1938

April 21.

May 16

BETWEEN:

THE DISCOUNT AND LOAN CORPORATION OF CANADA..... APPELLANT;

AND

THE SUPERINTENDENT OF INSURANCE FOR CANADA ..... RESPONDENT.

Appeal from ruling made by Superintendent of Insurance—Loan Companies Act, R S C., 1927, c 28—Powers of Superintendent of Insurance.

Appellant, a body corporate, created by special Act of the Parliament of Canada, deals in and lends money on various forms of security It is authorized to charge interest on all loans at a rate not greater than 7% per annum It is also authorized to make an additional charge for all expenses necessarily and in good faith incurred in making or renewing a loan "including all expenses for inquiry and investigation into the character and circumstances of the borrower, his endorsers, co-makers or sureties, for taxes, correspondence and professional advice, and for all necessary documents and papers, two per centum upon the principal sum loaned" S. 5 (1) (*b*) (iii) of the Act of incorporation also provides that "notwithstanding anything in the next two preceding sub-paragraphs (i) and (ii) the company shall, when a loan authorized by the said sub-paragraph (i) has been made or renewed on the security of a chattel mortgage, or subrogation of taxes, be entitled to charge an additional sum equal to the legal and other actual expenses disbursed by the company in connection with such loan but not exceeding the sum of ten dollars"

Appellant has issued 2,500 shares of its capital stock, of which 2,375 shares are held by the Beneficial Industrial Loan Corporation, a United States company. This latter company owns the entire issued capital stock of Beneficial Management Company, a corporation which performs certain services for the Beneficial Industrial Loan Corporation, the chief executive officers of both corporations being in the main the same persons. A company known as the Consolidated Credit Service Company Limited was incorporated under the provisions of the Dominion Companies Act, with a paid up capital of $10,000, all of which is held by persons who are officers, directors or shareholders of either the Beneficial Industrial Loan Corporation, or the Beneficial Management Corporation

By an agreement entered into between the appellant and the Consolidated Credit Service Company Limited, the latter agreed to perform certain services for the appellant in connection with the making and renewing of loans and to receive therefor an amount equal to one per centum on the principal sum loaned and in respect to loans or renewals on the security of chattel mortgages or subrogation of taxes an additional fee of $10 for the preparation of all necessary documents or papers in connection with each loan so made or renewed.

Appellant, since commencing business, operated under a licence issued by the Minister of Finance pursuant to the provisions of s 69 of the Loan Companies Act, R.S.C, 1927, c. 28 In May, 1937, the Superintendent of Insurance recommended to the Acting Minister of

Finance that the licence issued to appellant be renewed from month to month with the qualification "that no charge be made under the provisions of sub-paragraph (iii) of paragraph (*b*) of subsection 1 of section 5 of the Special Act incorporating the Company in respect of a loan made or renewed on the security of a chattel mortgage, in excess of the amount disbursed by the company, for legal and other actual expenses incurred in connection with the chattel mortgage, to persons other than the company's own employees or the Consolidated Credit Service Company Limited"

From this ruling the Discount and Loan Corporation of Canada appealed.

Respondent contends charges for "legal and other actual expenses disbursed" in cases where the loan was secured by a chattel mortgage, do not include a payment made in respect of the said expenses to an employee of the appellant, and do not constitute a "charge" or "disbursement" within the meaning of sub-paragraph (iii) of ss. 1 (*b*) of s 5 of appellant's Act of incorporation, and that the Consolidated Credit Service Company Limited is to be regarded as a department or employee of the appellant.

Held That the respondent acted beyond the powers delegated to him as Superintendent of Insurance by the Loan Companies Act, R S C, 1927, c. 28.

APPEAL from a ruling of the Superintendent of Insurance.

