1883
*May 12.
1884
*Jan'y 16.

THE MERCHANTS' BANK OF CANADA ..... } APPELLANTS;

AND

ROBERT HALL SMITH ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Warehouse receipts—35 *Vic., ch.* 5 (*D.*), *Intra vires.*

The appellants discounted for a trading firm, on the understanding that a quantity of coal purchased by the firm should be consigned to them, and that they would transfer to the firm the bills of lading, and should receive from one of the members of the firm his receipt as a wharfinger and warehouseman for the coal as having been deposited by them, which was done, and the following receipt was given:

"Received in store in Big Coal House warehouse at *Toronto*, from Merchants' Bank of *Canada* (at *Toronto*), fourteen hundred and fifty-eight (1458) tons stove coal, and two hundred and sixty-one tons chestnut coal, per schooners 'Dundee,' 'Jessie Drummond,' 'Gold Hunter,' and 'Annie Mulvey,' to be delivered to the order of the said Merchants' Bank to be endorsed hereon.

"This is to be regarded as a receipt under the provisions of Statute 34 *Vic.* ch. 5—value $7,000.00.

"The said coal in sheds facing esplanade is separate from and will be kept separate and distinguishable from other coal.

"(Signed), W. SNARR."

"Dated 10th August, 1878.

The partnership having become insolvent, the assignee sought to hold the coal as the goods of the insolvents, and filed a bill impeaching the validity of the receipt. The Chancellor who tried the case found that the receipt given was a valid receipt within the provisions of the Banking Act, and was given by a warehouseman, and that the bank were entitled to hold all the coal in store of the description named in the receipt. This judgment was reversed by the Court of Appeal for *Ontario*, and on appeal to the Supreme Court of *Canada* it was

*PRESENT.—Sir W. J. Ritchie, Knt., C. J., and Strong, Fournier, Henry and Taschereau, JJ.

1883

MERCHANTS' BANK OF CANADA v. SMITH.

Held (reversing the judgment of the Court of Appeal) that it is not necessary to the validity of the claim of a bank under a warehouse receipt, given by an owner who is a warehouseman and wharfinger and has the goods in his possession, that the receipt should reach the hands of the bank by indorsement, and that the receipt given by *W. S.* in this case was a receipt within the meaning of 34 *Vic.*, ch. 5 (D.)

2. (*Ritchie*, C. J., and *Strong*, J., dissenting), That the finding of the Chancellor as to fact of *W. S.* being a person authorized by the statute to give the receipt in question should not have been reversed, as there was evidence that *W. S.* was a wharfinger and warehouseman.

3. Per *Fournier*, *Henry* and *Taschereau*, J.J., That sections 46, 47 and 48 of 34 *Vic.*, ch. 5 (D) are *intra vires* of the Dominion Parliament.

APPEAL from a judgment of the Court of Appeal for *Ontario* (1).

The facts and pleadings are sufficiently set out in the judgments hereinafter given. See also report of the case in 28 *Grant* 629.

C. *Robinson*, Q C., and *J. F. Smith* for appellants:

The transaction was one strictly within the Banking Act of 1871. See *Royal Canadian Bank* v. *Ross* (2).

The firm of *J. Snarr & Sons* failed to pay the advances made by the appellants, and became insolvent early in March, 1879, and the respondent, who became their assignee, under the Insolvent Act of 1875, has no greater right than the *Snarrs* would have had. *Ayres* v. *The South Australian Banking Co.* (3); *Re Coleman* (4).

As regards the form in which these receipts were given, sections 46, 47 and 48 of the Banking Act of 1871 (34 *Vic.* c. 5 D), under which these receipts were taken, were passed to relieve banks from the strict construction which had been placed by the courts in *Ontario* on

(1) 8 Ont. App. Rep. 15.
(2) 40 U. C. Q. B. 466.
(3) L. R. 3 P. C. 558.
(4) 36 U. C. Q. B. 583.

1883

MERCHANTS' BANK OF CANADA v. SMITH.

the Consolidated Statutes of *Canada*, ch. 54 and amending Act 24 *Vic.* ch. 23 s. 1, (see *Royal Canadian Bank* v. *Miller*) (1), which strict construction had not, however, been followed in the Province of *Quebec*, for in *Molson's Bank* v. *Janes* (2), it was held in the Superior Court at *Montreal*, and afterwards affirmed by the Court of Review, that a warehouse-receipt given by the owner of goods (under 24 *Vic.* ch. 23 before cited, as amending Con. Stat. Can. ch. 54), acknowledging to have received coals into store on account of and deliverable to the order of the bank, transferred the property to the bank without endorsement.

The Act of the Dominion 34 *Vic.* ch. 5, in the enabling part of sec. 46, enacts that a bank may acquire and hold any receipt given them as collateral security for the due payment of any debt which may become due to the bank, under any credit opened or liability incurred by the bank on behalf of the holder or owner of such receipt, or for any other debt to become due to the bank. And by sec. 48, when the warehouseman is at the same time the owner of the goods, etc., any such receipt, or any acknowledgment or certificate intended to answer the purpose of such receipt, shall be as valid and effective for the purposes of the Act as if the person making such receipt and the warehouseman were not the same person.

The credit granted to the *Snarrs* was for a legitimate purpose under the Act, and the receipts were given as acknowledgments intended to answer the purpose of receipts under the Act. The purposes of the Act, for which such receipts are declared to be valid, are to enable the bank to make advances on warehouse receipts, and through other documents specified as collateral securities; and the Act should, to effect this purpose, receive a liberal construction.

(1) 29 U. C. Q. B. 266. (2) 9 L. C. Jur. 81.

The *British North America* Act, by sec. 91, assigned to the Parliament of *Canada* the exclusive right of legislation as to "banking, incorporation of banks, and the issue of paper money," as well as the same right in regard to "the regulation of trade and commerce." What are to be considered "banking" securities, for the purpose of lending money on them by banks, as well as the right to say what constitutes a banking security, and in what manner and to what extent such securities may be taken and dealt with by banks, is a matter pertaining to "banking" as well as to the "incorporation of banks." In the latter aspect, such a question goes to the potential capacity of the corporation, which is the creation of the Dominion Legislature. Such legislation must necessarily affect property and civil rights, and the *B. N. A.* Act, in assigning the subjects under s. 91 to the Dominion Parliament, intended to confer and did confer on it legislative power to interfere with such rights within the province, so far as these latter might be affected by a general law relating to those subjects. *Cushing* v. *Dupuy* (1).

