

it, turning upon the terms of a certain agreement between the banks, the validity of which was questioned on behalf of certain shareholders.

The Referee, with the consent of counsel representing all parties concerned, proceeded to determine in limine the question whether or not the agreement was valid and binding, in whole or in part, upon the Ontario Bank and its shareholders, and be determined and found that it was valid and binding so as to form a sufficient basis for taking the account.

The only substantial objection to the validity and binding effect of the agreement was that it was in reality a transaction of sale by the Ontario Bank and a purchase by the Bank of Montreal of the assets of the first-named bank; that it fell within the provisions of secs. 99 to 111, inclusive, of the Bank Act, and was not legally made or legally consummated in accordance with those provisions; and was *ultra vires*.

The Referee was of opinion that the transaction did not fall within those sections; that it was an arrangement which was within the powers of the board of directors to enter into; that it was binding; and that the Bank of Montreal was entitled to make proof of its claim against the estate of the Ontario Bank upon the footing of it.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, and MACLAREN, J.J.A.

J. Bicknell, K.C., and G. B. Strathy, for the liquidator.

I. F. Hellmuth, K.C., J. A. Paterson, K.C., and Glyn Osler, for W. J. McFarland and other shareholders.

W. Nesbitt, K.C., J. J. Gormully, K.C., and J. A. Worrell, K.C., for the Bank of Montreal.

MOSS, C.J.O.:— . . . No question arises of priority over other creditors: neither does any question as to the right of the Bank of Montreal to a preferential or privileged claim against the assets. The claim is simply as a creditor of the Ontario Bank now in course of liquidation in due course of law.

It is, of course, common ground that the transaction in question was not carried through in conformity with the requirements of the above-mentioned sections of the Act. The question is, whether it was of such a character as to call for compliance with those requirements. . . .

There was no intention on the part of any of the parties concerned to enter into and carry out a transaction which would involve recourse to the provisions of these sections.