Minimum Prices of The Stock Exchange

The ban upon trading in Canadian stocks under the arbitrary prices has worked advantageously to the Dominion in a variety of ways

By H. M. P. ECKARDT.

Probably the resumption last week of heavy liquidation in Wall Street, accompanied by drastic declines in stock prices, will cause many market observers in Canada to reflect that the minimum price arrangement instituted in our stock exchanges at the end of October is in all respects a happy device which is preserving our market values on a reasonable basis. It is certainly to be conceded that the ban upon trading in Canadian stock under the arbitrary prices, has worked advantageously to the Dominion in a variety of ways. For example it permitted the bond and stock brokers in November to devote the whole of their time and attention to the work of promoting the Victory Loan; and there is no doubt that the special efforts made by these parties were responsible for many millions of dollars in loan subscriptions. Again, the restriction upon trading probably prevented a severe downward readjustment of the domestic price level, which might conceivably have caused important failures upon the exchanges and perhaps a serious financial disturbance interfering greatly with the success of the loan. Such an upset would probably have damaged Canadian credit abroad, particularly in the United States.

Another point in favor of the minimum list is that it ensures tranquility and steadiness in the securities and financial markets during the election campaign. Many people doubtless consider that the election, turbulent as it has been in certain parts of the country, furnished distraction enough, and that while the great issues of the campaign remained undecided, it was better to have the stock markets quiescent. It is not by any means certain that the quotations for all the active stocks traded in Montreal and Toronto would have gone to lower levels and stayed there if the minimum price list had not been re-established. As a matter of fact a few of the leading securities have been selling several points above the minimum, thus creating a presumption that the minimum quotations have not been the sole factor in establishing their value. However in these cases appearances may be deceptive, and cynics will doubtless declare that manipulation probably accounts for the surplus value of these stocks, over and above the official minimum.

If it be assumed that our stocks would have tobogganed but for the restriction placed upon trading, then the proceeding furnished temporary protection to scores of borrowers on stock collateral at the principal Canadian centres. The banks, of course, could not force repayment of these loans through selling the collateral; and the borrowers could claim perhaps that with the collateral quoted as on the minimum list, their margins were not impaired or wiped out. It does not necessarily follow that the protection thus accorded to borrowers will be advantageous to them in the long run. It may eventually turn out that their interests would be best served by permitting or encouraging liquidation of their loans. If the policy of hanging up all liquidation in this country, were persisted in, and meantime in the United States and elsewhere security values were being inexorably forced to lower levels by the exigencies of the war, it is conceivable that the postponement of liquidation in Canada might eventually result in severe additional losses to the Canadian borrowers who imagined that they were finding protection in the minimum prices. Then, in case of certain stocks, the market has been temporarily destroyed. Day after day an "asked" price only is quoted, and no bidders appear. Occasions constantly arise for liquidation of stocks and bonds by parties who may or may not be borrowers; and if these sales cannot be made in the usual way on the stock exchange, they have to be arranged privately, outside; and in numerous instances the sellers do not receive very good or fair treatment. Again, there is the fact that the minimum price arrangement has almost eliminated the commissions of the brokers dealing in Canadian stocks. To illustrate—during the second half of November the transactions in stocks on the Toronto Exchange, exclusive of mining sales, were roundly 2,800 shares, and a considerable proportion of these transactions were in stocks such as Mackay and Twin City which are traded in Wall Street and are therefore not subject to the minimum rule. Now this represents an average of less than 250 shares per day. Taking the commission rate as ¼ per cent, we get $62.50 per day to be divided among the score or so of members of the Toronto Stock Exchange—an average of say $3 per day. Conditions in Montreal are more or less the same. So, although a few of the houses, who are perhaps overloaded with securities, may not desire an immediate resumption of free trading, others again will have to close their offices and take up some other line of activity if the present condition continues.

For these and other reasons, it is perhaps to be expected that after the turn of the year, providing the money market then has a more favorable aspect, the question of a resumption will come to the front, if it is not decided upon before that time. It might be considered advisable to retain the minimum plan with regluar readjustments to lower levels if circumstances so require. In this way anything like a precipitate decline would be stayed, and yet the prices could be fixed on a plane at which buyers would be in evidence. Of course, the stock exchange would experience considerable trouble if loans from the banks were not forthcoming in quantity sufficient to take care of the daily transactions. Fortunately there are indications that the banks will be in better shape for attending to the monetary requirements of the stock market by the middle of January. By that time they probably will have received from the Dominion Government repayment of a large amount of special loans now carried in their books. Undoubtedly there will be heavy discounting of instalments of the war loan on January 2nd by the large subscribers; and this will enable the Finance Minister to square off some of his bank loans. Also January, 1918, is certain to witness a very heavy contraction of the bank note circulation. The contraction may amount to $25,000,000 or more. These notes will come back to the banks in the form of farmers' deposit, repayments of loans, etc., and owing to the fact that the banks have issued the excess notes nearly altogether against deposits of gold or Dominion notes in the Central Gold Reserves, the large redemptions will enable them to withdraw a like amount of gold or legals from the central reserve. This cash is what provides the wherewithal for loans to brokers. When the "legals" get too high, the banks are desirous of putting the money out at call, and if trading here is unrestricted a portion of the money will go to the Montreal and Toronto brokers.

