

BAIN, J.]

[July 19.

RE THE COMMERCIAL BANK OF MANITOBA.

Winding up—Interest to be allowed to creditors.

This was an application by the liquidators of the bank for the direction of the court as to the allowance of interest to the several classes of creditors other than noteholders.

Held, that unless there is a surplus of assets available after payment of the principal of the debts, all interest ceases after the commencement of the winding up.

If, however, there shall be any funds available for the purpose, interest should be allowed as follows :

Depositors who before the winding up had been receiving interest without written agreement, and depositors entitled to interest by special agreement, should now be allowed interest at the agreed on rates, just as if the bank were not being wound up, and any dividends paid them should be applied, first, in payment of the interest accrued, and then on account of principal in the ordinary way.

Depositors whose accounts did not bear interest and general creditors can only claim interest if they have made a demand in writing upon the liquidators under the statute 3 & 4 William IV., c. 42, s. 28, "with notice that interest will be claimed from the date of such demand until the time of payment," and then they are entitled to interest at six per cent. per annum.

Holders of drafts and bills of exchange issued by the bank, drawn either on its own branches, or on other banks or bankers who acted as agents of the bank, will be entitled under s. 5, s-s. 2, of The Bills of Exchange Act to treat them either as bills of exchange or promissory notes of the bank, and can claim interest at six per cent. from the time of presentment for payment to the drawees under section 57 of the Act. The fact that these holders knew that an immediate presentment for payment would be useless does not entitle them to interest from the date of the winding up : *In re East of England Banking Co.*, L.R. 4 Ch. 14, and section 46 of The Bills of Exchange Act.

Holders of cheques drawn on the bank by customers and accepted or certified by the ledger-keepers in the ordinary way and charged to the customers' accounts will not be entitled to interest, unless they have served the demand and notice under the statute 3 & 4 William IV., as in the case of other ordinary creditors.

Such an acceptance or certifying of a cheque by the bank cannot be held to be an "acceptance" of it so as to make it an accepted bill within the meaning of s. 17, s-s. 1, of The Bills of Exchange Act, especially in view of the provisions of section 90 in the case of an instrument "signed" by a corporation, the impression of the name of the bank by the rubber stamp in use not being equivalent to sealing the instrument by its corporate seal.

Phippen for liquidator.

Aikins, Q.C., *Howell*, Q.C., and *I. Campbell*, Q.C., for the several classes of creditors.