J. MacLennan, Q.C., for respondent:

It is clear that the receipts in question are not such as the statute authorizes. They are signed by *W. Snarr*, and express that the goods are received from the bank, and are to be delivered to the order of the bank. The real owners of the goods are nowhere mentioned. The transaction is a direct transaction between *W. Snarr* and the bank. There was no previous holder, as required by the statute. What is required is that a receipt shall be issued and held by some other person than the bank, and that the bank may require it from that other person. The bank therefore cannot succeed under sec. 46. See

(1) 5 App. Cases 409.

1883

MERCHANTS' BANK OF CANADA v. SMITH.

Bank B. N. A. v. *Clarkson* (1); *Royal Canadian Bank* v. *Miller* (2); S. C., in appeal (3).

Neither can the claim be supported under sec. 48. *W. Snarr* was not a warehouseman within the meaning of the section. He was not a person engaged in the calling of a keeper of a wharf, of a warehouseman, or of a wharfinger. He was a coal dealer. This section is liable to great abuse, and there should be no doubt of a man's calling in any case to bring him within it.

But if he were a warehouseman, the section does not apply, for he was not also the owner of the goods. The goods belonged to the firm, and not to *W. Snarr*, and the section only applies where the warehouseman is also the owner. *Ontario Bank* v. *Newton* (4); *Todd* v. *London & Globe* (5): S. C., in appeal (6).

The provisions of sections 46, 47 and 48, so far as they assume to alter the general law of the Province of *Ontario* in favor of banks, are *ultra vires* and void. At Confederation the general law of *Ontario* was expressed in the provisions of the Consol. Stat. of U. C. 24th *Vic.* ch. 23, and 29 *Vic.* ch. 19, and was applicable to banks as to other persons. This law, as regards the general public of the province, is the same as before, and is now found in R. S. O., ch. 116, secs. 14, 15 and 16.

The Banking Act of 1871 assumes to change this general law so far as banks are concerned. This is clearly not authorized by the provisions of the *British North America* Act, and is void. *The Citizens Insurance Co.* v. *Parsons* (7).

Excluding the alterations made by the Dominion Legislature, the bank's rights must be regulated by secs. 14, 15 and 16 of the R. S. O., ch. 116, and the

(1) 19 U. C. C. P. 182.
(2) 28 U. C. Q. B. 593.
(3) 29 U. C. Q. B. 266.
(4) 19 U. C. C. P. 258.
(5) 18 U. C. C. P. 192.
(6) 20 U. C. C. P. 523.
(7) 7 App. Cases 110.

transactions in question are clearly unsustainable under those sections.

The bank can have no claim for coal disposed of by the *Snarrs*. It was well known they were selling, and it was intended by the bank that they should do so, and they urged the *Snarrs* to sell. *Slado* v. *Morgan* (1); *Re Coleman* (2); *Cockburn* v. *Sylvester* (3).

RITCHIE, C.J.:—

This is an appeal by the defendants against the judgment of the Court of Appeal for *Ontario*, on appeal from a judgment of the Chief Justice of *Ontario*, before whom the action was tried when Chancellor of that province. A decree was made by the Chief Justice in favor of the appellants with costs. The respondent then appealed to the Court of Appeal, which court allowed the appeal, and reversed the decree, with costs. The appellants now submit that the decree was right, and ought not to have been reversed.

The firm of *John Snarr & Sons*, carrying on business at *Toronto*, dealers in coal, was composed of *W. S. Snarr* and *George Snarr*. Their place of business was on the *Esplanade*, in *Toronto*, where they had a wharf and coal sheds on the same premises.

In the summer of 1878, the firm, desiring a credit for the purpose of importing coal, applied to the appellants to grant it to them, and this the latter agreed to do on the understanding that warehouse receipts of the coal so to be imported would be transferred to them.

The circumstances under which they were given and received by the bank were as follows:

The *Snarrs* went to the bank about the middle of July, 1878, and arranged for advances, or a credit of $25,000 on endorsed paper, with warehouse receipts as

(1) 23 U. C. C. P. 517. (2) 36 U. C. Q. B. 559.
(3) 27 U. C. C. P. 34.

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

collateral security on the coal to be purchased with the money. The notes were discounted, and the money put to the *Snarrs'* credit before any coal was bought, but they were apparently not allowed to draw upon the account until some of the coal arrived. They then purchased coal and had it consigned and shipped to *Toronto*; and the vendor's agent at the same time drew a draft for the price, addressed to the bank. The shipping papers and draft were sent to the bank. The *Snarrs* called at the bank, drew a cheque upon their account for a sufficient sum to buy a draft on *New York* for the amount of the draft, and handed this cheque to the manager, or else they wrote across the face of the draft an authority to the manager to charge it to their account. The manager endorsed the shipping bill to the *Snarrs*, which enabled them to get a delivery of the coal from the vessel, and the manager sent a draft on *New York* to the vendors. Afterwards when the coal was unladen at the *Snarrs'* warehouse, they gave the bank a warehouse receipt. It seems that the account was opened by a discount of a note for $7,000. Other similar discounts followed from time to time, and the *Snarrs* afterwards used the account as an ordinary deposit and drawing account for their business operations, as well as for the coal drafts, for which no separate account was kept.

The so called warehouse receipts given were as follows:

> Received in store in Big Coal House Warehouse at *Toronto* from Merchants' Bank of *Canada* (at *Toronto*), fourteen hundred and fifty-eight (1,458) tons stove coal, and two hundred and sixty-one tons chestnut coal per schooners 'Dundee,' 'Jessie Drummond,' 'Gold Hunter' and 'Annie Mulvey,' to be delivered to the order of the said Merchants' Bank to be endorsed hereon.
>
> This is to be regarded as a receipt under the provisions of Statute 34 *Vic.* ch. 5—value $7,000.00.

The said coal in sheds facing *Esplanade* is separate from and will be kept separate and distinguishable from other coal.

(Signed,) *W. Snarr.*

Dated, 10th August, 1878.

The following sections of 34 *Vic.*, ch. 5, provide (section 40) that the bank shall not—

Either directly or indirectly deal in the buying and selling or bartering of goods, wares or merchandise, or be engaged in any trade whatever, except as dealer in gold and silver bullion, bills of exchange, discounting of promissory notes and negotiable securities, and such trade generally as appertains generally to the business of banking.

