No one can have any quarrel with that, but the phraseology is so broad—it certainly was not so intended I believe—that the trustee could avail himself of any law in any province of Canada regardless of the locality of the debtor or of the property affected. There might be some extreme statute in British Columbia and the bankruptcy might have taken place in Quebec, yet as this subsection is worded the British Columbia law might be invoked in relation to the bankruptcy in Quebec, although the debtor did not reside in British Columbia nor had he any assets there. It seems to us this subsection should be redrafted to make it clear that that is not intended. As you gentlemen are aware, before the enactment of the Bankruptcy Act the provinces had certain legislation in the field of bankruptcy, such as the assignments and preferences acts. When the bankruptcy statute was enacted it was universally felt, and probably held, that the Bankruptcy Act would suspend the operation of the provincial laws. A question would now arise whether this amendment would remove that suspension. That is one of the difficulties which arises from the use of the more general phraseology such as appears here.

Before leaving subsection 1 of section 68, I may say that over all the years there have been many decisions on the effect of the provision that there should be intent established before a transaction is declared void for fraud. Those decisions will pretty well have to be abandoned under the proposed amendments, and that might be unfortunate in a number of different ways. But taking it from the point of view of bank transactions, it has been held that it would not be a preference for a bank to transfer a credit from one account of a customer to another account which was in debt. It is still a question whether under this broad phraseology that would be permitted. It would have to come before the courts again until it was declared authoritatively whether a bank could exercise its privilege of consolidating accounts, which it has always hitherto been allowed to do.

Then there are other cases where they might have difficulty. It has been held that payments in the ordinary course of business would not be regarded as constituting a preference. It might be a question whether payment on a debt which was matured and due the bank would be contrary to these provisions. In another case it has been held that payment of secured creditors should not be within the provision as it stands now in the Act. That question would have to be settled in the courts and until that had been done in an authoritative manner, the banks would not know how far to go in their ordinary day-to-day dealings with their customers. It seems to us that this amendment goes much further than may be necessary and will make it very difficult for people doing business.

In subsection 3 of section 68 there is reference to a secret transaction between the bankrupt and "any other person". It is difficult to know just what that might cover. As I have explained, there is an implied secrecy between banker and customer. Under this amendment that would be a secret transaction and might give rise to difficulties because it comes within that definition.

Subsection 5 of section 68 has already been referred to in a sense, but it does make it clear that evidence of intent on the part of either party to the transaction shall not be available as a defence to support such transaction if in fact a preference, benefit or advantage was obtained over the creditors or any of them. That is a pretty broad provision. A man would not be able to come into court and show good faith if in fact a preference, benefit or advantage was obtained. The transaction would be regarded as fraudulent and would be voided. In the Bankruptcy Act of 1910, as you gentlemen will remember, there was a provision of that sort, but in 1920 those words were transferred to subsection 2 and formed part of a prima facie presumption, which of course was susceptible of rebuttal. In other words, it might be a presumption of law from certain facts that the transaction was a benefit and improper, but evidence could be adduced to show that such was not the case. This new provision will