

LIEN OF A BANK ON ITS OWN STOCK

Section 77 of the Bank act provides that "a bank shall have a privileged lien for any debt or liability for any debt to the bank on the shares of its own capital stock, and on any unpaid dividends of the debtor, and may decline to allow any transfer of the shares until the debt is paid."

This section was dealt with by Judge Middleton of the Ontario Supreme Court in the case of Lazard Bros. vs. the Union Bank of Canada, where it appeared that one DuVernet made an arrangement with Lazard Bros. in London whereby Lazard Bros. agreed to accept drafts made on them by the Union Bank of Canada upon the strength of collateral security, consisting of 500 shares of the Union Bank to be deposited with the Union Trust Company.

On his return to Toronto DuVernet deposited the bank stock with the Union Trust Company, on the terms arranged, and deposited with the Union Bank a letter from the Trust Company stating that DuVernet had deposited with the Trust Company a certificate for the Union Bank stock with the usual power of attorney to transfer it. Drafts for £30,000 were then drawn by the Union Bank and accepted by Lazard Bros.

When DuVernet's transaction with the Bank was closed he owed Lazard Bros. about £12,000 and Lazard Bros. attempted to hold the Union Bank stock, and, as DuVernet owed the Bank about \$30,000, the Bank claimed that it was entitled to a lien on the stock for that amount under the section of the Bank act quoted above.

Lazard Bros. set up the claim that as they supposed that the stock was held for them by the Trust Company when, as a matter of fact, it still stood in DuVernet's name and was transferrable by him at any time, and the Bank had a lien on the stock for DuVernet's indebtedness to them, it should have disclosed these facts to Lazard Bros.

The Bank, on the other hand, contended that it owed no duty to disclose the facts, and that Lazard Bros. should have inquired as to any lien on the stock and need not have accepted the drafts if dissatisfied with the security, saying, in effect, as the Judge expressed it, "am I my brother's keeper?"

Judge Middleton decided in favor of Lazard Bros. on the ground that it was the duty of the Bank to have disclosed the above facts.

"In this case I have no hesitation in finding that there was a duty upon the part of the Bank to disclose its lien," said the Judge, "that the failure to disclose was fraudulent, in the sense that it was intended to allow Lazard Bros. to assume the liability incident to acceptance of the bills with-

out the security they thought they had. The real enormity if what was done was probably not apparent to the bank officials at the time, for they assumed that Mr. DuVernet could and would meet his obligations. The indignation of the general manager at the failure to disclose the true nature of the certificates was minimised by the pious hope that all would be well—I have no doubt at all that the transaction will be strictly carried out on its understanding—in other words, that Mr. DuVernet will not transfer to some one else in fraud of the Lazard Bros. I cannot help thinking that at that time he would not have thought of setting up the Bank's own claim to Lazard Bros' prejudice.

"Mr. DuVernet's insolvency and death have now made it plain that one of the contending parties must lose; the Bank asserts its statutory right to its lien; and I think that, under the circumstances, I should apply the principle stated by Lord Maclefield. 'Now, when anything in order to a purchase is publicly transacted, and a third party knowing thereof, and of his own right to the lands intended to be purchased, and doth not give the purchaser notice of such right, he shall never afterwards be admitted to set up such right to avoid the purchase, for it was an apparent fraud in him not to give notice of his title to the intended purchaser.'"

TRAFFIC RETURNS

Canadian Pacific Railway

Year to date	1918	1919	1920	Increase
May 31	\$58,185,000	\$61,847,000	\$74,133,000	\$12,286,000
Week ending	1918	1919	1920	Increase
June 7	\$2,846,000	\$2,957,000	\$3,619,000	\$662,000
June 14	2,914,000	3,062,000	3,660,000	598,000
June 21	2,849,000	3,024,000	3,578,000	554,000
June 30		3,977,000	5,000,000	1,083,000
June 30	3,419,000	3,977,000	5,000,000	1,083,000

Grand Trunk Railway

Year to date	1918	1919	1920	Increase
May 31	\$17,909,748	\$36,208,273	\$38,219,006	\$2,010,733
Week ending	1918	1919	1920	Increase
June 7	\$1,012,481	\$1,619,870	\$1,906,529	\$316,656
June 14	1,113,729	1,693,589	1,905,993	262,404
June 21	1,164,354	1,746,055	2,013,144	267,689
June 30	2,411,295	2,196,478	2,926,623	730,165

Canadian National Railways

Year to date	1918	1919	1920	Increase
May 31		\$35,062,837	\$37,798,285	\$2,735,448
Week ending	1918	1919	1920	Increase
June 7		\$1,509,340	\$1,618,195	\$108,855
June 14	\$1,532,519	1,676,264	1,866,517	190,253
June 21	1,574,307	1,435,593	1,820,408	384,815
June 30	2,294,272	1,811,838	2,471,419	659,581