The same section provides that—

The bank shall not directly or indirectly lend money or make advances upon the security, mortgage or hypothecation (*inter alia*) of any goods, wares or merchandise, except as authorized in this Act.

By section 41:

Bank may take, hold and dispose of mortgages and hypotheques upon personal as well as real property by way of additional security for debts contracted to the bank in the course of its business.

Same rights, &c., bank has in respect of real estate mortgaged to it, to be held and possessed by it in respect of any personal estate mortgaged. And section 48 provides that—

Where any person engaged in the calling of cove-keeper, keeper of a wharf, yard, harbor or other place, warehouseman, miller, wharfinger, master of a vessel, or carrier, curer and packer of pork, or dealer in wool, by whom a receipt or bill of lading may be given in such capacity, as hereinbefore mentioned, for cereal grains, goods, wares or merchandise, is at the same time the owner of or entitled himself (otherwise than in his capacity of warehouseman, miller, wharfinger, master of a vessel or carrier, cove keeper of a wharf, yard, harbor or other place, curer and packer of pork, or dealer in wool), to receive such cereal grains, goods, wares or merchandise, any such receipt or bill of lading or any acknowledgment or certificate intended to answer the purpose of such receipt or bill of lading, made by such person, shall be as valid and effectual for the purposes of this Act, as if the person making such receipt, acknowledgment or

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

certificate or bill of lading, and the owner or person entitled to receive such cereal grains, goods, wares or merchandise were not one and the same person, and in the case of the curing and packing of pork, a receipt for hogs, shall apply to the pork made from such hogs.

The first question which arises, in my opinion, is, does sec. 48 apply to a private person's warehouse who does not hold himself out to the public as filling the character of one of the callings named in the section and with whom the public have a right to deal as such? The language of the Act is, where any person engaged in the calling of cove-keeper, keeper of a wharf, yard, harbor or other place, warehouseman, miller, wharfinger, master of a vessel or carrier, curer and packer of pork, or dealer in wool, by whom a receipt or bill of lading may be given in such capacity as hereinbefore mentioned as set out in the section I have just quoted at length.

I think this section was not intended to permit a person, whose business or calling was not one of those mentioned in the Act, to place goods on his private wharf or yard or in his private store or warehouse, and by giving a receipt, or; more properly speaking, as more applicable, an acknowledgment or certificate, make such a security as this Act contemplates banking companies may acquire and hold as collateral security as provided in the 46th section. The calling of the party being once established, then the form of the acknowledgment or certificate need not be too strictly scanned, if it clearly appears on its face to have been intended to answer the purpose of such a receipt as the statute contemplates, which the documents in this case clearly do; for though certainly awkwardly given in the form of a receipt, an awkward attempt at literal compliance with the statute, I see no reason why they may not be fairly treated as an acknowledgment or

certificate, it being by the instrument expressly declared "this is to be regarded as a receipt under the provisions "of the statute 34 *Vic.* ch. 5, value $7,000." Nothing could more clearly show that this was, in the words of the statute, "intended to answer the purpose of such receipt," and by which no person could be misled.

I am therefore driven to enquire whether *W. Snarr* who signed the receipt was a warehouseman within the meaning of the statute, or *John Snarr & Sons*, if the receipt can be considered as signed by or for them. It is not pretended that *W. Snarr* carried on any business other than as one of the firm of *John Snarr & Sons*. I have read the evidence with great care, and I fail to discover anything whatever to show that *Snarrs* or any of them were warehousemen in the sense contemplated by the statute, they were wholesale and retail dealers in coal, pure and simple, and the bank dealt with them as such.

The very object of the transaction between the bank and *John Snarr & Sons* having been to enable the latter to carry on such their business as usual by supplying them with the means of doing so, that is, to enable them to procure coal for the business—such advances to be repaid out of the proceeds of the coal sold in the course of such business—the business was so carried on, the manager of the bank urging that sales should be made, though he does wish it to be understood that the sales were not to be made without his sanction, nor without his receiving the proceeds. No doubt the bank expected to obtain, and supposed the acknowledgments they held would secure to them, the proceeds; but the conduct of the manager and all the testimony in the case forces me to the conclusion that the sole business of the *Snarrs*, during the period of these transactions, was that of dealers in coal, which was carried on by them in dealing with the coal in question as usual, sales by

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

wholesale and retail being openly made without any objection on the part of the bank, and with nothing whatever in the slightest degree indicating the character of warehousemen apparent in the business.

The very nature of the transaction is entirely inconsistent with that of warehousemen. *Snarrs* were not to hold these goods as warehousemen hold goods. They were to carry on their business by selling the goods. No doubt, both parties may have intended to secure the bank on the coal for the advances made by the bank and ultimately to pay the bank out of the proceeds of this coal, but this could only be done under the statute, in the manner therein prescribed; and as the statute in my opinion clearly applies only to persons engaged in the callings named therein, in which enumeration dealers in coal are not to be found, the *Snarrs* could not secure the bank in the manner they attempted to do. It has been argued that there was evidence to show that *Snarrs* were warehousemen outside of the coal business, but, in my opinion, there is nothing in the evidence to justify this contention. Let us refer particularly to the evidence as to the business carried on by *John Snarr & Sons*.

Cooke, the manager of the bank, is examined, and thus answers the questions put to him:—

Q. *Snarrs'* business was that of coal dealers? A. Coal dealers and wharfingers; I believe they received stone and different things of that kind on consignment or to store.

Q. Whereabouts? A. On the same wharf where they stored their coal; I think their books show; their clerk showed me once a book containing it, and Mr. *Snarr* himself told me so if that is anything.

Q. But so far as your transaction with them, their business was buying coal and selling it wholesale and retail? A. I think so.

Q. Had they the carts for taking it around the city in the ordinary way? A. I believe so.

Q. You will have to produce your ledger I am afraid? A. Well, the ledger won't show it.

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

Mr. *Robinson*.—Mr. *Snarr* told you they were transacting what sort of business? A. That they were wharfingers who made a considerable sum per annum by storing stone and selling coal in consignments; I do not know whether it was Ohio stone or what stone, but storing it and I think to sell.

Augustus C. Myers, in the employ of *Snarr & Sons*, in June, 1877, and book-keeper from February, 1878, a witness called by the defendants, is asked:

Q. What business was *Snarr* carrying on besides buying and selling coal? Were they doing warehouse business? A. They had some iron stored on the dock and they charged for the storing of that, and there has been one or two loads of stone put there.

