the evidence, and had had plenty of opportunity to consider it; but it had been taken at great length, and where there was conflict, it was safer to refer to the notes which the parties expressed their desire to have printed, and which appears to have taken some time, for the record was only sent up to me for judgment on the 12th of this month.

Besides this there was a very important point of law raised by demurrer to the declaration, which demurrer had been nominally dismissed, and the same point was raised by another plea. The action had been brought for damages sustained by the plaintiffs by reason of fraud and of misrepresentations said to have been made to them by the defendants while these latter had been directors of the City Passenger Railway Company;—the plaintiffs alleging that they had advanced money to a customer on the security of the stock of this company, and measuring their loss and damage by the difference between the price they were able to get for it when they sold it, and the price they were induced to give by the false representations alleged to have been made by the defendants.

The defendants had all pleaded alike, but separately: and they had all of them first of all put in a demurrer on the ground that the plaintiffs alleged themselves to have suffered the loss in consequence of their having loaned on a species of security which they had no authority to take. This demurrer, as I have said, was nominally dismissed.* I mean that the learned Judge who dismissed it (and I have of course his express authority for the statement) did so, in the main, for a reason of expediency which he explained at the time, and not because he had formed any opinion that the Bank had by law the power to lend on the security alleged. The learned Judge considered that a resort to the various Courts of Appeal, at the commencement of the suit, was undesirable, and that it would be better to reach a final decision on all the points raised before the case went to other courts. He also had doubts, at that time, whether the objection lay properly with the defendants, and he therefore hesitated to overrule a decision that had been given in *Geddes* v. *Banque Jacques Cartier*: but the learned Judge upon the mere question of law, is now of opinion that the Bank had not the power. However this may be, this court now is unquestionably called upon first of all, and before it can proceed further in the case, to decide this point; and I must do so not only because of the question of law which is still before the court on the *fond* of the case, but because the same point is expressly raised by all the defendants in their third plea.

* 2 Legal News, 356.

I have already stated the point to be in substance that the bank had no power to take the stock of the City Passenger Railway Company as collateral security for such a loan, and that no action of damages can accrue to them from a contract which they had no power to make. It is admitted that such a power, if it exists, can only be claimed under the 40th, or the 51st sections (or both) of the Banking Act of 1871 (34 V. c. 5). Those sections are in the following words:—

Sec. 40. "The Bank shall not directly or indirectly lend money, or make advances upon the security, mortgage or hypothecation of any lands or tenements, or of any ships or other vessels, nor upon the security or pledge of any share or shares of the capital stock of the Bank, or of any goods, wares or merchandize, except as authorized by this act; nor shall the Bank, either directly or indirectly, deal in the buying and selling, or bartering of goods, wares or merchandize, or engage or be engaged in any trade whatever, except as dealers in gold and silver bullion, bills of exchange, discounting of promissory notes and negotiable securities, and in such trade generally as appertains to the business of banking."

Sec. 51. "The bank shall not make loans or grant discounts on the security of its own stock; but shall have a privileged lien for any overdue debt on the shares and unpaid dividends of the debtor thereof, and may decline to allow any transfer of the shares of such debtor until such debt is paid, and if such debt is not paid when due, the Bank may sell such shares, after notice has been given to the holder thereof, of the intention of the Bank to sell the same, by mailing such notice in the Post Office to the last known address of such holder, at least thirty days prior to such sale; and upon such sale being made, the President, Vice-President, Manager or Cashier shall execute a transfer of such shares to the purchaser thereof in the usual transfer book of the Bank, which transfer shall vest in such purchaser all the rights in or to such shares which were possessed by the holder thereof, with the same obligation of warranty on his part, as if he were the vendor thereof, but without any warranty from the Bank or by the officer executing such transfer; and nothing in this Act contained shall prevent the Bank from acquiring and holding as collateral security for any advance by or debt to the Bank, or for any credit or liability incurred by the Bank to or on behalf of any person (and either at the time of such advance by, or the contracting of such debt to the Bank, or the