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

L. A. Forsyth, K.C. and *H. A. Aylen, K.C.* for appellant.

S. M. Clark, K.C. and *A. Macdonald* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (May 16, 1938) delivered the following judgment:

This is an appeal from a ruling made by the Superintendent of Insurance under the provisions of the Loan Companies Act, R.S.C., 1927, chap. 28, and in the circumstances which I am about to state. The appeal was heard on an agreed statement of facts, the testimony of the Superintendent of Insurance, and certain documentary evidence.

The Discount and Loan Corporation of Canada, the appellant, to be referred to hereafter as the "Loan Corporation," is a body corporate created by a special Act of the Parliament of Canada, namely, Chap. 63 of the Statutes of Canada, 1933, as amended by Chap. 68 of the Statutes of Canada, 1934. The head office of the Loan Corporation is in the city of Montreal, in the province of Quebec, and its authorized capital stock is one million

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dollars, divided into ten thousand shares of one hundred dollars each. The Loan Corporation is authorized, *inter alia,* to deal in and lend money on the security of conditional sales agreements, lien notes, chattel mortgages, hire purchase agreements, bills of lading, trade paper, warehouse receipts, bills of exchange, or other forms of security. I understand that the individual loans of the corporation are usually restricted to comparatively small amounts. The corporation may borrow money upon its own credit but it is not authorized to issue bonds, debentures or other securities for moneys borrowed, or to accept deposits.

The Loan Corporation, under sub-paragraph (i) of s. 5 (1) (*b*) of its Act of incorporation, is authorized to charge interest on all loans at a rate of not more than seven per centum per annum, and may deduct the interest in advance, and provide for repayments in weekly, monthly or other uniform payments; the borrower shall have the right to repay the loan before maturity, and, on such repayment being made, to receive a refund of such portion of the interest paid in advance as has not been earned, except a sum equal to the interest for three months.

By sub-paragraph (ii) of s. 5 (1) (*b*) of the same Act the Loan Corporation is authorized to make a charge, in addition to interest as aforesaid, for all expenses necessarily and in good faith incurred in making or renewing a loan, "including all expenses for inquiry and investigation into the character and circumstances of the borrower, his endorsers, co-makers or sureties, for taxes, correspondence and professional advice, and for all necessary documents and papers, two per centum upon the principal sum loaned."

Sub-paragraph (iii) of s. 5 (1) (*b*) is the important provision of the appellant's Act of Incorporation in dispute here, and it reads as follows:—

> (iii) notwithstanding anything in the next two preceding sub-paragraphs (i) and (ii) the company shall, when a loan authorized by the said sub-paragraph (i) has been made or renewed on the security of a chattel mortgage, or of subrogation of taxes, be entitled to charge an additional sum equal to the legal and other actual expenses disbursed by the company in connection with such loan, but not exceeding the sum of ten dollars.

In certain circumstances this maximum charge may be less than ten dollars but I need not delay to explain how this might occur.

Sub-s. 4 of s. 5 of the same Act is, I think, also of some importance and it is as follows:

(4) Any officer or director of the company who does, causes or permits to be done, anything contrary to the provisions of this section shall be liable for each such offence to a penalty of not less than twenty dollars and not more than five thousand dollars in the discretion of the court before which such penalty is recoverable; and any such penalty shal lbe recoverable and disposed of in the manner prescribed by section ninety-eight of the Loan Companies Act.

Sec. 6 of the same Act makes applicable to the Loan Corporation the provisions of the Loan Companies Act, in the following terms:

6. Except as otherwise provided in this Act, the Loan Companies Act, chapter twenty-eight of the Revised Statutes of Canada, 1927, excepting therefrom paragraph (*f*) of subsection one of section sixty-one, paragraph (*c*) of subsection two of section sixty-one, subsection three of section sixty-two, sections sixty-four, sixty-five, sixty-six, sixty-seven, eighty-two and eighty-eight shall apply to the company.