Q. Stored with them do you mean? A. Put there to dock and h ul away in a few days.

Q. Did they charge for it as wharfingers or warehousemen? A. Yes.

Q. And did they store much iron for the *Rochester* Iron Company? A. Well, they did; there was none since the latter part of, since 1876.

And again:

Q. What was the name of their business? A. Dealers in coal and wood.

Q. What was the character of their business, was it wholesale or retail? A. Both.

Q. And had they carts teaming about the city? A. Yes?

Q. Supplying customers? A. Yes.

Q. And when they would sell wholesale how would that be carried out? A. Well, they would ship by cars, load cars for other places, and when they would send up to the asylum in large quantities.

Q. And how much would it take to make a wholesale transaction? A. 10 tons or upwards.

Q. You do not mean selling to dealers? A. Well, to dealers in other places; *Rimer* was a dealer.

Q. He sold to *Rimer* who was another dealer and they shipped coal to other places. A. Yes.

Q. I suppose that must have been perfectly well known to any person who took notice to their business, the way it was carried on? A. Yes.

Q. That was an open transaction and no secrecy about it? A. No.

Mr. *McCarthy*.—You spoke about the business they were carrying on as wharfingers two years ago, that they had stored some stone or

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

iron there? A. Some iron; I take from the book the date but there was one cargo received since I was there.

Q. When was the last cargo? A. In August, 1877, the schooner "Falcon."

Q. Then they stored that as wharfingers? A. Yes, and they got so much a ton delivered.

Q. Was it for keeping it or receiving it on the wharf? A. Well, for receiving and delivering.

Q. Did they deliver it? A. Yes.

Q. Where did they deliver it to? A. It was subject to the order from the bank of *Hamilton*, it was on account of the *Rochester* Iron Company, and the bank of *Hamilton* had the charge of it.

Q. Were they at any expense delivering it? A. They carted it away on carts principally.

Q. That was the only transaction of that kind while you were there? A. Yes.

Q. They had a yard in which they stored coal which they bought and deposited too? A. Yes.

Q. But they did not store coal or wood for anybody else? A. No.

Q. What about the stone? A. There was some stone went across the docks also in the same way; it was put on the docks and some sand for *Gurney*.

HIS LORDSHIP.—Are you saying that they are wharfingers and yet dealers?

WITNESS.—There was some sand received for *Gurney* that they received 50 cents a ton, that they received and delivered up to *Gurney's* foundry.

Q. In regard to this wharf matter, Messrs. *Snarrs* had a wharf there? A. Yes.

Q. And on that wharf they at one time stored some stone for which they charged? A. There has been stone on the wharf.

Q. They received it and delivered it? A. Yes.

Q. And I suppose they charged for the time they kept it there? A. They charged so much a toise; that was charged as delivered.

Q. Then in regard to the iron, they had that on how many occasions? The first iron was there from the time *Milloys* gave up the dock to *Snarrs*.

Q. That would be February in what year? A. In 1876.

Q. It was left there by *Milloys* and turned over to *Snarrs*, and the second iron was in what year? A. August, 1877.

Q. Both lots of iron belonged to the *Rochester* Iron Company? A. Yes.

Q. And how long did it remain there? A. The last of it appears to have gone out April 30th, 1878.

Q. How long would it have been there at that rate? A. About eight months.

Q. And they charged, I suppose, for storing during that time? A. 50 cents a ton.

Q. And as far as you know is that all the business they did in storing for people? A. Excepting sand that was received for *Gurney*, and carted up to his place.

Q. And they charged for that? A. Yes.

Then as to his dealings with the coal in question, he thus answers the questions;

Q. How was that coal sold? A. In all quantities; from half a ton up to 100 tons.

Q. And when was it sold that way, on through from the 2nd of August? A. Yes.

Q. And these sales were going on from the time the coal was brought in in the ordinary course of their business? A. Yes.

Q. And that was in the ordinary course of their business, from half a ton up to 100 tons? A. Yes.

Q. And any person taking any interest in the way their business was managed could see that? A. It was all open as far as I was concerned.

Q. It was not all sold just the last month or few months, or six weeks before *Snarr* absconded? A. No.

Q. But you were selling up to the very time that he absconded? A. Yes.

Q. Were you selling in large or small quantities? A. Both wholesale and retail.

Q. Were you selling 100 tons at a time? A. Not very often, we were shipping by cars, 10 or 20 tons, and were also delivering through the city, but we make a regular abstract from the delivery book.

Then as to *Snarrs'* dealing with the coal in question, the manager of the bank says:

Q. It was the intention all along that this coal should be disposed of and out of the proceeds the notes should be paid; that was your idea? A. Yes.

Q. That was the reason the notes were taken at three or four months so as to give an opportunity for disposing of it? A. Yes.

Q. Was it expected that the coal would be sold during the currency of the notes? A. Yes, that was the intention and the idea.

Q. Well, then, when the notes matured, but one was partially paid and the others were renewed in full? A. Yes.

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

Q. Were they all four months' renewals, the first notes, were they four months? A. I think they were all four months.

Q. What excuse was given for not paying, coal had not been sold or what? A. Some contracts that he had expected to get and had not; he said he expected some large contracts which he had not been able to get.

Q. Did you take any means to see if the coal was there or not? A. Well, I did not take any special means of getting it measured or examined by any expert.

Q. Did you do anything? A. I went down to the yard once or twice.

Q. When the renewals were made? A. No, not at the special moment?

Q. Were you pressing him to sell so as to retire the paper? A. I repeatedly urged him that I hoped he would get the contracts closed so that we could get the money.

Q. By getting his contracts closed you meant that he should dispose of the coal? A. Yes.

Q. And you expected the coal to be sold and in that way to pay the notes? A. Yes.

Q. Did he renew again, or was that the last renewal? Had he absconded before these notes were renewed? A. Yes; they were only renewed once, they were current at the time.

Q. One note was due in November and he absconded in the beginning of March? A. Yes; I think one note fell due shortly after he went away.

Q. Nothing had taken place in the interval during which the notes were current? A. I urged him repeatedly.

Q. What did you say to him? A. I asked him why he could not sell the coal, why he did not get the contracts, and he said it was a very bad time to sell coal, and he had failed in his endeavour to get these contracts, that he expected to sell it shortly, and gave me various excuses from time to time; I pressed him to try to get offers for the coal.

