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CASE OF J.C. M'INTOSH & CO. VS. BANK NEW BRUNSWICK

Continued from page 2.

Q.—Did you not give Mr. Clark money to take him away? You knew he was going.
Ans.—I sent him to endeavor to straighten up matters with Collins if possible. I sent him to get as much knowledge as possible.
Q.—Did you ask Mr. Smith not to present the check he held until he had time to look into matters?
Ans.—I never made any request for delay.
Q.—Did he not present you that check and ask if you intended to pay it, on the 12th of May?
Ans.—I don't know whether I refused him payment. I told him it was no use to present it.
Q.—Didn't you tell him to wait a while, or words to that effect?
Ans.—Whatever I said it meant no. Mr. Powell then read part of a letter dated May 21st, written to Mr. Kessen by Mackintosh and Co., part of which reads as follows: "We wish to proceed as quickly as possible with the closing out of the Clark-McBeath accounts and at your request we delayed pressing our claim for a considerable time and the time is over a week now."
Q.—In the face of that letter, did

you not make any request for the delay of presentation of that check? Did you not deny that letter?
Ans.—No, I did not deny it. I made no reply to it whatever.
Q.—Was it not a fact that you could not delay it?
Ans.—No.
Witness stated that he had given him certain information re the Vanderhill bonds sometime in May.
Q.—Did not the evidence he adduced as to these bonds satisfy you that they were all right?
Ans.—I don't remember.
Mr. Powell asked witness if he had not answered Mr. Fowler in the case previous that the bonds were worth 80c.
Ans.—I cannot deny it.
Q.—Were you not satisfied that they were good security?
Ans.—No, there was evidence that satisfied me regarding them, but not that they were good security.
Mr. Powell referred to witnesses' evidence in the previous case of Clark and asked if Mr. Kessen had not considered the bonds all right.
Ans.—Yes, but not particularly good security.
Q.—According to the custom of banking business in Canada, the acceptance of a check is universally recognized as making the bank liable?
Ans.—Yes.
Mr. Kessen stated that if the manager was acting as the ledger keeper, in case the ledger keeper was out or busy at something else, it would be all right.
Mr. Powell read part of the evidence brought out on cross-examination by Mr. Fowler during the progress of the Clark case, which showed that Mr. Kessen had made some enquiry into the standing of the man Collins, but his standing had most misrepresented to him.
Mr. Kessen then cross-examined again:
Q.—Collins had an account at the bank apart from the McBeath account?
Ans.—Yes.
Q.—According to the practice, a check would not be accepted unless the money is there?
Ans.—Yes, the certification is a warranty of the bank that the bank will pay the check.

Witness said he would not scrutinize Mackintosh's account. The bank had collateral security from them.
Witness said that when he advanced money to Mr. Clark he had discovered something wrong. Collins had some scheme which he claimed was promising, and out of what he expected to make Collins was going to help Clark.
In regard to letters from Smith, re-disposal of the stocks, the directors had given him, the witness' instructions not to do anything in regard to the accounts, but to resist them.
Mr. Kessen said he first knew of Clark's dealing in cotton stock on the receipt of a second statement of the accounts with Mackintosh. Mr. Kessen claimed there was a discrepancy in the report of his statements to Mr. Fowler, in the Clark investigation, in regard to his knowledge of the value of bonds which the bank held.

Mr. Powell asked Mr. Kessen if he did not know of the bank certifying checks without the bank holding the money?
Witness replied he knew of such things having been done.

F. P. Starr Called.

Francis P. Starr called to the stand, said he had been a director of the Bank of New Brunswick since 1899. The board of directors generally meets twice a week. He stated the duties of the branch managers were to take deposits, checks, make small loans, such as several hundred dollars, and to make statements to the head office. In reply to Mr. Nesbitt a manager made no loans over \$5,000—for instance on securities—without reporting to the head office. Witness knew at the first bank meeting after Clark had left town that Clark had given letters of indemnity, and had certified a check. The directors had directed that the check be not paid. In regard to speculation on the part of a bank official, the board would not allow it for a moment, nor would it allow any official to pledge the bank's credit for himself or his friends, in which he was interested. In regard to stock transactions, the board of directors often had special meetings, and endeavored to get by direct the business of the bank.

