Vol. II.] [Number 3

JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

MARCH—1895

ANOTHER MONETARY CONFERENCE

THE present period of world-wide commercial depression is affording to the bimetallists a most favorable opportunity of agitating their cause, which they have not been slow to profit by. Within the past few weeks in the German Reichstag a motion favoring an International Monetary Conference, proposed by a supporter of bimetallism, was carried by a large majority, and subsequently we have seen that a similar resolution was passed by the British House of Commons. The fact that the two nations which have been regarded as most wedded to gold monometallism should have been induced to originate the proposition for a Monetary Conference, has been heralded as a great triumph for bimetallism, since the avowed object of such a Conference is to devise a plan for the greater use of silver in the world's monetary systems. Much of its apparent significance disappears, however, when it is remembered that the resolutions in both cases were carried by the votes of members who are uncompromising opponents of bimetallism, but who are quite willing to help forward any movement looking to a greater use of silver—in the currency systems of other nations. Neverthe-

less the action of these governments does possess some significance in that it indicates the existence of a feeling, however well or ill-founded, that a measure of relief would be afforded by any economically sound plan under which silver would be utilized to a much greater degree as a monetary basis for the world's commercial transactions. That the Conference will result in such a plan being evolved, however, no one believes, but besides affording an opportunity for profitable discussion of a subject of vast importance, it will doubtless serve the purpose of demonstrating at least the futility of the hope that even all the *leading* commercial nations can be induced to enter into the agreement which would be necessary to the institution of bimetallism.

PRIZE ESSAY COMPETITION, 1895

THE following are the subjects chosen by the Committee on Essays for the Competition of this year:

SENIOR COMPETITION

Describe the cause of the decline in the value of products, and indicate to what extent it has affected the general welfare of Canada.

A first prize of - - - -	$100
A second prize of - - - -	60

JUNIOR COMPETITION

Give an account of the resources of the Province in which you reside, and trace their recent development or decline.

A first prize of - - - -	$60
A second prize of - - - -	40

CONDITIONS

Competitors eligible for the Senior Competition will comprise Managers and Senior Officers who have had a banking experience of not less than 10 years.

Competitors eligible for the Junior Competition will com-

prise all under 25 years of age, whose banking experience does not reach 10 years.

The essays in the Senior subject are not to exceed 10,000 words, and in the Junior subject 5,000 words. All essays must be typewritten, having the writer's nom-de-plume or motto, also typewritten, subscribed thereto, and be lodged with the Secretary-Treasurer not later than the fifteenth day of May.

The address on the envelope containing the essay must be typewritten, and to insure identification of the essayist, a separate sealed envelope, with the address also typewritten, containing the name, rank, and place of employment of the competitor, along with his nom-de-plume or motto, must also be mailed.

A Special Committee will examine the essays and decide the prize-winners.

The Prize Essays will remain the property of the Association.

The envelopes of successful competitors only will be opened, except in cases where a competitor indicates on his envelope that he would like his identity disclosed.

A CORRECTION.—In the article upon the late Mr. Stevenson, in our December issue, the date of his death should have been given as 10th Dec. instead of the 11th.

FROM ANOTHER POINT OF VIEW

BEING SOME THOUGHTS ABOUT TRADE AND THE GROWTH OF CORPORATIONS

As a constant reader of our JOURNAL, I am beginning to realize what an opportunity its publication affords to us as bankers to exchange ideas about subjects of interest and to obtain the opinions of others upon matters of importance to our fraternity. The Council of the Canadian Bankers' Association very properly decline to be responsible for the facts furnished or opinions held by the author of any paper published in the columns of the JOURNAL. It is, therefore, open to any member of the Association to challenge the statements or oppose the arguments of another writer without being considered to array himself in opposition to the views of the editors of the JOURNAL.

Permit me then the use of your pages for the purpose of courteously reviewing an article which has assisted to make the December number of the JOURNAL the most interesting yet published. It is to the positivism of the author of "The Growth of Corporations" my desire to review his article is owing. Mr. Fyshe's manifest belief in the impregnability of his position and the soundness of his views must have arrested the attention of many of his readers, and I trust that my attempt to express some of the thoughts engendered by perusal of Mr. Fyshe's article may be the means of eliciting the opinions of others upon a subject quite as interesting as any treated of by that clever and miserable pessimist, Mr. A. J. Wilson. In a recent number of the *Investors' Review*, Mr. Wilson discusses the question, "Is trade going to revive?" If the process of impoverishment which, according to Mr. Wilson's statement, is ever widening, forbids any higher prices for the staples of life, if the "drift of events in this modern world of steam and electricity, unprecedented capitalization of inventions and pawning of human lives" indicates "descent towards universal decay" and shuts out all possibility of a revival in trade, then it is high time that those engaged in the pursuits of banking and commerce ceased to

bother about the things of this earth. Out with such gloomy predictions! Does the history of the world furnish no examples of recovery after each former crisis in finance and depression in trade?

Mr. Wilson, editor of the *Investors' Review*, is always able and ready to tell his readers in a very forcible way what, in his opinion, the world is now suffering from. Perhaps to dullness may be attributed my inability to find in his utterances any suggestion of a remedy for the deplorable state of affairs he seems to delight in dwelling upon.

I have referred to Mr. Wilson's question "Is trade going to revive?" (to which I am almost tempted to make the flippant rejoinder "Of course, apples will grow again,") because I find something equally irritating in Mr. Fyshe's article upon "The Growth of Corporations." The latter also revels in gloom, and quarrels with the existing condition of things. To enable the big men to become bigger he proposes that they should swallow their smaller brethren. Let us briefly review some of the passages in "The Growth of Corporations." It will be noted that Mr. Fyshe does regard one of his pen pictures as likely to provoke adverse comment. For, after blaming the "great completeness and efficiency of our banking system" for extending credit everywhere and thereby creating "a vast army of impecunious traders," he pulls himself up with a jerk and adds, "This is not a caricature, but a simple statement of fact." Mr. Fyshe fails to see that even his supposedly well considered opinion does not of necessity constitute a fact for the rest of the world to silently accept.

Hence it is that I quarrel with his positivism upon matters which, if differently presented to view, might have far greater weight with his readers.

If the tendency of the times is towards the formation of big corporations; if individualism in banking, trade and commerce is dying out; if the business of the world is in the future to be conducted by joint stock companies of enormous size, power and importance; and if the object and intention of these leviathan companies is to prevent competition by what Mr. Fyshe terms "amalgamation or otherwise," then it is surely

time for the peaceful manager of a small bank, or the honest individual tradesman with a moderate capital, to consider what haven of refuge the future opens for him.

But, perhaps, there is no occasion for uneasiness, and we may find in the very positivism of Mr. Fyshe the proof of the bogey-like character of his article. I, at least, derive comfort, so far as the immediate future is concerned, from the closing sentences of Mr. Fyshe's article. He says :—

"We are beginning to see the weakness and waste of numerous small organizations and the folly of competition. Indeed, competition, while it has been of much service to the world, is becoming less and less useful, where not absolutely hurtful, and now begins to give evidence that it is approaching the period of its old age. It was chiefly necessary in order to make up for the lack of proper organization. When the latter is achieved, we may regard the rapid disappearance of competition with comparative equanimity." What a beautiful dream for a practical banker !

To quote from a well known comic opera, it will also be for those outside of the big corporations, a "time for disappearing" into comparative obscurity.

It seems to me, having read Bellamy's pretty picture ("Looking Backward"), that the author of "The Growth of Corporations," although a shrewd banker, sometimes dreams of an idyllic state of things. Fancy the cold, cruel business world becoming so Bellamystic as to consent to be catered for by one big Emporium or Universal Trading Corporation, to be willing to leave the rates of exchange and interest to the fiat of some one enormously bloated bank, and, in this unique and supposedly happy condition of things, "regarding the disappearance of competition with comparative equanimity."

I venture to think that, when the big corporations attain their full growth, and succeed in swallowing or amalgamating all small competitors, instead of competition becoming less and less useful and showing signs of senility, it will then be at its best and liveliest, and most useful as a protection to consumers from the natural rapacity of powerful monopolies.

Mr. Fyshe refers, at the commencement of his article, to

Adam Smith's prediction concerning joint-stock companies that, save for the purposes of banking and insurance, such companies can seldom fail to "do more harm than good."

Mr. Fyshe states that this was written by "the wisest man of his time, only 120 years ago," and then goes on to say, "to day the most conspicuous economic fact in the world is that what we may call individualism in trade and industry of all kinds is rapidly dying out, while its place is being taken by those very joint-stock companies which Adam Smith deemed so inefficient, and to the growth of which there seems to be hardly any limit." Is it not just possible that Mr. Wilson or any other seer of change and decay may, 120 years from to-day, prove to have been, with Adam Smith, "the wisest man of his time," astray in his opinions, and that Mr. Fyshe's belief in the rapid disappearance of competition may yet be found by those of us who are permitted to enjoy a second term on earth to have been based upon nothing but hope of the extinction, absorption, or amalgamation of his neighbors.

It is pleasing to observe that Mr. Fyshe does not claim for a movement having for its object the creation of big corporations, that it is "fraught with great potential blessing to the world." He even refers with some warmth of invective to the so called Trusts in the United States as being "little better than vampires," and admits that "there is no more urgent work required of our legislators than the enactment of proper restrictions and regulations for all joint-stock companies."

With Mr. Fyshe's ideas concerning the pensioning of employees, I am, of course, thoroughly in accord, and his reflections on the continual battle between capital and labor form for me the most interesting paragraphs in his article.

But, with his following regret that the borrowers from our banks who succeed in making money are thereby rendered independent, and by ceasing to borrow drive their bankers back into the wilderness in search of "new and hungry aspirants to position and wealth, who will borrow our money and use it in a probably vain competition with their successful predecessors who are now using their own," I am simply entertained.

Mr. Fyshe also states, without any apparent regard for con-

trary opinions, "*there will never again be the profit in banking that there has been,*" and adds, "for all the really legitimate business there is to be done in this country, we have about three times as many banks as are required."

I am willing to admit that banks, like grocers' shops, are somewhat numerous in certain localities. But the phenomenal earnings of some of our banking institutions only so recently as two years ago, when the troubles of our Republican neighbors enabled some of us to select from sheaves of gilt-edged bonds, etc., security for money advanced at a rate of interest practically named by the lender, leads me to question the wisdom of Mr. Fyshe's statement that apples will grow never again, that profitable banking is a thing of the past.

Let me now refer to the passing reference made by the author of "The Growth of Corporations" to the necessity for "wise bankruptcy legislation." Why such legislation should of necessity result in the restriction of credit, reduction in the number of traders, and therefore of bank customers, is beyond my comprehension. Perhaps Mr. Fyshe lugged in this conclusion as a means of introducing his opinion that "by some means or other it would be wise to think of bringing about a reduction in the number of our banks."

Even if the officials of our banks fail to find comfort in Mr. Fyshe's reference to this age of rapid transitions, and cannot accommodate themselves to the prospect of being "wiped out altogether" when small competing institutions are amalgamated with or swallowed by the surviving "one or two" unnamed banks, we have the soothing assurance of Mr. Fyshe that the banking of the country could then be done much more effectively and economically. I must leave to those who have served the Bank of Montreal, or some other large institution, to deal with Mr. Fyshe's graceful tribute to the managers of successful small banks when he says, "*It is perhaps less difficult to manage large than small banks, and it should be proportionately much more economical.*" Who rises to respond?

There is such strong common sense, and effective, if blunt argument in parts of Mr. Fyshe's article upon "The Growth of Corporations," that many of his readers must surely share my regret at finding this recent contribution to the JOURNAL

disfigured by the positivism which always destroys the best thoughts and proposals of an extremist. Why should Mr. Fyshe, towards the close of his article, affirm so positively that the condition of the country does not admit of an increase of business for our banks, and why should he refer to the "wasting competition which threatens to prove fatal to the banks and public alike" as suggesting amalgamation (much as it would improve the banking business in his city) as the only panacea, the sole chance of salvation? Surely he must realize that many of his readers will not need to glance at the Government statement of the condition of Canadian banks to recall that some of them (even in the little province of Nova Scotia) continue to grow and prosper regardless of the "wasting competition" which, according to Mr. Fyshe, has rendered profits "so infinitesimal that it would almost require the aid of a microscope to see them."

Is the condition of the country to-day to be its condition for all time to come? We know to the contrary.

Before closing this brief review of Mr. Fyshe's article and the thoughts it has engendered, I wish it to be understood that I do not view with any alarm the growth of corporations. I do not fear for the world any evil which we cannot eradicate resultant from the amalgamation of banks and the formation of big companies. Personally I would rather be a door keeper in the banking house of some leviathan institution in Montreal, with a good pension in prospective for my declining years, than dwell as a manager of a little money box in Queerboro'—providing the salary attached to the former position was in keeping with the size of the bank and the character of my door keeping.

But Mr. Fyshe has signally failed, in my opinion, to show that the growth of corporations betokens for competition the period of its old age. I am rather inclined to believe, on the contrary, that competition is only in its infancy; that the building up of big and necessarily rival companies will witness a war of rates such as will enable consumers to always preserve some decent chance of living. For Mr. Fyshe (again resorting to invective) has to admit that the present experience of the world with big corporations, owing to the expenses of management or

the rapacity of shareholders therein, is calculated to make one think "they are controlled by men of the buccaneer type, who run them for plunder or swamp them with watered stock in the very act of creating them."

With Mr. Fyshe's sensible wish to witness the disappearance or amalgamation of some of our banks, I am thoroughly in sympathy. But is not this coming about gradually? In this corner of the Dominion we miss the names of six or seven institutions, of say twenty years ago, and the diminution in the number of Canadian banks is nearly as rapid as in Scotland, the country named by Mr. Fyshe.

I class Mr. Fyshe's positive statement, "we shall never again see the profit in banking that there has been," with Mr. Wilson's equally pessimistic prediction that trade will not revive and that everything indicates "descent towards universal decay" and demnition bow-wows.

Trade will revive and our banks flourish long after Messrs. Wilson, Fyshe and the writer have ceased to fret and worry about money and clothing. Looking down from our next place of abode, we shall see occasional periods of depression, as now, clearing the commercial atmosphere, periodical seasons of sunshine in banking circles, followed by days when financial ruin and disaster are visible on the horizon. In all ages of the world prosperity and hard times have been known, and those who truly realize the drift of things will abandon pessimism and cling to the hope of better days.

Doubtless others than the writer have observed in "The Growth of Corporations" the same spirit of fault finding which is so markedly a characteristic of the editor of the *Investors' Review*, Mr. A. J. Wilson, who is a chronic fault-finder, the Labouchere of the financial world, tilting at real and imaginary grievances alike, suspicious of everybody and everything, and always eager to advise upon or moralize about occurrences the particulars of which are unknown to the general public. He is the great self-appointed moral censor of the financial world.

I will presently adduce instances of Mr. Wilson's chronic fault-finding. Before doing so let me point to the evidence that the clever and forcible author of "The Growth of Corporations"

is also inclined, perhaps as the outcome of constant reading of the *Investors' Review*, to harbor cynical doubts of the future of our race, and to find fault with our present condition.

Mr. Fyshe complains, in an article intended to show "the beneficial results to society which will probably accrue from the growth of corporations," of many things. I think it can be shown that the "unhappy condition of the world at present" has probably been a theme for moralizing about ever since the garden of Eden incident, and that incompetent and dishonest traders, failures and frauds will always harass and vex the souls of upright and honorable competitors in business.

