

As to the other point decided by the learned judge, it is a judicial construction which seems almost to amount to legislation, in the face of the apparently positive prohibition of section 75 of the Bank Act against the acquisition of any warehouse receipt or bill of lading or security, under section 74, to secure any pre-existing debt; but allowing such a security to be taken where a bill, note, or debt is negotiated or contracted at the time of the acquisition thereof by the bank, or where there is a written promise or agreement made at the time of the negotiation of the bill, note, or debt, that such warehouse receipt or bill of lading or security would be given to the bank.

The learned judge, in holding that, notwithstanding this provision, such a security might be taken for a pre-existing debt, proceeded upon the reasoning that the policy of Parliament appears to be to prohibit any lending or advance made either directly or indirectly upon the security, mortgage, or hypothecation of any kind of property (s. 64); but to give banks the fullest opportunity of recovering old debts by taking securities upon any kind of property (s. 68). It appears to us, however, that ss. 73, 74, and 75 of the Act very clearly indicate that the intention of Parliament was just the reverse in case of warehouse receipts, bills of lading, and assignments in the form of Schedule C., viz.; that banks may lend money directly upon these securities, but may not take them as securities for pre-existing debts. As to this point the judgment says: "When section 75 says that a bank is not to acquire a security under section 74, except to secure payment of a note, etc., then negotiated, or on the written promise of such a security, it seems intended to prohibit advances upon uncertain verbal promises of such security."

Surely the bank can make advances upon verbal promises of such security, but the question is, can they afterwards legally acquire such security? If they can acquire it without any prior promise at all, as the learned judge has held, there seems no reason for saying that they could not acquire it if there had been a prior verbal promise.

On the whole, however, if the learned judge was wrong on this latter point, the plaintiffs' security was prohibited by the Act, for it was taken to secure a pre-existing debt due to them; and even if both points were incorrectly decided, on the principle that two wrongs may make a right, the verdict entered may be a