In reply to Mr. Mellish, witness did not know whether the first meeting of the directors had been after Mr. Kessen had seen Mr. Smith. Mr. Kessen reported the certification of this check for \$10,000. Witness did not remember Mr. Kessen saying he had been vice-president of the bank for the Collins account he had found for the Collins account at the time.
Mr. Powell read part of the evidence brought out on cross-examination by Mr. Fowler during the progress of the Clark case, which showed that Mr. Kessen had made some enquiry into the standing of the man Collins, but his standing had most misrepresented to him.
Mr. Kessen then cross-examined again:
Q.—Collins had an account at the bank apart from the McBeath account?
Ans.—Yes.
Q.—According to the practice, a check would not be accepted unless the money is there?
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Mr. Starr said that if a man came to a manager with good security for a \$5,000 or \$10,000 loan he might not secure the loan unless he was a man well known. Witness said he knew of no code defined in writing which governed the action of a general manager. Witness stated a manager would not buy bonds without referring to the board. It was the custom to refer such things to the board. The branch managers generally received the instructions from the general manager. Mr. Starr stated that he would sooner have a good \$5,000 loan than a bad \$100 loan, but he said

that a branch manager would not be allowed to handle a \$5,000 loan without reference to the board.
Mr. Mellish wished to know if it was not largely with the discretion of the manager with regard to the size and worth of the loan.
Mr. Starr stated that the board did not think they were liable with regard to this \$10,000 check in question. The board had put the question of liability before their solicitors. The board had first decided that they would not pay the check if they could help it, they had been confirmed on this stand by a later reference with a lawyer.
Q.—Would you expect Mr. Kessen to tell Mackintosh to close out the stock?
A.—I don't remember.
Q.—You won't say that Mr. Kessen did not say he had done so to the board?
A.—I don't remember about it.
Q.—Did you attend all the board meetings?
A.—Nearly all.
Q.—Did you ever hear about Smith closing out the stock?
A.—I don't remember.
Q.—Did Mr. Kessen attend the meetings?
A.—Did he ever show you any of Mr. Smith's letters or any reports on the circumstances?
Q.—Would not the board be opposed to a manager pledging the bank's credit for any purpose? Does the bank ever give a guarantee?
A.—Yes, in some cases. It depends on the circumstances.
In reply to Mr. Nesbitt, Mr. Starr stated that Mr. Kessen had reported about the letters of guarantee and the securities without reporting to the head office.

Witness stated that Mackintosh had a large line of credit with the bank. That is, if a firm had been passed upon by the board as to its worth or credit, loans up to a certain extent would be made to the firm, if necessary, without a reference.
Dr. W. W. White Examined.
Dr. W. W. White, vice-president of the Bank of New Brunswick, said he had been vice-president of the bank for about five years and had been connected with the bank for about thirteen years.
Witness said he had heard Mr. Starr's evidence and practically concurred with it. He attended meetings when able and kept in as close touch with the bank affairs as possible on account of his profession.
Mr. Nesbitt—Would you, as a director tolerate a practice of stock gambling by an officer of your bank?
A.—Personally I think it would be wholly unjustifiable. I never knew of it having been done.
Mr. Nesbitt—Take the case of a bank manager certifying a check for a friend in whom he is interested?
A.—No authority.
Q.—How about certifying for identity?
A.—No authority.
Mr. Powell—Would you shut off one of your managers playing poker or one of your managers betting on points?
Mr. White—I don't think you are serious, Mr. Powell.
Mr. Nesbitt then stated that the case for the defence had closed and Mr. Powell stated that there would be no rebuttal.
The court then adjourned until this morning at 10 o'clock when the case will be resumed in argument.