Q. As a matter of fact the coal was sold very largely? A. Yes.

Q. And no return had been made to you for it, that was the fact? A. I believe it was so.

Q. It is said that you urged him to sell the coal; were they authorized to sell it without your authority? A. No; I did not expect that they would make any contracts to sell it without I authorized it.

Q. And in regard to the sales, had they any authority by which they could sell this coal retail? A. No, not at all, but I permitted them to sell the coal of the "*E. P. Dorr;*" that was the only case in which I authorized them to sell; I do not recollect any other.

Q. Then I suppose other sales would have been made if they had been large sales? A. I expected they would have come and told me, and I would have taken the notes if good.

Q. But they had no authority to sell otherwise? A. No.

Q. In other words, did you give them any authority, generally speaking, without reference to you? A. Not at all.

MR. MCCARTHY.—Was there any bargain of that kind, or why do you say that? A. I have shown you already that I was very particular in transacting this, and I certainly had many conversations with them.

Q. I ask you when you made this arrangement if you ever made any such arrangement with the *Snarrs* that they were not to sell coal without authority? A. I did not say that they were to sell without my authority, but I expected.

Q. Was there any such arrangement made? A. Yes, there was an arangement made.

Q. During what time? A. During the currency of these notes.

Q. Tell me about the date? A. During the currency of these notes.

Q. Well, the currency was six or seven months? A. Well, say four months—I say the first four months.

Q. Do you swear that? A. Yes.

Q. That what was said or done? A. That I repeatedly asked *Snarr* if he could not sell some of this coal to pay these notes, and he gave me various reasons that he had not been able to sell and so required to renew the notes.

Q. You told Mr. *Robinson* that you had a right to control the coal? A. Yes.

Q. I want to know by what power or agreement you had the right to control the coal? A. I would not pass a cheque of his.

Q. I understand that you were urging him to sell the coal? A. Yes.

Q. That was a different thing from telling him that he could not sell it without your authority? A. He spoke of the parties to whom he could sell, and I told him that if he could sell the coal to these parties to do it.

Q. Then you were urging him to sell to different parties? A. Yes.

Q. Was there anything else—did you ever tell him that he was not to sell coal without your authority and consent? A. I not know that I told him in so many words.

Q. Then you did not tell him in so many words—you did not tell him in any other way? A. Why, I told him by refusing.

Q. Did you tell him in so many words or in any other way that he

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

was not to sell the coal without your authority? A. I do not remember in so many words.

Q. You were urging him to sell the coal? A. To certain parties; he said he expected a large contract from the hospital.

Q. And what did you say to that? A. I urged him to sell.

Q. And anything else? A. There were other large firms that he hoped would buy from him.

Q. And you urged him to sell? A. Yes, and he was to give me the paper, or promised me the notes of those parties.

Q. Will you, on your oath, say that you told him at any time not to sell any coal without your consent? A. I do not know that I will say that.

Q. He told you of different parties and you urged him to sell coal to these different parties? A. Yes.

Q. And you were anxious that he should sell the coal to these parties? A. Yes.

Q. Did you ever ask him who he was selling to, or tell him he was not to sell? A. We had many conversations about it.

Q. I want to come at this: you are aware that he was retailing the coal? A. Yes; retailing some coal.

Q. Did you know? A. I did not know whether he was retailing hard or soft coal.

Q. Did you know that he was not retailing this coal? A. That is a strange question to ask; I did not know that he was.

Q. Did you interest yourself in the least? A. I did, as far as it was necessary for me to do.

Q. In what way? A. I tell you by asking him if he could not sell to these parties he mentioned.

Q. Did you take any means of seeing that he was not disposing of this coal? A. No.

Q. Did you ever ask him whether he was not? A. I did not.

Q. But you knew he was selling the coal? A. Yes.

Q. And you never took any means of seeing that he was not selling this coal, is that correct? A. No; I went down to his place once or twice.

Q. You said a moment ago that you took no means to prevent him selling this coal, is that true? A. Yes; I did not take any means to prevent him selling the coal because I did not know that he was selling and therefore did not think it necessary to take any means; I had no idea that he was selling our coal.

Taking the whole of this testimony together, it seems to me clear beyond a doubt that the business carried on by *Snarrs* was that of coal dealers, and coal dealers

alone, and that there is nothing whatever to justify the conclusion that these *Snarrs* ever carried on the business of warehousemen, or, at any rate, that they were warehousemen at the time of this transaction, or in reference thereto. The mere fact of their having in two or three isolated instances, two or three years before this transaction, received, under exceptional circumstances, goods to sell on consignment, or received articles to transmit and to deliver, would not justify their being treated as "engaged in the calling" of warehousemen or any of the callings specified in the statute, more especially as they do not appear to have, in any way, held themselves out as warehousemen, or ever even to have previously to this transaction given a warehouseman's receipt or document in any such capacity, but who, on the contrary, carried on a well known and well established business of an entirely different character, and in furtherance of which the transaction in question had reference, and which cannot make them, in my opinion, warehousemen in the sense of the 48th section, so as to enable them to give, or the bank to accept, the security contemplated.

As to the effect on the public of allowing parties, carrying on business of coal dealers, to give valid and binding receipts or acknowledgments of this kind, it is, in my opinion, contrary to the spirit and policy of the law, and calculated to lead to confusion in mercantile dealings and disastrous results to innocent parties; for, if these receipts are valid securities in the hands of the bank, what is to prevent the bank from following the coal and claiming its value from innocent purchasers from *Snarrs*, on the ground that *Snarrs* had wrongfully sold the coal on which the bank held a valid and binding security, and of which such wrongful sale could not deprive them? Surely to such a claim, could not the innocent pur-

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Ritchie, C.J.

chaser reply with crushing effect: *Snarrs* were not engaged in any of the callings mentioned in the statute, but were openly and notoriously engaged in the business of wholesale and retail dealers in coals and none other, in which capacity I dealt with them, and they could not give such a security as the bank claims to hold, therefore the sale was good and sufficient to pass the property.

It is abundantly clear that the bank cannot recover in this action unless the security they claim to hold on these coals is strictly within the provisions of the statute, the statute expressly declaring that the bank shall not directly or indirectly deal in buying, selling or bartering goods, and shall not directly or indirectly lend money or make advances or loans upon the security of any goods, wares or merchandise, otherwise than that in accordance with the statute and as authorized thereby.