Presently, a total of 2,500 shares of the capital stock of the Loan Corporation have been issued, of which 2,375 shares are held by the Beneficial Industrial Loan Corporation, a United States corporation, authorized, I understand, to carry on in the United States the same class of business as the Loan Corporation. This corporation, it is stated, has a paid up capital in excess of $27,000,000, and its shareholders number over twenty thousand. A second United States corporation enters into the debate, namely, Beneficial Management Corporation, the entire issued capital stock of which is owned by the Beneficial Industrial Loan Corporation; the former corporation performs certain services for the latter corporation and apparently was created for that purpose; the chief executive officers of both corporations are much the same, and for all purposes here we may regard them as being precisely the same.

In September, 1933, there was incorporated by letters patent under the provisions of the Dominion Companies Act, the Consolidated Credit Service Company Ld., hereafter to be referred to as "the Service Company." The entire paid up capital of the Service Company, $10,000, is held by persons who are officers, directors or shareholders of either the Beneficial Industrial Loan Corporation, or the Beneficial Management Corporation. In the agreed statement of facts, it is stated that because of the possible technical constructions which might be placed on the language of the Act incorporating the Loan Corpora-

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tion, and particularly sub-paragraphs (ii) and (iii) of s. 5 (1) (*b*), it was suggested that the language of these two sub-paragraphs might give rise to difficulties of proof of charges made or expenses incurred, in an action brought by a dissatisfied or recalcitrant borrower. The Loan Corporation was advised by Canadian counsel that the creation of a separate and independent corporate entity would obviate the difficulties of proof which were apprehended, and which was necessary in order to comply strictly with the disbursement requirement of sub-paragraph (iii) in respect of each particular loan. Accordingly the Service Corporation was brought into being. The officers and directors of the Service Company would appear to be largely officers and directors of either the Beneficial Industrial Loan Corporation, or the Beneficial Management Corporation.

There is subsisting between the Loan Corporation and the Service Company an agreement, the principal terms of which are as follows:

2. The Service Corporation hereby agrees that in respect of all loans made or renewed by the Loan Corporation in accordance with the provisions of sub-paragraph (1) of subsection (*b*) of section 1 of article five of the said Act the Service Corporation shall inquire and investigate into the character and circumstances of the borrower, his endorsers or sureties, if any, and will pay all taxes for which the Loan Corporation may be liable in connection with the making of any such loans and conduct all correspondence and defray the cost of all professional advice and costs of registration for which the Loan Corporation may be liable and prepare all necessary documents or papers in connection therewith.

3. In consideration of the foregoing the Loan Corporation hereby agrees to pay the Service Corporation on or in respect of each loan made by the Loan Corporation an amount equal to one per centum (1%) upon the principal sum loaned and in respect of each loan made or renewed by the Loan Corporation under the authority of the said sub-paragraph (1) of subsection (*b*) of section 1 of article 5 or made or secured on the security of chattel mortgages or subrogation of taxes, and in addition thereto a fee of ten dollars ($10) for the preparation of all necessary documents or papers in connection with each loan so made or renewed; provided, however, that the payments hereinabove provided for shall be made and owing to the Service Corporation only in respect of loans as to which the Service Corporation shall render to the Loan Corporation some or all of the services hereinabove mentioned.

The head office of the Loan Corporation, as already stated, is in the city of Montreal, P.Q., and the head office of the Service Company is in the city of Ottawa, in the province of Ontario, but neither the Loan Corporation nor the Service Company carry on any business in the city

of Montreal but both do so in the cities of Ottawa and Toronto, in the province of Ontario; the Loan Corporation carries on the business of loaning money as authorized by its Act of incorporation, and the Service Company performs the services required of it by the Loan Corporation, pursuant to the agreement referred to. The official auditors of the Loan Corporation and the Service Company are Messrs. P. S. Ross & Sons, chartered accountants, of Montreal, who prepare the annual audited statements required of both corporations by the Loan Companies Act and the Dominion Companies Act. Certain of such audited annual statements form a part of the agreed statement of facts, and their accuracy is in no way attacked. In addition, each loan effected by the Loan Corporation, and everything incident thereto, is subject to an audit or check by the Beneficial Management Corporation, and this latter corporation performs a similar service for the Service Company. It is suggested that by reason of the inter-related interest of the Loan Corporation, the Beneficial Industrial Loan Corporation, the Service Company, and the Beneficial Management Corporation, that it was inevitable that the affairs of the Service Company, so far as it performs any function in the business of the Loan Corporation, would be conducted so as to accord with the wishes of the Beneficial Industrial Loan Corporation. In any event, it is not open to dispute that the four corporations mentioned are closely related by share ownership, or by interlocking directorates or managements. Whether that is of any importance is another question.