MATERIAL GAINS M'INTOSH'S AT OPENING OF MARKET

New York, N. Y., April 24.—The more favorable outlook to the contrary between the railroad managers and the locomotive engineers was a most important factor in shaping the course of today's stock market. It was known long before the opening of business that a halt had been called in the threatened strike, but it was not until later that official announcement was made of the settlement of the engineers to accept mediation. The financial district and more particularly the speculative public chose to accept this as a long step in the direction of a satisfactory settlement and its effect upon the market was almost electric.

Yesterday's lethargy and heaviness gave way to ebullience which resulted in a number of material advances at the opening. The market was soon extended, and by mid-day gains of 1 to 2 points were so general as to comprehend practically the entire active list. There were a few exceptions to this tendency, notably in the tobacco group, some of which suffered a decline, presumably in connection with the adoption yesterday by the United States senate of a resolution calling for a review of the recent decision in the American Tobacco Co. case. Advances from Washington today threw some doubt on the action of the lower house in this matter.

Reading, which sold at dividend of 1 1/4 per cent., was the most prominent feature of the day, not only by reason of its activity—sales by noon were far greater than of any other stock—but because of its strength. Initial dealings were on an unusual scale, and the stock moved sharply covered its dividend in the first hour. At noon it had added to its rise and in the early afternoon was selling over 8 points above yesterday's low. The entire list was stimulated to a higher level in the course of the morning, with little diminution of business, but in the afternoon trading fell off appreciably.

Various obscure issues took the place of the speculative leaders in the later session, at which time the market was going through a natural process of digestion. Prices were disposed to yield fractionally to the realization of profits, but another buying movement in Reading, which advanced to 68 1/2, infused renewed strength elsewhere. Just at this juncture there were some contrary movements in the specialties. Sears-Roebuck adding very substantially to its previous rise, with a gain of 2 1/2 points in American security, while International Leather and Bethlehem Steel declined. The closing price of the steel stock was 112 1/2, with the usual recessions from the top. International Mercantile Marine was in better demand and moved some recovery from their recent heaviness.

In banking circles little interest was shown in the progress reported in the proposed investigation of the money trust. Financiers paid more attention to the renewal of loans in this market by London, which were made on the basis of 3 1/2 per cent. for 30 days. Revival of demand from abroad was said to be due to unexpected requirements and postponement of expected war. The British trade reports for March were favorable, on the whole, despite some gloomy indications prompted by the recent industrial upheaval in Great Britain.

Local monetary conditions were decidedly easier, 30 and 60 day loans having been made at 3 1/4 per cent., a reduction of 1/4 per cent. from the previous day. Apparently the further strain to the interior, notwithstanding this far this week to almost \$5,000,000, has excited no misgivings. The annual report of the General Electric Company, showing a falling off in earnings, was without effect on the stock, which took a prominent part in the day's rise.

Bonds were strong and showed gains in Denver and Rio Grande fours and Wabash fours. Total sales, par value, \$2,360,000. United States government bonds unchanged on call.

OBITUARY.

Mrs. Elizabeth Milliken.
The death took place yesterday morning of Mrs. Elizabeth Milliken, daughter of Mrs. Ellen and the late Thomas Devlin. Mrs. Milliken, whose home is in Boston, came here last Saturday to visit her mother at No. 27 Elliott Row. She had been ill, but her death was quite unexpected. She is survived by her husband and four children; also, in addition to her mother, by four sisters, Hattie E., Catherine L., Helen M. and Teresa, and two brothers Frank S., with the Westinghouse Co., in Montreal, and John at Woburn, Mass.

Geo. A. Woods.
News has been received that George A. Woods died at his home in Los Angeles, California, on the 22nd inst., after a short illness. The deceased was the third son of the late Hon. Frank Woods, of Wexford. He was 54 years old. Early in life he became a locomotive engineer and has been following that work in California for many years. His wife, who was Miss Emma Scholtenberger, of Wichita, Kansas, and one son, George, survive. Also two sisters Mrs. Wm. Howe, of Wexford, and Mrs. F. C. Taylor, of Hoyt Station, and two brothers, Wm. F. and H. W. Woods of M. P. P., of Wexford.