However, it is to two statements of Mr. Fyshe that these rambling, ill-expressed thoughts of mine may be attributed. When Mr. Fyshe states "there will never again be the profit in banking that there has been," he is much more positive about the outlook than was Adam Smith when writing about joint-stock companies 120 years ago. When Mr. Fyshe blames "the great completeness and efficiency of our banking organization" for creating "a vast army of impecunious traders," and blames an indulgent community for shouldering losses incurred in business instead of ordering those who fail thereat to be executed, he is merely furnishing his readers with proof that an otherwise excellent article is the work of an extremist and a disciple of Mr. A. J. Wilson.

Before closing, let me give a few examples of the growing disfiguration of the *Investors' Review*, an otherwise readable magazine, by the chronic and sometimes purposeless fault-finding of its editor, who believes that the world has nearly reached "the turning point of a descent towards universal decay."

The aim and purpose of Mr. Wilson's editorial life seems to be fault-finding. His self-satisfied replies to shareholders injured by his attacks show that he is not a fair and unbiassed critic of the companies about the operations of which he must, of necessity, be frequently only half informed. However, it is to Mr. Wilson's reference to the colonies I wish, in closing this article, to briefly refer.

One might find it possible to forgive the attitudinizing of

Mr. Wilson as the inspired patron saint of investors. But no true Canadian will suffer in silence the persistent sneering allusions of this self-sufficient, conceited Scotchman to Canada as the hot-bed of wild, reckless extravagance and incapacity in the administration of public affairs, nor tolerate his charges of political and commercial immorality. I observe in the last number of the *Investors' Review* an article recommending for Canada political union with the United States.

Who is this Mr. Wilson, that he should consider himself justified in writing as follows upon the condition of affairs in the colony of Newfoundland? Has he personally learned aught of the past, present and future of Newfoundland? Let me quote from Mr. Wilson's article, "The Ruin of Newfoundland:"

"Its only currency consisted in the notes of its two banks, now insolvent; and when they stopped payment, the slender amount of specie in one of them was claimed by the Government as property of the savings banks whose deposits, with *true colonial recklessness*, it first 'guaranteed' and then lent to the other banks without security. One of the banks which failed—the Commercial—was found to be a mere empty shell. Those who managed it had used up its resources and its 'credit' also in *the approved colonial style*."

By what right does Mr. Wilson seize upon the failure of a couple of banks in Newfoundland and the weakness of its Government, as the occasion for such a tirade. True colonial recklessness! Approved colonial style! Mr. Wilson is quite a pretty picker of phrases. But this chronic fault-finder mars all the good he might do by the clumsiness of his probing into the sore spots of this work-a-day world, and the rough and brutal style of his pessimism. He forgets that any gentleman of colonial extraction has now the right to ask Mr. Wilson some questions. There are little bits of English history which serve to show from whence the colonists of to-day imbibed some of their peculiar methods in financing. What also would Mr. Wilson think of a writer who referred to the disposition made by his countrymen of a certain king of England as being in accordance with our ideas of "approved Scottish thriftiness."

Again referring to Newfoundland, Mr. Wilson states: "The

business of the place suffered complete paralysis until such time as the Bank of Montreal arranged a loan to the Government and sent along some of its specie and notes. Without help from London in the shape of a new 'Government' loan floated here, *that debt will never be repaid*, for the Government has no money, and its expenditure habitually exceeds its income. We should like, then, to know on what terms the Bank of Montreal has made the advance." Mr. Wilson then winds up his extraordinary reference to the trouble in Newfoundland by a startling statement, coming as it does from a representative of a race usually distinguished for caution, "This is the kind of thing which has gone on, and is going on, in all the dependencies of the British Crown."

It does not seem to occur to Mr. Wilson, of the *Investors' Review*, that the general manager of the Bank of Montreal saw no good reason for consulting Mr. Wilson about the business of that eminently successful institution, and that his inquisitiveness about the terms of "that advance" is the unconscious rudeness of ignorance. I have no doubt that Mr. Clouston will be thoroughly frightened by the positivism of Mr. Wilson when he states "that debt (referring to the loan to the Newfoundland Government) will never be repaid."

But I am occupying too much of your space in discussing Mr. Wilson. When I first subscribed to the *Investors' Review*, the editor's vagaries were considered by me to be the eccentricities of a genius. I am now beginning to regard his ravings about true colonial recklessness and approved colonial style as feeble imitation of Laboucherean audacity, so attractive to many of the readers of London *Truth*.

If Mr. Wilson chooses to forget the past history of the world and imagines he has discovered in the present state of trade and commerce a very unique condition of affairs, let him recall a certain passage from the *History of Currency* recently published by Mr. W. A. Shaw.

This studious and thoughtful writer of a work praised by Mr. Wilson himself, tells of a crisis in the 17th century so severe that "properly speaking, there has been no subsequent crisis in European history fitly comparable with it." Again,

" by the end of the year (1621) there was no money in the country, and trade was at a standstill. The ordinary taxes of the country could not be levied, or, when levied, provided only a fraction of the estimated amount. The expectation of outbreaks were great, etc., etc. "

This is almost a picture of the condition of Newfoundland to-day. But, even as England has known seasons of prosperity since 1621, so it is not too much to expect that the Colony of Newfoundland and the Canadian banks now assisting in restoring the credit and reputation of that island, should receive from Mr. Wilson words of comfort and encouragement rather than a brutal opinion that the day of finally winding up Newfoundland (whatever that process may mean to Mr. Wilson) *may* be delayed a few years longer, "*if the population does not in the meantime die of starvation.*" What a pleasant, affable, kindly gentleman this Mr. Wilson must be.

But let me abandon these thoughts about "The Growth of Corporations" and Mr. Wilson's question, " Is trade going to revive ? " For, despite the gloomy interrogatory of this self-satisfied editor, the present depression in business *will* disappear like mist before the sun, and Mr. Fyshe can rest assured that, even if the phenomenal earnings of our banks in 1893 were not duplicated this year, he is not justified in saying " there will never again be the profit in banking that there has been." The history of the very successful bank of which he is the able manager opens such an assertion to the good-natured comments I have attempted to make upon his recent article in the JOURNAL of our Association, and the history of the world forbids us to treat Mr. Wilson, of the *Investors' Review*, much as I respect a man of undoubted talent, very seriously.

For Mr. Fyshe's utterances upon all matters of banking and finance, I have much respect. He has succeeded in building up a prosperous institution even at a time when Mr. Wilson has been preaching woe and universal ruin for the colonies, and bankruptcy for the Empire at large.

But, when considering Mr. Wilson, we must not forget that he is writing for his patrons, the readers of his magazine, the British investors and bondholders. He naturally desires to

impress his subscribers with the belief that their adviser is perennially pregnant with premonitions of trouble, charged with wisdom and information denied to directors and managers of the banks, railway companies and other corporations whose management he so freely criticizes and usually thoroughly condemns, or, at least, damns with faint praise.

Careful perusal of Mr. Wilson's "Balance Sheet Facts and Inferences," in the January and February numbers of the *Investors' Review*, will serve to justify my contention that the best work of this brilliant writer on financial matters is spoiled by persistent sneering at directors' reports, and chronic fault-finding with the condition of the world in general and the colonies in particular. Perhaps he is only a very shrewd Scotchman. Preaching, as he does, almost universal ruin, he must sometimes "strike it rich," and then his admirers feed his ever-growing conceit with their tribute of "wonderful Wilson—he alone was able to predict this disaster."

JOHN KNIGHT

HUMORS OF THE CURRENCY REFORM AGITATION IN THE UNITED STATES

IF the fact that the United States Congress has been struggling for some months with a currency plan based in some of its essential features upon that of Canada, has had a tendency to render Canadian bankers unduly self-satisfied, the reception which this plan has met in some quarters, and the incidental references of its opponents to Canada and the Canadian system of banking, are somewhat calculated to subdue that feeling.

The Empire of Finance and Trade is the name of a journal published somewhere in the United States. Its editor has recently unburdened himself of some original thoughts as to the working of the Canadian Bank Currency System, if we may credit a quotation by another eminently respectable journal. He objects very strenuously to the adoption of any new currency plan in

the United States which in any respect imitates our own, and he deplores the fact of American financiers being so pressed for original ideas as to borrow the plan of a British *colony* in order to find a new and *destructive* system. We learn from him that Canada is seeking some plan more suited to its needs than that now employed, and—more interesting still—that the Canadian system is but the product of a system remodelled somewhat after that of the National Banking System, that whatever of good there is in it is from that system which the United States officials wish to discard, and whatever of evil is from the Canadian element still inherent in its make-up. "The only thing that "makes the system tolerable to even the Canadians is that by "it a system of large central institutions, and the use of thor- "oughly trained accountants, can be operated! Without these "the Canadian System of Banking would not answer even in "that British colony."

The editor of our contemporary believes that "what is "needed in the United States is a *thoroughly American* system, "original and complete in itself, one that the Canadians can "afford to discard their own cumbersome plan for, without "loss or regret."

W. P. St. John, *President of the Mercantile National Bank of New York, before the House Committee on Banking and Currency*:—"I desire further to object to Canada as a criterion for "the United States. Canada will be a criterion for the United "States when the eagle takes dictation from the humming bird."

THE CANADIAN BANKING SYSTEM
1817 - - - 1890

BY ROELIFF MORTON BRECKENRIDGE, PH D.

CHAPTER V

PROVINCE OF CANADA, 1850-1867

§ 23.—THE FREE BANKING ACT OF 1850[1]

IN the session of 1850, the Honorable William Hamilton Merritt introduced in the Legislative Assembly a bill "to establish Freedom of Banking in this Province, and for other purposes relative to Banks and Banking."

The group of large chartered banks which had hitherto carried on the banking business of the Canadas seemed to the general public to be insufficiently equipped with capital. Their efforts, indeed, during the eight years preceding to secure additional capital authorized by the Legislature, had met only a partial success. The new banks incorporated in 1841 and 1847, three in all, had failed to secure the capital required by law before they could begin operations, and had forfeited their charters by non-user. These facts were not considered as evidence to the effect that Canada already had all the banking investments it could attract. Complaints of a lack of banking facilities were frequent, and there was a wide-spread agitation for an increase of bank capital, for the territorial extension of banking facilities, and particularly for the incorporation of small banks in the lesser towns, where local opportunities for accommodation were much desired.

Important safeguards in the existing system were the large capital stocks of the banks, the small number doing business, the broad fields from which they drew their business, and the prudent and cautious manner in which that business was, as a whole, conducted. It was thought that in maintaining the system it would be very difficult for the Legislature to refuse to in-

[1] §§ 23-27, inclusive, have been re-written from the article "Free Banking in Canada," published in the *Journal of the Canadian Bankers' Association* for March, 1894.

corporate small banks for the small towns. But to allow such institutions the important privileges of the chartered banks, especially that of circulating notes as only a general charge against assets, seemed too great a risk. If small banks were to be established, it was necessary to devise some other plan for issuing a sound currency.[1] There was no bank of such predominant position that to it alone, as to the Bank of England, the function of issue could be entrusted; after the failure of Lord Sydenham's proposals of 1841, there was no probability of establishing a Government Bank of Issue; and the Government itself was in such pressing financial need that any step towards relief would be welcome.[2]

The Banks of Montreal and British North America then (June, 1849) exclusively had the account of the Government. The one refused absolutely to furnish exchange for £10,000 on the three months' note of the Receiver-General, to meet interest payments in England; the other, in respect to a similar sum, at first demanded collateral security, and finally also refused. But when the specie, come by lucky chance into the Government chest, was produced, both banks found the required exchange.[3]

Already, in 1830, it had been proposed to establish a "system of banking founded upon capital invested in permanent securities, and limited according to amount of capital stock so invested." The plan was then rejected as "too difficult in the present state of the Province."[4] Canadians in the meanwhile had noticed the evils sustained by the public of the United States from systems of banking which resembled their own, in so far, at least, as each were chartered systems. More particularly had they observed the banking legislation of New York.

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[1] Journal, Can., 1851, Appendix LL, p. 202, Memorandum of the Inspector-General upon 13 and 14 Vic., cap. 31.

[2] The whole period, 1847 to 1852, was one of severe depression for Canada, who had lost, by the free trade policy of Great Britian, the advantages enjoyed in the era of protection. "Three fourths," it was said, "of the commercial men are bankrupt owing to free trade." They had been stripped of their partial monopoly in such commodities as Canada produced. The people were economically desperate, and highly susceptible to fomentation into political discontent. In order to meet just demands upon the Provincial Government, for which the public funds were insufficient, it became necessary in 1848 to issue six per cent. debentures payable in one year after date, and for sums as low as $10 (£2 10s.). (12 Vic., cap. 5.) At the time, of course, these were negotiable only under par.

[3] *Vide* "Reminiscences, etc.," HINCKS, pp. 188, 197, and Journal, Can., 1854, Appendix, E.E.

[4] Journal, U.C., 1831, Appendix, p. 201, 2nd Report of the Select Committee on Currency.

Thus Mr. Francis Hincks, while advocating in 1838 a general banking law, commented upon the recommendation contained in the last message of the Governor, and endeavored to show an analogy between the situation there and in Canada. The "free banking" law of New York had been in force since 1838. After a costly experience, the statute had been so altered and amended that in 1850, with only United States or New York securities receivable on deposit with the State, with a system of immediate note redemption, with each bank confined to a single place and obliged to exercise there the discount and deposit, as well as issue functions, and with the stockholders subjected to double liability, it presented a carefully wrought out system of banking law.

The commercial relations between the Upper Province and New York had long been close and important. When the economic conditions of the two countries were compared, New York, no doubt, appeared to marked advantage. The legislation of New York, therefore, was not unlikely to be regarded by Canadians as recommended by the success, prosperity and credit of the State in which it was in force. Its influence was not necessarily the weaker because the judgment as to results was not entirely logical. The emphatic adherence given to free banking [1] by Millard Fillmore, as comptroller of the State for 1849, was followed by the adoption of laws drawn on the New York model, in Massachusetts, Ohio, Vermont, Wisconsin, and other American States.[2] Canadians also remarked that the system had worked satisfactorily and that its effect had been to raise the value of public securities very materially.[3]

They overlooked the fact that in New York the free banking system had been established primarily as (*a*) an escape from the complete monopoly of banking, discount and deposit, as well as issue, conferred upon the chartered banks in 1818, and (*b*) a remedy for the shameless, corrupt and unendurable practice of regarding bank charters as *spoils* for the victorious party to deal out as rewards for partisan services.[4] The char-

[1] Report of the Comptroller of the State of New York, 1849, pp. 55, 56.
[2] Report of the Comptroller of the Currency, Washington, 1876, p. 35.
[3] Journal, Canada, 1851, *ut supra*.
[4] Comptroller's Report, N.Y., 1849, p. 54.

tered banks of Canada, on the other hand, enjoyed no exclusive privilege save in the function of issue. Even in that there was abundant competition. Nor was there then the suspicion even of corruption or partisanship in the distribution of bank charters. But in spite of the lack of analogous conditions, in spite of the facts that twenty-nine New York banks had failed in the first five years of the law's operation, and that the special deposits of securities realized but 74 per cent. of the defaulted notes,[1] Mr. Merritt's bill was modelled after the free banking laws of New York. Its objects are sufficiently described as (*a*) to provide for the establishment of small banks, (*b*) properly to secure their circulation, (*c*) to relieve, in part at least, the financial difficulties of the Government by widening the market for its securities, and at the same time so stimulating the demand as to raise their value.