The practice of the Loan Company Corporation, and the Service Company, in the transaction of their respective businesses, is illustrated by their co-operation in the city of Ottawa where they jointly occupy offices in the same building. The lease of these premises was taken by the Loan Corporation, but by agreement the Service Company became co-tenant and contributes to the monthly rental of $100 per month, the sum of $75 per month; each has its own name on the door of the premises referred to; each maintains its own books, records and accounts; there is no intermingling of funds, and each contributes one-half of the cost of the telephone service provided for the premises. The Loan Corporation is represented by one employee in

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the city of Ottawa, who is paid from the funds of that corporation. The Service Company is represented by its manager and a staff of two persons, their salaries being paid from the funds of that company. It would appear from the agreed statement of facts, that neither company exercises any control or authority over the other, and that their business relations are limited to those set forth in the agreement between them, the main provisions of which I have already mentioned.

Since the Loan Corporation commenced doing business, it operated under a licence issued by the Minister of Finance, under the provisions of s. 69 of the Loan Companies Act, chap. 28, R.S.C., 1927. In May, 1937, the Superintendent of Insurance recommended to the Acting Minister of Finance that the licence issued to the Loan Corporation be renewed, from month to month, I think, with the following qualification or limitation:

That no charge be made under the provisions of sub-paragraph (iii) of paragraph (*b*) of subsection 1 of section 5 of the special Act incorporating the company in respect of a loan made or renewed on the security of a chattel mortgage, in excess of the amount disbursed by the company, for legal and other actual expenses incurred in connection with the chattel mortgage, to persons other than the company's own employees or the Consolidated Credit Service Company Limited.

It is from this ruling that the Loan Corporation has appealed. The Superintendent, at the request of the Loan Corporation furnished a certificate wherein is set forth the reasons for the said ruling, and the recommendation to the Minister of Finance, and they are as follows:

4. That the reasons for the said recommendation were:—

(*a*) That the "legal and other actual expenses disbursed by the company in connection with such loan" referred to in sub-paragraph (iii) of paragrpah (*b*) of subsection (1) of section five of the said Special Act are the legal and other expenses incurred in taking a chattel mortgage or a subrogation of rights on payment of taxes and do not include expenses of the nature specified in sub-paragraph (ii) of the said paragraph;

(*b*) That a payment in respect of the said expenses to an employee of the said company is not a "disbursement" within the meaning of the said sub-paragraph (iii); and

(*c*) That a payment in respect of the said expenses to the Consolidated Credit Service Company, Limited, incorporated by letters patent under the Dominion Companies Act, on September 12th, 1933, is not such a "disbursement" since for the purpose of the said sub-paragraph (iii) the Consolidated Credit Service Company Limited, is to be regarded as a department of the company or as its agent or instrument so that in truth and substance the business and operations of the Consolidated Credit Service Company Limited were the business and operations of the com-

pany. The Consolidated Credit Service Company Limited constituted a device for evading the restrictions of sub-paragraph (iii) aforesaid.

