stances did not deprive the transaction of its character of a negotiation of the note, for the proceeds were placed freely at the disposal of the customers, and the drawings on the account continued as before, and it was held, distinguishing Halstead v. Bank of Hamilton, that the warehouse receipts were valid securities.

But, whatever may be the legal effect of the transaction upon the evidence of what was done when the warehouse receipts were assigned, in the light of the two cases referred to, I think the letter of 28th November, 1904, would entitle the bank to hold the warehouse receipts as security for the advances which constituted the large overdraft referred to. That letter was, in my opinion, "a written promise or agreement that such warehouse receipts would be given to the bank," within the meaning of the Bank Act, and while the warehouse receipts are not identified in it, and a different warehouse is named, I think when the customer assigned the warehouse receipts it was the intention of both parties to appropriate them to the "written promise" made when the account was opened. While the promise may not have been sufficient to entitle the bank to an equitable claim in the nature of specific performance or otherwise, upon the goods warehoused with the McLean Company, the plaintiffs cannot now, after execution of the transaction, be permitted to repudiate it.

As to the 99 cases, I am of the opinion that no warehouse receipt ever having been given or assigned in respect to them, the bank are not entitled to hold the proceeds. There was no written promise or agreement to furnish any specific warehouse receipt, no agreement to warehouse goods with the McLean Company, and no executed appropriation of the 99 cases to a written promise. At most there was a verbal agreement when the receipts for the 401 cases were assigned, with reference to further warehouse receipts, which verbal agreement being unexecuted and in violation of the Bank Act, and being beyond the power of the bank to enter into, gives no equity to the bank in reference to the goods in question: Bank of Toronto v. Perkins, 8 S. C. R. 603; Fry on Specific Performance, 4th ed., p. 217, and cases there cited.

Defendants' counsel objected that the liquidator and not the company should be plaintiff, and cited Kent v. Community of Sisters of Charity of Providence, [1903] A. C. 220.