

and if there were we would have to presume that she gave it because she believed herself liable for the notes. She was then still under marital authority, and her husband's authorization was necessary for this transfer. Assuming that Mrs. Jodoïn was debtor, the bank could not have taken her shares without giving her thirty days' notice in the terms of the statute; it did not comply with this provision of the law. It disposed of the pledge in violation of art. 1971, C. C. The shares of the bank are on the market to-day, and the appellants may procure them to replace those of which it illegally took possession. The bank is above all bound to restore what it took; the debtor may claim back his pledge when the creditor abuses it. Respondent pretended that the action was instituted too late; but I do not know of any prescription which could extinguish the action unless there was acquiescence, and acquiescence has not been proved. Appellants are entitled to the dividends, less the amount which they admit they owe, but they are not entitled to interest on dividends. We condemn the bank to restore the shares, or to pay the nominal value, and we reserve any recourse which it may exercise for the recovery of the balance of the two notes of \$2,000 and \$757, but reserve appellant's recourse for damages which they may have suffered, and which may result from the illegal sale by the bank.

Judgment reversed.

(Note).—This case is going to the Privy Council.

BASE BALL—See Gambling.

BENEFIT SOCIETY—See Insur. Life 5.

## BILLS AND NOTES.

### 1. CHECKS—PRESENTMENT FOR PAYMENT—REASONABLE TIME—DAMAGES—CUSTOM OF BANKERS.

On Saturday, the 31st day of May, 1890, about the close of banking hours, one M. indorsed in blank, and deposited to his credit in a bank of Wymore, Nebraska, certain checks drawn to his order by one B. on a bank in Courtland, Nebraska. Wymore, and Courtland are twenty-seven miles distant from one another, but connected by telegraph telephone and railroad lines; and a mail left Wymore at 6 p.m. daily, arriving at Courtland at 9 p.m. the same day. The Wymore bank made no inquiry of the Courtland bank as to whether the checks were good, nor did it at any time advise the Courtland bank that it held the checks, but on the day of their receipt mailed said checks to a bank in St. Joseph, Missouri, which bank sent them by mail to a bank in Omaha, Nebraska, and this

latter bank sent them by mail to the bank in Courtland, at which they arrived on June 5, and were then protested for non-payment.

*Held*, that the Wymore bank did not present the checks for payment to the Courtland bank in a reasonable time, and that the indorser, Miller, was thereby discharged.

An ordinary check is not designed for circulation, but for immediate presentment, and, to charge an indorser must be presented with all due dispatch and diligence consistent with the transaction of other commercial business.

Greater diligence is required in presenting ordinary checks for payment than in presenting bills of exchange. Whether an ordinary check has been presented for payment by the indorsee thereof in such a reasonable time as to hold the indorser must be determined from the facts and circumstances of each particular case.

No custom or usage among bankers as to the manner of presenting ordinary checks for payment will relieve them from the legal duty of presenting such checks for payment within a reasonable time. *First National Bank of Wymore v. Miller*, Nebraska, Supreme Court, June 30, 1893.

### 2. PROMISSORY NOTE—WARRANTOR—PROTEST.

*Held*, a warrantor *donneur d'aval* occupies the same position as an endorser, and is discharged by omission to protest. Hence a declaration in an action against a warrantor which does not allege that the note was protested is demurrable.

(2) An allegation in the declaration that the defendant acknowledged to owe, and promised to pay the amount of the note, is destroyed by an allegation also contained therein, that payment of the note was refused at the time of presentment and had always since been refused. *Emard v. Marcille*, Montréal, Superior Court, Wurtele J., Sept. 19 1892.

### 3. PROMISSORY NOTE—ACCOMMODATION—BAD FAITH OF HOLDER—CONSPIRACY—ONTARIO.

P. endorsed a note for the accommo-