STRONG, J.:

I am unable to agree with the learned judges of the Court of Appeal, who held that the documents called warehouse receipts under which the appellants claimed title to the coal in question in this suit were not good and valid instruments of title under the 48th section of the Banking Act of 1871. That they were intended to be effectual under the statute is declared on their face. The statement that the coal had been received from the bank was in a sense true, since it had originally been consigned to the bank By the words "to be delivered to the order of the said Merchants bank" the *Snarrs* expressly acknowledged that they held the coal as the property of the bank. I am therefore of opinion that these instruments were acknowledgments intended to answer the purposes of a receipt within the meaning of those terms as used in the 48th section of

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Strong, J.

the Banking Act of 1871. I differ from the learned judges of the court below, who held that, in order to make a receipt, acknowledgment, or certificate, given by any of the persons engaged in the callings mentioned in this section, who are also the owners of the goods, effectual, there must be a person interposed between them and the bank, and that the acknowledgment cannot be directly given to the bank. It is declared that an acknowledgment, certificate, or receipt, given by a wharfinger, or warehouseman, who is himself the owner of the goods, shall be as effectual as if he were not both owner and wharfinger or warehouseman, and if the owner and wharfinger or warehouseman were not "one and the same person" then such a receipt or acknowledgement as this given to the owner would be a valid charge upon the property in the hands of the bank if transferred to it by indorsement. I consider that the statute cannot be construed as requiring an indorsement in the case of an acknowledgment given by a warehouseman owner, for such a form would be inappropriate and meaningless. What I consider this 48th section to authorize is, that an owner, who is engaged in the calling of a warehouseman or wharfinger and has the goods in his own possession, may, by a certificate or acknowledgment given directly to the bank, effect the same purposes as may be attained by a receipt given by a warehouseman to the owner (when they are different persons) and by the latter transferred to the bank. This is the only sensible construction which we can place on the statute and we are bound to interpret it *ut res magis valeat quam pereat*, which we should not do if we held otherwise.

To say that there must be a person interposed between the bank and the wharfinger, for which no good reason can be suggested, would be to add to the words of the sections, which do not point out to whom the acknow-

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Strong, J.

ledgment or certificate is to be given, but merely say that any acknowledgment so intended to answer the purposes of a receipt shall be good; therefore, there being no reason for requiring the intervention of another person between the owner and the bank, all we have to ascertain is, whether the instrument given was intended to answer the same purposes as a receipt would have answered, if there had been a separation of the characters of owner and warehouseman, and this is plainly shown both by the form of the instrument and the nature of the transaction.

If an endorsement were requisite to complete the title of the bank, it would be of course for a Court of Equity, (and this suit was instituted as a suit in equity,) to direct that the title of the bank, as holders for value, should be completed by an indorsement, as is done in a case of a transfer for value of a bill payable to order, where, by reason of the omission to indorse, the transferee is not clothed with the legal title. And this equitable right the bank would have against the plaintiff, who is an assignee in insolvency and not a purchaser of the coal for valuable consideration.

But for another reason, upon which the judgment of Mr. Justice *Patterson* also proceeds, I have come to the conclusion that the judgment appealed from should be affirmed. The 48th section can have no application unless the insolvents, the *Snarrs*, are proved to have been persons engaged in the "calling of warehousemen or wharfingers," and the evidence shows they were not such persons but dealers in coal and wood. The witness, *Myers*, who had been book-keeper of the insolvents, says, they were "dealers in coal and wood." It is true that it is shewn that there was some iron on the wharf when they got possession of it from *Milloy* for which they received wharfage, and that another lot of iron was received by them, after they got possession, and also

charged for, and that on one occasion some sand and on another some stone was received at the wharf; but these three or four occasional and isolated transactions do not show that they were persons engaged in the calling of wharfingers or warehousemen. Further, I cannot agree that *William Snarr* is to be considered as having been a warehouseman for the firm, the warehouse and wharf were really the leasehold of the firm and the nominal title only was in *William Snarr*.

Upon the constitutional question I refrain from expressing any opinion, its determination, in the view of the case which I take, not being requisite for the decision of the present appeal, and in doing so I act upon the principle laid down in the Privy Council in *Parsons* v. *Citizens' Ins. Co.* (1), and which was also acted upon in the *Western Counties Ry.* v. *Windsor & Annapolis Ry. Co.* (2).

The receipts being for the reason given inoperative under the Banking Act, the respondent, as assignee in insolvency of the *Snarrs*, and being in that capacity the representative of the creditors, is entitled to insist upon the provisions of the *Ontario* Chattel Mortgage Act, which avoids these instruments considered as mere equitable assignments outside of the Banking Act.

I am of opinion that the appeal should be dismissed with costs.

FOURNIER, J. :—

In this case I entirely agree with the reasons given by the learned Chancellor on all points. As to the fact of *Snarr* being a warehouseman, I adopt the finding of the learned judge who tried the case. True, the evidence is not very strong, but still evidence of several transactions by *Snarr* as a warehouseman was given; the law does not say how many transactions shall be

(1) 7 App. Cases 96. (2) 7 App. Cases 178.

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Fournier, J.

deemed necessary to qualify a person as a keeper of a yard, a warehouseman, &c.

Then as to the receipt, although not exactly in the form of the statute, still *Snarr* intended it to meet the requirements of the statute, and if it had been necessary to amend it, the court could have directed it to be amended as prayed for by the appellants. The respondent, being the assignee of *Snarr*, cannot impeach the form of the receipt any more than *Snarr* could have done had the latter been a party to this suit.

The question has been raised as to the constitutionality of certain sections of the Banking Act, as being an encroachment on civil rights, as they provide the means of making contracts with banks. No doubt contracts entered into with banks under the Banking Act are encroachments on civil rights or civil law, but such encroachments have been declared to be legal and constitutional by the Privy Council in the case of *Dupuy* v. *Cushing* (1). For, when legislating upon subject-matter exclusively assigned by the *British North America* Act to the Dominion Parliament, civil rights, and even civil procedure, will necessarily be interfered with, and the conclusion arrived at by the Privy Council in that case of *Dupuy* v. *Cushing* is perfectly applicable to this case; here the Dominion Parliament, legislating on the subject-matter of banking, interfere with civil rights by saying that banks may take certain receipts as collateral security for the payment of any debt which may become due to the bank under credit opened by the bank for the holder of such receipt; and as held by the Privy Council in *Dupuy* v. *Cushing*:

> It is a necessary implication that the Imperial statute, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer upon it legislative power to interfere

(1) 42 L. T. N. S. 445.

with property, civil rights and procedure within the provinces, so far as a general law relating to these subjects might affect them.

