

TITLE UNDER WAREHOUSE RECEIPTS AND
UNREGISTERED ASSIGNMENTS.

The case of *La Banque d' Hochelaga v. Merchants Bank*, reported in the current volume of the Manitoba Reports, at page 361, "gives rise," in the words of Mr. Justice Killam, "to some new and rather difficult questions under the new Bank Act. That case, as stated in the headnote of the report, is as follows:

"One A., a wholesale purchaser and shipper of dead stock and the products thereof, obtained certain advances of money from the defendants on the security of assignments of certain hog products in the form in Schedule C to the Bank Act; and agreed with the manager of the bank to ticket the goods so as to identify them, and not to sell the goods. He then set apart certain of the goods as belonging to the defendants, and placed tickets over them to indicate this; but afterwards he sold all these goods in the ordinary course of business, and substituted other goods of a like character in their place, placing the same tickets upon them. Subsequently, the plaintiffs, as security for a then pre-existing debt due them from A., obtained an assignment of the same kind as the defendants had taken, covering, *inter alia*, 10,000 lbs. of bacon, but no appropriation of any particular bacon as hypothecated to the plaintiffs was made until about seven weeks later, when, at the instance of an officer of the plaintiffs, A. set apart 10,000 lbs. of bacon out of the pile which had been appropriated to the defendants in the manner above described, and this quantity was ticketed with the name of the plaintiff bank, the defendants' tickets being removed. Shortly afterwards A. absconded, and the defendants took possession of this 10,000 lbs. of bacon under their securities. It was held that they were entitled to hold it against the plaintiffs; and that, notwithstanding the language of s. 75 of the Bank Act, a bank may take securities of the kind provided for by s. 74, even for pre-existing debts, as the general provisions of s. 68 should not be held to be restricted by the language of s. 75 so as to prevent it."

The question arising in the above decision may be stated as follows: If the goods covered by a warehouse receipt or bill of lading indorsed to, or made directly in favour of, a bank under section 73, or by an assignment from the owner under section 74, are fraudulently sold or disposed of to other persons, and other goods