The measure as passed (13 & 14 Vic., cap. 21) first repealed the old laws of Lower Canada (Ord. L.C. 2 Vic. (3), cap. 57), "to regulate private banking and the circulation of the notes of private bankers," and of Upper Canada (7 Wm. IV., cap 13), "to protect the public against injury from private banks." Henceforth it became lawful only for chartered banks or other corporations or persons authorized under the new Act to issue circulating notes, which were to be of the value of 5 shillings or over. Notes under 5 shillings were prohibited. So also circulation by unauthorized persons was forbidden on penalty of fines of £100.

The significant provision of the Act is the extension of the privilege of note issue "to other persons or corporations thereunto authorized as provided for herein." Individuals or general partners might establish banks, or joint stock companies might be formed to carry on the business, but in any case the bank was to have an office in but one place, and in but one city, town or village. Of the companies was required a minimum capital stock of £25,000, divided into shares of £10 or more. Articles of agreement in notarial form, showing the name, place of business, capital stock, number of shares, names and residences of the shareholders and the time when the company should begin and

[1] Report of the Comptroller of the Currency, 1876, p. 23.

end, were the legal basis for organization. After the articles were duly filed in stipulated courts of record, the companies became incorporated, and the liabilities of the shareholders limited to double the amount of their subscribed stock. The total liabilities of a joint stock bank were not allowed to exceed three times its capital stock. Every institution working under the Act was required to keep *bonâ fide* an office of discount and deposit, at all times to keep exposed in its place of business a list of its partners or shareholders, and to make detailed semi-annual returns to the Inspector-General, as well as to submit to official inspection at the discretion of the Government.

In order to issue notes the banks thus formed were each obliged to deposit with the Receiver-General provincial securities for not less than £25,000 currency ($100,000), par value, in pledge for the redemption of their notes. Interest on the securities was to be paid to the depositor as it accrued, and against the bonds the Receiver-General was authorized to deliver to the bank an equal amount of registered notes, printed from plates furnished by the bank upon paper selected by the Receiver-General. When signed by the proper officer these notes were to become notes of the bank. In every case they were to be payable in specie on demand at the bank's place of business. They were to be marked "Secured by provincial securities deposited with the Receiver-General," and were to be receivable for all duties and sums due to the provincial Government, so long as the issuing bank redeemed its notes. These registered notes were exempt from the rate of 1 per cent. per annum levied upon the average monthly circulation of the chartered banks. The third or fiscal object of the Act is especially plain in that clause which permits the chartered banks to surrender their right of circulation against assets, and to secure from the Receiver-General registered notes in return for deposits of securities. Any of the corporations within the purview of the Act might deposit additional securities from time to time, and withdraw sums of not less than £5,000, provided that like amounts of the notes were returned to the Receiver-General and the required deposit of £25,000 maintained.

If, in case of suspension of specie payment and protest of the notes, the paper was not paid with interest at 6 per cent. within

ten days after the requisition issued by the Inspector-General of the province upon receipt of the protested notes, that officer was commanded to close the institution and wind up its affairs, should it have no valid excuse to offer for the default. The process of liquidation was to be completed by a Receiver appointed by the Receiver-General. His duty was *first* to pay off the notes from the proceeds of the securities on deposit. The remaining proceeds were then to be applied with the other assets to settlement of the remaining debts of the bank. But if insufficient funds were realized from the sale of the securities, the general assets of the bank were to be applied to the payment of the notes before they were used for the other claims. This is the first appearance in Canadian legislation of that principle of making bank notes a preferred claim, which, 30 years later, was embodied in the Bank Act of the Dominion.

§ 24.—AMENDMENTS AND SUPPLEMENTARY MEASURES

The "Act to establish Freedom of Banking" could hardly be called perfect. Time proved it ill-calculated to promote the ends of the Legislature which passed it. The amendments passed in the following years show that certain of its defects were recognized. From the very first it suffered severe criticism on the part of the English Lords of the Treasury. The most serious defect of the Act, in their opinion, was the lack of guarantee for the immediate convertibility of the notes on demand. Against the fancied completeness of Government obligations as "security," they cite the fall of Exchequer bills to 35 shillings discount in 1847. Anxious as always that the financial and monetary systems of the colonies should be sound, they warn the Canadian Government against the reverses following too great an extension of the facilities which may be afforded by the use of paper money. The measure might cause Canadian securities to rise temporarily, but they would also be exposed to the risk of depreciation should it become necessary to throw them into the market in order to provide for the payment of bank notes. In the opinion of the Lords of the Treasury, the great protection against over issue was the constant maintenance of a proportionate reserve of specie against the outstanding circulation, with

Government supervision and frequent publication of bank statements. They recommended the requirement of a specie reserve of one-third of the notes issued, and of monthly statements.[1]

The following year, accordingly, an amendment was passed requiring monthly statements from the free banks. (14 and 15 Vic., cap. 69.) It is plain that half yearly returns provided a basis for intelligent criticism to neither the Government nor the public. The period of one year in which to retire their circulation and begin operations under the new plan accorded by the Act of 1850 to banks or companies whose authority to issue notes had been withdrawn, was increased to five years, provided that in each year of the next four they should retire one-fourth of the average circulation, during 1850, of notes not secured by a deposit of bonds. The requirement of a specie reserve of one-third was not adopted.

In the same session, the Assembly passed another Act with a view "to encourage the chartered banks to adopt as far as conveniently practicable, the principles of the General Banking Act in regard to the securing of the redemption of their bank notes." (14 and 15 Vic., cap. 70.) The real purpose, of course, was a further sale of bonds. The means were (*a*) a remission during the next three years of one-half the tax on circulation to those banks willing forthwith to restrict their circulation to the highest amount shown in the last statement, and at the end of three years to three-fourths of the average for 1849 and 1850; (*b*) at the end of the three years, entire exemption from the tax to banks with note circulation thus restricted; (*c*) permission to such banks to issue in excess of the restricted circulation further notes to the amount they should hold of gold or silver coin or bullion, or debentures of any kind issued by the Receiver-General, the value of such securities to be reckoned at par; (*d*) exemption of these banks from the requirement to deposit the debentures and to secure registered notes. But if failures occurred the proceeds of bonds thus held by the banks were to be applied exclusively to the redemption of outstanding notes. Finally, the Act imposed upon the chartered banks the obligation

[1] Journal, Canada, 1851, Appendix, LL, Letter of C. E. TREVELYAN, June 11, 1851.

to return monthly, instead of half-yearly, statements of assets and liabilities.

The Act of 16 Vic., cap. 62 (session of 1853), was an attempt further "to encourage the issue by the chartered banks of notes secured" in this manner. They were permitted to issue notes in excess of the limit laid down by their charters, *i. e.*, the amount of their paid up capital stock, to the amount of the sums held by them in specie or debentures receivable in deposit by the Receiver-General, although the deposit of the securities was not required. The 1 per cent. tax upon circulation, also, was to be calculated only upon the sum by which the average during any period of the outstanding notes of a bank should exceed the average of the securities and specie which the bank had on hand.

For these supplementary measures, the only analogy in New York legislation is the law of 1849, which permitted the Safety Fund banks to continue their business after the expiry of their charters, on condition that they should deposit securities with the Comptroller and reorganize under the general banking law.[1] The Canadian measures, however, seem strongly to reflect the influence upon the Legislature of Sir Robert Peel's Bank Act of 1844, and the statutes of 1845, which dealt with the Scotch and Irish banks. The plan of restricting that part of the circulation "unprotected" by special security, the extension to the banks of the privilege of indefinitely increasing circulation beyond that limit, provided equivalent values in specie or debentures were held, and the repeated efforts to provide as much as possible of the fiduciary currency with bond security, are not, to be sure, conclusive evidence of this influence. Such regulations might have been adopted after independent consideration, or to reach other ends than those sought by Lord Overstone, Sir Robert Peel and their followers. In Canada too the financial purpose, though the laws failed to afford the anticipated help, was highly influential.[2]

But the inference that English example was followed is greatly strengthened when we revert to the position of Mr. Francis Hincks as Inspector-General at this time and mem-

[1] Bank Statistics, 1849-50, 31st Congress, 1st session, H. R. Executive Documents, No. 68, p. 132.

[2] Journal, Can., 1851, pp. 209 and 216.

ber of the Executive Council, and to the influence he enjoyed in the Legislative Assembly. Ten years before he had supported the proposals of Lord Sydenham to regulate the Canadian note circulation by means similar to those suggested by Lord Overstone.[1] He wrote an energetic defence of Peel's Bank Act in 1847.[2] As late as 1870 his views were unchanged.[3] Mr. Hincks, as one of the leaders of the Government, was chiefly responsible for the legislation of 1851-1853.[4] The inference is practically confirmed by the fact that in June, 1851, the colonial office itself advised the Canadians to adopt, as far as possible, the principles of Peel's Bank Act in their regulation of banking and currency. In Sir C. E. Trevelyan's letter for the Lords of the Treasury, transmitted through Downing Street, it is remarked: "Although the establishment of a bank in connection with the Government appears to have been impracticable or inexpedient, it does not follow that some modifications of the scheme adopted in the United Kingdom with respect to the circulation, the leading feature of which is a limitation to the amount of notes issued on the credit of securities, and the maintenance of a deposit of specie equal to all issues exceeding that amount, might not still be attainable in Canada."[5] The authority of the officials in Downing Street and the promptness with which their recommendations were usually carried out in the Province leave no doubt of the marked effect of this factor on the supplementary legislation in regard to "freedom of banking"

§ 25.—FAULTS OF THE SYSTEM

The possible dangers or faults of the original Act, pointed out for the Lords of the Treasury in the same letter, and noted by us on a preceding page, were not, on the whole, the source of much trouble in the working of the system. Very few banks, in fact, began operations under the law. The system of chartered banks remained predominant and characteristic. The obstacles

[1] "Reminiscences of his Public Life," by Sir Francis Hincks, p. 69.

[2] Montreal *Pilot*, 23rd October, 1847.

[3] Parliamentary Debates of the Dominion of Canada, Vol. I., p. 216.

[4] Journal, Canada, 1851, p. 209; 1853, p. 1040.

[5] Journal, Canada, 1851, Appendix LL.

to a thorough trial of the so-called "free banking" were, first, the diminution rather than increase of banking facilities which its introduction would have brought about, and, second, the inferior opportunity which it offered for banking profits. The obstacles will be examined in their order.

The bonds receivable on deposit as note security bore interest at 6 per cent. The minimum deposit for a bank beginning business was £25,000 currency, or $100,000. The small banks, however, which it was expected to establish under this Act, would seldom need a capital greater than £25,000, and, even if they needed it, a greater sum would be hard to get in the localities whence the demand for such institutions came. But before a bank could begin business this hardly-gained capital was to be removed from the locality and locked up in debentures. In return for these, the free bank was to receive an equivalent amount in registered circulating notes. A chartered bank, on the other hand, acquired by the privilege of circulation a power of loaning to the community, in addition to its capital stock, the amount of its authorized note issue. To meet the needs of its district the free bank in our example was to derive from capital and circulation combined a fund of only £25,000, *i.e.*, the amount of its note issue, or rather so much of it as could be kept in circulation, a proportion which rarely reached 90 per cent., and in some cases did not exceed 50 per cent. In brief, £25,000 of the capital of the district was to be taken bodily away and replaced by notes, of which only a part were available for loaning purposes. If carried out, the scheme to provide banking facilities for poor communities was destined actually to diminish the loanable funds in the districts for whose benefit it was devised.[1]

Intimately connected with this fault is the fatal defect of the Act—the slight inducement to investment afforded by its provisions. With its capital locked up in debentures there remained to the free bank, besides its deposits, which need not be considered here, the £25,000 of registered notes for accom-

[1] *Cf.*, the remarks of WASHINGTON HUNT in an official letter from the office of the Comptroller of New York, dated 1st May, 1849. "The tendency of the change (from the Safety Fund system to Free Banking) is to diminish materially the banking facilities enjoyed by the community. To the extent that the chartered banks are required to transform their present capital into permanent securities, as a pledge for the redemption of their bills, they must deprive themselves of the means now employed in the regular operations of banking." Quoted in Bank Statistics *ut supra*, p. 139.

modation of the local public. Of these, we have seen that only 50 to 90 per cent. constituted the actual loaning fund which could be turned over several times a year in banking operations, and from which could be derived the additional and incidental profits that banks, in spite of usury laws and other hindrances, will contrive to secure whenever the markets permit. From an equal sum invested in one of the chartered banks could be gained the banking profit on the capital itself, and the circulation issued upon the credit of that capital. The advantage, in favor of the chartered bank, apart from the important consideration of its control of much larger means—none of its capital being locked up in debentures—was approximately the difference between the banking profit on the amount of its capital and the interest on an equal amount invested in Government securities. In other words, the chartered bank would get the greater return from both circulation and capital; the free bank from circulation alone, its capital being invested, by law, at a lower rate of interest.

This higher gain to be had from employing their funds in their own business, also caused the chartered banks, as a rule, to reject the encouragement offered by the Legislature so to invest those funds in debentures as to make them practically a permanent loan to the Government. And in a country where the best bank profits were moderate, other investors were slow and unwilling to engage in a form of banking in which the chances for gain were still more restricted.[1]

§ 26.—STATISTICAL VIEW OF THE FREE BANKS

Among the chartered banks the Bank of British North America alone appears in the statements published according to the free banking laws. A supplementary charter enabled it to enjoy under these enactments a valuable privilege withheld from it by the original Royal charter, but exercised by the other banks under their colonial charters since the time of the first incorpor-

[1] *Cf.* on this point, the remarks of MR. MERRITT, the author of the bill, on the 4th March, 1859, in the Legislative Assembly: "The cause why the banks have not succeeded under the Free Banking Act, was because his (the Minister's) predecessors had abandoned the policy they had commenced * * * Why did not other banking companies seek charters under the Free Banking Act? Simply because they made more money under the old system.'

ation. This was the right to issue notes for less than four dollars. Until the banks surrendered their small note issue in 1870, the British Bank appears to have continued its issues under this Act. At the close of 1854 three other banks were doing business under the Act. Following is the return :—[1]

	Bank of British North America	Molsons' Bank, Montreal	Niagara District Bank, St. Cath'rines	Zimmerman Bank, Clifton	Total
	£	£	£	£	£
Capital in Provincial Debentures deposited with the Receiver-General	162,125	50,000	50,000	25,000	287,125
Amount of registered notes outstanding and delivered to the banks by the Inspector-General	153,750	50,000	49,999	24,500	278,249
Circulation		37,861	46,169	22,000	
Liabilities, including circulation.....		85,446	67,615	29,321	
Assets.....		136,840	101,642	49,931	

The next year operations reach the highest figure in the whole history, though only four banks appear in the Statement.[2]

	Bank of B. N. America	Molsons' Bank	Niagara District Bank	Zimmerman Bank	Total
	£	£	£	£	£
Capital in Provincial Debentures deposited with the Receiver-General	170,708	50,000	50,000	40,000	310,708
Registered notes outstanding .	169,750	49,794	49,999	40,000	309,549
Circulation		24,332	69,050[3]	40,000	
Liabilities		24,332	77,761	48,817	
Assets.....		79,100	133,285	54,585	

After 1855 there was a steady falling off in the amount of securities deposited, notes outstanding against them, and notes in circulation. In the statement of 1856 the Provincial Bank and the Bank of the County of Elgin first appear, the former with a deposit of securities for $120,000 and notes for the same

[1] Public Accounts, Province of Canada, 1854, p. 225.
[2] *Ibid.* 1855, p. 264.
[3] Also issues under charter.

amount, the latter with securities for $100,000 and notes for $79,950. The Molsons', Niagara District and Zimmerman Banks, which were chartered in 1855, appear to have been retiring their secured notes. The total bond deposits are $1,114,633.33 (£278,658) and notes outstanding $1,080,684 (£270,171).[1] In 1857 the figures have fallen to $770,319.33 and $769.730.[2] In 1858 they are $730,503.33 and $729,531, and the Molsons' and Zimmerman Banks disappear from the list. In 1859 the bond deposits are $730,503.33, and notes outstanding, $699,531; in 1860, $562,603.33, and $495,631, of which the British Bank stands for $440,933.33 and $373,964, about $100,000 less than in the statements for 1857 to 1859.[3]

By December, 1861, the Niagara District Bank had nearly withdrawn its provincial securities, and the Provincial and County of Elgin Banks had only $2,000 and $20,440 of bonds, respectively, on deposit.[4] At the end of 1862 the British Bank held securities for $436,933.33; its registered notes amounted to $336,964, of which $130.505 were in circulation.[5] But the Provincial Bank had deposits and circulation of only $9,729, and the Bank of the County of Elgin had disappeared both from the Government statement and the world of business. To all intents and purposes, free banking in Canada had run its course.

