opening of such credit, or the incurring of such liability, by the Bank) the shares of the capital stock of any other Bank, the bonds or debentures of municipal or other corporations, or Dominion, provincial, British or foreign public securities, and such stock, bonds, debentures, or securities, may, in case of default to pay the debt for securing which they were so acquired and held, be dealt with, sold and conveyed in like manner and subject to the same restrictions as are herein provided in respect of the stock of the bank on which it has acquired a lien under this Act."

The meaning of this language in these two sections would probably be caught by an unprofessional reader at once; but when it comes to be considered in the aspect in which it was presented to the Court, that is to say, with reference to the precise legal import of these two sections taken by themselves, it is perhaps not entirely free from obscurity. This obscurity, however, probably arises more from the style than from the terms; less from what is said than from the manner of saying it. There is an inconvenient mixture of negative and affirmative matter; there are prohibitions and restrictions and powers all in the same section. First of all in the 40th section, there would appear to be a series of prohibitions the only exception to which would seem a general permission to carry on the business of banking. Then, coming to the 51st section—the latter part of it, which is all we have to look to—we find what the Bank may take as collateral security is regulated, in the terms of this section, not by a power directly given, but by specifying the things that it is not intended to prevent it from taking; so that it might look at first as if the power to make advances on certain securities was given in the shape of a saving clause, while leave to be a Bank at all is only mentioned in the form of an exception! Of course there are direct powers given in other sections, but they have not been referred to as having any bearing on this case. There is the power, for instance, in sec. 41, to hold mortgages on real and personal property, not as collateral security for advances to be made, but as additional security for pre-existing debts; and there is the 46th section, a most important one, giving the power to hold warehouse receipts and bills of lading, and to sell the property they represent, which is, as a general thing, all the power the bank has to deal in merchandize, and which also is made the subject of special exemption in the 40th section, from the prohibition there contained to deal in merchandize either directly or indirectly.

As to sec. 41, and the power to take security of every description for overdue debts, of course there is an obvious distinction between that and the power to make advances upon that and every kind of security whatever; it is the distinction between the power to contract an unlawful debt, and the power to collect a lawful one; or to speak more accurately, it is the distinction between taking an unlawful security and realizing a lawful asset. In the one case the money of the proprietors is illegally risked; in the other, after it has been lawfully lent, and lost, additional (not collateral) security is obtained to make it good; and of course there may be and there is excellent reason for not risking the shareholders' money on chimerical stocks of what I believe the western people call the wild-cat kind, while there is no reason at all for refusing to take from your debtor all you can get out of him for the ultimate satisfaction of a legitimate claim. These observations occur to me now, not because the plaintiff's counsel attached any importance to this other and distinct power as in any way affecting his case: on the contrary, he rested his case entirely and in the frankest manner upon the authority supposed to be implied in the concluding words of the 40th section, and we may feel perfectly sure, if there was anything to be made properly out of it, he would not have failed to enlist it in his service; but I make these remarks in passing merely to show that in no other part of the statute (unless it be in these two sections—the 40th and the 51st) is there any definite power given to lend money on this kind of security, and to show also that counsel are perfectly right in my opinion in putting the case upon the ground they do, for it is clearly, and I may say admittedly true, that if the 40th and 51st sections do not give the power, it is not given at all. Whatever, therefore, may be the form of this section 51, it can be no better for the plaintiff's case than if, instead of being in the form of a saving clause, it had given in a direct manner the authority it now gives in its present form; for it could not possibly be contended that even if the 51st section had enacted in a direct way that the Bank should have power to lend on the securities that are mentioned in that section, such an enactment would have included a power to lend on the kind of stock in question.