

like bank notes:—and the *Société anonyme*, as was then called what is now styled the *Société en participation*, which is nothing more than an *adventure on joint account*, well known in every commercial community. This last, being private and only for special and temporary purposes, is not recognized specifically by the present code; and by *Société anonyme* is now understood the *joint stock partnership*, of which some examples have existed in former days; but they were then always created by special ordinance, and under the immediate patronage and control of Government, which shared directly in the profits. Although we have here all four of these different forms of partnership, they are necessarily governed by the law as it existed in France before the cession of Canada.

Of these different forms, the most important,—especially in former days,—by its influence and results, directly and indirectly, is the *limited partnership* or *Société commandite*; it fills the pages of the commercial, maritime, and civil history of the middle ages, and was the most powerful instrument of organized industry.

It was, in early times, divided into three kinds—the *commande de bestiaux*, (known also as the *baïl de cheptel*), the *commande de peccatille*, and the *commande d'argent*; which are the placing in *commande* (1) of animals, (2) of goods, (3) of money. It, consequently, owes its origin in part to agricultural enterprise; and in these operations is to be found "*le bureau modeste d'une grande cause.*"

The *commandite*, however, took its greatest development under the last of these, which necessarily absorbed the others, unfitted as they had become for business on any large scale. Florence, not to speak of the other great commercial cities of the period, was in the fourteenth century, "a city of *commanditaires*"; and if its historians can boast of its trade as co-extensive with Christendom, it is because the *commandite* furnished it with the giant means to compass the world." From Italy it readily found its way into France, where we now see it in full activity.

In 1673 was passed an ordinance by the French Government requiring certain formalities in the formation of companies, in order to protect its subjects from the frauds sometimes practised by foreigners. This ordinance forms the basis of the enactments of the present French code on the subject, and its requirements would be in force here now, had it not, a few years after its present promulgation, fallen into disuse.

It required that all deeds of partnership, of any kind whatever, should be drawn up before notaries, or *sous seing privé*—that an *extract* containing the name, surname, quality, and residence of the partners; any extraordinary clause regarding signature, the date of commencement, and the duration of the partnership, should be enregistered, and also hung up to public view; this extract was to be signed by the parties to the deed. The same formalities were to be observed with regard to any deed modifying or altering in any way a deed of partnership.

These forms were required in order to prevent fraud, and that in case of bankruptcy all the partners in an association might be known. An omission of any of them was visited by the pain of nullity (as well for the parties themselves as for third parties) of the deed, which could only take effect from the date of its enregistration.

In the present French code, the same formalities are required with more detail, but with few modifications. The chief points of difference are, that the omission to comply with the law is only prejudicial to the partners themselves, and not to third parties; and the *extract* must contain the names, at length, of all the partners (if *en commandite*, other than the *commanditaires*, the amount of capital *en commandite*, &c.) The *extract* must, (by a subsequent law,) be published in two papers designated by the "*Tribunal de commerce*," for the purpose.

With all these requirements frauds had been practised, and so much so, that a few years ago it was attempted to make new enactments in order to prevent their recurrence. A project of laws was introduced for that purpose into the French Chambers, but it was, after much discussion, withdrawn: and it yet remains a question with the ablest juriscounselors, whether the preventive is to be sought for in further legislation or in public opinion. There is no difference of sentiment as to the propriety of the present enactments; their sufficiency is alone debated; but the principle itself is never found fault with. When speculation runs rioting among men, it inevitably brings rum with it, and the rashness of speculators must be blamed, not the law, innocent both of the errors of men and the misfortunes of trade.

A proper examination of facts will soon shew that the momentary ill is far counterbalanced by the permanent good produced, and that it is easy to bring a remedy where it may be wanted. It is not just to take a transitory evil, caused by circumstances, for the principle itself, nor to attempt to cure the former by destroying the latter, or by even embarrassing it; for experience proves it to be one of the most powerful instruments of credit and association, inasmuch as by it small capitals are attracted towards industry and commerce, to find in them a means of increase, thereby advancing "the greater good of the greater number."

8th October, 1845.

JEAN BAPTISTE.

## THE POST-OFFICE DEPARTMENT IN BRITISH NORTH AMERICA.

[Extract from the Report of the Commissioners.]

The Post-Office Department in British North America is marked by two leading defects in its constitution: the want of uniformity in the principles upon which it is conducted by two Deputy Post-Masters General of co-ordinate and independent authority; and the absence of not only responsibility to the Executive or Representative authorities in the colonies, but of all real responsibility to the Head of the Department in England.