§ 27.—REPEAL OF THE ACT TO ESTABLISH FREEDOM OF BANKING, AND DISAPPEARANCE OF THE BANKS ORGANIZED UNDER IT

The failure of the system had received the attention of the Legislative Assembly at least five years before. On March 6th, 1857, the Hon. Wm. Cayley introduced a bill to discontinue the incorporation of joint stock banks and the issue of registered notes. The merchants and monied men of the province were generally in favor of the old chartered system, he said, and even in 1855, the Assembly had decided to perpetuate

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[1] *Ibid*, 1856, p. 237.
[2] *Ibid*, 1857, part ii., pp. 94-95.
[3] *Ibid*, 1860, part ii., p. 88.
[4] *Ibid*, 1861, part ii., p. 94.
[5] *Ibid*, 1862, part ii., p. 96.

it. Its decided superiority had been shown by the action of the three banks which had retired their registered notes and continued their business under charters.[1] Wm. Hamilton Merritt was still in the Assembly, and in reaffirming his responsibility for the first free banking Act, he declared with a lofty disdain of the facts, that it was the "best system adopted in any country from the beginning of the world to the present time." "The sole cause of its being inoperative in Canada," he contended, "was that it had not been honestly carried out."[2] Mr. Cayley's bill did not come up for the third reading, for what reason the debates give no evidence.

The Minister of Finance, the Honorable A. T. Galt, proposed the repeal of the law in 1860, but the other proposals to which this was coupled were so radical and far-reaching that action upon the whole group was indefinitely postponed.[3] Six years after this, and sixteen years after its first passing, the "Act to establish Freedom of Banking" was finally repealed by the Provincial Note Act of 1866. (29-30 Vic., cap. 10, § 16.)

Six banks in all had taken advantage of the Act. To one of these, the Bank of British North America, the privileges acquired under the Act were doubtless of considerable value. The others did not thrive. Two of the companies working solely under the free banking laws wearily struggled for three years (1856 to 1858) against the competition and prestige of the chartered banks, and then began to retire their issues and wind up their business. The three banks earliest started under this Act soon applied for charters and secured them. (18 Vic., cap. 202-204.)

Of these, the Zimmerman Bank had the shortest life. Founded in 1854 by a person of means, it was, to an unusual degree, the creature of one man. It seems to have been well and honorably managed by the capitalist whose name it bore, but after his death in December, 1857, the notes and debts of the bank were redeemed by his executors and the stock and plates transferred to a Chicago firm of the name of Hubbard & Co. In

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[1] Toronto *Globe*, 7th March, 1857.

[2] *Ibid.*

[3] Thompson's Mirror of Parliament, 1860, pp. 22, *et seq.*

1858 the charter of 1855 was amended by changing the name of the institution to the "Bank of Clifton," and extending the time for the subscription and payment in full of its capital stock. (22 Vic., cap. 129.) The extraordinary privilege "that the bank notes and bills in circlation shall be of whatsoever value the Directors shall think fit to issue the same, but none shall be under the value of 5 shillings ($1)," was a feature of the amended charter. In 1863 its charter was repealed for reasons which will presently appear. (27 Vic., cap. 45.)

The Bank of the Niagara District, with its head office in St. Catharines, Canada West, found difficulty from the first in securing the capital required by its charter. The Act of 1855 required subscription and payment in full of the million dollars in five years. In 1857 an indulgent Assembly extended the term to 1861; in 1861 to 1866; in 1863 the capital stock requirement was reduced to $400,000, and the time for paying it up extended to 1865. The bank had a fairly successful career until it suffered large losses through the failures of Jay Cooke & Co., and others, in 1873. Hardly able longer to carry on an independent business, it was amalgamated early in 1875 with the Imperial Bank of Canada. The shares of the Niagara District Bank were exchanged for those of the Imperial, according to the relative value of the two stocks, and thereafter the former bank disappeared as a separate institution.

Out of the five originally "free banks," but one, the Molsons' Bank, of Montreal, has survived, and is now an institution of standing and importance.

§ 28.—CONTINUATION AND AMENDMENT OF BANK CHARTERS

As early as November, 1854, there came before the Legislature the question of permitting the chartered banks to increase their capital stocks. In this connection Mr. Francis Hincks admitted that the public had not shown any great disposition to take advantage of the free banking law. He said further:

"First. He thought that the public wanted a large increase of banking capital.

Second. There was not money in Canada to furnish that capital.

Third. The country must get this capital from foreigners, and the

people of Canada would have to consult foreigners as to the manner in which it should be done.

Fourth. The county knew that no English capitalist was disposed to furnish money to Canada through the agency of private banks. But English capitalists would recognize the large chartered banks, because these banks had been known for many years as a safe means of investing capital. * * * Capitalists had confidence in them, but they would not have confidence in private banks established under a new banking system. If the people wanted to increase their banking capital they must do so through the existing banks."

The question as thus presented was in essence the alternative whether or no to retain the old system and give up the new. Banks with a "secured" circulation cannot long survive, in a time of specie payments, the competition of banks issuing notes upon their general credit. They have not the earning power to maintain the contest on equal terms. This principle was illustrated in Massachusetts, it was acknowledged in New York,[1] it was recognized in the United States, it has been proved in Canada. After 1854, the fate of the free banks was inevitable; the Assembly decided not to give up the chartered system which had served so well.

Accordingly bills were passed permitting additions to capital stock amounting to £2,010,000 for the six banks who applied (18 Vic., cap. 38 to 42, inclusive). A few amendments were added to the charters. The Bank of Montreal, *e.g.*, taking warning from a case decided shortly before,[2] secured the right to hold mortgages on ships, steamships and other vessels by way of additional security. The shares necessary to qualify as a director were raised to twenty, and discounts bearing names of directors were limited to a tenth of the total discounts. Provisions permitting the transfer of shares and the payment of dividends in Great Britain were included in most of the Acts. Ostensibly as a security to the public, really as a brace to the

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[1] *Cf.* MR. FILLMORE'S remark: "It cannot be expected that banking under this (the free) system will be as profitable as under the Safety Fund system." Report of the Comptroller at N.Y., 1849, p. 57. It will be remembered that the latter system, the banks of which had a privilege of issue similar to that of the Canadian chartered banks, disappeared from the State, not through the action of competition, but because the State ceased to grant charters and those expiring after 1849 were not renewed. The banks were forced to re organize under the general banking law or go into liquidation. The principle referred to in the text received most striking recognition by the United States in the 10 per cent. tax upon State bank notes imposed in 1865, 13 U. S. Statutes at Large, p. 469.

[2] McDonald vs. the Bank of U.C., U.C.Q.B., Hilary Term, 13 Vic., p. 264.

debenture market, all the banks were required, in case they availed themselves of the permission to increase their capitals, to invest one tenth of their paid-up capitals in debentures of the Province or of the Consolidated Municipal Loan Fund. The charters were continued to the 1st January, 1870, and the end of the then next session of Parliament.

Again in 1855, when the tide of sudden and remarkable prosperity which followed the Reciprocity Treaty of 1854 was beginning, the Legislature decided to increase the number of chartered banks. The Molsons', Zimmerman, Niagara District, and Eastern Townships Banks were incorported with authorized capitals of £250,000 each, £50,000 to be paid in each case before the bank should begin business, and the whole in five years. The St. Francis Bank was chartered with a capital stock of £100,000, and the Bank of Toronto with £500,000. In these charters it was provided that, instead of voting by scale, the shareholders should have as many votes as shares. But in the Acts to amend and consolidate the charters of the Bank of Montreal, Bank of Upper Canada, and Commercial Bank, passed in 1856 at the request of these corporations, the old voting scale was retained. (19 Vic., cap. 76, 120, 121.) The Quebec Bank obtained a similar Act in 1858 (22 Vic., cap. 127); the City Bank in 1863, (27 Vic., cap. 41). The directors were in each case limited to one-twentieth of the total discounts. By another Act of 1856 chartered banks were permitted to charge not more than one-half of one per cent. on ninety day paper, in addition to the legal rate of discount, for the expenses of agency and collection, when the security was payable at a place different from that where it was discounted. (19 Vic., cap. 48.)

Penalties upon usury had been abolished in 1853 by a law according to which contracts and securities were to be void with respect only to the excess of interest above six per cent. (16 Vic., cap. 80.) But the Act did not apply to the banks or to the corporations, such as loan companies or building societies, authorized to borrow or lend at a higher rate. Until 1858, banks taking or accepting or receiving the rates higher than six per cent. were liable to forfeit treble the value of the money lent or bargained for, half to the Crown and half to the person suing for the penalty. The Act 22 Vic., cap. 85, however, per-

mitted, in general, that any rate of interest agreed upon might be exacted, but prohibited the banks from taking or stipulating for a higher rate than seven per cent. per annum. When the paper discounted was payable at another of the bank's own offices, the charges for agency and collection on paper payable at another place than that where it was discounted, were reduced for short time discounts to correspond with the rate of one-half of one per cent. for securities payable in 90 days.

In 1859 another general Act applying to the chartered banks was passed for the avowed purpose of granting additional facilities in commercial transactions. The measure had been strongly urged by the banks.[1] It was the first step of the legislation, afterwards much developed, enabling the chartered banks, in discounting bills of exchange or notes, to take as collateral security bills of lading, specifications of timber, or receipts given by carriers, whether on land or water, keepers of coves, wharfingers and warehousemen. The banks were empowered to acquire title to the grains, goods, wares or merchandise described in the face of the instrument, by indorsement of the owner or person entitled to receive them, subject, of course, to the right of the indorser, upon his paying the debt, to have the title re-transferred.

In case the debt were not paid when due, they were authorized to sell the commodities, deduct their claim, costs and interest, and return the remaining proceeds, if any, to the indorsor. But no such transfer of title was permitted unless the bill, or note, or debt was negotiated at the same time with the indorsement of the collateral security. The bank might not hold the goods for more than six calendar months. In case they were to be sold, it was obliged to give ten days notice to the indorser. The important restrictions were the last two but one. These, it was believed, were sufficient to keep the banks from engaging in trade or risking their capital by speculative investments in graded merchandise.

Seven more bank charters were added to the list in 1856 and 1857. The authorized stocks amounted to £2,966,666 currency, thus making a total of twelve banks incorporated be-

[1] Journal, Can., 1859, Appendix No. 67, Evidence of the Bank of U.C., Bank of Montreal, Bank of B.N. America and Commercial Bank.

tween 1855 and 1857 inclusive, and of £6,326,666 currency added to the authorized banking capital of the province. This was more than double the total paid-up capital of the banks in 1851, and nearly equal to their actual capital in 1861. These figures indicate the manner in which the expansion and speculative movements were affecting people and Legislature. Events soon proved that so many banks were not needed. The Union Bank and St. Francis Bank never began business, and three other charters granted in this period were repealed in 1863, the banks having failed to fulfil the duties required by law. For the banks which managed to survive, the Legislature was obliged to relax its policy of requiring from each bank a capital stock of £250,000, and greatly to extend the time for paying up the reduced stocks.

§ 29.—1857 - 1863

One explanation of the large increase in banks has already been given in the mention of the great agricultural and commercial changes which were plainly apparent in 1855. The Reciprocity Treaty, in furnishing the Canadians with a large market, easily reached, for the products of their fisheries, farms and forests, was undoubtedly a powerful factor in the new prosperity. But long before the success of Lord Elgin's diplomacy, foreign capital was beginning to come into the colony, agriculture was reviving in the West, population was increasing rapidly, vast public works were started, large additions to the railway system were commenced.[1] Government assistance was granted to the trunk lines. The Grand Trunk Railway, the Great Western Railway and some eastern roads together effected an increase of 1,563 miles of road between 1852 and 1858. The railway mileage of Canada was increased over 1,500 per cent. The better prices for produce obtained after the Treaty turned the attention of investors to land speculation. Excessive prices were given for wild lands. Schemes for new villages and towns were everywhere afloat. Harvests were abundant in 1853, 1854, 1855; the price of breadstuffs high; and yet, in 1857, the

[1] *Cf. Bankers' Magazine*, Vol. 2, p. 441; Vol. 12, p. 368; Vol. 13, p. 538.

farmers were more deeply in debt than in 1853. They had sold for cash, and bought largely on credit. Considerable additions were made to improved farming lands, but many tied up their capital by speculating in unproductive real estate. Trade was stimulated to an unprecedented degree, and bank accommodation stretched to the utmost limit. Excessive and extravagant importations occurred in 1856 and 1857. The Municipal Loan Fund, a scheme whereby the Province guaranteed the borrowings of the towns and counties, served to swell the inflation. The pressure for money was very strong in 1856; there was a prospect that both public works and railway expenditures would soon be ceased.

Then came the bad crop of 1857. The commercial crisis in Great Britain, Europe and the United States was at its height. The suspension of specie payments in New York on the 14th October compelled the Canadian banks to guard against an extraordinary drain of gold. They ceased discounting. Some five or six weeks elapsed before they could safely grant the advances necessary to bring the crops of the year to market.[1] This delay of produce operations alone caused great loss. As a result of the crisis elsewhere the Canadians next suffered a heavy falling off in the demand for their grain, ashes, timber, etc. Then followed numerous commercial failures, a fall in all values, the collapse of the real estate boom, a contraction of credits, a second bad harvest in 1858, and two years of black depression.[2]

But in 1859, the Provincial Parliament was again addressed by petitioners for new bank charters. To secure evidence by which to guide the policy of the House with respect to banking, a select committee on banking and currency was struck on the motion of the Minister of Finance, Mr. A. T. Galt. In the evidence presented by this committee, and chiefly obtained from the leading bankers, there was much pointed criticism of the existing banking system. It was objected, *e.g.*, that the law had allowed the creation of banking capital beyond the needs of the country. The privilege of circulation was conferred without the necessary safeguard. A dishonest bank could begin business

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[1] Thompson's Mirror of Parliament, 1860, 27th March.

[2] Journal, Can., 1859, Appendix No. 67, Report and Proceedings of the Committee on Banking and Currency, is the leading authority for the facts detailed in the last two paragraphs.

merely by investing £10,000 in debentures; there were no means to assure the full payment of the required capital, and this minimum was often too small. There was no obligation to publish the names of stockholders. The plan of limiting circulation to the paid-in capital, plus specie and debentures, was delusive, as either of the latter could be gotten only by purchase with capital or deposits. If capital were used, then so much of the capital was displaced. The law thus treated as distinct from capital what was really a part of it. If deposits were used, then the bank was allowed to base an additional liability upon what it was already bound to pay.

