeal in and for the District of Montreal at the Court House in
Montreal on Wednesday the 4th day of January, 1939, at eleven
o'clock in the forenoon or so soon thereafter as counsel may be
heard and do you govern yourselves accordingly.

Montreal, 29th December 1938.

(Signed) Montgomery & McMichael, 40
Attorneys for Appellants.

JUDGMENT ON ABOVE MOTION

COURT OF KING'S BENCH

(Appeal Side)

In the
Court of
King's Bench
(Appeal Side)

Judgment
of the Hon.
Mr. Justice
Letourneau
on above
Motion
9 Jan. 1939

MONTREAL, Monday, the ninth day of January, One
thousand nine hundred and thirty-nine.

10

PRESENT: Honourable Mr. Justice Letourneau (In
Chambers)

Having heard the parties by their respective Counsel on
the petition of the Plaintiff-Appellant for leave to appeal to His
Majesty in his Privy Council from the final judgment pronounced
in this case by the Court of King's Bench (Appeal Side), at Mont-
real, on the 14th day of December, 1938, and to fix a delay within
which security on the said appeal should be furnished:

20

CONSIDERING that, by reason of the nature and the
circumstances of this case, an appeal lies from the said judgment
to His Majesty in his Privy Council in virtue of Article 68 of
the Code of Civil Procedure of the Province of Quebec;

I, the undersigned, one of the Judges of this Court of
King's Bench, DO FIX a delay expiring on the 23rd day of
January, 1939, within which the appellants may give in conformity
with the provisions of Article 1249 of the said Code of Civil Pro-
cedure, and in the manner and for the purposes therein mention-
ed, the security required by the law governing the said appeal,
costs to follow.

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(sgd.) Severin Letourneau,
J.C.K.B.

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In the
Court of
King's Bench
(Appeal Side)

Notice
of furnishing
security
17 Jan. 1939

NOTICE OF SECURITY ON APPEAL TO
THE PRIVY COUNCIL

To:

J. C. H. Dussault, Esq., K.C.,
and
A. A. Magee, Esq., K.C.,
Attorneys for Respondent.

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Sirs:—

Take notice that on the 19th day of January, 1939, at eleven o'clock in the forenoon, before one of the Honourable Judges and the Clerk of Appeals of the Court of King's Bench, Appeal Side, for the District of Montreal, in the Court House, Montreal, Appellants will furnish the security required by law, by the rules of the Privy Council and by the practice of this Court, for the costs of the Respondent in this cause in their appeal to His Majesty in His Privy Council, the whole in accordance with the judgment of the Honourable Mr. Justice Letourneau rendered on the 9th day of February, 1939, the said security to be in the form of a surety bond of The Canadian Surety Company, a body politic and corporate, duly incorporated, having its head office in the City of Toronto, in the Province of Ontario, and having its chief place of business for the Province of Quebec in the City of Montreal, in the said Province of Quebec, and duly authorized to become surety before the Courts of the Province of Quebec; and do you take notice thereof and of said appeal and govern yourselves accordingly.

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Montreal, 17th January 1939.

(Signed) Montgomery & McMichael,
Attorneys for Appellants.

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SECURITY IN APPEAL TO PRIVY COUNCIL

Bond No. 175645

THE CANADIAN SURETY COMPANY

Head Office - Toronto

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CANADA :
Province of Quebec :
District of Montreal :

S.S. No. E-125582

WHEREAS, on the 20th of September, one thousand nine hundred and thirty-five, judgment was rendered by the Superior Court for the Province of Quebec, sitting at Montreal, in the District of Montreal, in a certain cause between

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In the
Court of
King's Bench
(Appeal Side)
—
Surety Bond
of the
Canadian
Surety Co.
19 Jan. 1939

MONTREAL TRUST COMPANY

Plaintiff Appellant

and

GEORGES HENRI SEGUIN,

30

Mis-en-Cause

— vs —

CANADIAN NATIONAL RAILWAY COMPANY,

Defendant Respondent.

AND WHEREAS judgment was given by the Court of King's Bench (Appeal Side) for the Province of Quebec, on the 14th day of December, one thousand nine hundred and thirty-eight, dismissing the appeal of the Plaintiff Appellant.

