

not his intention to go over this evidence; he should confine himself to such facts as he conceived had a direct bearing upon the issue to be tried. It appeared that on the 8th of October, 1858, Pierre Chartre, one of the defendants, having entered into a contract with Her Majesty's Commissariat Department, at Quebec, for the supply of fresh beef to the Forces, and being unable to carry out the contract, without some pecuniary assistance, applied to the firm of A. J. Maxham & Co., the other defendants, to make application to the Quebec Bank on his behalf, in order to obtain the necessary advance of money for this purpose. Accordingly, the defendants, A. J. Maxham & Co., did apply to the Quebec Bank on behalf of Mr. Chartre, to make him this advance, by the discounting of their notes in his favor, and offered, on behalf of Mr. Chartre to assign the monies coming to him from the Commissariat Department in payment and satisfaction of the advance, or so much thereof as the said monies would suffice to pay and satisfy. This proposition was acceded to by the Bank, and Messrs. Maxham & Co. were requested to reduce the same to writing, which was done by the letter of the same date, which had been read to the jury, and which formed the basis of the whole transaction. The Bank were aware at the time that they could not, without violating their charter, make a direct advance in money to Chartre upon this beef contract, because their charter expressly forbids their dealing in anything except bills of exchange, discounting of notes of hand, receiving the discount at the time of negotiating, gold or silver bullion, or in the sale of stock pledged for money lent and not redeemed, and therefore, in order to carry out the agreement with Chartre, they required that the notes alluded to should be granted. The making and granting of these notes can only be looked upon, therefore, as ancillary to the carrying out the direct advance of money to Chartre by the Bank. By the letter, Maxham & Co. stipulated that the Bank only should receive the money, meaning the monies to become due to Chartre by the Commissariat; and it was for the gentlemen of the jury to put such a construction upon that and the other portions of the letter, as would best carry out the intentions of the parties. By its terms Maxham & Co. could only be considered as becoming liable as sureties of Chartre towards the Bank, in the event of the monies to be received by them from the Commissariat, not proving sufficient to cover the advances made to Chartre. The Bank having accepted the terms of this letter, in order to carry out the principal condition imposed upon them by Maxham & Co., namely, that of receiving the monies themselves from the Commissariat, caused to be prepared and executed the deed of assignment which had been referred to, by which Chartre not only appears to have transferred all the monies to become due to him, but also the contract, so that the Bank virtually came to be contractors with Her Majesty's Military Government for the supply of fresh beef for the use of the Forces; and the monthly accounts furnished to the department would seem to justify this position. The making of this

assignment was certainly to ensure the due payment of the notes; and the Bank fully intended that they should lose nothing by the transaction, required not only that the order on the Commissariat, by means of a notarial transfer, should be deposited with the Cashier, as stated by Mr. Gethings, but also that the beef in store during the winter months should be insured by Chartre, and the policy assigned to them; constituting at the same time Mr. Gethings the sole judge of the amount of monies to be advanced. Advances were then made from time to time to Chartre by the Bank, and his monies were received by Mr. Gethings, and placed to his account by the voluntary act of the Bank, as the question put to Mr. Maxham by the Cashier, whether he should continue to place the monies to Chartre's account as usual, which was the first occasion he had addressed Mr. Maxham, sufficiently shews. Mr. Gethings stated his reason for asking this question: it was, as he said, that Chartre had come into the Bank on several occasions in a state of intoxication, — a circumstance which surely should have placed the Bank on its guard in relation to the application of these monies. Notes of a similar description continued to be discounted, and the monies to be received by the Bank from the Commissariat for nearly a year, coming down to the 3rd of October, 1859, when the last payment was made, amounting to \$5730. On the 4th October four notes of Maxham & Co., and held by the Bank, amounting in the aggregate to \$4000, matured and were retired by Maxham & Co.'s cheque, Chartre having, on the same day, abstracted from the Bank, of the monies so received on the previous day, a sum of \$4200. The jury had heard a great deal about those four notes and the money so abstracted by Chartre, but this had nothing whatever to do with the present case. There then remained of these Commissariat monies \$1530, and that amount being in the Bank on the 8th October last, when the note for \$2000 declared upon in this cause became due, this sum of \$1530 was applicable to the payment of this last mentioned note, which came to be satisfied to that extent; and Maxham & Co., having tendered the balance, which was refused, the plaintiffs certainly could not claim against him for any larger sum. They have endeavored, however, to account for the \$1530. Mr. Gethings has told you in his evidence that they had imputed this sum to the part payment of the amount of the four notes which matured on the 4th October, while, in the same breath, he told you that Messrs. Maxham & Co. had retired these notes and had them in their possession, and that the Bank had instituted another suit against Maxham & Co., which was still pending in this Court, for the recovery of the amount of the very cheque which had been given by them and accepted by the Bank in payment of these notes. The only question in this case is this: Was there any part of the monies received by the Bank from the Commissariat in the Bank at the maturity of the note sued upon in this cause, to meet that note or any part thereof? The jury had been told there were \$1530, but