

Graham, E.J., at Chambers.]

[Feb. 18.

IN RE MERCHANTS' BANK OF HALIFAX.

Assessment Appeal Court—Case stated by—Evidence—Bank held not liable to assessment on increased capital not required for local business.

Case stated by the Court of Appeal on assessment for the City of Halifax, under s. 343 of the City Charter for the opinion of a Judge. The Bank had increased its capital from \$900,000 to \$1,500,000. The increases were authorized by a resolution of the shareholders, which did not state the object in increasing it, but which gave the directors power to increase from time to time, as they saw fit.

The resolutions of the directors making the increases, in one case stated that the object of the increase was for the purpose of extending the business of the bank in Montreal. In the case of the other increases the object was not stated.

By s. 316 of the City Charter banks are assessed on their paid-up capital, as it was in 1883, when the act was first passed at the rate of $\frac{3}{8}$ ths per cent., and on any increase of their paid-up capital, "provided, however, that in the event of any bank increasing its capital for the purpose of extending its business outside of the city, said bank shall not be assessed in the city on such increased capital." The city assessors had assessed the Merchants Bank of Halifax in respect to its capital, \$1,500,000. The bank appealed to the Court of Appeal on assessment, and before that court the officers of the bank swore that the several increases in its capital were made for the purpose of extending its business outside of the city, and were not required for the business of the bank in the City of Halifax, and gave figures which conclusively showed this to be the case.

The Court of Appeal on Assessment held that the evidence of the officers of the bank to show the object for which the capital was increased was inadmissible, and that the only evidence receivable to show this was the resolution of the shareholders. At the request of the bank they, however, received the evidence, and submitted the question to a Judge of the Supreme Court under s. 343 of the City Charter.

GRAHAM, E.J., who heard the argument, decided that the Court of Appeal was bound to hear the evidence of the officers of the bank, and that under the circumstances the Bank was not liable to be assessed on the amount of the increases of capital, but only on the sum of \$900,000, the amount of its capital in 1883.

R. E. Harris, Q.C., for bank. W. F. MacCoy, Q.C., for City of Halifax.