In proof of the first of these propositions we have only to refer to our statement of the incongruous practices prevailing in Canada and the Lower Provinces.

The commissions and instructions under which the Deputy Post-Masters General act, do not recognize the existence of any local authority to whom they are to report their proceedings, or from whom they are to receive directions. In those documents the Deputy Post-Masters General are regarded as the mere Agents of the General Post-Office, to which all their reports are to be sent, and from whence all orders emanate. In certain exceptional cases, such as the late troubles in the Canadas, the Deputy Post-Master General may have been directed to place himself for specified purposes under the orders of a Provincial Executive. Of late years, also, the rule by which he was forbidden to communicate information on the state of the Department to committees of the several Legislatures, has been relaxed or rescinded. Occasionally we have seen that under some peculiar circumstances an Executive or a House of Assembly has influenced to a certain extent the action of the Post-Office. In Nova Scotia, where this influence has most prevailed, although, from a variety of causes it operated very anomalously, it cannot be denied that it had the effect at least of putting the department on a better footing and rendering it more popular than in New Brunswick; where, though under the same administration, this sort of influence has been but little felt. Of the Provinces of British North America it may be observed generally, that in practice there has been somewhat more intercourse between the Executive and the Post-Office authorities than the theory would suggest; but it has always been of an irregular and unsatisfactory character.

The responsibility to the Head of the Department in England, however complete in theory, in practice is little better than nominal. The ordinary proceedings of the Provincial Post-Office are almost unknown to the Post-Master General, and upon questions of greater importance and more unusual character the decision of the Imperial authorities must be mainly influenced by the report of the Deputy Post-Master General, even though they affect his own pecuniary interest, the extent of the business of his office, or the manner in which he executes his functions.

All applications and complaints are addressed to the Deputy Post-Master General, and in the majority of cases finally determined by him. Whenever an appeal is made from his decision, the Post-Master General is placed by distance and untoward circumstances in a false and embarrassing position. He has no officer whom he can send to investigate the circumstances on the spot, nor any independent means of inquiring into disputed facts or alleged grievances. There is evidence that in this respect the condition of the Department has not been considered satisfactory, in the fact that since the appointment of this Commission, the Post-Master General has thought fit, on more than one occasion, to refer to us for our report on recommendations sent to his Lordship, by the Deputy Post-Master General.

A department constituted in the manner we have described could scarcely have escaped unpopularity. Power, however purely exercised, is subjected to no popular control and but little check of any kind, will always be liable to suspicion. Concealment creates jealousy and distrust. But if to this we add the fact that from some of the colonies, the Canadas especially, a large surplus revenue has been annually remitted to England, the public dissatisfaction will appear natural enough, even though the expediency of the measures we are about to recommend should not be admitted.

It has been already stated that in the year 1834 a Bill was prepared in England, under the direction of the Post-Master General, for the purpose of remodeling the Post-Office in these colonies. Amongst other provisions contained in that measure, it was proposed to form the whole of British North America into one charge; and the surplus revenue, instead of being remitted to England, was to have been distributed in certain proportions amongst the several provinces. Had it passed into a law, the effect of that measure would have been to remove some, but not all, the defects of the present system. But it was prepared unfortunately with a view to its being submitted for enactment to each of the Colonial Legislatures, an error sufficient in itself to have rendered the success of the project almost impossible. There was an admitted necessity for uniformity in the leading features of the system, as well as in its relations with the several provinces as with the other parts of the empire: but it was too much to expect that all those independent, not to say conflicting Legislatures, each more or less ignorant of the subject, and some influenced by no friendly spirit, would have agreed upon all the details of a very complicated plan. When colonies begin to legislate, one of their first impulses is to make even an unnecessary display of independence by acting to the full extent of their powers; and we have seen accordingly that in every province where the subject was taken up at all, the Parliament evinced a strong desire for an independent Post-Office; overlooking, in their love of self-assertion, all the obstructions, incongruities, and extravagance which must necessarily be produced by a conflict of many Provincial Departments, each having separate officers, accounts, contracts, rates, and regulations of its own. The result of this attempt has already been described: it failed completely.

But even if it had succeeded, the proposed measure calculated to afford only an incomplete remedy for existing defects, whilst on the other hand it would have introduced difficulties from which the present system is