Finance who is in question as well as the banks, if the banks do not live within the terms of the section.

Mr. WHITE: I intend to have a heart to heart talk with the Bankers' Association in regard to these and other matters.

Mr. CARVELL: They will stand a lot of that.

Mr. WHITE: As I read section 79, I agree that banks are absolutely prohibited from holding real estate beyond what is required for their actual use. We have not changed the law in that respect. I think the matter should be drawn to the attention of the banks.

Amendment agreed to.

Section agreed to.

On section 91—interest which may be charged:

Mr. SHARPE (North Ontario): I do not think this clause was given the consideration that it was entitled to in the committee. According to the section as it stands, a bank can charge any rate of interest, and it would be an extraordinary condition of affairs to permit a bank to over-ride the ordinary usury laws and to charge any rate of interest, no matter how necessitous a customer might be. I would respectfully suggest to the hon. Minister of Finance that he should revert to the old section. While it is objectionable inasmuch as it is being violated as other sections in the Act, still in its original form it is not so objectionable as in the present form. In the original section there is a stipulation by which banks cannot charge more than seven per cent; that acts as a corrective.

Mr. WHITE: My hon. friend from North Ontario (Mr. Sharpe) will recall that when this section was under consideration by the committee, I stated that it was entirely acceptable to myself that the section should remain as it was. Other members of the committee, however, were of the view that the section on its face permitted a rate of interest to the banks not exceeding seven per cent. That certainly appears to be the case. I shall read the section as it was originally, that is to say, in the revision of 1901:

> The bank may stipulate for, take, reserve or exact any rate of interest or discount, not exceeding seven per centum per annum, and may receive and take in advance, any such rate, but no higher rate of interest shall be recoverable by the bank.

It seems to me that is as clear a statement that the bank is limited to maximum seven per cent as it is possible to make it in a statute. Notwithstanding that section 91 and the plain language therein contained, the banks have been taking rates of interest in excess of seven per cent and have been taking those rates in advance, following their usual practice. If a man borrows a hundred dollars from a bank for a year at eight per cent, the bank would not give him $100 at the time the loan was negotiated and then take his note for $100 at eight per cent, but would give him $92 and take his note for $100. The banks' practice in taking a higher rate of interest than seven per cent has been sanctioned by a judgment of the Judicial Committee of the Privy Council delivered by Lord Moulton on the 17th of February, 1913, in the case of McHugh versus the Union Bank. I shall only read one section of that decision which seems to confirm the right of the bank to take such rates of interest as may be stipulated for, provided it is taken in advance. This is the quotation:

> The plaintiff must be taken to have known that the bank had no right to stipulate for and no power to recover interest at eight per cent, but he voluntarily assented to that which was equivalent to payment of interest at that rate, and he has no right to recover back any excess which he thus voluntarily paid.

That finding surprised me, for this reason. It proceeds upon the principle of estoppel. If a man agrees with a bank that he will pay eight per cent, he cannot be heard to say that that is not a binding agreement between him and the bank. I should have thought it would be argued in contravention of that that it was ultra vires of the bank to take more than seven per cent. That either was not argued or was regarded as not arguable by the Judicial Committee. The effect of the finding is that a bank may take any rate of interest that is stipulated for, provided it takes it by way of discount and deducts it at the time the loan is made. Take the case of seven per cent under that decision. Suppose that a bank made a loan to a man of $100 with interest at eight per cent, and did not deduct it in advance, and then sought to recover it by action. I think without question, under that decision, the bank would be limited to seven per cent interest. The decision goes further and holds that, if the loan has gone past maturity, only the legal rate of interest of five per cent can be recovered for the period after maturity. If we sum all that up, because the law is not only this section but this decision under it, the law to-day is as follows: If a bank makes its bargain with a man who borrows the money at 8 or 10 or 12 or 20 or 30 per cent, and deducts it at the time the loan is made, the bank's action in doing so is legal under the decision which I have quoted; but, if the bank loans the money upon a note bearing interest at 8 per cent or 15 per cent or 20 per cent, and does not deduct the amount of interest at the time the loan is made, then the bank cannot recover by