

bank, solely on the ground of further fraud or dishonesty of the compounding officer occurring in the negotiation itself (1).

61. In like manner it not unfrequently occurs that the wrongful or erroneous act of an officer causes a loss to the bank which he can be held liable to reimburse, but which there is reason to believe can only be recovered by a suit against some other third party. But if recourse is had to the suit against the third party, then the testimony of the officer in fault may be absolutely essential, or at least very desirable to secure the success of the bank. Whereas, on the ground that he is a party immediately interested in the result of the litigation, he must in all probable expectation be rejected at the trial as an incompetent witness, unless he is first legally and fully released from his liability to the corporation (2). In this dilemma it is the duty of the directors to consult solely comparative ultimate probability of securing reimbursement to the bank from the defendant or from the officer. It may be that the amount of the loss is greater than can possibly be recovered from the officer or from his bondsmen, while the defendant would be amply able to pay it. It may be that the result of the suit is doubtful: or it may be that only a successful result can in reason be anticipated. Upon the consideration of such facts, the directors must conclude whether or not worldly wisdom would lead them to release the claim of the bank against the officer, or to abandon the notion of the other suit, or to sacrifice in its prosecution the advantage of his evidence. If their choice is of the first alternative, then it is not only in their power, but it becomes their duty to execute to him a full, valid, and sufficient release from his liability. We say they must be guided solely by their notion of worldly wisdom in the case: unless by direct sanction from the shareholders, their feeling towards the officer, and their opinion of his conduct and character, cannot be allowed any weight whatsoever: and this equally, whether this feeling and opinion would lead them to punish him to the utmost extent of their power, or to pity and relieve him. The question is purely of dollars and cents, not of moral desert, vindictiveness, or of commiseration (3).

62. OVER ISSUE OF NOTES.—Where the bank has the legal authority to issue its bills or notes for circulation as currency, the

1. *Lewis v. Eastern Bank*, 32 Me. 90.

2. *Frankford Bank v. Johnson*, 24 Me. 390.

3. See *Bank Jacques Cartier v. Valin*.