There was insufficient motive provided for an active interest on the part of the directors. It was urged that a larger holding of paid-up stock should be exacted of them.

The effects of the crisis had been aggravated somewhat by the restriction on the rate of discount chargeable by the banks. The banks could give no warning of approaching difficulty by raising the rate. It was necessary peremptorily to refuse discounts to some applicants, and to confine their accommodations, as far as possible, to wealthy and independent customers, and those with "valuable accounts," *i.e.*, customers from whom incidental advantages of exchange, agency charges, large deposits, undoubted security, and the like might be derived. The result was that inferior customers, and those who, very possibly, most needed the assistance to tide them over, were the least likely to get it.

But it also appeared that in every district of any importance the banks had planted agencies and brought to the door of such communities liberal advantages, with the power and security of the same large monied corporations which served the cities. The branches had not indeed quieted the demand for small banks. But small banks, so the experience of the United States seemed to teach, were unsafe. Besides, it was perceived that the cry for small banks was one seldom voiced by the lending part of the community. As a Province, Canada very properly refused the eternal task of quieting borrowers' claims. The Minister himself acknowledged that as a rule the banks had been well and wisely managed.[1] During the panic

[1] Thompson's Mirror of Parliament, 1860, p. 21.

in the United States, Canadian notes were received there with the same readiness as specie in payment of notes which the local banks were called on to redeem.[1] And yet the Minister was not satisfied. He had used the committee to conceal the purpose which he revealed in 1860.

This was the establishment of a Bank of Issue, or Treasury Department, for which he introduced resolutions on the 27th March. He wished, he said, "to put the currency on a perfectly sure and safe footing, by separating it from the banking interest, and by removing it from the possible suspicion of being affected by political exigencies." But his solicitude was insincere, his monetary theories false. His ultimate object was assistance to the Provincial finances; his proposed means, the emission of legal tender, though convertible, Government notes as the sole currency. The resolutions found slight approval as the order for their consideration in committee was discharged the 18th May.[2] They are interesting now only as the forerunner of the Provincial Note Act of 1866, the provisions of which were largely due to the monetary fallacies and financial exigencies of the same Minister.

The policy of the Legislature was steadily to extend the system of chartered banks on the old lines. In 1858 the Bank of Canada (afterwards the Canadian Bank of Commerce) was incorporated. (22 Vic., cap. 131.) In 1859, three charters were granted, among them that of *La Banque Nationale*, situate at Quebec. (22 Vic., cap. 102-104, 2nd sess.) In 1861, the Merchants' Bank and La Banque Jacques Cartier were created in answer to the petitions of Montreal capitalists. (24 Vic., cap. 89 and 90.) The Royal Canadian Bank was chartered in 1864, the Mechanics' Bank, the Union Bank of Lower Canada and one other concern in 1865, and two more still in 1866. Fourteen charters and amending acts, authorizing capital for $19,460,000, were the record for the nine years, 1858 to 1866. Payments amounting to $1,475,000 were required on the twelve charters before the banks could begin business.[3] Only the seven banks named in

[1] Journal, Can., 1859, Appendix, No. 67.

[2] Journal of the Legislative Assembly of the Province of Canada, 1860, pp. 114, 452.

[3] After 1857 the denominations of the decimal currency are used almost exclusively in Canadian legislation.

the text took advantage of their charters and began a corporate life of some duration. The charters of the Banks of Clifton and of Western Canada, like those of the International and Colonial Banks, were repealed in 1863. The International and Colonial Banks had failed in 1859, without, however, inflicting much loss.[1] All had suspended their payments and discontinued operations, and the Legislature then deemed it advisable to prevent their resumption on the terms and conditions embodied in their charters. (27 Vic., cap. 45.)

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1 Thus the last return made to the Government by the Zimmerman Bank (changed to the Bank of Clifton), was for October, 1857, of the Colonial and International Banks (situate at Toronto) for October, 1859:

Average of the Assets and Liabilities of the

Liabilities	Zimmerman Bank, for Oct., 1857	Colonial Bank, for Sept., 1859	International Bank, for Sept., 1859	Bank of Western Canada, for June, 1861
Capital Stock paid-in	$453,500	$112,000	$132,500	$101,750
Notes in circulation	33,991	75,300	119,021	5,210
Balances due to other banks	27,711	3,061	5,097	.....
Cash deposited not bearing interest	10,809	21,517	9,968	.....
Cash deposited bearing interest	99,200	.....	.....	.....
	$171,712	$99,878	$134,087	$106,960
Assets				
Coin and bullion	$2,723	$18,769	$20,030	$1,115
Landed property	1,463	262	2,423	3,871
Government securities	35,000	13,200	15,000	12,000
Notes and bills of other banks	936	5,928	9,990	3,786
Balance due from other banks	573	54,713	19,011	25,000
Bills and notes discounted	596,559	119,245	201,875	61,186
	$636,254	$212,118	$268,331	$106,960

Vide Canada Gazette, vol. xvi., p. 2,678.
" " " vol. xviii., p. 2 497.
" " " vol. xx., p. 1,624.

The Bank of Clifton, as such, never made any returns to the Government. Hubbard of Chicago was succeeded by one Callaway, formerly of Toronto, as President. Some circulation for its notes was obtained in the Western States by advertising in a bank note Reporter that the "notes of the Bank of Clifton, incorporated by the Parliament of Canada," would be redeemed at a broker's office in Chicago. Enough notes were paid to get credence for the statement and then the supply of funds was stopped. Over $5,000 of the paper thus repudiated was sent to Clifton, but there was no money to meet it. The Bank of Western Canada was controlled by one Paddock, a New York tavern keeper, who, by paying for his stock, secured a respectable old man at Clifton to act the stool pigeon as President of the bank, but he had no check on the issue of notes. Efforts were made to float them in Illinois, Wisconsin and Kansas, with some success, but the notes were never redeemed. Reed, of Lockport, N.Y., a man of bad repute, owned nearly the whole stock of the International Bank in Toronto when it failed, and was connected also with the Bank of Clifton.

A committee of the Assembly reported in 1862 that the position of the two banks first named was such that it was discreditable to the Legislature to allow their charters to remain in existence any longer. Action was postponed, however, till a committee of 1863 reported that "considerations of public policy imperatively demand the immediate repeal of the charters of these four banks." *Vide* Journal, Canada, 1863, p. 109; *ibid*, 1862, Appendix No. 4.

None of the charters granted between 1858 and 1866 permitted the beginning of business with less than $400,000 capital subscribed and $100,000 paid up. As evidence of its *bonâ fide* payment, it was usually required that before the new bank should issue notes, its paid-in capital should be deposited, as specie, in some existing chartered bank of the province. One year from the passing of the Act was the ordinary time in which a charter became forfeited by non-user. In some cases the limit of one-fifth the paid-in capital stock was imposed upon the circulation of notes under five dollars; in others, of those under four dollars. Differences are also to be noted in the application of a scale, or the rule of one for each share, to the voting of the shareholders. In requirements of larger stock investments by the directors, proof that capital is actually paid in, and the like, the charters embody important corrections suggested to the Committee of 1859. It hardly need be said that they contained all the safeguards and provisions previously adopted, in compliance either with Imperial recommendations or the teachings of colonial experience.

It was impossible, even for the seven banks finally started, to secure the payment of their capitals in the time limited by their charters. The Parliament accordingly consented to relax these requirements in a manner very like that in which we have seen it indulge the Niagara District Bank. The laws of 1858 had contained no less than five extensions of the times prescribed for banks previously chartered, to secure full subscription and payment of their stocks. And similarly, between 1862 and 1865, the Merchants' Bank, the Canadian Bank of Commerce, the Eastern Townships Bank and the Quebec Bank were all obliged to secure extensions of the periods in which the payment of their original or additional capitals was required by the Acts authorizing them.

§ 30—FAILURE OF THE BANK OF UPPER CANADA

The period between 1852 and 1857 was a time not only of great economic expansion but also of great economic change. The development had been over discounted by sanguine

Canadians, and hence values collapsed when the crisis arrived. Of the long depression that followed a leading cause must be sought in the slowness and difficulty of the adjustment to new conditions brought by the introduction of railways, extension of public works, roads and bridges, shifting of the routes of commerce and alterations in the chief industrial pursuits of important districts. The statement may be made with especial force, of Upper Canada, or Canada West, where the real estate excitement had been higher and the increase of railways greater. Many of the towns placed for water communication were left on one side by the railways or deprived of their importance. Cobourg, Sandwich, Dundas, Burlington, Kingston, Niagara, Brockville and others, once the centres of flourishing trade, either failed to recover from the depression or lost heavily to more favored situations. Lumber getting and real estate improvement were pushed backward and northward to make room for more settled industry.

In the early days of the province the Bank of Upper Canada had been the provincial bank. It had given assistance, comparatively enormous, to the development and commerce of the country. Land was then the single valuable security possessed by its customers in any quantity. It was therefore necessarily more or less a land bank in a disguised form. Its managers and clerks were often British immigrants who lacked the intimate knowledge of Canadians and Canadian trade that life-long familiarity would have given. In many instances, too, they failed to exhibit acquaintance with the simplest of banking principles. Discounts were freely extended to lawyers and legislators, the gentry and professions. "Accommodation" paper was common. Loans were made to civil servants and to politicians. No one will deny that the bank was guilty of much bad practice, that it paid high rates of dividend when it could ill afford, that it failed to write off accrued losses, that it impaired its capital by extravagant bonuses, that its internal organization was defective, and that its management was often blind, reckless and ignorant.

Still the bank survived. It was invested with the dignity,

it enjoyed the prestige, of a Government institution. Its credit was always high, its "green notes" held in great esteem. Quantities of notes issued twenty years before, and as bright as they came from the press, were found in due time stored away, like gold itself, in the chests of Canadian farmers. For them the bank was as the Bank of England. A position in its service was a post of honor and consequence. Its name was the very synonym of strength. The confidence of the public was reinforced by their gratitude. The bank had been the instrument of men of broad ideas and large purpose, ambitious, enterprising, hopeful pioneers. The good they did lived after them, but at the time of the bank's demise it had not reached the enjoyable stage.

Up to 1857 the Bank of Upper Canada had grown steadily. Dividends of 6, 7, 7, 8, 8, and 7 per cent. were paid in 1852-1857. The capital was increased in 1855, and a 12½ per cent. bonus paid to the old shareholders. In 1858 the capital paid in amounted to $3,118,000. The dividend that year was 8 per cent, and the rest was reduced but $40,000, to meet the losses of 1857. For a bank which had worked in the midst of the land speculation, had undoubtedly joined in it, and lost heavily when property taken as additional security fell to the lower values, this was utterly inadequate.[1] Their mistake was recognized by the directors in 1861. Thos. G. Ridout, cashier since 1822, retired, and Mr. Robert Cassells, a banker of high reputation and eminent ability, was employed at the salary of $10,000 per annum, in the hope that he would succeed in saving the Bank. In compliance with his suggestions, permission was obtained of the Legislature to reduce the paid-up stock to something over $1,900,000, the par value of the paid-up shares from $50 to $30. (25 Vic., cap. 63.) For twelve years or more the bank had kept the Government's account. During this time it was usually a considerable debtor to the Treasury. But the

[1] Twenty years and more after the event Senator Alexander revealed an incident in urther explanation of the bank's losses. In 1858 or 1859 the Grand Trunk Railway Company were indebted to contractors to the ex ent of a million dollars. To enable the Company to pay these claims the b nk was induced to make advances of that amount on two bills of exchan e for £100,000 each, drawn upon the Railway Company's London bankers, the Barings and Glyns. These houses, however, had closed down upon the Company, and the bills were dishonored, the result being that a good part of the million was wholly lost.—Debates of the Senate of Canada, 1885, p. 35.

debt to the Government was fixed by an Order-in-Council of the 12th August, 1863, at $1,150,000, and transferred to a special account.[1] Some slight general deposits were allowed to remain, but most of the Treasury balances were, by November, transferred to the Bank of Montreal, which became henceforth the Government's banker.

The deep rooted belief in the bank entertained by the public was still strong, but after 1860 the monthly returns give unmistakable signs of retrogression on the part of the bank itself. The general business had fallen off heavily as the old towns in which the bank was established lost their prosperity to the centres growing up in the new industrial districts and along the altered routes of trade. Another cause of the reductions is to be found in the efforts of the new management to get the business down to a solid basis. Its circulation, which averaged over $2,100,000 between 1857 and 1860, fell in February, 1862, to $1,696,000, and in August, 1865, to $988,000. Non-interest bearing deposits dropped from $1,920,000 in February, 1862, to $640,000 in August, 1865; deposits at interest from $2,644,000 to $1,959,000; discounts from $6,186,000 to $3,231,000; but the landed or other property of the bank rose from $503,000 to $1,473,000. In this last item we find the prime cause of the trouble, the collapse of 1857-58, in the real estate of Canada West.[2] Neither in 1864 nor in 1865 were any dividends paid. The task of saving the bank was become clearly impossible; some of the assets were worthless, some locked up in land. By an Act approved the 15th August, 1866, permission was granted further to reduce the capital to $1,000,000, in fully paid-up shares of $20 each. Before this could be acted upon, the bank was further weakened by the withdrawal of deposits, and its stock fell to $3 per share. The loan of $100,000 obtained from the Government on special securities in the first fortnight of September was of slight avail.[3] On the 18th the Bank of Upper Canada stopped payment.

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[1] Sessional Papers, Canada, 1867-68, No. 27.

[2] See Note 1, page 130.

[3] Sessional Papers, Canada, 1867-68, No. 27.