The ground therefore upon which the Superintendent recommended that the licence to the Loan Corporation be renewed, with the qualification or limitation stated, was, that charges made for "legal and other actual expenses disbursed," in cases where the loan was secured by a chattel mortgage, do not include a payment made in respect of the said expenses to an employee of the Loan Corporation and do not constitute a "charge" or "disbursement" within the meaning of sub-paragraph (iii) of sub-s. (1) (*b*) of s. 5; and that in the premises the Service Company is to be regarded as a department or employee of the Loan Corporation. In his report to the Minister on this subject-matter the Superintendent stated:

> Sub-paragraph (iii) permits the company to charge an additional sum to the borrower when the loan is made or renewed on the security of a chattel mortgage, that sum being the amount of the legal and other actual expenses disbursed by the company in connection with such loan, but not exceeding the sum of $10. In view of the sweeping nature of the expenses intended to be covered by the charge of two per centum under sub-paragraph (ii), it is obvious that the additional expense covered by paragraph (iii) is the disbursements for legal and other expenses in respect of the chattel mortgage. It is believed that charges of this nature are imposed by the company upon borrowers in excess of the amount so disbursed to persons other than the company's own employees and that the company, in order to justify the said charge, disburses the amount thereof to another corporation, the Consolidated Credit Service Company Ltd. which the undersigned believes to be operated for the benefit indirectly of the owners of the majority shares of the Discount and Loan Corporation.

We may now turn to an examination of some of the provisions of the Loan Companies Act, which, as I have already stated, are made applicable to the Loan Corporation "except as otherwise provided in this Act," that is, the Act incorporating the Loan Corporation. It is quite obvious that the Loan Companies Act was never drafted or enacted with the idea that its provisions would be made applicable to a loan company of the type with which we are here concerned, and an examination of the provisions of that Act will reveal how difficult it is to make any satisfactory application of many of its provisions to the matter in dispute here. The Act would seem to relate particularly to companies lending money on the security of mortgages or hypothecs upon freehold real estate, with powers to borrow money on its bonds, debentures or other

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securities, and to receive money on deposit. However, the Loan Companies Act has been made applicable to the Loan Corporation, with the exception of a few sections, and it becomes necessary to examine some of the provisions of that Act.

Sec. 69 (1) relates to the licensing of loan companies to which that Act applies, and it first states that no company to which the Act applies shall transact the business of a loan company unless the company has obtained from the Minister of Finance a licence authorizing it so to do. The application of that provision to the Loan Corporation would seem quite practical. A condition for granting a licence to any loan company is that the financial position of the company is such as to justify its transaction of the business of a loan company. It was conceded by the Superintendent that the financial position of the Loan Corporation was satisfactory to him. Sec. 69 (3) provides that the licence shall be in such form as may be from time to time determined by the Minister, and "may contain any limitations or conditions which the Minister may, consistently with the provisions of the Act, deem proper." Sub-s. 4 of s. 69 provides that the licence shall expire on the thirty-first day of March in each year, but may be renewed from year to year subject, however, to any "qualification or limitation which may be considered expedient," and such "qualification or limitation" would, I think, have reference only to the financial position of the company. If the Minister refuses a licence, there is a right of appeal to the Governor in Council. Under s. 69, a licence could not therefore be refused, or if granted, qualified or limited, except on the ground of the unsatisfactory or doubtful financial position of the company applying for a licence. I doubt if this section, save perhaps sub-s. 4, is of any assistance in this case.

Sec. 70 requires that the company shall file annually with the Minister a statement, setting forth its capital stock, the portion thereof paid up, the assets and liabilities of the company, the nature of the investments made on its own behalf or on behalf of others, and other particulars. It would appear from the agreed statement of facts, that the requirements of this section, if applicable, were complied with by the Loan Corporation.

Sec. 71 requires the Superintendent to examine into and inspect annually the conditions and affairs of the company, and to make returns to the Minister as to all matters requiring his attention and decision. Sec. 72 provides that if, as the result of the examination required by s. 71, the Superintendent believes that the assets of the company are insufficient to justify its continuance in business, he shall make a special report to the Minister on the condition of the company; the Minister may, upon further inquiry and examination, and upon hearing the company, suspend or cancel the licence of the company, or he may issue such conditional licence "as he may deem necessary for the protection of the public." This section does not appear to have any bearing upon this case.

