

of bailment, the fact that the products lose their identity on delivery, as in the McClean Grain case, is a strong indication that the parties intended the contract to be one of sale and, therefore, that the producer did not retain title to the products.

In the McClean Grain bankruptcy, the Trustee asked the Courts for advice in respect to the ownership of certain grain and soya beans delivered by various farmers prior to bankruptcy and also with respect to certain purchases thereof from McClean Grain by other parties.

This application was adjourned pending the taking of a reference before His Honour Judge McCallum in London, Ontario, as to the ownership and this reference specifically excluded any determination of the validity of the bank's Section 88 security. Title to all but a relatively small amount of the grain and soya beans was found to have passed from the farmers to McClean Grain Ltd. and none was found to have passed in the purchase thereof from McClean Grain Ltd. by other parties. All the parties other than the Trustee in Bankruptcy and the bank appealed Judge McCallum's findings but eventually a settlement agreed to by the creditors was submitted to and approved by the Court providing in effect for a preference among the general creditors to the farmer claimants and also to the certain purchasers of grain previously mentioned.

The bank took no part in the settlement discussions, made no contribution to the settlement, and received nothing from it as loans were repaid from other sources. No part of moneys received by the Trustee on disposition of grain and soya beans immediately after the bankruptcy was in any way received by the bank and, no doubt, a portion of such proceeds was used by the Trustee in Bankruptcy to make the preferential payments agreed upon in the creditor's settlement.

Mechanics' Lien Legislation

The view has been expressed that while the terms of Bill C-5 are of course not completely identical with the provisions of Mechanics' Lien Act legislation in effect in certain provinces, there is an analogy. Based upon that view, the question was asked whether when the Mechanics' Lien Act was introduced in the respective provinces, The Canadian Bankers' Association raised any objections.

Generally speaking, mechanics' lien legislation gives the workman or materialman a lien against land, subject to various stipulations. When the legislation was introduced many years ago banks were not permitted to lend against the security of land and, of course, this is still the case. Therefore, banks were not in the class of lenders affected by such legislation and would have had no cause to object to it. In passing it should be noted that mechanics' lien legislation recognizes and preserves the security of a lender who has a prior mortgage, and such lender, when advancing money under his mortgage, is able to protect his priority against liens.

The question no doubt also relates to the trust provisions of the Mechanics' Lien Acts which are found in the Acts for the Provinces of New Brunswick, Ontario and British Columbia. Similar provisions are found in the Builders' and Workmen's Act of Manitoba. There are no such provisions in the Acts of the other provinces as far as we are aware.

The trust provisions, which have had a serious effect on the banks, were added in more recent years (Manitoba—1932, Ontario—1942 and British Columbia—1948). These provisions did not go unnoticed and, to illustrate, the C.B.A. counsel in 1942 warned the banks of the implications and difficulties that might arise for the banks in financing contractors. While the banks were on the alert because of this warning, in point of practical experience the