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[Circular.]

Commercial Bank of Canada,

Kingston, 23rd August, 1865.

To the Shareholders of the Commercial Bank of Canada:

In the Report submitted at the Annual General Meeting held on 26th June last, the Directors, when alluding to the proceedings against the Great Western Railway Company, then pending before the Privy Council, informed the Shareholders that a decision would probably be had in August, and that means would be taken to communicate the result to the Shareholders at the earliest practicable moment. The Directors further stated that they had no reason to doubt the decision would be in favor of the Bank.

The case was argued before the Judicial Committee of the Privy Council, by the Attorney General and Sir Hugh Cairns, on behalf of the Bank, on the 17th, 18th, and 19th July, and judgment was given on the 27th. When the judgment reached Canada, it was reprinted, and copies were at once forwarded to all the Branches, for the information of Shareholders. The views of Counsel could not be ascertained until a few days since.

To those Shareholders who have not read the judgment, I am directed to say that, apparently, the Lords Justices have practically adopted the views of the Court of Appeal in Canada, and have ordered a new trial to determine the amount due to the Bank. They decide that the account was the account of the Great Western Railway Company, not that of the Detroit and Milwaukee Company, and thus that the Great Western Railway Company could not claim a nonsuit; that the facts were properly put before the jury; that the Great Western Railway Company were authorized to make advances to the Detroit and Milwaukee Company, to the extent of £250,000 sterling or $1,250,000, and are liable to the Bank for the undrawn balance of that sum. Upon this judgment, the whole case will again go to a jury, by whom the main question to be determined under the direction of the Judge will be, the amount of liability of the Great Western Railway Company to the Bank. This will be divisible into two points—first, whether there is any liability beyond the £250,000 sterling, and secondly, what amount of the £250,000 sterling has not been properly drawn by the Great Western Railway Company on Detroit and Milwaukee account, and therefore remains applicable to the claim of the Bank.

The judgment, although at variance with what the Directors had reason to expect, must however be submitted to, and acted upon; and consequently, notice of trial will be given at the earliest possible day, for the next Assizes. But the Directors deem it proper to remark upon the decision of the Privy Council, because in the Annual Reports since the proceedings began, they uniformly expressed their confidence in the result, and they desire to show that they had good grounds for that confidence.

At the trial, the jury found in favor of the Bank on every question of fact submitted to them. Then, and throughout the whole proceedings, the fact that the account was one with the Great Western Railway Company, and not with the Detroit and Milwaukee Company, was established and maintained, notwithstanding the most persistent efforts to make it appear otherwise. Then the referee, to whom by formal consent the question of amount was submitted, found in favor of the Bank, to nearly the whole amount claimed. Subsequently, application was made by the Great Western Railway Company to the Court of Queen's Bench for a nonsuit or a new trial, but the rule was discharged by the unanimous decision of the Court, after full argument of all the points. Against that decision the Great Western Railway Company appealed to the Court of Error and Appeal. In the judgment given by the Court of Appeal, effect was given to an objection to the Bank's recovering the whole amount claimed, which was not taken at the trial, nor raised in the Queen's Bench. Mr. Justice Hagarty's remarks establish this, and are in these words:—"I was not present at the argument, and therefore give "no judgment, but I think it right to add to the judgment just delivered, that in the elaborate argument of the Appellants "(G.W.R. Co.) in the Queen's Bench, no distinction whatever was pressed on the Court between the liability for the unpaid "portions of the two loans and the residue of the claim. Nor as far as the papers show, was any such point made at the "trial." Nothing could be more explicit than this statement. Then, it had been an established rule of law and practice, that an objection or point not raised in the Court below could not be heard in a Court of Appeal. Yet the Court of Appeal