Mrs. Letitia O'Brien.
Mrs. Letitia O'Brien, widow of James S. O'Brien, died at her residence, East Cambridge, Mass. Friday. She is survived by two daughters and two sons, and also by three sisters, Mrs. P. McCarron, St. John West, and Misses Teresa and Clara Keenan of Boston. Mr. and Mrs. O'Brien resided in the North End in their younger days, but went to Boston many years ago.

Thomas McDonald.
The death took place on Monday evening at 27 Clarence street, of Thomas McDonald, the well known butcher, leaving a wife, four sons and four daughters also three brothers, John, Edward J. and James, all of this city and four sisters, Mrs. Moriarty, Mrs. Prouty and Miss Laura, of Boston, and Mrs. Edward Walsh, of this city.

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Succession of Depressing Occurrences.
It is remarkable how the market stands up in view of the many unfortunate occurrences of the past month. First came the coal strike in Great Britain, with what results it is unnecessary to go into detail. In short, the entire industrial life of Great Britain was on the verge of paralysis when work was resumed in the mines.

After this came the demands made by the railway management for the strike among the coal miners of the United States, which strike continues to the present, although it has been predicted that it will be of short duration.
The decision upon this matter was in the balance, came the news concerning the accident to the "Titanic," none of the details of which have been received, although late messages by no means tend to lessen apprehension.

Market Continues Buoyant.
It is astonishing that in the face of all these unfortunate circumstances, the market not only is not suffering a severe break, but is actually rather higher than a week ago. For instance Richelieu & Ontario, after some days of easiness, was up to 124 1/2, as against 122 a week ago. Power ran down today to 201 1/2, as against 204 1/2 a week ago. On the other hand, Ottawa Light & Power is up fully 2 points, having sold today at 157, as against 151 1/2 a week ago. C. P. R. which a week ago was 124 1/2, is now up to 125, after having been somewhat higher in the interval. Rio, which a week ago was 118 1/2, was 120 today. Even Steel Corp was higher at 59 1/4.

Traders Bank and Bank of Toronto.
The statement has been made by the general manager of the Traders Bank that no negotiations were in progress for the absorption of the Traders by the Bank of Toronto. There it may be stated, appeared on the list only a few days ago at 156 whereas today it sold on the local market at 160. The general manager explains the advance by the recognition on the part of the public that the stock was worth more. It is stated on excellent authority however, that there have been negotiations between these two banks, and that the basis of an amalgamation was reached a couple of weeks ago, and that the completion of the deal was simply a matter of accounting. It is just possible that these negotiations have since fallen through, more especially as there have been indications during the past day or two that the Bank of Montreal was taking an interest in the Traders Bank. There is practically no question, however, that negotiations were going on between prominent interests in the Traders and the Bank of Toronto to a few weeks ago, and that there was every reason to believe that these would be successful.

Situation in New York.
Our New York correspondent wires: "Evidences are accumulating that the continual bearish news, which the events of the past few months have been bringing to the market, are losing their influence. The 'Street' is becoming just a little bit tired of the succession of unfortunate occurrences, and is beginning to disregard them. It is quite true that the expansion in the iron and steel trade early in April is not maintaining the record set some little time ago, but there is moderate activity, and the industrial situation seems to be gradually improving. The export of domestic products for March reached \$93,828,512, as compared with \$62,585,781 a year ago and \$59,047,930 for March 1910. There was also a decrease in the supply of copper, which will certainly be welcomed by producers. In other respects, also, improvement is noted, with the coming of the summer and a continuation of favorable crops in the East, there is every reason to look for a better situation. There is no lack of money for all the purposes of the market. The speculative position is, however, a little more unsettled, but the market has maintained its strength in face of many adverse conditions, and the general feeling is that it will work to higher levels."

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FUNERALS.

Miss Mary A. McBratney.
The funeral of Miss Mary A. McBratney, daughter of the late John and Margaret McBratney, took place at 7:15 o'clock yesterday morning from the Most Merciful Home to St. Rose church, Fairville, where Requiem High Mass was celebrated by Rev. Francis Collins. The remains were interred in Sand Cove cemetery.

See Barley & Baitum's human frog.

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