Then s. 73 is to the effect that in his annual report to the Minister, under the provisions of s. 71 of the Act, the Superintendent shall allow as assets only such of the investments of the company as are authorized by the Loan Companies Act, or by the Act incorporating the company, and he shall make all necessary corrections in the annual statements made by the companies, and he shall be at liberty to increase or diminish the assets or liabilities of such companies to the true and correct amounts as ascertained by him in the examination of their affairs. Sub-s. 3 and 4 of s. 73 are not relevant to this appeal because no question of unauthorized investments arises, and it is not suggested that the assets and liabilities of the Loan Corporation are inaccurately reported. It will be seen therefore how inapplicable are the provisions of s. 73, so far mentioned, to the facts of the case under discussion.

Sub-s. 5 of s. 73 must be referred to and it reads:—

> An appeal shall lie in a summary manner from the ruling of the Superintendent as to the admissibility of any asset not allowed by him, or as to any item or amount so added to liabilities, or as to any correction or alteration made in any statement, or as to any other matter arising in the carrying out of the provisions of this Act, to the Exchequer Court of Canada, which Court shall have power to make all necessary rules for the conduct of appeals under this section

It is doubtful if this sub-s. is applicable here, or that it could have been so intended, unless it be by reason of the words "or as to any other matter arising in the carrying out of the provisions of this Act * * *," not, the provisions of the Act incorporating the Loan Corpora-

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tion. This sub-s. seems to relate to loan companies having investments, and liabilities to the public, and the Superintendent is authorized to increase or diminish the assets or liabilities of the company to the true and correct amounts as ascertained by him, and he may require the company to dispose of unauthorized investments, all of which is hardly applicable to the Loan Corporation. The words "or to any other matter arising in the carrying out of the provisions of this Act" are of doubtful application here. It is arguable that there is no provision for an appeal from the Superintendent in a case of the kind under discussion, and if that should be so it would follow, I think, that the act of the Superintendent which is in question here would be unauthorized by the statute. It would be unthinkable that the power claimed and exercised by the Superintendent here would be bestowed by the statute without the right of an appeal by the person affected.

The issue here seems to narrow down to this: Does subparagraph (iii) of sub-s. (1) (*b*) of s. 5 authorize the charges disbursed to the Service Company, in connection with loans secured by chattel mortgage, and, in the state of facts here is the Superintendent empowered to say that they were not disbursements actually incurred by the Loan Corporation because they were made to the Service Company, and by reason of which he recommended a qualified or limited renewal of the Loan Corporation's licence?

It was agreed on behalf of the Superintendent that if the charges in question had been incurred through the employment of a solicitor retained for the purpose, the same would be permissible under the statute and would not have been put in question. I think the Loan Corporation might retain the services of any qualified person, a solicitor, or a trust company, to perform the identical services, and for the identical charges, and apparently no objection would or could be made to the same by the Superintendent. I cannot see how any objection can be made to the Service Company being set up and employed for that purpose; in that I see nothing unlawful, or anything contrary to the provisions of the Act of incorporation of the Loan Corporation, or the Loan Companies Act. It would be a matter of indifference to the borrower to whom the charge