If so, how can it be said that the Dominion Parliament cannot, by a general law on banking, passed in order to facilitate commerce, provide certain forms of receipts or certificates which shall be considered to be valid instruments upon which parties may obtain money from banks? I do not think this question to be susceptible of argument since the decisions of the Privy Council. I am of opinion that these sections of the Banking Act are *intra vires* of the Dominion Parliament. For these reasons, I am for allowing the appeal.

HENRY, J.:

In deciding as to the rights of the parties in this case, it is necessary to consider the bearing upon it of the Acts passed in *Canada* previous to 1867, and the Act of the Dominion, intituled "Banks and Banking" (34 *Vic.*, ch. 5), or rather the 46th and the four next succeeding sections of it. Section 14 of the first-mentioned Act is as follows:

Any cove receipt, bill of lading, specification of timber, or any receipt given by a cove keeper, miller or by the keeper of a warehouse, wharf, yard, harbor or other place, for cereal grains, goods, wares or merchandise laid up, stored or deposited in or on the cove, mill, warehouse, wharf, yard, harbor or other place in this Province of which he is keeper; or any bill of lading or receipt given by a master of a vessel, or by a carrier for carrying cereal grains, goods, wares, or merchandise shipped in such vessels, or delivered to such carrier for carriage from any place whatever, to any part of this province or through the same, or on the waters bordering thereon, or from the same to any place whatever, and whether such cereal grains are to be delivered upon such receipt in specie or converted into flour, may, by endorsement thereon by the owner of, or person entitled to receive such cereal grains, goods, wares or merchandise, or his attorney or agent, be transferred to any private person as collateral security for any debt due to such private person, and being so endorsed shall vest in such private person from the date of such endorsement, all the right and title of the endorser

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Henry, J.

to or in such cereal grains, goods, wares or merchandise, subject to the right of the endorser to have the same re-transferred to him, if such debt is paid when due.

It will be observed that by the term "private person," used in the first mentioned act, banks were excluded from its operation. Section 46 of the Dominion Act before mentioned, in language similar in substance and nearly verbatim, extended the provisions of the previous act to banks; but instead of permitting them to take an endorsement of a receipt for a debt already due, as might be done by a private person under the first mentioned act, they were only authorized to take a receipt:

As collateral security for the due payment of any bill of exchange or note discounted by such bank in the regular course of its banking business, or for any debt which may become due to the bank under any credit opened or liability incurred by the bank for or on behalf of the holder or owner of such bill of lading, specification or receipt, or for any other debt to become due to the bank.

The coal, which is the subject of contention in this case, with a large quantity besides, was shipped for parties named *Snarr*, who subsequently became insolvent, and the respondent became assignee of their estate in bankruptcy. It was, however, consigned to the bank, who paid for it. The latter, having paid for it, had by agreement a lien on the shipments of coal for the advances made, and indorsed the bills of lading to the *Snarrs*, who kept a coal warehouse from which they sold, upon obtaining from them receipts signed by *W. Snarr*, such as the following:

Received in store in Big Coal House warehouse, at *Toronto*, from Merchants' Bank of *Canada*, at *Toronto*, (so many tons stove coal and so many tons chestnut coal) per schooners (naming them) to be delivered to the order of the said Merchants Bank to be endorsed hereon. This is to be regarded as a receipt under the provisions of statute 34 *Vic.*, ch. 5, value $7,000. The said coal in sheds facing the esplanade, is separate from, and will be kept separate and distinguishable from other coal.

Dated 10th August, 1878. *W. Snarr.*

W. Snarr was a member of the insolvent firm, and lessee of the wharf and of the warehouse wherein the coal was stored.

No part of it was delivered to the bank or upon their order. Instead of being kept separate, as agreed upon, the *Snarrs* placed it with other coal of their own, and sold from the warehouse and bins without regard to their agreement.

When the *Snarrs* became insolvent, the respondent, as assignee, took possession of the coal remaining unsold in the warehouse, and sold it, or the greater part of it, under an agreement with the appellants that he should pay the proceeds of the hard coal into the appellants' bank at *Toronto* to the joint credit of the appellants and respondent without prejudice to the rights of either party in respect to the same. The question now is, who is entitled to the amount so paid into the bank, and subsequently paid into court, and also as to any coal of the description specified in the receipts remaining in the warehouse or sold subsequently by the respondent?

Questions have been raised as to the validity of the receipts as what are commonly known warehouse receipts under the statutes referred to. Before, however, considering the validity of the receipts it is important to consider the question of the ownership of the coal before the *Snarrs* were placed in possession of it. It having been consigned to the bank, who paid for it and had a lien upon it, as security for the money advanced, the property in it and the right to the possession of it vested in the bank; and the *Snarrs* could obtain no title to or possession of it, except through the bank. The latter gave them no right or title to it, but merely gave them the custody of it as warehousemen to be kept separate from any other coal, and to be delivered to the order of the bank, just as they might have done to any other person having the means of storing it. No

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Henry, J.

property in it passed to the *Snarrs* or out of the bank and, independently of the validity of the so called warehouse receipts, the property in the coal was in the bank; but the receipts are evidence of the terms under which the *Snarrs* got possession of the coal, and which shows plainly that they got such solely as the bailees of the bank. It is true that under the arrangements the *Snarrs* had an equitable claim to obtain the coal on repayment of the bank's advances, and that equitable claim was all that went to their assignee. If then the *Snarrs'* had no title to or property in the coal, except as I have said, how can their assignee claim any? The latter can only have the property, rights, and interests of the insolvents to deal with. The *Snarrs* would be estopped by their agreement contained in the receipts from making any claim of property in the coal until the advances were repaid or tendered to the bank, and the same estoppel meets their assignee. Independently, then, of the receipts, as warehouse receipts under the statute, the appellants should be adjudged to have been the owners of the coal and as such entitled to our judgment.

The statute of *Canada* first mentioned is still in force in *Canada*, as far as I can discover. The Dominion statute does not in any way repeal or alter it, but merely extends it to banks. They adopt the wording of the previous acts and provide that:

> The bank may acquire and hold any cove receipt, or any receipt by a cove keeper or by the keeper of any wharf, yard, harbor or place, any bill of lading, any specification of timber or any receipt given for cereal grains, goods, wares or merchandise, stored or deposited in any cove, wharf, yard, harbor, warehouse, mill or other place in *Canada*, as collateral security for any debt to become due to the bank.

