BANKING & FINANCIAL NEWS.

TO PROSECUTE DIRECTORS?

Ontario Bank Shareholders Place the Matter in the Hands of Committee.

To proceed with the action against the former directors of the Ontario Bank, subject to the approval and concurrence of a special committee, consisting of Messrs. E. R. Wood, W. T. White, Barlow Cumberland, J. J. Cormaly, and A. Bruce, K.C.; and to use the funds of the bank for that purpose.

After an unusually heated debate, this was the result of the meeting of the shareholders of the Ontario Bank, held at the head office, Toronto, on Wednesday. This decision is a modification of the action proposed in the resolution originally submitted to the meeting.

The amended resolution, which was carried unanimously, reads:—

"The shareholders hereby approve the action of the directors in instituting legal proceedings against the late directors of the bank, and hereby authorize the board of directors in their judgment, and with legal advice to incur what expense may be necessary and expedient to prosecute the suit and to use the funds of the bank for that purpose, or to borrow from time to time any moneys which may, in their opinion, be necessary; but that the question of further proceeding be subject to the approval and concurrence of the committee named above, and that such committee be given access to the opinions of counsel, to the evidence collected, to the books and records of the bank and to the information in possession of its officers, and that the directors act in accordance with the advice of the above committee or a majority thereof. Vacancies in the committee by death or resignation may be filled as they occur by the remaining members or a majority of them."

In the absence of Mr. Hammond, president of the bank, Mr. E. R. Wood, occupied the chair. Mr. Hammond, he explained, was abroad, and the doctor would not allow him to return to Canada until the summer. Mr. Wood went on to state that under ordinary circumstances the directors of a bank would have the right to take proceedings such as proposed, without special authority of the shareholders, if, in their judgment, such proceedings were in the interests of the shareholders. But in this instance, the Bank of Montreal had assumed the liabilities of the Ontario Bank, and the Bank of Montreal in turn was guaranteed to a certain extent by other banks. It was necessary, therefore, to have the approval of the curator, Mr. Stavert. Mr. Stavert would not sanction the suit unless with the consent of the shareholders for the following reasons:—

Why Shareholders' Consent Was Necessary.

The liquidation so far makes it almost certain that the shareholders will be called upon for a part, if not all, the amount of their double liability; the Ontario Bank has no funds for the purpose of proceeding against the former directors; if any funds are secured for the purpose of the proceedings they must be obtained from the Bank of Montreal; and if the Bank of Montreal makes such advances, the liability of the shareholders will be increased by that amount.

Mr. Cephas Goode then moved the original resolution, which Mr. J. A. Latimer seconded. Mr. Barlow Cumberland moved the amendment to the effect that the question be left with the committee named above, and Mr. E. B. Osler seconded this.

Hon Richard Harcourt, whom, it will be remembered, made a long speech at the previous meeting, addressed the shareholders for about thirty minutes. He cited two cases which he considered very similar to the present. One, a Quebec case, in which Prefontaine sued Grenier, a bank president, for misrepresentation. The plaintiff considered the affairs of the bank had been negligently managed. He thought there was insufficient inspection. This case had gone to the Privy Council, who had tried scores of suits—involving the liability of directors. It was found that they had done everything under the guidance of trusted officials of the bank and were, therefore, not liable. Then there was the decision in the Yarmouth case.

Mr. Goode. "That case is in appeal."

Mr. Harcourt. "I am accustomed to stating facts, and had not overlooked that. Here is a Canadian case similar to that of the Ontario Bank. Is it not wise to hear the final arguments of that case before proceeding further with this?"

"No, no."

"Two or three say 'No, no,'" observed Mr. Harcourt, "but two or three may say 'Yes, yes.'"

Mr. Harcourt asked if anything was known in the whole past life of the directors—all of middle age—which would impugn their sworn testimony. "I knew nothing of the trading in stocks which was going on," he declared. "None of us knew of it."

"Does your transfer book show that?" asked Mr. Charles Livingston, of Kingston.

"The courts have held that it is not the duty of a director to turn over a leaf," declared Mr. Harcourt.

Duties of a Director.

"What are his duties then?"

"I came regularly to the meetings of the bank," continued Mr. Harcourt, "four times out of five. Sometimes I asked a question for an explanation. I did that from 1901 to 1905. What else would you expect me to do?"

"Resign."

"There are directors of the Bank of Montreal," was the rejoinder, "who never attend a meeting, and who are three thousand miles away from the head office. What should they do?"

"Resign," was the reply again.

"Custom is on my side," Mr. Harcourt went on. "I devoted one hour per week, from those of a crowded life, to the affairs of the Ontario Bank."

"You should not have recommended a person to buy Ontario Bank stock six months before the failure of the institution, nor have said that the dividend would be increased," suggested Mr. Livingston.

"I am glad that has been mentioned," replied Mr. Harcourt. "Fact all goes to show that I believed the bank to be in a sound condition." Mr. Harcourt then referred to the Sovereign Bank and the statement of Mr. Aemilius Jarvis six months before the collapse of the institution, that the bank was in good condition.

"If I or my colleagues," concluded Mr. Harcourt, "have done anything dishonorable or discreditable in connection with the affairs of the Ontario Bank, I ask the shareholders and the officials of the bank to say so this hour. I can say that nothing can be laid either to my charge or to that of any other director."

Facts for the Prosecution.

A shareholder asked on what grounds it was hoped to obtain a conviction against the former directors. Mr. Bicknell, the solicitor for the bank, replied that it would not be proper to give the grounds. "We have collected a number of facts. They may or they may not, be sufficient. We may succeed, and we may not. In similiar cases, directors have been held liable; for instance, in the Glasgow Bank case they were all held liable."

Mr. G. F. Macfarland said that the shareholders were not complaining of the time given by the directors to the bank affairs, but that in that time they had not discovered what had been found out since.

Mr. J. F. Ellis, Mr. J. A. Latimer, and Mr. J. F. McDonald, spoke in favor of the amended resolution.

Mr. John Macdonald. "Have the former directors been asked to compromise this matter?"

"No."

Mr. E. R. Wood and Mr. Barlow Cumberland both spoke as to the integrity of the former directors. Mr. Cumberland adding, "We allege nothing improper: this is a question of civil responsibility and not a personal action."

The meeting was largely attended. Mr. P. H. Pope was secretary to the meeting, and Messrs. Andrews and Kerr acted as scrutineers.

It was intended that the directors should appear before a jury, but on Saturday the defendant filed a notice of motion at Osgoode Hall, asking that the case be changed to the non-jury assize. They allege that "owing to the widespread publicity given by the Press to the cases of the King against McGill and the King against Cockburn, and owing to the biased and inflammatory reports and comments of some of the newspapers upon the said case, we verily believe that the defendants in this action will not be able to obtain a fair verdict from a jury upon the intricate questions of fact in issue in this action."

Think Jury had been Biased.

They further state their belief that it would be impossible to select a jury in which some of the members would not be relatives or friends of some of the shareholders, or which would not have upon it some reader or readers of those articles who would be unable to rid himself of their effect. The affidavit also urges that so complicated would be the