

MANUFACTURERS AS BORROWERS

How New Bank Act's Clauses Deal With Subject—
Borrower's Own Pledge

In view of the protracted discussion of the unregistered pledges or liens, on the security of which manufacturers and wholesale dealers are accustomed to borrow extensively, it will be worth while to take note of the clauses of the new Bank Act dealing particularly with them. The matter is covered by sections 88, 89 and 90, and subsections thereof. For the purposes of this article the discussion will be confined largely to the clauses relating to manufacturers, suggests Mr. H. M. P. Eckardt, in *Industrial Canada*.

The new act interprets "manufacturer" as follows:—"Manufacturer" includes manufacturers of logs, timber or lumber, maltsters, distillers, brewers, refiners and producers, of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise."

This interpretation is identical with the interpretation in the old act, which expired on July 1st, 1913.

Section 88 empowers the bank to lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live stock or dead stock or the products thereof—on the security of the unregistered lien.

Subsection 4 of the new act corresponds with subsection 2 of the old. The wording of this clause has been altered.

Authority to Lend on Grain.

And subsection 2 contains the newly-granted authority for the bank to lend money to a farmer upon the security of his threshed grain grown upon the farm. Subsection 3 deals particularly with the manufacturer. It reads: "The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him, or procured for such manufacture." The wording is identical with that of subsection 3 of the old act.

Then subsection 5 of the new act provides that the security hereinbefore referred to may be given by the owner of the goods; and subsection 6 prescribes the form in which the security is to be given. These subsections correspond respectively to subsections 4 and 5 of the old act. In the old act subsection 6 merely stated that the bank, by virtue of such security, should acquire the same rights and powers in respect to the pledged goods as if it had acquired the same by virtue of a warehouse receipt.

Subsection 7 of the present act, which covers this subject, is similarly phrased; but it contains a rider which provides that the wages or salaries of persons employed by the pledger, for a period not exceeding three months, shall be a charge upon the pledged property in priority to the claim of the bank; and the bank is required to pay such wages, salaries, or other remuneration if it takes possession or disposes of the property.

Section 89 and subsections 2 and 3 are practically the same as in the old act. The section itself provides that when the bank has taken security in the aforesaid manner, or by way of a warehouse receipt, on goods which are subsequently manufactured into a different form, it has the same right and title to the manufactured goods, or the goods in process, as it had on the raw material.

Subsection 2 establishes the claim of the bank to the pledged property in preference to the claim of an unpaid vendor, except in case the unpaid vendor had a lien upon the goods at the time the bank acquired its warehouse receipt, bill of lading or pledge. However, even in that case, the clause states that if the bank is without knowledge of such an existing lien its claim would be superior to that of the unpaid vendor possessing the lien.

Subsection 3 prescribes the steps that are to be taken by the bank to safeguard the interest of its debtor if it proceeds to sell the pledged property in order to satisfy its claim. Provision is made for sale by public auction after due notice.

All these clauses, as remarked above, are practically the same as the clauses of the former act.

Also section 90 and subsection 2 are practically unchanged. Section 90 provides that the bank shall not take security in this manner to bolster up or support an old or pre-existing debt. The borrower's own pledge, the warehouse receipt, or bill of lading, is declared to be invalid in the bank's hands unless the bank loan or advance secured thereby is negotiated or contracted at the time of the acquisition of the security by the bank; or upon the written promise or agreement that the security would be given. And the subsection provides for the conversion of the pledge or the warehouse

receipt into a bill of lading if the goods are shipped; for the conversion of a pledge or a bill of lading into a warehouse receipt, and for the exchange of one bill of lading for another.

In the course of the bank act discussion before the banking and commerce committee, Mr. H. C. McLeod stated that he considered the unregistered lien to be more in the interest of the borrower than of the bank. He said if registration was required many applicants for credit would be refused and many business men who now borrow in that way would never apply for the credits.

Mr. Gordon Waldron, in his evidence, was more disposed to dwell upon the possible injury to outside creditors when the bank has a secret lien on the manufacturer's assets. The minister of finance, in seeking Mr. Waldron's views, stated that as he understood it the business done under section 88 was as follows: "A manufacturer obtains his raw material and desires to pay cash for it. He obtains a loan from the bank to make that payment. He gives a lien to the bank on that raw material, and that lien is a continuing lien upon that raw material, transformed into the finished product, and until sold; and then the bank debt is liquidated."

Mr. Waldron insisted that the process was somewhat different. "What takes place," said he, "is that the debtor buys merchandise for the purpose of manufacturing it into goods. He receives from the bank money to pay for it and gives the lien upon it. He manufactures the goods, or partly manufactures them, and renews the lien. The goods disappear and other goods come in; and, in practice, track is lost entirely of the original goods, but the lien is made to cover other goods and all goods that he may have in his possession then or thereafter."

His claim was that the exercise of this banking function tended to unduly stimulate manufacturers and to fix banking assets which ought to be liquid. This witness also enlarged upon the matter of the injury done to outside creditors of the manufacturer in some cases when the bank had a secret lien covering practically everything.

Facilities for Manufacturers.

Mr. Joseph Henderson, vice-president of the Bank of Toronto, explained to the committee the circumstances under which the unregistered liens were added to the banking law. They were introduced at the time the national policy was adopted. "The Government desired to give greater facilities to manufacturers, and the impelling motive that led to these clauses being put into the act was to enable the manufacturers who had to put a great deal of capital into buildings, and who required an additional amount of working capital, to carry on their business; it enabled them to go to the bank and upon the security of their raw material they could obtain an advance to cover the period of the working up of these goods in process of manufacture and distribution." He says the original intention was to keep this confined to large transactions by fairly large manufacturers who had capital; and he thought the practice should not be carried too far.

Sir Edmund Walker also gave an explanation of the working of the lien in connection with manufacturers' accounts. He began by saying that the manufacturers of Canada are well enough off not to need this kind of help now to any great degree. He then took the case of the maker of an article in which wood and steel enter largely, and which is made up and sold to the farmer at a certain season. Quoting from his evidence: "The expense of buying the raw material and paying for the wages goes on from the beginning of the manufacturing season until the moment when the goods are delivered, and even then the bank has to wait, of course, the final payment by the buyer of the article. In the early days when a manufacturer began with a capital of \$50,000—and that was quite a large capital then—he might turn out products in one year to the extent of \$200,000. And the banks in those days might lend \$125,000 or \$150,000 to a manufacturer whose capital was only \$50,000, on his pledge, when they saw that the money they lent was used in payment of the lumber, the steel, and the wages."

While he thought the clauses are not now so much needed perhaps as in former days, Sir Edmund considered that it would be a great harshness to the small manufacturer who is trying to start in competition with the larger concerns, if through the abolition of these clauses of the Bank Act he was prevented from getting the same kind of help that his competitors once had.

The Furness liner *Queen Wilhelmina* recently arrived at Montreal from Hamburg with a full cargo of beet-sugar, consigned to the Canada Sugar Refining Company. She is the fifteenth sugar-boat to arrive there this season, though most of the former vessels with sugar as their cargo have come from the West Indies. The next arrival will be that of the direct liner *Serrana*, which sailed from Barbados for Montreal on October 18th.