—whether or not entered into voluntarily or under pressure by an insolvent person becoming bankrupt within three months thereafter resulting in any person or any creditor or any person in trust for such creditor or any surety or guarantor for the debt due to such creditor obtaining a preference advantage or benefit over the creditors or any of them shall be deemed fraudulent and void as against the trustee.

The danger of that broad provision, it seems to us, is that the question of intent is no longer an element. It is still a pretty general requirement in almost all criminal offences that intent is an element of the deed and, in many cases, a man is entitled to bring in evidence that his intent was honest or proper, and the intent may vary considerably the gravity of the crime. Yet here the effect alone is to be the arbiter of the situation. If there is any "advantage or benefit over the creditors or any of them"—which means any one of them—the transaction is deemed to be a preference, and the person that took part in it is tainted with fraud. That is almost as bad as being tainted with criminality, because no one wants to be put in a position of that sort. A man may have entered into a transaction in perfectly good faith and it may have resulted in advantage to him over some single creditor, yet the transaction would be fraudulent.

Hon. Mr. LEGER: What about its effect on a bank advancing money on a bill of lading?

Mr. ROGERS: That is precisely what I was coming to, sir. Banks do business in various ways with different customers. A bank frequently does business on bills receivable, with a promise by the customer to give security if the bank requires it. A situation may develop, due either to general business conditions or a change in the individual's situation, which from its experience indicates to the bank that it probably had better get security, and this it will ask for and obtain. Undoubtedly in cases of that sort there is some benefit to the bank as against other creditors or as against a single creditor. The onus now would be upon the bank to prove the transaction was a proper one. By reason of the phraseology of section 69 as now amended the onus is a very difficult one to satisfy, because it has to be shown that the transaction is for adequate and valuable consideration and without reason to suspect any insolvency. Yet by reason of the broad definition of bankruptcy it might well be—I realize this is stretching the point—that as bankruptcy would be constituted under the bill, failure to pay a particular debt, if the bank knew that it could hardly be said that it did not have some reason to suspect insolvency. You do not know how far the courts may go in that event. While it is an extreme illustration, there might be other cases where the bank could not come in and satisfy the onus, yet under the Bank Act there is a provision for banks taking additional security. For instance, a bank is not allowed to lend money on mortgage of land, but it is allowed to take such a mortgage as additional security; that is, if additional security is necessary to protect not only the bank but the depositors, because that is the important part of it, and that is why parliament has authorized those provisions. If a bank is going to be exposed to having it established that the taking of that security was a preference, it might invalidate the security and the bank might refrain from putting itself in that position. As a result the banks' security would be weakened and the credit standing of people doing business with banks would be affected. To offset this banks would have to take more security at the outset than perhaps is taken at the present time. The combined effect it seems to us is rather serious and could go a long way towards making ordinary business rather difficult.

If you look at subsection 2 of section 68 you will find it designed to enable the trustee to invoke provincial laws in order to invalidate certain transactions.