

wise; they were also checked out by Chartré. According to the authority already cited, "in ordinary cases of deposits of money with bankers, the transaction amounts to a mutuum or loan for use and consumption, it being understood that the banker is to have the use of the money in return for his consent to take charge of it." The instant this money was received by the Bank, the Bank owed Chartré a similar sum, and were accountable to him for every farthing they received. It is a circumstance of no importance that, for the most part, Chartré appears to have given his checks to Maxham & Co., who paid their own notes by means of their own checks. It is sufficient for this case that, by the consent of all parties, the monies received from the Commissariat were treated as the monies of Chartré, held by the Bank, subject to his order. With reference to the instrument styled an assignment to the Bank, it purports to be an assignment, but is really none whatever. It is an instrument contradictory in itself. It commences by saying that Chartré assigns to the Bank his contract for the supply of beef. If the rights of Chartré on the 8th of October, 1858, were that he should first supply the beef before he could get any money this was an executory contract. Yet the defendants pretend it was an assignment of that contract. If it were looked at in that light, the Quebec Bank ought to have supplied the beef and received the money as their own. But a little further on it says nothing is to be understood as compelling the Bank to furnish the beef, and that Chartré himself is to supply it. Thus the so-called assignment is contradictory in its terms; it is nothing more than a power of attorney from Chartré to Mr. Gethings to receive the monies and grant discharges. The advances, then, were made by the Bank upon the security of Maxham & Co.'s notes, and there is nowhere proved any undertaking to apply the monies received from the Commissariat to the payment of these notes: if any such agreement existed, it was one between Maxham & Co. and Chartré, to which the Bank was no party. The defence, therefore, has not been made out, but the facts which have been disclosed leave the question of the appropriation of these monies, sooner or later, to the part payment of the note sued upon, almost a matter of certainty. The four notes, endorsed by Chartré, which fell due on the 4th of October, were taken up by Maxham & Co.'s check. It is perfectly true that it is of very little consequence to Maxham & Co., whether they owe the money on notes or on a check, but Chartré was exonerated from all liability on those notes, which were not protested, when they were surrendered. The only note discounted by the Bank, which has been protested, is the one sued upon, consequently this is the only one upon which Chartré is indebted to the Bank. The Bank admit they owe him \$1539, and if Chartré sets up compensation to this amount, it is difficult to see what the Bank can say to prevent it. I think the letter, written by Maxham & Co., on the 5th of October, 1859 has no weight. It was written before the note sued upon. In this cause

was due, and at that time Chartré appears to have been released by the Bank upon the \$4000 by the delivering up of the notes on which his name was endorsed. If released from the \$4000, there is no ground on which Maxham & Co.'s request could be complied with by the Bank; Chartré owes the monies, but he owes them to Maxham & Co. I do not, therefore, think that should trouble the jury much. There is the admission that Maxham & Co. were unable to meet their notes for \$1,500, but that will come up in another suit. Looking at the evidence, it seems to me that the jury will have no difficulty in coming to the conclusion, as to the first question submitted, that the money was advanced on the security of A. J. Maxham & Co.'s notes, and of that of receiving the money from the Commissariat, which was done. To the second question the jury will, no doubt, immediately answer in the affirmative. And as to the third question, the testimony shows that all the advances made by Chartré on that security have been repaid to the Bank by Maxham & Co. with the exception of the note sued upon. With reference to the \$1500 there is, no doubt, such a sum in the hands of the Bank now which might be applied by Chartré to the payment of the note in question, but as I look upon the case, Maxham & Co., the defendants have not proved any agreement, as set up by their plea, that the money was to be so applied. This is the whole case, and I conceive it will not take the jury long to deliberate upon it. It is an advantage to the parties to have the benefit of such great commercial experience to decide between them.

The Jury then (2 o'clock P.M.) retired, and, after an absence of about an hour and a half, returned into Court with the following unanimous verdict (which was read by Mr. Macpherson, the Foreman,) upon the questions submitted to them:—

1 Question.—Was there any and what agreement entered into, in the month of October, 1858, between the plaintiffs and the defendant by which the plaintiffs agreed to make advances or loans of money to Pierre Chartré, to enable him to fulfil his contract with Her Majesty's Commissariat for the supply of beef to the garrison of Quebec, and, if so, upon what security?

Answer.—There was an agreement that the Bank was to advance money to enable Chartré to carry out his contract with the Commissariat, the security being A. J. Maxham & Co.'s notes, endorsed by Chartré, and a material transfer of the money to be paid by the Commissariat for the beef and of a policy of insurance on the beef.

2. Question.—Did the plaintiffs, in pursuance of such agreement, make any advance loan to the said Pierre Chartré for the said purpose, and was the promissory note sued upon a part of such advance or loan?

Answer.—Yes.

3. Question.—Did the plaintiffs recover back from the said Pierre Chartré any and what part of the advances and loans so made by him, and from whom?

Answer.—Not from Chartré, but they