

assessable against him without taking any steps to inform themselves of the truth or falsity of the statement furnished.

Held, also, that the provision that there should be no appeal from the assessment where no statement is furnished relates only to an appeal against over-valuation under C.S.N.B., c. 100, s. 60, and does not abridge the power of the court to do justice if the assessors assess arbitrarily or upon a wrong principle, or no principle at all.

Held, per Gwynne and Patterson, J.J., that the assessment law of St. John does not apply to railway companies, there being no provision made for ascertaining the amount of business done in the city as proportioned to the whole business of the company.

Appeal allowed with costs.

Weldon, Q.C., for the appellant.

Jack, Q.C., for the respondents.

Quebec.]

STEVENSON v. CANADIAN BANK OF COMMERCE.

Insolvency—Knowledge of, by creditor—Fraudulent preference—Pledge—Warehouse receipt—Novation—Arts. 1034, 1035, 1036, 1169 C.C.

W.E.E., connected with two business firms in Montreal, viz., the firm of W. E. Elliott & Co., oil merchants, of which he was the sole member, and of Elliott, Finlayson & Co., wine merchants, made a judicial abandonment on the 18th August, 1889, of his oil business. Both firms had kept their accounts with the Bank of Commerce. The bank discounted for W. E. Elliott & Co., before his departure for England, on the 30th June, a note of \$5087.50, due 1st October, signed by John Elliott & Co., and endorsed by W. E. Elliott & Co. and Elliott, Finlayson & Co., and on the 5th July took as collateral security from Finlayson, who was also W. E. Elliott's agent during his absence, a warehouse receipt for 292 barrels of oil and the discount was credited to Elliott, Finlayson & Co. On and about the 9th July 146 barrels were sold; the proceeds, viz., \$3528.30, were subsequently on the 9th August credited to the note of \$5087.50. On the 13th July, McDougall, Logie & Co. failed, and W.E.E. was involved in the failure to the extent of \$17,000, and on the 16th July Finlayson, as agent for W.E.E., left with the bank, as collateral security against W.E.E.'s indebtedness of \$7559.30 on the paper of McDougall, Logie & Co., customers notes of the oil business to the amount of \$2768.28, upon which the bank collected \$1603.43, and still kept a note of J.P. & Co. unpaid of \$1165.32.

On the return of W.E.E. another note of John Elliott & Co. for \$1101.33, previously discounted by W.E.E., became due at the bank, thus leaving a total debit of the Elliott firms on their joint paper of \$2660.53. The old note of \$5087.50, due 1st October, and the one of \$1101.33, were signed by John Elliott & Co., and on the 10th August were replaced by two notes signed by Elliott, Finlayson & Co., and secured by 200 barrels of oil, viz.: 146 barrels remaining from the original number pledged, and an additional warehouse receipt of 54 barrels of oil, endorsed over by W.E.E. to Elliott, Finlayson & Co., and by them to the bank.