On the 12th November the bank, by the consent of the

[1] The course of the bank's business can best be judged by the following table for 1857 to 1866, compiled from the *Canada Gazette:*

AVERAGE MONTHLY STATEMENT of the Bank of Upper Canada for the months of August and February, from 1857 to 1866 inclusive, from the *Canada Gazette.*

	LIABILITIES (000 omitted)						ASSETS (000 omitted)								
	Capital Stock paid-in	Notes in circulation not bearing interest	Balances due to other banks	Cash deposited not bearing interest	Cash deposited bearing interest	Total liabilities	Coin and bullion	Landed or other property of the bank	Government Securities	Promissory notes or bills of other banks	Balances due from other banks	Notes and bills discounted	Other debts due to the bank not included under foregoing heads	Total assets
	$	$	$	$	$	$	$	$	$	$	$	$	$	$
1857—Aug	3,094,390	2,765	894	1,612	262	5,530	442	147	273	223	629	7,378		9,093
1858—Feb	3,110,250	2,132	1,219	1,727	141	5,220	475	182	341	138	703	7,067		8,779
Aug	3,118,255	2,271	1,460	1,932	136	5,800	411	204	946	156	654	6,925		9,299
1859—Feb	3,124,980	2,368	477	2,085	1,259	6,192	686	223	508	164	667	7,466		9,718
Aug	3,127,215	2,119	403	2,148	2,713	7,383	517	240	937	160	671	8,540		11,069
1860—Feb	3,130,485	2,306	1,176	2,075	1,585	7,143	518	254	288	227	688	8,967		10,945
Aug	3,136,240	2,277	65	1,916	2,319	6,578	722	379	319	206	635	7,983		10,247
1861—Feb	3,138,320	1,965	399	2,209	2,546	7,120	477	385	314	199	296	6,479	2,562	10,715
Aug	3,170,270	1,883	139	2,151	3,191	7,365	463	428	316	286	594	5,245	2,214	9,549
1862—Feb	3,169,600	1,696	193	1,920	2,644	6,454	687	503	317	221	407	6,186	920	9,244
Aug	1,901,460	1,657	116	2,230	2,620	6,624	636	714	203	178	467	6,298	880	9,378
1863—Feb	1,911,543	1,592	701	1,796	2,503	6,594	563	809	203	193	308	6,462	741	9,282
Aug	1,922,268	1,611	508	2,242	2,516	6,878	755	839	207	174	292	6,409	776	9,455
1864—Feb	1,928,850	1,537	480	2,066	1,639	5,723	509	932	203	109	452	4,921	1,094	8,223
Aug	1,932 102	1,183	746	804	2,757	5,491	446	1,281	203	100	183	4,322	1,098	7,637
1865—Feb	1,936 401	1,049	793	866	2,453	5,161	545	1,464	203	82	157	3,752	1,077	7,283
Aug	1,939,287	988	783	640	1,959	4,372	412	1,473	197	71	133	3,231	1,056	6,576
1866—Feb	1,939,287	954	142	842	1,880	3,820	345	1,515	196	69	32	2,717	940	5,816
July	..	888	369	677	1 800	3,735	367	1 632	196	84	22	2,531	894	5 728
Aug	1,939,845	813	416	571	1,754	3,555	244	1,673	196	61	26	2,488	874	5,565
Sept	1,939,845	754	476	511	1,659	3,402	104	1,676	196	12	15	2,481	875	5,362

shareholders in general meeting, was assigned to trustees. Previously to the 9th of the same month reductions from the average liabilities of August had been effected as follows:

(000.00 omitted)	Average for Aug., 1866	Actual condition, 9th Nov., 1866	Reduction
Notes in circulation	$813	$722	$91
Balances due to other banks	416	299	117
Deposits not bearing interest.....	571	395	781
Deposits bearing interest	1,754	Due to the Government 1,149	
Total.....	$3,555	$2,566	$989

Which was evidently provided for as follows:

Coin and Bullion, or cash in banks	$244	$42	$202
Landed or other property	1,673	1,673	....
Govt. securities	196	17	179
Notes and bills of other banks	61	....	61
Balances due from other banks	26	....	26
Notes and bills discounted ..	$2,488	Bills and judgments..... $2,225	
Other debts due to the bank..	874	Railway and other bonds 35	
	3,362	Mortgages .. 62	
		$2,322	1,040
	$5,565	$4,056	$1,509

The statement for the 9th November may be taken very nearly to represent the condition of the bank at the time of its failure. Liquidation of the estate proceeded slowly. In December, 1867, the trustees were incorporated, and provision made for the appointment by the Government of two trustees, to represent the interests of the creditors, and of one by the shareholders to act in their behalf. (31 Vic., cap. 17.) The three new trustees took hold of the estate on the 16th March, 1868. In December, they reported that no steps had been taken to enforce the double liability, and that the apparent surplus of

assets over liabilities had been reduced from $1,375,797 in March to $477,161 on the 31st December, through the following operations :

Written off as irrecoverable debts	$ 623,076 51
Losses on lands assigned to Glyn & Co. and sold by their trustees	111,918 87
Net loss on lands sold by the Bank of Upper Canada Trustees..	93,411 83
Sundry items	70,228 34
	$ 898,635 55

This loss had been incurred in realizing about $307,998 upon $1,266,633 of the assets as they had been valued in March. It was expected that $1,019,000 of bills and judgments would produce some $513,000; that real estate valued at $979,000 would net say $588,000. A deficiency of nearly $500,000 would probably occur,[1] and the trustees believed that the trust could not be profitably closed up before five years. Meanwhile it was costing the estate $14,280 a year, besides the interest on certain outstanding debts.

"No creditor of the bank has been paid the amount of his claim, either in full or in part, excepting some trifling sums that could not otherwise be disposed of," the trustees reported. According to the deed of assignment, they were compelled to receive claims against the bank at their full value in payment of debts due to the bank; but as an inducement to facilitate the negotiation of real estate, after the 16th March, 1868, claims were received at from 66 to 75 per cent. of their par value, in payment of lands taken in settlement by the bank's creditors.[2] The trustees continued their operations until the whole estate and powers vested in them were transferred to the Crown by an Act of

[1] Sessional Papers, 1869, No. 6. Correspondence, Bank of Upper Canada.

[2] *Ibid*, p. 6.

1870, approved the 12th May (33 Vic., cap. 140). The following table will indicate the progress of the liquidation down to 1882:

Liquidation of the Bank of Upper Canada (cents omitted.)

	1 (*b*) 9th November 1866	2 (*b*) 16th March 1868	3 (*b*) 31st December 1868	4 Increase and Decrease between 1 and 3	5 (*c*) 1st August 1870	6 (*c*) 16th May 1882
Assets:	$	$	$	$	$	$
1. Cash on hand and in banks	41,943	7,302	13,622	– 28,321	....	....
2. Government Debentures ..	17,591	22,162[a]	....	– 17,591	....	....
3. Gov. re'cpts from liquidation	....	....	....	....	4,617	348,746
4. Railway and other bonds ..	35,282	....	12,811	– 22,470	10,640	10,640
5. Bills and judgments, old acct.	2,225,469	1,829,339	1,019,855	– 1,205,614	649,534	15,000
6. Bills and judgments, new acct	....	....	....	....	....	....
7. Real estate	1,673,623	1,367,576	979,778	– 693,845	311,503	....
8. Real trust account	....	....	....	....	184,612	....
9. Mortgages, old account	62,580	135,402	54,707	– 7,873	64,419 }	40,000
10. Mortgages new account ..	....	....	96,896	+ 96,896	72,454 }	
11. Bills and securities, new acct.	....	....	17,400	+ 17,400	19,621	6,000
12. Suspense account	....	....	....	....	1,219	....
13. Irrecoverable debts.....	....	.. ..	....	....	271,631	....
14. Total	4,056,491	3,361,783	2,195,071	– 1,861,420 net	1.317,400[d]	420,387
Liabilities.						
15. Notes in circulation	722 086	262,219	116,687	– 605,399	43,301	....
16. Due to Depositors	395,740	382,668	112,751	– 282,988	....	....
17. Due on new acct certificates.	....	....	239,145	+ 239,145	55,861	5,000[e]
18. Due to Glyn & Co	299,300	207,268	126,685	– 172,614	74,416	....
19. Due to the Government....	1,149,430	1,133,430	1,122,639	– 26,791	1,122,639	1,122,639
20. Due on advance account ..	....	....	....	....	150,000	252,376
21. Sundry items	....	....	....	....	18,823	....
	2,566,556	1,985,986	1 717,909	– 848,647 net	1,465,040	1 380,015

(*a*) Includes road stock.
(*b*) Compiled from Sessional Papers, Canada, 1869, No. 6, pp. 2 and 9.
(*c*) *Ibid*, 1882, No. 108a.
(*d*) Irrecoverable debts and suspense account not included in this footing.
(*e*) Items 15, 17 and 21, estimated demands.

It appears from this that the liabilities of the bank to the Canadian public (deposits and note circulation) stood in November, 1866, at $1,117,826, and were reduced by the end of 1868 to $468,583 (including certificates of deposit issued by trustees); by 1870 to $99,161, and by 1882 to $5,000 (estimated). The Government continued to redeem its liabilities at 75 cents on the dollar after the property was vested in the Crown. Supposing the redemptions previous to December, 1868, to have been at the average rate of 70 per cent., regarding only the direct capital loss, and making no allowance for the extra discounts to which needy note holders or depositors were obliged to submit, I calculate that the Canadian creditors of the Bank of Upper Canada lost at least $310,000 by the failure. The stockholders lost the whole of a capital which was once $3,170,000; the Government, and through it the taxpayers, lost all but $150,000 of deposits amounting to over $1,150,000.[1] For proprietors and creditors combined the results of the failure was the disappearance of a principal which cannot be reckoned at less than five millions of dollars, a sum equal to 17 per cent. of the entire banking capital of the Province. Such a loss to the Canada of those days, and to Canada West, where the larger amounts were involved, was not merely severe; it was enormous.

One of the questions suggested by the facts I have recounted is, "Why was not the double liability of the shareholders enforced?" But the true answer will not be found in the documents. The trustees reported on the three thousand shareholders in December, 1868, thus:—[2]

	Stock
Executives, guardians and minors	$129,360
Trustees	337,500
Municipalities	12,810
Females and persons living abroad	585,165
Residents in Canada, not known	172,220
" " " believed to be bad	139,900
" " " including females, believed to be good	562,890
	$1,939,845

It is true that loss had fallen upon many of those least able

[1] Sessional Papers, Canada, 1882, No. 108 a.

[2] Sessional Papers, 1869, No. 6, p. 5.

to bear it, widows, orphans, women and aged investors of small means, who had put their little all into the stock of what was once the Government Bank, and suddenly found themselves stripped both of principal and income. It is true that the Government, as the largest creditor of the bank, had secured the "opinion of the best legal authority" that any contribution from the shareholders under the double liability clause could not be enforced by law until the entire estates had been realized. For that process, it was thought, in 1868, that five more years would be needed. It is also true that the Government carefully abstained from an effort to secure judicial decision upon the question. And there is no doubt that the Government of the years in which the Bank of Upper Canada was still solvent, and the knowledge of its losses had not reached the public, having the bank at their mercy in consequence of the heavy indebtedness to the Treasury, abused their position, and compelled the bank to make many advances for political reasons which resulted in very heavy losses.[1] It is not denied, of course, that there must have been grave mismanagement to bring the bank into a condition in which it had to submit to such demands, or that the chief cause of the failure was the collapse in Ontario in 1858. There is no doubt that all four factors, the contributory responsibility for the failure which the Government could scarce avoid, certain political motives, never yet revealed, of the party in power, the distressed condition of many shareholders, and the opinion of the Government's legal advisers, combined to prevent the effort to enforce the double liability.

Instead tremendous efforts were put forth to prevent a full inquiry, attempts were made to silence the press, and they were not without success.[2] The liquidation under trustees was costly, absorbing, in all, some $90,000 a year. The Government, although the largest creditor, has received no divi-

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[1] I do not pretend to cite the documents for this or for a number of other statements made in relation to the Bank of Upper Canada; but I have them from contemporary authorities as credible as exist in the Dominion of Canada, and members, some of one, some of another party. Many of the bank's books were destroyed after the failure, and legal evidence of the misdoings referred to is not procurable. Very few of those who could speak from personal knowledge are now living.

[2] *Monetary Times*, Vol. III., p. 126.

dend on its claim, the assets were insufficient to meet the liabilities of the bank. But it was thought that the Government, having no taxes to pay, and being able to wait, would succeed in securing more from the real estate than could be had by private manipulation. Accordingly the Act of 1870, already mentioned, was passed. In 1871 not more than $250,000 were placed at the disposal of the Governor-in-Council to pay off claims upon the bank, provided its assets contained ample security for reimbursement. (34 Vic., cap. 8.) Eleven years later $5,000 more were similarly voted. The course of the subsequent liquidation is familiar. It remains now merely to remark some of the valuable effects of the failure. Blind popular belief in the safety of banks as banks, was corrected, and a popular criticism was created and thereafter applied to the management and accounts of the banks which served the province. To managers and directors it gave a wholesome warning, not only to look to the inner organization of their banks, but also to guard against loans whatsoever on real estate security. Finally it opened the way for two or three clean-handed young banks, who were destined, partly in filling the Upper Canada's place, to take rank among the leading banks of the Dominion.

§ 31.—THE PROVINCIAL NOTE ACT OF 1866

The Government in which the Honorable (afterwards Sir) A. T. Galt acted as Minister of Finance was obliged, in 1866, to raise some $5,000,000 to discharge the floating debt. The credit of the Province had suffered in the English market, on account of the renewal, from time to time, of the balances in arrears. The Minister averred that the Canadian banks were unwilling to extend to the Government a loan amounting to 15 per cent. of their capital.[1] The Bank of Montreal was already a creditor for $2,250,000, and was pressing for payment. The Government would not trust to the chance of meeting the engagements of the country by large loans at high rates of interest. "The Government," said Mr. Galt, "should resume a portion of the rights which they had deputed to others, and meet the liabilities of the

[1] Toronto *Globe*, 4th August, 1866, Ottawa *Times*, 4th August, 1866.

country with the currency which belonged to it." In short, he acknowledged the primary cause of all paper currencies emitted by governments—government needs. But he professed to offer to Parliament the choice between issuing two year debentures at 7 per cent., receivable for public dues, and establishing a Government currency. The offer of the alternative was as insincere as his solicitude, in 1860, for the security of the bank note circulation. It was asserted in Parliament, and not denied, that note plates had been engraved two years before the bill was introduced, and that clerks were actually engaged in signing the notes while the bill was under discussion. The proposal to issue debentures was a sham and a delusion.[1] Furthermore the Minister's justification of his real plan was unsound. For those who wish it, the discussion of this contention will be found in the note at the end of the chapter.

In Canada, a proposal to establish a provincial monopoly of the note issue would have conflicted with the convictions of a people inveterately suspicious of all monopolies, and taught by long years of colonial struggle to be particularly jealous of the executive. The Minister, accordingly, did not dare to propose the complete and instant abolition of the bank note currency used by the people for forty years. But he had his party behind him, he had pressing demands to meet, and he lacked, apparently, the courage to borrow, at the market rate of interest, the necessary funds. Shorn of the fallacy and verbiage with which he introduced it, his plan was simply to extend the activities of the Government in the economic field, by *assuming* the right to issue, under the authority of the Governor-in-Council, not more than $8,000,000 of provincial notes, payable on demand in specie at Toronto or Montreal, as they might be dated, and legal tender except at those offices. The Act received the Royal assent the 15th August, 1866. (29 Vic., cap. 10.) The compulsory retirement of the bank note circulation provided for in the original Bill was struck out in the House of Commons. Partly in its stead were adopted provisions for *inducing* the banks to surrender their circulation and to take up the issue and redemption of provincial notes. The consideration offered was the payment of 5 per cent.

[1] Ottawa *Times*, 4th December, 1867.

per annum on the amount of notes outstanding the 30th April, 1866, until the expiry of the charter of any bank which might accept the conditions of the Act and withdraw its own circulation before the 1st January, 1868, compensation to be paid from the date of such withdrawal. For the service of issue and redemption, one quarter of one per cent. was to be paid at the end of every three months, upon the average amount outstanding during that period of provincial paper issued by the bank. As a further inducement, banks giving up their issue rights were accorded exemption from the obligation to invest ten per cent. of their paid-up capital in provincial debentures, and were allowed to exchange them at par for provincial notes. The last was the offer of a decided bargain, for debentures were then worth not more than 83. The Receiver-General was obliged to hold specie for the redemption of the notes to 20 per cent. of the circulation under $5,000,000, and 25 per cent. for the circulation in excess of $5,000,000. He was to issue and hold provincial debentures for the full amount by which the reserve of specie should fail to cover the circulation outstanding. Proceeds from the issue operations were to be turned into the Consolidated Revenue Fund, and expenses lawfully incurred under the Act were to be charged upon it. The Free Banking Act was repealed save as to the privilege of issuing one and two dollar notes enjoyed under it by the Bank of British North America, and all the chartered banks were relieved from the penalties retained in the Act of 1858 for taking interest above 7 per cent.[1]

§ 32.—EFFECTS OF THE PROVINCIAL NOTE ACT

The condition of the money market and of trade in the autumn of 1866 was such that all but one of the banks were unwilling to reduce their resources by that retirement of their notes from circulation which acceptance of the Government's offer would have rendered necessary.[2] That single bank was

1 These penalties were those imposed by the Acts 51 Geo. III., cap. 9, U.C., and 17 Geo. III., cap. 3, L.C., viz., For taking, exacting, accepting or receiving interest above the authorized rate, forfeiture of thrice the value of the money, goods, wares or merchandise sent or bargained for, one-half to the Crown (later to the support of the Civil Government of the Province), and one-half to the person suing therefor. Since 1866 the only statutory restriction upon the rate of interest chargeable by the banks has been the impossibility of collecting at law the excess above legal rate.

