The learned Judge makes a distinction between being "insolvable" and being "*en état de déconfiture.*"

Under the articles of the code above cited it is not necessary that defendant should have been "*en état de déconfiture,*" to render the note exigible; it was sufficient that he was "*insolvable.*" The very word used by the learned judge, is the word used in article 1092, "*insolvable,*" and so it has been held in the case of *Corcoran* v. *The Montreal Abattoir Co.*, reported in the 6th vol. of the Legal News, p. 135. The holding in that case was that a company *ceasing to meet its ordinary payments* when they became due, though its nominal assets may be equal to its liabilities, will be deemed *insolvent*, and cannot claim the benefit of the term upon a note not yet due.

It has always been held that the bankruptcy of the firm entailed that of the individual partners. The partners of A. M. Foster & Co. were jointly and severally liable for the negotiable paper bearing the firm's name, which matured from the date of the suspension (18th January, 1883,) to the 24th February, when suit was instituted (Art. 1854, C.C.). Stephenson (one of the trustees) proves that there was about $30,000 of negotiable paper, upon which the firm was liable, overdue and unpaid on that date. In fact, the firm became dissolved by the suspension (bankruptcy) (Art. 1092, C.C.), and defendant was bound to have paid the maturing paper, as if he alone had signed it. The Court, therefore, is with the plaintiff on the first point, and adopting the view of the learned judge who dissolved the attachment, holds that the defendant was insolvent; and under Art. 1092 C.C. the note had become exigible. As to the second point—the right of action on the third day of grace after banking hours—I am with the plaintiff also. The general rule, no doubt, is that the law does not recognize fractions of days; and upon that principle, in a case of *Ste. Marie & Stone** the Court of Appeals held that prescription of a note only commenced after the third day of grace. But here we have to see what effect the law gives to a term of indulgence such as 'grace,' or the days of grace. Prescription certainly runs by entire days; but does that principle of positive law quite satisfactorily dispose of the question as to the point of time when a right of action arises in such a case as this. I think not. Daniel in his work on Negotiable Instruments, vol. 2, p. 214, secs. 1207, 1208 and 1209, discusses the question and winds up by saying: "But there "is still stronger reason to hold that the action "may be commenced after demand and refusal "on the last day of grace, for grace was origi- "nally a matter of indulgence and courtesy, and "not of contract, and it would seem unreason- "able to extend indulgence after the maker has "expressly refused to make the payment on the "last day allowed him. The weight of author- "ity supports the view that suit may be com- "menced on the last day of grace against the "maker." There are, he says, contrary authorities.

When we come to look at our own code, and the statute law which it reproduces, the point seems still more clear. Art. 2319 of our Civil Code says: "Bills of exchange after pre- "sentment for payment, as provided in the 5th "section of this chapter, if *not then paid*, are "protested for non-payment *in the afternoon of* "*the last day of grace.* The protest is held to "have been made in the afternoon of the day "on which it bears date, unless the contrary "appears on the face of it." Turning to the 5th section, we find the same provision as to the *afternoon* of the third day of grace, a particular provision of law applicable to bills and notes, and giving rise to rights, not only on particular days, but *in the afternoon* of a certain day. Then, looking at our consolidated statutes, c. 64, sec. 16, from which Art. 2319 is taken, we find the same thing; but, as I venture to think, more plainly expressed than in the Code. We find the words of the 16th section to be: "If any bill or note is unpaid *at the expiration of* "*the forenoon* of the last day of grace, the "holder thereof may cause the same to be duly "presented for payment, and in default thereof "to be protested for non-payment, and if such "bill or note is payable at a bank (which was "the case here) it may be presented at such "bank, and the demand of payment preliminary "to the protest thereof may be made either "within or after the usual banking hours of "such bank." I confess I am at a loss to see what more can be wanted than a presentment for payment at the time allowed by law, and

* 5 Legal News, 322.