

## The Legal News.

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### VALIDITY OF BAILEE RECEIPTS RECEIVED BY BANKS.

The case of *The Merchants' Bank v. McGrail*, decided by the Court of Review, at Montreal, on the 30th ultimo, deserves special notice, the question involved being one of great importance to banks and to the produce trade of the country. It arose upon the effect of an instrument known as a bailee receipt, given to the Bank by one Henry Parker, a factor and commission merchant, for goods pledged to the Bank at its agency in St. Thomas, Ontario, by Scott, Yorke & Co., of Aylmer, as security for a draft drawn by that firm upon Parker, and accepted by him. On the arrival of the goods at Montreal, the Bank, being desirous of realising thereon, entrusted them to Parker for sale, subject to its order; and received from him a receipt in the following form :

" Received from the Merchants' Bank of Canada, B. L. for 1234 hams, 100 shoulders, and 10 pes. bacon; and I hereby undertake to sell the property therein specified for account of the said bank, and collect the proceeds of the sale or sales thereof, and deposit the same in the said bank, at Montreal, to the credit of acceptance No. 2414, due July 11, hereby acknowledging myself to be bailee of the said property for the said bank.

" Dated at Montreal, the 22nd May, A. D. 1877.

" Signed, HENRY PARKER."

Parker having become insolvent, his assignee (intervening party in the case) claimed that by entrusting the goods to Parker for sale, under the foregoing receipt, the Bank lost all lien on them, and all right to recover possession of them.

The use of these bailee receipts has for a long time past become practically universal in the trade at Montreal, and seems to be both convenient and just; but considerable doubt has been felt as to their validity, as, in the cases in which they are generally made use of, the persons entrusted with the possession of the goods for sale under such receipts are usually the purchasers of them.

There was no difficulty about the facts of the

case in question, which may be stated shortly as follows :

On the 9th May, 1877, the Merchants' Bank, at its St. Thomas agency, discounted a draft for Scott, Yorke & Co., of Aylmer, drawn by that firm upon Henry Parker, at Montreal, and at the time of such discount received, as collateral security for its due acceptance and payment, a bill of lading of the goods mentioned in the bailee receipt already referred to, as being shipped by that firm to the Bank or its order at Montreal. By the delivery of this bill of lading, the Bank, under sections 46, 47, & 49, of the Banking Act, 34 Vict., chap. 5 (1871), became vested with the goods, and had a right to retain them till the draft so discounted, which is referred to in the bailee receipt as No. 2414, should be accepted and paid.

As already stated, upon the arrival of the goods at Montreal, Parker accepted the draft so drawn on him, and the Bank entrusted them to him for sale under the terms of the bailee receipt.

Parker accordingly proceeded with the sale of the goods; but afterwards the Bank, having learned that he was in financial difficulties, requested him to deliver to them the balance of the goods in his hands, and, upon his refusal, they attached them by process of re-attachment.

Parker becoming insolvent, his assignee intervened, and claimed the goods attached as belonging to Parker's estate, relying mainly upon the proposition that Parker, having purchased the goods, they were his property, and that the Bank, being only pledgees, had lost their privilege by surrendering the goods to him, under article 1970 of the Civil Code, which enacts that the privilege subsists only while the thing pawned remains in the name of the creditor, or of the person appointed by the parties to hold it.

On its part, the Bank submitted and argued the following propositions :

1. The firm of Scott, Yorke & Co., and not Mr. Parker, were the pledgors of the goods to the Bank, and the latter could validly entrust the goods for sale to Parker as their factor or agent. His possession was the possession of the Bank, in accordance with the well-known