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AND WHEREAS the said judgments of the Superior Court and of the Court of King's Bench (Appeal Side) have been appealed from to His Majesty the King in His Privy Council by the said PLAINTIFF APPELLANT thus rendering necessary

In the
Court of
King's Bench
(Appeal Side)

Surety Bond
of the
Canadian
Surety Co.
19 Jan. 1939
(Continued)

the security required by Article 1249 of the Code of Civil Procedure;

THEREFORE, THESE PRESENTS TESTIFY THAT, on the 19th day of January, one thousand nine hundred and thirty-nine, came and appeared before me, one of the Judges of His Majesty's Court of King's Bench and before us the Clerks of said Court in and for the District of Montreal, The Canadian Surety Company, incorporated by Special Act of the Parliament of Canada, having its Head Office in the City of Toronto in the Province of Ontario, and having its Chief Office for the Province of Quebec in the City of Montreal in the said Province of Quebec, and duly authorized to become surety before the Courts of this Province by Order-in-Council, dated the twenty-fourth day of July, one thousand nine hundred and thirteen, under the provisions of Articles 7446 and 7452, R.S.Q., 1909, said authorization having been published in the Quebec Official Gazette on the ninth day of August, one thousand nine hundred and thirteen; and therein represented and acting by H. L. Gyton one of the Resident Attorneys, and J. E. Benoit, one of the Resident Assistant Secretaries, of the said Company, duly authorized by resolution of the Board of Directors of the said The Canadian Surety Company, duly certified copy of said resolution being hereunto annexed, and which said Company has acknowledged and hereby acknowledges itself to be the legal surety of the said Plaintiff Appellant, in regard to the said appeal, and hereby promises and binds and obliges itself that in case the said appellant do not effectually prosecute the said appeal, do not satisfy the condemnation and pay such costs as may be awarded by His Majesty, in case the judgment appealed from is confirmed then the said Surety will satisfy the said condemnation in principal, interest and costs and pay such costs as may be awarded by His Majesty in case the judgment appealed from is confirmed, to the extent of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the use and profit of the said Defendant Respondent, their heirs, administrators, executors and assigns.

And the said Canadian Surety Company has signed these presents by its said Resident Officers.

Taken and acknowledged
before me at Montreal,
P.Q., this 19th day of
January 939
(Sgd.) Severin Letourneau

J.C.B.R.

(Sgd. Pouliot & Laporte,
Clerk of Appeals.

The Canadian Surety Company
(Sgd.) H. L. Gyton
Resident Attorney.

(Sgd.) J. E. Benoit
Resident Assistant Secretary.

SEAL
The Canadian Surety Company

In the
Court of
King's Bench
(Appeal Side)
—
Surety Bond
of the
Canadian
Surety Co.
10 Jan. 1939
(Continued)

I, E. T. Alberts, Assistant Secretary of THE CANADIAN SURETY COMPANY, do hereby certify that I have compared the foregoing extracts and transcripts of resolutions from the Minute Book of the Board of Directors of THE CANADIAN SURETY COMPANY with the originals as recorded in the Minute Book of said Company, and that the same are true and correct extracts and transcripts therefrom and that the said resolutions have not been revoked or rescinded. 10

Given under my hand and the seal of the Company at the City of Toronto, Ontario, this 28th day of January, 1938.

(Sgd.) E. T. Alberts
Assistant Secretary.

SEAL

The Canadian Surety Company

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CONSENT OF PARTIES AS TO CONTENTS OF THE
TRANSCRIPT RECORD IN APPEAL TO HIS
MAJESTY IN HIS PRIVY COUNCIL

In the
Court of
King's Bench
(Appeal Side)
—
Consent
of Parties
as to contents
of the
transcript
Record to
His Majesty
in His Privy
Council
March 1939

The Parties, by their undersigned Attorneys, hereby agree that the transcript from the record to be submitted in the present Appeal to His Majesty in His Privy Council shall consist of the documents hereinafter mentioned, under reserve of the Parties to refer to any other documents in the original Record. 30

1. Pleadings (Case heading and description of parties to be omitted);
 - (a) Plaintiff's Declaration;
 - (b) Defendant's Plea;
 - (c) Plaintiff's Amended Answer to Plea;
 - (d) Contestation by Mis-en-cause of Defendant's Plea;
 - (e) Defendant's Reply to Plaintiff's Amended Answer to Plea;
 - (f) Answer to Contestation by Mise-en-cause;
 - (g) Plaintiff's Answer to Defendant's Reply;

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In the
Court of
King's Bench
(Appeal Side)

Consent
of Parties
as to contents
of the
transcript
Record to
His Majesty
in His Privy
Council
March 1939
(Continued)

2. All Exhibits with the exception of Plaintiff's Exhibit No. 1 at Enquete (Document No. 50) of which only By-Laws Nos. 11, 14, 15 and 17 shall be printed;
3. The written Admissions of the parties;
4. All Depositions of witnesses; 10
5. The Judgment of De Lorimier, J., rendered September 20th, 1935;
6. The Factum of the Appellants before the Court of King's Bench (Appeal Side);
7. The Factum of the Respondent before the Court of King's Bench (Appeal Side); 20
8. The formal Judgment of the Court of King's Bench (Appeal Side);
8. The formal Judgment of the Court of King's Bench (Appeal Side) dated September 14th, 1938, dismissing the Appellants' Appeal;
 - (a) Notes of the Honourable Mr. Justice Letourneau;
 - (b) Notes of the Honourable Mr. Justice Boud; 30
 - (c) Notes of the Honourable Mr. Justice Galipeault;
 - (d) Notes of the Honourable Mr. Justice St. Jacques;
 - (e) Notes of the Honourable Mr. Justice Barclay.
9. Motion for Leave to Appeal to the Privy Council and to fix delay to furnish security; 40
10. Judgment of the Honourable Mr. Justice Letourneau on above Motion;
11. Notice of furnishing security;
12. Surety Bond of The Canadian Surety Company;
13. Consent of Parties as to contents of the Transcript Record to His Majesty in His Privy Council;

