

HAMILTON, 13th Sept., 1870.

MESSRS. BROWN, GILLESPIE & CO,
Hamilton.

I have carefully perused the several opinions of Mr. Blake. Mr. Martin and Mr. Abbott.

I quite concur in opinion with Mr. Blake upon the questions submitted to him. With regard to the fourth query he appears to have felt some doubt, but he evidently inclines to the opinion afterwards expressed by Mr. Martin and Mr. Abbott, which for the reasons they assign, is in my judgment, indisputably correct.

Whilst I agree with Mr. Blake in his opinion on the facts stated for it, I think that the case submitted to him omits a very material fact. The question, as it seems to me, is not whether the Bank of Montreal, or the firm of Kerr, Brown & McKenzie, or an individual member of that firm, had the right, under the various aspects of the case presented to Mr. Blake, to rank upon the estate of Messrs. Brown, Gillespie & Co., for the whole amount of the \$10,000 note, but whether, after Messrs. K., B. & McK. had retired the note and reduced the amount of their ranking to one half of it, they are entitled either in law or equity to the whole benefit of the gain which occurred to the estate of B., G. & Co. by such reduction; whether, in fact, they were in a position better than that of any of the other creditors. This question was not submitted to Mr. Blake, nor does his opinion touch upon it.

The case appears to me to be plain enough. Messrs. K., B. & McK. were bound by their agreement with B., G. & Co. to pay one half of the note—they paid the whole. For the excess which they paid