

Mr. Auger McVean stated that Mr. Kilvert said that "he was satisfied the bank would do their part if we did ours." There was never any understanding whether the bank, or the Cosgrave Company and Mr. Reinhardt, were to be first repaid by Mr. Mossop out of the proceeds of the mortgage. Mr. McVean says there was "no arrangement made as to whether the bank or the brewers were to be paid back first." Also: "I remember now that Mr. Cosgrave said the brewers were to get their money back first, but Mr. Kilvert said nothing." Mr. L. J. Cosgrave said: "Something was said that after the building was completed they could mortgage and pay off the bank or the liabilities."

Mr. Reinhardt said: "As to whether the bank was to be repaid first or the brewers, was left open until a full agreement was drawn. I expected an agreement would be drawn when it would be settled whether we were to be paid first or the bank." And in re-examination he said: "The written agreement I spoke of would be as to the bank as well as the rest."

Now, all this points to an incomplete arrangement between the plaintiffs and defendants. The representatives of the bank were materially interested in knowing when and how the advances were to be repaid, and Mr. Kilvert was waiting for a complete proposition as to all details before submitting the new request of the plaintiffs to the head office. It is true that later on an agreement was made between the plaintiffs themselves, and reduced to writing, but the bank was not a party to it, and it does not appear that Mr. Kilvert had any knowledge of its contents.

I have no doubt that the plaintiffs fully expected that the bank would make the advance, but it is equally clear that the matter had never reached a point where Mr. Kilvert had all the necessary information to submit the whole proposal in detail to the head office.

The foregoing renders it unnecessary to consider the question of damage; but, had an agreement been established, the authorities seem to shew that the measure would have been the difference between the rate of interest agreed upon and the rate the plaintiffs would have had to pay for the money elsewhere. . . . Mennie v. Leitch, 8 O. R. 397; Fletcher v. Tayleur, 17 C. B. 21; Henderson v. Bank of Hamilton, 25 O. R. 64, 22 A. R. 414. I do not think South African Territories Limited v. Wallington, [1898] A. C. 309,