In the
Court of
King's Bench
(Appeal Side)

Consent
of Parties
as to contents
of the
transcript
Record to
His Majesty
in His Privy
Council
March 1939
(Continued)

14. Fiat for Transcript Record to His Majesty in His Privy
Council;
Certificate of the Clerk of Appeals.
Certificate of the Honourable the Chief Justice. 10
Montreal, March 1939.

(sgd.) J. C. H. Dussault

A. A. Magee

Attorneys for Appellants.

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Montgomery & McMichael,
Attorneys for Respondent.

FIAT FOR TRANSCRIPT RECORD TO HIS MAJESTY
IN HIS PRIVY COUNCIL 30

In the
Court of
King's Bench
(Appeal Side)

Fiat for
transcript
Record to
His Majesty
in His Privy
Council
25 Mch. 1939

We require the preparation of the Transcript Record in
appeal to His Majesty in His Privy Council, the said Transcript
to be printed at Montreal, by C. A. Marchand.

Montreal, March 25th 1939.

Montgomery & McMichael, 40
Attorneys for Appellants.

In the
Court of
King's Bench
(Appeal Side)

Certificate
of the Clerk
of Appeals
March 1939

CERTIFICATE OF CLERK OF APPEALS

We, the undersigned Alphonse Pouliot and Clovis Laporte, K.C., Clerk of Appeals of His Majesty's Court of King's Bench for the Province of Quebec, do hereby certify that the present transcript, from page on to page contains 10

True and faithful copies of all the original papers, documents, proceedings and of judgments of His Majesty's Superior Court for the Province of Quebec, sitting in the City of Montreal.

Transmitted to the Appeal Office, in the said City of Montreal, as the Record of the said Superior Court in the cause therein lately pending and determined between The Montreal Trust Company, Plaintiff and G. H. Seguin, Mis-en-cause, and Canadian National Railway Company, Defendant. 20

And also true copies of all the proceedings of the said Court of King's Bench (Appeal Side) and the final judgment therein rendered on the said Appeal instituted by the said Plaintiff.

Given at the City of Montreal, in that part of the Dominion of Canada, called the Province of Quebec, this day in the year of Our Lord one thousand nine hundred and thirty nine. 30

L. S.

POULIOT & LAPORTE,

Clerk of Appeals.

In the
Court of
King's Bench
(Appeal Side)

Certificate
of the Hon.
the Chief
Justice
March 1939

CERTIFICATE OF CHIEF JUSTICE

I, the undersigned Honorable Sir Mathias Tellier, Chief Justice of the Province of Quebec, do hereby certify that the said Alphonse Pouliot and Clovis Laporte, K.C., are Clerk of the Court of King's Bench, on the Appeal Side thereof, and that the initials "P and L" subscribed at every eight pages and the signature "Pouliot & Laporte" of the certificate above written, is their proper signature and hand writing. 10

I do further certify that the said Pouliot & Laporte as such Clerk, the the Keeper of the Record of the said Court, and the proper Officer to certify the proceedings of the same, and that the der the sanction of the Court.

In testimony, whereof, I have hereunto set my hand and seal above set is the seal of the said Court, and was so affixed un-seal, at the City of Montreal, in the Province of Quebec, this day of in the year of Our Lord one thousand nine hundred and thirty nine and of His Majesty's Reign, the first. 20

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SIR MATHIAS TELLIER,

L.S.

Chief Justiche of the Province of Quebec.

SEAL

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In the King Council

No. of 193

On Appeal from the Court of King's
Bench for the Province of
Quebec (Appeal Side)
CANADA

BETWEEN:

Montreal Trust Company

Plaintiff in the Superior Court,
and Appellant in the Court of King's Bench,
(Appeal Side),

&

George Henri Séguin

Mis-en-cause in the Superior Court,
and Appellant in the Court of King's Bench,
(Appeal Side),

APPELLANTS

and

Canadian National Railway Coy.,

Defendant in the Superior Court,
and Respondent in the Court of King's Bench,
(Appeal Side),

RESPONDENT

RECORD OF PROCEEDINGS

MONTGOMERY & McMICHAEL,

Attorneys for Appellants.

J. C. H. DUSSAULT,

A. A. MAGEE,

Attorneys for Respondent.