

MACLAREN, J. A., in a written judgment, said that the action was brought by Clarkson, the liquidator, and the National Match Company, a creditor, of an insolvent manufacturing company, to set aside the claim of the respondent bank to certain goods pledged to it, by securities under sec. 88 of the Bank Act, and also two mortgages on real estate in St. Thomas and Montreal.

After setting out the facts and referring to sub-sec. 3 of sec. 88 and to sec. 90 of the Bank Act, the learned Judge distinguished *Bank of Hamilton v. Halstead* (1897), 28 S.C.R. 235, negating the appellants' argument that the demand notes given by the company to the bank in this case were never negotiated at all.

It was also argued for the appellants that the securities in question were bad because the written promises or agreements to give the securities were not made at the time the demand notes were negotiated or the debt or liability contracted, and that an antecedent promise or agreement was of no value. But clauses (a) and (b) of sec. 90 provide for two distinct classes of cases, quite independent of each other. For the purposes of this case, the section should be construed as if clause (a) were not in it at all.

Reference to *Impèrial Papér Mills of Canada Limited v. Quebec Bank* (1912), 26 O.L.R. 637, affirmed by the Privy Council, S.C. (1913), 110 L.T.R. 91, *Townsend v. Northern Crown Bank* (1912-13), 27 O.L.R. 479, 482, 28 O.L.R. 521; S.C. (1914), 49 S.C.R. 394, 401.

Upon the facts of this case, it was unnecessary to consider the question of the substitution of goods. As the law stood up to the 1st July, 1913, when the present Bank Act came into force, a bank holding securities from a manufacturer could not claim a lien upon goods substituted for those covered by his securities. The new law would apply to all securities given after the 1st July, 1913; and, as the advances made and new securities taken after that date amounted to over \$300,000, and the goods on hand at the suspension were valued at only \$83,687.92, the bank might have a double title to the whole of the goods—it might claim them under the individual securities by virtue of clause (a) of sec. 90 or under the last blanket security by virtue of sub-sec. 4 of sec. 88 and clause (b) of sec. 90.

The validity of the two land-mortgages depended largely upon the credit to be given to the testimony of the then manager of the bank; and the trial Judge had given the manager credit, and had based on his evidence findings in favour of the bank—findings which the Court would not be justified in reversing.

The appeal should be dismissed.