The Canadian Monetary Times.

THURSDAY, NOV. 21, 1867.

THE LAW RESPECTING INTEREST.

In a case of the Commercial Bank *vs.* Cotton, before our Court of Common Pleas, the plaintiffs sued upon a promissory note which the defendants contended was void in consequence of the taking by the bank of more than seven per cent. interest. Our "Act respecting interest" (Con. Stat., C, cap. 58) repealed, except so far as banks and certain incorporated companies were concerned, all the penal parts of the usury laws except as to contracts made between 1854 and 1858; and, as to them, the only forfeiture that remained was that such contracts were made void as to the excess of interest beyond six per cent. The banks were permitted to receive seven per cent. interest and a certain commission when bills and notes discounted were payable at places other than those at which they were discounted. Section 4 of the above act is to the effect that no bank may stipulate for, take, reserve, or exact a higher rate of discount or interest than seven per cent. per annum. Section 9 enacted that all bonds, bills, notes, contracts, made in contravention of the act, whereupon a greater interest is received and taken than authorized, should be utterly void and the bank should forfeit and lose for every such offence treble the value of the moneys, wares or merchandize lent or bargained for.

This was the state of the law when the statute 29 and 30 Vic., cap. 10 was passed. Its fifth section reads "No bank shall, after the passing of this act, be liable to *any penalty or forfeiture* for usury under Con. Stat. C. c. 58, s. 9, but the amount of interest or commission which such bank can receive shall remain as limited by that chapter." The act, 29 and 30 Vic., from which this extract is made is entituled "An act to provide for the issue of provincial notes" and the point was raised in the Bank of Montreal *vs.* Scott, whether the act in question referred only to such banks as came under its terms by surrendering their power to issue notes, but the Court held that the particular section as to interest was not thus restricted by the intituling of the act or its general purport. In the case against Cotton the Common Pleas decided that the effect of 29 and 30 Vic., c. 10, s. 5, was not merely to relieve banking corporations from the pecuniary penalty mentioned in the Con. Stats., cap. 48, but also to save the security given for the moneys loaned from the forfeiture.

The case was carried to our highest judical tribunal, the Court of Error and Appeal, and the judgment of the Court below was there affirmed, Chief Justice Draper, Chancellor Vankoughnet and Vice-Chancellor Mowat dissenting. If the decision of the Court of Appeal be good law then the paragraph, "The amount of interest or commission which such bank can receive shall remain as limited by that chapter" (Con. Stat., cap. 58,) has no force and banks may receive and take any rate of interest they please for all liability to a pecuniary penalty, or loss or forfeiture is done away with. As regards banks there is, then, actually no such offence as usury. The Chief Justice argues strongly in his judgment against this view of the law, which created, as he expressed it, "the singular anomaly of an act being positively prohibited by law and yet not being punishable by any sort of loss, penalty or forfeiture." His opinion was that, although relief is given by the statute against penalties and forfeitures, yet the provision for making void the securities is untouched. Mr. Justice Hagarty said that the presence of the clause as to interest and commission was only explicable to his mind, on the supposition that the Legislature meant to say and have said in effect "We relieve you from all forfeitures and losses, and disabilities which the 9th section imposed on you. You may still enforce your contracts but we leave one prohibition on you, the amount of interest and commission you receive must remain as limited by the statute." In considering the uselessness of the prohibition he drew attention to the Interpretation Act (Con. Stat. C. cap. 5, sec. 6,) which provides that "Any wilful contravention of any such act as aforesaid which is not an offence of some other kind shall be a misdemeanor and punishable accordingly." Mr. Justice Adam Wilson thought that if the prohibition were infringed an indictment would lie against the bank although no longer liable for any penalty or forfeiture for usury. The Court was divided on the whole subject and the case was decided by four judges against three.

Our law respecting interest may, therefore, be thus summarized. Any person may stipulate for, allow and exact on any contract or agreement any rate of interest or discount which may be agreed upon. When no rate is fixed by the parties or by law, six per cent. is payable. Except as otherwise authorized by some act, no corporation or company or association of persons, (other than banks,) permitted by law to lend or borrow money, shall take on loans more than six per cent. Banks may not exact a higher rate of discount or interest than seven per cent; may pay any rate of interest for moneys deposited; and may, in discounting paper payable at a place different from that at which the paper is discounted, charge, in addition to the discount, a sum not exceeding one half per cent. to defray expenses of agency and collection. But, according to the above decision, the bank exacting a higher rate of interest than seven per cent. is exempt from liability to any pecuniary penalty imposed by the act, as well as from loss or forfeiture of the security received for the moneys advanced; the remedy against a bank for breach of the prohibition to take no more than seven per cent. being by indictment for a misdemeanor.

GOLD MINING.

It may now be accepted as an established fact that the Madoc mineral region is very rich in gold and silver. A large number of companies have been formed for working the mines, and the avidity with which their stock has been taken by very sober-minded and staid Canadians, is some evidence, at least, that the indications are good. In Toronto, we have no less than six companies. We have doubted so long that we can hardly believe our eyes when we see the results of assays; they seem to be too good to be true. But the crushing machine which is now at work has furnished indubitable proof, as rock already crushed has yielded as much as $130 to the ton. The question now is what are the expenses incident to gold minding. It is perhaps difficult to say what yield of gold to the ton will pay in a new district when no large quantities of ore have been reduced as so many things require to be taken into consideration. An Australian miner informs us that when he left Australia eight dollars per ton would pay handsomely, whereas double that yield would not have paid expenses on his arrival there. In the Madoc district fuel and labour are cheap, wood being $1.50 per cord and labourer's wages about $1.50 per day. Undoubtedly $15 per ton would now pay well in Madoc if the quartz lode were well defined, say of the width of four feet. Opinions differ somewhat as to the cost of raising and crushing a ton, but $5 is the highest esti-