2 Parliamentary Debates, Canada, Vol. I, p. 802.

the Bank of Montreal. As fast as it withdrew its own notes it was able to replace them by notes of the Province.[1] These were set off against the two and a quarter millions owed by the Government, the previous locking up of which may be presumed seriously to have crippled the operations of the bank. Or they may have been obtained in exchange for the $600,000 of debentures, worth about 83, formerly held by the bank according to charter, but now redeemed by the Government at par. The position of the Bank of Montreal was unquestionably improved by the change. Nearly three millions of assets, which for some time had been unavailable for immediate purposes, were put into liquid condition.

The effect on the total circulation in the hands of the public during the first year of the Bank of Montreal's operations under the Act, was inconsiderable. It received compensation upon $3,130,818, the amount of its outstanding issues on the 30th April, 1866; from November, 1866, to the 31st December, 1867, the average of provincial notes in circulation was $3,147,180.[2] The profit to the Government during this period and the following year was also inconsiderable; according to some calculations, a direct loss was incurred under the Act, but this point is not now pertinent.

What was the effect of the Act upon the banks and the country? A general answer must be postponed until the results of this legislation have been studied in detail.

First, then, while assets amounting to some $2,800,000 had been locked up in Government debt, the Bank of Montreal, it was said, had been sorely pressed by the Quebec and British Banks and La Banque du Peuple.[3] After the passing of the Provincial Note Act, it was put in a position to use its strength. It had been the practice to settle balances arising from the exchanges between the banks and branches in different parts of the country by drafts on Montreal or Toronto. Owing to its possession of the Government accounts, these balances were usually in favor of the Bank of Montreal. As the arrangements

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[1] Journal of the Senate, Canada, 1867-68, Appendix 1, p. 7.
[2] *Monetary Times and Insurance Chronicle*, Toronto, Vol. I., p. 369.
[3] *Ibid*, p. 101.

for balances were merely conventional, it had the power in this case to exact gold, unless its debtors happened to be stocked with legal tenders. But that was unlikely, as the demands on bank reserves were largely for export, and for this they needed gold. When the balances were against them the Government's bankers could pay in gold or in legal tenders. They had a direct interest in getting as many of the latter into circulation as they could. By threatening to exact settlements at all points in money, instead of in drafts upon the financial centres, the Bank of Montreal was able to coerce sundry of its competitors into holding regularly at least $1,000,000 of Provincial notes in sums ranging from $50,000 to $200,000, under arrangements which practically set these sums apart from the funds available for banking purposes.[1] For those who yielded to the threat the diminution of banking resources was considerable if viewed in relation to specie reserves, inconsiderable if in relation to their funds for discounting, but still a diminution. Banks with many agencies who refused to enter such arrangements were obliged either to hold larger reserves and distribute them more widely, while *pari passu* their power to discount was diminished, or to restrict their business to the volume which, under the new conditions, could be safely based upon the old reserve.[2]

Second, "the Bank of Montreal, having withdrawn its own notes from circulation, and substituted for them the notes of the Province, it was no longer interested, in common with the other kindred institutions, in maintaining unimpaired the credit of all; the effect of that Act (the Provincial Note Act) was to place the interests of the Bank of Montreal, the most powerful monied institution in Canada and the fiscal agent of the Govern-

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[1] Journal of the Senate, Canada, 1867-68, Appendix I, pp. 3, 7, 14, 19, 24. The Bank of Toronto held $100,000 of notes which could not be presented for redemption without fifteen days' notice, "to promote the financial interests of the Government and to secure favorable arrangements with the Bank of Montreal as to the settlement of balances," p 7.

The $200,000 held by the Bank of British North America under a formal arrangement with the fiscal agents of the Government was available at all times for ordinary business, but "*it must be made good in twenty-four hours and paid for by exchange, gold drafts on New York, or specie.*" It was terminable on seven days' notice and "was entered into to facilitate settlement of balances throughout Canada with the financial agents, and because it was agreeable to the Government," p. 28. The italics are my own.

[2] Mr. James Stevenson, cashier of the Quebec Bank, said that ordinarily one-fifth of the circulation and deposits, and one-seventh the amount of time deposits, were sufficient money reserve, but that a demand for settlement in gold or legal tenders at all the agencies of an extended bank would compel the bank to keep at least one-fourth of the circulation and ordinary deposits as a reserve. *Ibid*, p. 24.

ment, in antagonism to those of the other banks."[1] This conclusion of a Select Committee of the Senate is not refuted by the returns made by the several banks to the Government. Between the 30th September, 1866, and the same day of 1867, the proportion of specie or its equivalent held by the Bank of Montreal against immediate liabilities had fallen; the amount of notes issued by it and outstanding in the hands of the public had decreased, and so had the bank's public deposits.[2] The aggregates of the other banks showed an increase in each of these items. Assuming that there had been a general stagnation in business prior to October, 1867, the Bank of Montreal, compared to the other banks, was unprepared to meet heavy

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[1] *Ibid*, pp. 1, 2. The document cited is the second report of the Select Committee upon the Causes of the Recent Financial Crisis in the Province of Ontario.

[2] The foll wing figures are taken from a Government return dated 11th March, 1868, quoted in the periodical named below, and the usual "Statements of banks acting under charter," in the Canada Gazette:

Extracts from the Statements of Chartered Banks in the Province of Canada for 30th September, 1866, and 30th September, 1867, exclusive of the Bank of Upper Canada

Immediate Liabilities	Bank of Montreal 1866	Bank of Montreal 1867	Bank of Montreal as Gov't Bank, 1867-71	Other Banks, 1866	Other Banks, 1867
	$	$	$	$	$
Bank notes in circulation	3,187 995	657,862		6,716,324	8,477,058
Provincial notes in circulation			2,000,000		
" " in Bank of Montreal			385,693		
" " other banks			1,000,000		
Deposits by the public	8,078,762	7,505,201		14,648,883	19,651,188
" " government	1,015,052				
" " " provincial					
notes on hand		2,120,987			
Deposits by the government on issue account		351,995			
Due by Commercial Bank on loan					300,000
Due foreign banks					84,279
Total	12,281,809	10,636,045	3,385,693	21,365,207	28,512 525
Quick Assets	$	$	$	$	$
Specie	1,845,325	545,308		3,479,260	4,334,454
Specie held for redemption of provincial notes			677,138		
Provincial notes					1,000,000
Notes and cheques of other banks	324,325	379,438		1,095,425	1,559,212
Due by Commercial Bank		300,000			
" Foreign banks	885,736	976,263		1,541,383	
	3,055,386	2,201,006	677,138	6,116,068	6,893,666
Percentage of specie or its equivalent.	25 %	19 %		29 %	24 %
Change in specie, 1866-1867		−$622,879			+$855,194
" in circulation		− 530,133			+1,760,734
" in public deposits		− 573,561			+5,002,305

demands by the public. But if we adopt the Committee's conclusion and assume that there was general prosperity and soundness in trade, involving increased circulation and heavy deposits, the bank's position was such that, provided confidence in itself were undisturbed, a general discredit of the other banks would be, *à priori*, not only desirable but profitable.[1] Such a discredit would tend to increase the circulation of provincial notes, to attract depositors to the security of the Government bank, and to bring the "valuable accounts" of merchants to the great institution that could afford them discounts.

Third. In 1858 and 1859 the Commercial Bank furnished large advances for the current expenses and completion of an American railway, the Detroit and Milwaukee R.R., on the faith of a grant of £250,000 stg., secured from the London Board of the Great Western Railway. The bank supposed that the loans were made to the Great Western Railway, but under the Commercial's system of cash credits evidences of that corporation's liability were not secured at the time of each advance. "The advances were made by overdraft on current account, and the headings of the ledger as made by a clerk, as he carried the account from folio to folio, were so indefinite as to leave room for endless dispute."[2] The agreement was that traffic receipts of the D. & M. should be deposited with the bank, and exchange on the London Board of the G. W. R. Co. given monthly to cover deficiencies. Only about £82,620 stg. of this exchange were drawn. By the end of 1859 there was a large balance in favor of the bank. The Great Western's London directors contended that the credit was given to the D. & M., or to their own Canadian colleagues, who were managing the American enterprise, as individuals. Suit for a million odd dollars was brought against the English company in 1862.[3] The Court of Queen's Bench decided in favor of the bank. On appeal it was held, in 1864, that so much of the £250,000 loan

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[1] *Cf.* the arguments in the *Monetary Times*, Vol. I, p. 419.

[2] Bullion on Banking, with notes and observations by a Canadian bank manager, Toronto, 1876, p. 24, note.

[3] 22 U.C. Queen's Bench Reports, p. 285.

as had not been drawn for could be recovered by the bank, that the lower court should have so declared the liability of the Great Western Company, and that, as it had not done so, there should be a new trial, unless the parties settled on this footing or ascertained the amount by a referee.[1]

During the litigation the capital, of course, was still locked up, and neither principal nor interest was settled for until the autumn of 1866. The bank then obtained $1,770,000 of Detroit & Milwaukee 30-year bonds, bearing interest at 7 per cent., $100,000 of which were payable annually.[2] But instead of selling them promptly the bank waited to realize upon the bonds, and thus failed to set free its locked up funds. The community suspected that the capital had been impaired. Distrust, inspired by the failure of the preceding year, was still strong. It became known that the bank had been obliged to give security to several of its largest depositors. A run was then started upon the deposits. A loan of $300,000 upon collateral, secured by the help of the Government's request from the Bank of Montreal, averted immediate danger. This was the 16th or 17th September, 1867. A month later another run upon deposits was begun. The representatives of all the banks in Canada West met at Montreal the 21st October. The Commercial Bank asked for an advance of $750,000, one-half at four, and one-half at six months, and offered the D. & M. bonds as security. A discussion ensued as to the amount to be contributed by each bank, the representatives of the Bank of Montreal and the Bank of British North America contending that the shares should be in proportion to circulation and deposits; the others for contributions in proportion to capital. The Bank of Montreal offered to advance two-thirds of the money necessary to sustain the Commercial, provided the other banks would guarantee it. The British Bank offered the other third on the same terms. This plan was rejected by the other banks. The two Montreal banks then withdrew from the meeting, the Bank of Montreal agreeing in the meanwhile not to discredit the Commercial, but refusing, practically, to grant assistance on the same basis as the other banks. An unsatisfactory understanding reached at noon

[1] 2 Error and Appeal, p. 285.

[2] Toronto *Globe*, 23rd October, 1866.

was objected to by some of the head offices at five o'clock. Then the Bank of Montreal declined to accept the responsibility of taking in hand the affairs of the Commercial and protecting the creditors.[1] The Government was anxious to avert the failure, but as they were again owing the Bank of Montreal two millions and a half, they could not urge it to act. It is not apparent from the returns or circumstances that the latter had any interest in maintaining the credit of the Commercial or of other banks. The Privy Council did not feel justified further to interfere, and on the morning of the 22nd October the Commercial Bank of Canada stopped payment.[2]

Over $2,000,000 of notes and deposits were paid in the thirty-five days after the 19th October. By the 31st December its total liabilities, averaging $4,657,000 in September, were reduced to $1,871,173. The amalgamation of the Commercial with any other bank or banks was authorized by the Dominion Parliament the 21st December, 1867. (31 Vic., cap. 17.) The contract with the Merchants'Bank of Canada, by which the shareholders got one share in the Merchants for three in the Commercial, was confirmed the 22nd May, 1868. (31 Vic., cap. 84.) All its liabilities were redeemed in full. The rapidity of this redemption, as well as the course of the bank previous to the suspension, can best be read in the table appended.[3]

Its shareholders lost two-thirds of their investments, and another of the Upper Canadian banks succumbed to the fate which overtook them all. But the failure of the Commercial Bank was honorable. It was the result, as we have seen, partly of one large and bad account, partly of the suspicion caused by the bank disaster of the year before. If, however, we accept the explanation given by its President, it must be said that the "real and ultimate cause was the measure which had been inflicted on all the banking institutions of the country."[4]

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[1] Toronto *Globe*, 28th October, 1867. Ottawa *Times*, 13th December, 1867, Mr. Galt's explanations respecting the Commercial Bank failure.

[2] *Ibid.*

[3] See Table next page.

[4] Ottawa *Times*, 4th December, 1867, Speech of Sir Richard J. Cartwright, upon the Commercial Bank Bill. I have hesitated to use this quotation because, though none other were published, the press reports of the debates in these years are somewhat unreliable. The distinguished speaker gave evidence to the Committee of the House of Commons in 1869, in which he remarked: "No appreciable disturbance was caused by the effects of the Act, the failures of the Bank of Upper Canada and of the Commercial Bank being clearly traceable to causes wholly unconnected with and unaffected by that measure." *Vide* Journal, 1869, App. I, p. 41.

AVERAGE MONTHLY STATEMENT of the Commercial Bank of Canada for the months of August and February, from 1857 to 1867 inclusive, from *The Canada Gazette*.

