

new was objectionable in many respects, and gives colour to the argument that there never was, in fact, any change of ownership or control, I think Mrs. Clark would be estopped from claiming any interest in the property then or subsequently acquired by the company, except in her capacity as stockholder, and that, therefore, the butter in question was the property of the plaintiffs when it was warehoused.

As to the 401 cases, I think defendants are entitled to hold the proceeds thereof by virtue of sec. 73 of the Bank Act, now sec. 86, R. S. O. 1906 ch. 29.

Counsel for plaintiffs submitted that the evidence brought the transaction within the prohibitive provisions of sec. 75 of the Bank Act, now sec. 90, R. S. C. 1906 ch. 29, which provides that "the bank shall not acquire or hold any warehouse receipts or bill of lading or any such security as aforesaid to secure the payment of any bill, note, debt, or liability, unless such bill, note, debt, or liability is negotiated or contracted, (a) at the time of the acquisition thereof by the bank, or (b) upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank."

And it was argued that the case was governed by *Halstead v. Bank of Hamilton*, 27 O. R. 435, 24 A. R. 152, 28 S. C. R. 235, which decided that a bill or note taken by a banker is not "negotiated" within the meaning of this section at the time of the acquisition of the security when the person giving the security, and to whose account the proceeds of the bill or note are credited, is not at liberty to draw against them except on fulfilling certain other conditions. . . .

I am unable to find in this case that the transaction of discounting the \$6,000 note and placing the proceeds to the credit of the overdrawn account was a mere form intended only to reduce the overdraft, or that there was any restriction against the customer drawing the same out in the ordinary course of business, and, therefore, *Halstead v. Bank of Hamilton* would not apply.

This case is more like *Ontario Bank v. O'Reilly*, 12 O. L. R. 420, 8 O. W. R. 187. In that case there was negotiation of a note and an actual advance at the time of acquisition of each warehouse receipt; although on most occasions when the discount was effected the account was overdrawn, that was in the ordinary course of dealing, and the circum-