was disbursed providing it was a *bona fide* charge, and within the statutory amount. I cannot say, upon the facts before me, that the Service Company is "operated for the benefit indirectly of the owners of the majority shares of the Loan Corporation," or that it constitutes "a device for evading the restrictions of sub-paragraph (iii) aforesaid." The particular provision of the appellant's Act of incorporation in question is a fairly wide invitation to make or incur the maximum charge, and one cannot resist thinking that it is probable that it was in the mind of the legislature when the provision was enacted, that the maximum charge would on balance not be an unreasonable one to impose. Upon the facts before me I cannot say that this charge is an unreasonable or oppressive one, and in fact the Superintendent does not say that it is; he only asserts that in his belief the disbursement to the Service Company is not an actual "disbursement," because that company is in reality an employee or department of the Loan Corporation, and that it is operated for the benefit indirectly of the owners of the majority shares of the Loan Corporation. The Loan Corporation is "entitled to charge an additional sum," not for "legal expenses," but for "the legal and other actual expenses disbursed." It does not clearly appear from the agreed statement of facts what is the precise character or volume of the work or services, ordinarily incidental to a loan, or the renewal of a loan, secured by a mortgage on chattels. I can well imagine that in many cases at least the maximum charge might not be unreasonable. If the maximum charge might be incurred and disbursed by the Loan Corporation to a solicitor, retained specially for the purpose, without objection by the Superintendent, I cannot see on what principle the same charge becomes improper or unlawful, or an unauthorized one if such services are actually performed by any other person or organization on behalf of the Loan Corporation. If so, then the Superintendent is not empowered, in my opinion, to rule that the charges disbursed to the Service Company, and which are in question here, is a ground for refusing an unconditional renewal of the appellant's licence.

It was suggested that the paid employees of the Loan Corporation, or the Service Company, could or should

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perform the services in question without any additional charge to the borrower. How could that be determined by the Superintendent, or by a court, without hearing the evidence directly bearing upon the point? It is conceivable that some employee of the Service Company was being paid a certain salary or wage just because he was competent to perform the particular services incident to loans secured by a chattel mortgage, and which would relieve the Loan Corporation of the expense of employing specially the services of some one competent to perform the same services. The Loan Corporation is explicitly authorized to make an additional charge for expenses actually incurred in connection with loans so secured, and I do not apprehend it is prohibited from employing some one to perform such services, in this case the Service Company. Having been authorized to make a charge against the borrower for disbursements incurred for services connected with loans of the character in question, and such disbursements having been made to the Service Company, I do not think the Superintendent is empowered to say such disbursements were unauthorized, or that they might have been performed without charge by some person or persons in the employ of the Loan Corporation, or the Service Company. Any service performed implies an expense. Nor do I think that the Superintendent is empowered to say that the Service Company is in substance just an ordinary employee, or that its business is the business of the Loan Corporation; in fact and in law it is a separate entity, clothed with powers of its own. If the Loan Corporation exceeded in any way the authorized interest charges, or the authorized additional charges, the borrower may complain, or the Attorney-General of Canada, or the Minister, may proceed under sub-s. 4 of s. 5 of the Act; if any such excess is thus established then the Superintendent might be authorized to take the steps he has taken. While the duties pertaining to the office of the Superintendent are highly important, and while the present Superintendent is doubtless a vigilant and valuable public servant, yet, his powers are only those specifically granted by the statute, and it is not desirable that such powers be in any way exceeded.

My conclusion is that the Superintendent in the facts and circumstances here, was not empowered to hold that the charges and disbursements in question, made by the Loan Corporation, were contrary to the provisions of s. 5 of its Acts of incorporation, or that he was empowered to refuse an unconditional licence, or to impose the qualification and limitation which he did, upon the grounds stated. It seems to me that this was not consistent with the provisions of the Loan Companies Act. Neither do I think that the Superintendent was authorized to determine and rule, as a matter of fact or law, that the Loan Corporation was acting contrary to the statute in employing the Service Company to perform the services mentioned in the agreement between them, and which is the subject of dispute here, or that the Service Company is merely an employee or department of the Loan Corporation and that the services which it performed should therefore be gratuitous to the Loan Corporation and the borrower, or that the disbursements made by the Loan Corporation to the Service Company are not actual expenses disbursed by the former. The matters here alleged to be contrary to the appellant's Act of incorporation are not, I think, of the character contemplated by the Loan Companies Act as a ground for refusing an unqualified licence. The powers delegated to the Superintendent under the Loan Companies Act, it will be found if closely examined, are to be exercised for reasons which are fairly demonstrable in point of fact, and do not involve questions requiring judicial determination.

The appeal is therefore allowed with costs.

Judgment accordingly.