There is another point that should be taken into consideration. If Canadian stocks are held arbitrarily at high levels which do not permit free selling, while the best American stocks are selling freely at prices which yield far better returns relatively, that means a drain of Canadian money into the United States. Notwithstanding the exhortations of the Finance Minister to the effect that Canadians should keep their money in Canada, the movement of funds into the specially attractive Wall Street bargains cannot be prevented. It will help to keep out money at home if the prices of Canadian stocks and bonds are permitted to find their natural level. Also our financial situation will be sounder and healthier if overloaded borrowers are permitted to reduce their liabilities.

An Interesting Point in Company Law

By M. L. HAYWARD, B.C.L.

The case of Norquay vs. The Grand Trunk Pacific Town and Development Company, recently decided by the Supreme Court of Alberta, raised a rather interesting point as to the powers of such a company under their corporate charter.

In this case the Development Company by its charter was given power "to acquire in any manner land and any estate or interest therein in any part of the Dominion of Canada, and to improve such land and use and deal with the same in any manner required to serve the purposes and object of the company, to assist, promote or engage in any industry that the company may think will enchance the value of lands or tend to develop the neighborhood or enure for the interest of the company or render profitable any of its property rights, to do any and all acts or things tendng to increase the value of the property at any time held or controlled by the company, to enter into any arrangement for co-operation with any company carrying on any business capable of being conducted so as directly or indirectly to benefit the Company."

After their incorporation the Company entered into an agreement with Norquay, whereby they agreed to sell him certain land in a townsite in Alberta, and by paragraph five of the Agreement of Sale, the Development Company covenanted "to establish and maintain a station at the foot of Main Street at the point indicated in red on the attached blue print." The Development Company failed to establish or maintain a station according to this clause of the agreement: Norquay brought an action for damages for breach of the contract, and the company contended that paragraph five of the agreement was beyond the powers conferred upon the company by their charter.

The Supreme Court of Alberta held that in its direct and primary meaning the agreement in reference to the station was certainly beyond the powers of the Development Company.

"It is obvious," said Judge Stuart, "from an examination of the plan referred to in the covenant that the word 'station' must be interpreted as meaning a railway station on the G.T.P.R. Co., and it is also I think, clear that the covenant would not have been fulfilled by the mere erection and maintenance of a building suitable to be used by the railway as a station. There could be no real railway station there unless there was a railway upon which were operated the usual trains passing by the building and stopping at it regularly as is the practise at any railway station. Inasmuch as by the letters patent incorporating the company the power to construct and work a railway was expressly withheld from the company, it follows that it was beyond the power of the company directly to establish and maintain a station."

The Court held, however, that the covenant was within the powers of the company, and that they were bound by it, in view of the powers conferred upon the company quoted above, and in view of the fact that the station in question could be procured from the Grand Trunk Pacific Railway Company, owing to an identity of management between the Development Company and the Railway Company.

"There would appear, in my opinion," said the Court, "to be no doubt that under these latter clauses of the charter the Development Company had the power to procure or induce by contract or otherwise the Grand Trunk Pacific Railway Company to establish and maintain a railway station at the point in question. And if, the covenant contained in clause 5 of the contract can be construed as a covenant, not directly to establish and maintain a railway station, but to procure the railway company, which possessed the necessary powers, to do so, it will follow that the Development Company is liable for a breach of that covenant. In my opinion, the construction I suggest is the proper one to be given. All the circumstances surrounding the making of the contract, as well as the actual position of the parties, suggest the most intimate relationship between the Development Company and the Grand Trunk Pacific Railway Company.

"Taking all these circumstances into consideration," the Court went on to say, "it would appear to be quite beyond doubt that the Development Company, when entering into a covenant to establish and maintain a station at the point in question, was relying entirely upon its intimate connection with the railway company, and its ability, owing to the identity of management, to procure the latter company to locate its station there.

"It is quite open to the Court, in construing the meaning of a contract, to look at all the surrounding circumstances in order to ascertain the sense in which certain words were used as applied to those circumstances. The Development Company clearly intended to contract that it would procure the establishment and maintenance of a station, and it is in that sense tha the words were undoubtedly used and should be interpreted. I can see no reason why the Development Company can in this case object to its covenant being construed in the sense in which it quite obviously intended to fulfil it. To procure the maintenance of a station and to contract to so procure it are clearly within the objects and powers of the Development Company, as set forth in the letters patent, if not specifically, at any rate incidentally, and as necessary to the complete fulfilment of its objects and purposes. Sec. 29 (3) of the Companies' Act clearly gives to a company incorporated under it, all the powers requisite or incidental to the carrying on of its undertaking, and this, of itself, would, in my opinion, confer upon the Development Company the power to procure the railway company by any means to establish the station, and to contract with the plaintiffs that it would do so. But I also think that the specific powers given in the letters patent are in themselves enough to authorise such a contract without the necessity of resort to Sec. 29 (3)."