It will be noticed that the receipt is not required to be signed by a warehouseman. It is valid if signed "by the keeper of any wharf, yard, harbor or other place."

The receipts in evidence in this case were signed by *W. Snarr*, who is proved to have been the lessee of the warehouse in which the coal was deposited; and that to my mind is sufficient, as soon as he receives goods, wares or merchandize to be warehoused and held for another party; but there is evidence of *W. Snarr* being a warehouse keeper for other parties at different times before the signing of the receipt. The Act does not mention "warehousemen" as necessary parties to give receipts; but, on the contrary, the term is not even used to indicate the party or parties by whom they are to be signed. What right, therefore, has any court to require that a receipt, to be valid, should be signed by one who has a warehouse in which goods are frequently deposited.

We must get at the objects of the Legislature by giving to the words of an Act their proper and ordinary meaning: but we have no right to attribute to the legislature any intention but what is fairly deducible from the words used. To require then more than I have said would, in my opinion, be requiring what was not intended or provided for.

If the bank, by way of lien, had the property in the coal and the possession of it, what law would prevent them from storing it for safe keeping in any store, warehouse, or place they pleased and taking an accountable receipt therefor? And having such a receipt as the statute prescribes, what objection could be raised if the bank assigned it to another bank within the provisions of the statute? For the bank to store or deposit the coal as was done in this case no statutory provision was necessary. In doing so the bank would be only exercising a common law right over their own property.

The Dominion statute provided in terms for the assignment to banks of receipts obtained by other

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Henry, J.

parties, and to enable such parties to transfer the property mentioned as security to the banks making advances to them.

The prohibitory provisions of section 40 of the Banking Act before mentioned do not apply to the circumstances of this case. The bank did not lend money to the *Snarrs* upon the security of the receipts. The money had been previously lent and no mortgage or hypothecation was given by the *Snarrs* to the bank. The bank held the property under the bills of lading and had a lien upon it for their advances to pay for it, which they might hold. They were not trading with the property as prohibited by that section, but having advanced the money to pay for it,it was held as collateral security for the payment of certain notes then running. I see nothing in law or equity to prevent their doing so.

The question of the validity of the provisions to be found in section 46 and succeeding ones on the ground that they constitute an interference with the functions of the Local Legislatures under the *British North America* Act, which gives to the latter the right to legislate in relation to "property and civil rights in the province," has been raised. The previous section (91) of that Act, however, gives to parliament the right to legislate in regard to "the regulation of trade and commerce, and banking, incorporation of banks, and the issue of paper money," and the concluding clause of section 91 provides: that

> Any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned to the legislatures of the provinces.

The subjects of "banking" and incorporation of banks give, and no doubt the section intended to give,

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Henry, J.

to Parliament full and exclusive powers to deal with those subjects, and I cannot for a moment believe that the power to deal with "property and civil rights in the province" was intended in any way to interfere with or control the action of Parliament in respect of the subject of banking. It is the policy of the Act to give exclusive jurisdiction in legislation, either to Parliament or to the legislatures of the provinces. It was impossible to specify in detail the extent of the powers of either so as to remove all doubts, and therefore the several provisions of the whole Act and its object must, in many cases, be fully considered to enable a right judgment to be formed. If the provisions of section 46 and those following it were necessary in the interests of the country, what power existed in the local legislatures to enact them, affecting as they do the subjects of "banking and incorporation of banks," given exclusively to Parliament. We must, I think, conclude that when the two subjects were placed within the powers of Parliament, without any limitation, no limitation was intended, and that everything necessarily connected with banking should be within the powers of Parliament; although interfering, in some respects, with "property and civil rights." There are many of the subjects in section 91 given to Parliament, which to as great an extent as in the case I am now considering, interfere in some respects with "property and civil rights;" "navigation and shipping," "inland fisheries," "bills of exchange and promissory notes," "bankruptcy and insolvency," and others I might mention as amongst the number; and if Parliament had not the power to pass the Act in question in regard to the receipts referred to in section 46, because of interference with the matters of "property and civil rights," it would indeed be but consistent to say that for the same reason Parliament had not the exclusive right to

1884

MERCHANTS' BANK OF CANADA v. SMITH.

Henry, J.

deal fully with the several subjects I have just referred to or any of them. I could give further reasons for sustaining the legislation referred to, but I consider it unnecessary to do so. The concluding clause of section 91, which I have quoted, was evidently intended to remove any reasonable doubt as to the plenary powers intended to be given to Parliament in regard to all the subjects in that section enumerated, and to subordinate to them the powers given to the legislatures as far as is necessary to legislate in regard to the subjects so enumerated.

One other question remains, as to the identity and ownership of the coal remaining in the warehouse when the *Snarrs* became insolvent. The law, however, is well settled. It is shown that the *Snarrs* improperly mixed the coal they received under the bills of lading assigned to them by the bank, and which *W. Snarr* agreed to keep separate, with coal of their own of the same kind, so that the one could not be distinguished from the other. Under such circumstances, the bank was entitled to the mixed coal to the extent of the quantity the *Snarrs* received under the transfers of the bills of lading. As the quantity left in the warehouse and taken possession of by the respondent was less than the quantity so received by the *Snarrs*, the bank is entitled to the whole sum paid into court.

For the reasons I have given, and for those others contained in the judgment of the learned chancellor who tried this case, I am of opinion that the judgment of the Appeal Court should be reversed, and the decree of the learned Chancellor affirmed with costs.

TASCHEREAU, J.:

I am of opinion that *Snarr*, having been found by the judge at the trial to be a warehouseman, and there being on the record some evidence in support of that

verdict, which evidence stands entirely uncontradicted, he must be held by this court to be such a warehouseman.

I am also of opinion that the warehouse receipt in the case is sufficient under the Act, and that the property of the coal duly passed to the bank in virtue of such receipt. If deficient in form, the *Snarrs* or their assignee cannot take advantage of it, because they had covenanted to give a good receipt.

The sections in question of the Banking Act are, in my opinion, clearly within the legislative power of the Dominion Parliament. I would allow the appeal, and restore the first judgment.

Appeal allowed with costs.

Solicitors for appellants: *Smith, Smith & Rae.*

Solicitor for respondent: *John Leys.*