	LIABILITIES (000 omitted),							ASSETS (000 omitted).						
	Capital Stock paid-in	Promissory Notes in circulation not bearing interest	Balances due to other banks	Cash deposited not bearing interest	Cash deposited bearing interest	Total Liabilities	Coin and Bullion	Landed or other property of the Bank.	Govern-ment Securities	From. Notes or Bills of other banks	Balances due from other banks	Notes and Bills discounted	Other debts due to the bank not included in fore-going heads	Total Assets
	$	$	$	$	$	$	$	$	$	$	$	$	$	$
1857—Aug. 31 ...	3,561	1,430	418	781	541	3,171	420	162	365	140	369	.....	5,963	7,419
1858—Feb.....	3,751	1,226	578	595	480	2,880	386	161	400	135	198	.....	6,015	7,298
Aug.....	3,886	1,359	120	767	193	2,440	177	444	400	124	261	.....	5,623	7,032
1859—Feb.....	4,000	1,526	319	1,066	282	3,194	480	199	400	175	529	.....	6,113	7,898
Aug.....	do.	1,200	300	936	451	2,888	461	210	400	97	417	.....	5,990	7,577
1860—Feb.....	do.	1,556	383	1,231	563	3,735	467	226	400	150	347	.....	6,870	8,462
Aug.....	do.	1,412	112	1,255	945	3,726	517	226	400	128	774	.....	6,356	8,403
1861—Feb.....	do.	2,192	236	1,285	948	4,663	538	239	400	150	274	7,487	271	9,362
Aug.....	do.	2,083	24	1,197	1,342	4,647	746	243	400	118	395	7,087	342	9,333
1862—Feb.....	do.	2,163	29	1,464	1,218	4,874	917	245	400	132	148	7,358	347	9,549
Aug.....	do.	1,393	499	1,237	1,091	4,241	616	248	400	132	77	6,927	300	8,701
1863—Feb.....	do.	1,264	518	1,108	1,085	3,976	544	250	400	142	45	6,775	283	8,441
Aug.....	do.	1,075	244	1,191	1,242	3,754	598	254	400	142	58	6,424	317	8,195
1864—Feb.....	do.	1,270	114	1,122	1,285	3,793	481	258	400	109	21	6,604	357	8,233
Aug.....	do.	1,015	108	996	1,346	3,467	379	258	400	101	22	6,374	368	7,904
1865—Feb.....	do.	943	339	932	1,256	3,471	412	262	400	76	39	6,343	370	7,905
Aug.....	do.	999	150	945	1,393	3,489	410	259	400	87	108	6,286	373	7,926
1866—Feb.....	do.	1,651	23	1,588	1,660	4,924	555	259	400	124	919	6,695	368	9,321
Aug.....	do.	1,295	34	1,469	1,709	4,508	455	262	400	129	543	6,836	359	8,986
1867—Feb.....	do.	1,594	66	1,648	1,597	4,906	656	276	400	149	301	7,237	356	9,377
June	do.	1,366	52	1,707	1,678	4,744	938	277	400	150	357	6,781	411	9,316
July	do.	1,270	64	1,679	1,675	4,689	917	277	400	159	282	6,629	499	9 166
Aug.....	do.	1,226	225	1,482	1,650	4,585	722	277	400	130	204	6,783	500	9,068
Sept.	do.	1,248	400	1,413	1,594	4,657	708	277	400	106	174	6,975	498	9,140
Oct.	do.	1,308	333	1,289	1,418	4,350	411	285	400	127	159	6,849	524	8,758
Actual Position (000 included)			Due to local banks.	Due to London agents.	Dep sits and bank loan.	Total.	Cash.				Included in the item "Cash"		See Note 1	
Oct. 31 ...	do.	1,102,166	40,292	303,229	2,015,996	3,461,683	484,475	285,861	400,000		do.	3,811,415	2,515,932	7,461,683
Dec. 31 ...	do.	483,284	17,127	220,517	1,110,245	1,871,173	395,604	285,715	400,000		do.	2,205,279	2,544,575	5,831,173

NOTE 1. This item was made up as follows: October—a. Bonds and Mortgages ..... $ 109,365 December—a. $ 107,550
b. Bonds of Detroit & Milwaukee R.R. 1,770,220 b. 1,770,220
c. Doubtful Debts ..... 1,106,787 c. 1,101,951
d. Less Reserve Fund and Profits..... 470,440 $4,515,932 d. 435,146 $2,544,575

Fourth. As the event was not altogether a surprise, the excitement occasioned by this failure soon subsided. But shortly after the Commercial suspended, the Bank of Montreal sent a confidential telegraphic caution to its branch managers against some of the western banks who, as individual concerns, were not in the strongest possible condition. On the 24th October a run was started on several of the Ontario banks. It increased the next day, the Royal Canadian being the most affected and the Gore next. Towards the afternoon of the 26th the run nearly ceased. Then came the alarming report that the Government's bankers were refusing the notes of the Upper Canadian banks except for collection. The panic returned with increased violence. Money rose from 9 per cent. to 12 per cent. in Montreal. The Royal Canadian managed to meet all the demands upon it, paying out over $400,000, but the panic abated only after the Government agents in all parts of the country had been instructed by telegraph to receive the notes of all chartered banks except the two that had failed (Upper Canada and Commercial).

The rumor that revived the panic was not, to be sure, exactly correct. The explanation of the action by the Bank of Montreal, offered through its General Manager, Mr. E. H. King, was that none of their agents had refused the notes of specie paying banks of Upper Canada, "*where they had agencies*,[1] except the manager of our Kingston branch, who acted under misapprehension and was immediately corrected by telegraph."[2] Two or three agents did decline to receive, except on collection, notes of the Royal Canadian Bank at places where they had no office.[3] The notes at Kingston had been thrown out of the deposit of a railway company, whose agent immediately warned all the officers on its line not to take the

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[1] The italics are mine.

[2] The news of the action of the Bank of Montreal reached the Government at 2.30 p.m., 26th October; that of the correction of the Kingston Manager, given by the Bank's head office, at 3.45 p.m. the same day. Ottawa *Times*, 13th December, 1867, *loc cit.*

[3] Journal of the Senate, 1867-68, App. I, p. 34. As a matter of fact, the notes of the Royal Canadian Bank were refused except for collection, by agents of Mr. King's bank at Belleville, Brockville, London, St. Mary's, Brantford and Stratford, as well as at Kingston. Toronto *Globe*, 28th and 30th October, 1867.

paper of that bank.[1] The damage was done long before the correction from the Bank of Montreal could reach Kingston.

Those who gave evidence to the Senate Committee of 1867-68 were nearly unanimous in testifying that trade from the 1st of September to the middle of October was in a very satisfactory state; the yield of staple crops, if a little less than the year before, was still good, and the quality excellent, prices were high, money plentiful, and importations not excessive. The timber trade was somewhat quiet, but not enough so to affect the general prosperity. After the bank failure and the subsequent panic, uncertainty as to the attitude and intentions of the Government's fiscal agent, compelled the other banks, in great measure, to withhold the advances obtained in the autumn by produce dealers and others. Yet at this time of the year an expansion, both of discounts and circulation, was not merely normal, it was economically necessary. Trade, therefore, suffered; produce operations were suddenly interrupted; money was scarce and held at high rates; the value of the staple products of the Province was depreciated. The business activity of September was changed in November to business stagnation. If the failure of the Commercial Bank is counted the third of these results to which the Provincial Note Act contributed, the situation in which the panic was revived and commercial depression induced, must be taken as the fourth.

Fifth. The panic, I have said, was quieted by the action of the Government. The larger number of runs resulted in drains of not more than three per cent. of the total liabilities of the several banks affected. In the heaviest run, not more than ten per cent. of such total was called for. It is not to be supposed, however, that distrust vanished immediately. In this connection a comparison of the bank statements for the 30th September and 30th November will be instructive. The table herewith indicates the changes in each direction to be noticed in the November statement from that of two months previous.

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[1] *Ibid*, p. 15, Evidence of MR. WOODSIDE.

DIFFERENTIAL COMPARISON of the Statement of Banks acting under charter in Ontario and Quebec, for the months of September and November respectively, 1867[1]

Liabilities	Bank of Montreal		Other Banks	
	Increase	Decrease	Increase	Decrease
Gov't deposits on General Acct...	$679,997	.....	.....	.....
" " on Provincial Note Account	502,540	.....	.....	.....
Notes in circulation.....	.....	$113,365	.....	$317,594
Deposits by the public.....	1,201,424	.....	.....	1,842,818
Due by Commercial Bank on special loan.....	.....	.....	.....	300,000
Balances due to other banks.....	.....	.....	$420,590	.....
Assets				
Specie and provincial notes	1,447,869	.....	558,860	.....
Government securities	.....	766,239	.....	56,672
Commercial Bank loan repaid	.....	300,000	.....	.....
Due by other banks.....	464,228	.....	.....	.....
Notes and bills discounted.....	1,304,134	.....	.....	2,103,827

The increase and decrease in the immediate liabilities and quick assets of the Bank of Montreal and the other banks of Ontario and Quebec (Upper and Lower Canada), were as follows :

Aggregate changes from the September average in the November average

	Circulation		Deposits		Discounts	
	Increase	Decrease	Increase	Decrease	Increase	Decrease
	$	$	$	$	$	$
Other specie-paying banks[2]	533,753	851,347	410,502	2,253,289	749,506	2,853,333
Bank Montreal..	389,184[3]	.....	1,881,400[3]	.....	1,304,134	.....

We have seen that in the months from September to December, there was, between the Bank of Montreal and the other banks, a difference of responsibilities, interests and position. The Government was depositing large sums in the Bank of Montreal,

[1] *Cf.* The *Monetary Times and Insurance Chronicle*, Toronto, 1867, Vol. I., p. 457.

[2] Exclusive of the Commercial Bank.

[3] As the provincial note circulation was profitable to the Bank of Montreal, it figures under the item of circulation as the bank's own, and is, by consequence, deducted from the deposits made by Government.

there to let them rest for some time.[1] The consequence of the distrust prevailing in the months mentioned is plainly apparent from the tables. The gain of the one bank, the loss of the others, must be reckoned the fifth result for which, in great measure, the Provincial Note Act was directly responsible.

The remoter consequences of this law will occasionally appear in subsequent pages. The more immediate effects detailed above were well summarized in a single sentence by Sir Richard J. Cartwright, delivered in the Dominion House of Commons the 3rd December, 1867:[2] "A statute more offensive, or more deliberately mischievous, or more calculated to prejudice Upper Canada, it was impossible to conceive."

In the discussion just concluded I have ventured somewhat beyond the strict limits of this part of our history. The Province of Canada came to an end the 1st July, 1867, when the territory which it comprised was divided, under the British North America Act of the Imperial Parliament, into the Provinces of Ontario and Quebec, and these two were united with Nova Scotia and New Brunswick into the Colonial confederation of the "Dominion of Canada."

To sum up the growth of the banks under the Union, a comparative table for 1841, 1851, 1861, and 1867 is annexed.

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[1] Statement of average daily balances for month at credit of the Receiver-General in the Bank of Montreal

Average weekly balances of the Receiver-General's Issue Account with the Bank of Montreal

		CREDIT	DEBIT
1867—June	$ 875,372	$ 164,800	.....
July	363,277	345,393	.....
August	639,137	336,995	.....
September	1,653,482	230,195	.....
October	1,977,619	742,793	.....
November	2 296 986	802,734	.....
December	1,728,622	893,034	.....
1868—January	1,010,247	1,186,742	.....
February	1,331,311	517,034	.....
March	1,816,591	293,090	.....
April	1,632,148	28,500	.....
May	1,932,985	.....	$305,840
June	1,510,214	152,740	.....

Sessional Papers of the Dominion of Canada, 1870, No. 38, pp. 6-8.

[2] Reported in the Ottawa *Times*.

AGGREGATE STATEMENT OF CHARTERED BANKS in the Province of Canada, 1841, 1851, 1861 and 1867 (£ currency)

LIABILITIES	1841 *a*	1851 *c*	1861 *d*	1867 *e*
Number of banks in operation	9 *b*	8	16	19
Capital stock authorized by Act	....	....	$35,266,666	$37 466,666
Capital stock paid up	£2,276.637	£2,897,619	24,410,796 *f*	27.618,440 *f*
Promissory notes in circulation not bearing interest	919,045	1,623,435 *f*	11,780,364	8,312,386
Balances due to other banks	340,771	271,621	444,120	2,771,925
Dividends unpaid	21,025	933	....	....
Net profits or Contingent Fund	146,410	59,845	....	....
Cash deposits not bearing interest, and all sums not otherwise specified due by the banks	786,468	1,126,305	9,175.957	13.938,447
Cash deposits bearing interest	54,858	565,326	9,545,341	14,765,879
Total liabilities	£3,677,965	£3,741,757	$30,945,341	$39,788.638

ASSETS	1841	1851	1861	1867
Coin, bullion and provincial notes *g*	£ 392.540	£ 413,422	$ 4.960,439	$ 7,384,197
Landed or other property of the bank	46,101	135,313	1,429,324	1,510,572
Government securities	24,661	43.825	2,735.956	6,142.573
Promissory notes or bills of other banks	148.342	144.375	1,136,153	1,651,772
Balances due from other banks and foreign agencies	203.586	218.501	4,157.286	5,068,635
Notes and bills discounted	3,282,150	5,573,983	39,588,842	48,158,431
Other debts due to the bank not included under foregoing heads	....	....	4,064,389	2,297,414
Total assets	£4,094,068	£6,529,769	$58,072,391	$72,213,597

a Journal, Can., 1841, Appendix O. The several statements from which the total is secured are for days approximate to the 1st July, 1841.
b Includes Farmers' Joint Stock Banking Co. and Viger, DeWitt et Cie., private banks recognized by statute.
c Journal, Can., 1851, Appendix I, No. 1 to 8 inclusive. Statements are for days approximate to June 1st, 1851.
d The Canada *Gazette*, Vol. XX., p 1736, Statement of banks acting under charter, for the month ending 30th June, 1861.
e The Canada *Gazette*, Vol. XXVI., p. 2245, Statement of banks acting under charter, for the month ending 30th June, 1867.
f This includes £620,000 stg., being the capital allotted by the Bank of British North America to its Canadian Branches.
g "Provincial Notes" occurs only in the statement for 1867.

NOTE.—RELATION OF THE BANK NOTE ISSUE TO THE PREROGATIVES OF THE STATE

The right to issue promissory notes, payable on demand, for circulation as money, was not originally a Government or Crown prerogative either in Great Britain or the colonies. It was the common law right of any one who chose to exercise it. The prerogative of drawing cheques or bills of exchange, of giving deposit receipts or promissory notes payable at a time future, could have been claimed just as logically as that of issuing bills for circulation. These instruments are all the documentary evidence of rights to demand, and all are available, all are used to effect transfers of rights to money or to goods expressed in terms of money. They are distinguishable, not by their function, but merely by their form and the different degrees of credit and transferability with which the different forms are endowed. The differences in the legal rules respecting them rest on the differences in the place, time and manner of payment, the persons to whom the payment is made, and the persons immediately or secondarily liable for that payment. In questions touching the economic essence of transactions in such paper, the legal rules are the same. Thus, *e.g.*, where the transfer is without indorsement, whether it be a sale of the bill or note, or an exchange, or by way of discount, or where the assignee agrees expressly to take it in payment, he can neither recover against the assignor upon the bill, nor recover back the amount given for it, on account of failure in the consideration, unless, indeed, the assignor knew the bill or note to be that of an insolvent when he assigned it.[1] The same principle obtains with regard to bank notes.[2]

But the difference between the notes of a solvent bank and coined metal or a legal tender Government currency, is one that cannot be too often or too strongly insisted upon. The one is an instrument of credit, a mere representative; the others, lawful money, the legal standard of value and the legal means of payment. Bank notes circulate and are used in money's stead, with like effect, only by virtue of convention. Current bank notes are a lawful tender in payment of debts only when the creditor does not object to them, as not money, and demands payment in coin. But an offer of current coin or Government currency endowed with forced circulation, whether or no it be convertible into specie, is a legal tender unconditionally. In short, bank notes *may* be, money *must* be accepted as payment. There is, therefore, no true analogy between the issue of promissory notes, payable on demand, and the determination and issue of the standard of value and the legal tender, as an exercise of the State's sovereign power. To premise such an analogy and to deduce from the mint prerogative the exclusive right of the State to issue a convertible fiduciary currency, is a process, specious perhaps, but illogical, unhistorical and dangerous. The true explanation of State interference with matters of banking and the issue of bank notes is

[1] Daniel on Negotiable Instruments, Fourth Edition, New York, 1891, § 739.

[2] *Ibid*, § 1677. *Cf.*, also, WEIR, The Law and Practice of Banking Corporations under Dominion Acts, Montreal, 1888, pp. 148-163.

to be found in the general powers of supervision and regulation exercised by Government in the supposed interest of the public, and in the conditions which Government has been able to exact in return for the concessions sought by the banks.[1]

It follows that two of the propositions implied by Mr. Galt when he urged that the Government should resume a portion of the rights which they had deputed to others, were radically incorrect. These propositions were: first, that the right of the banks to issue notes had been originally derived from the Government; and, second, that the prerogative of issuing a fiduciary currency pertained to the Government.

The right to issue bank notes existed and was exercised both in Lower and Upper Canada before banks ever became a subject of legislation. It was exercised by private banks, and without legislative sanction, for a considerable period after the early charters were granted. And in 1837-38 both Provinces interfered with the private note issue, not as an infringement on Government prerogative, but as a menace to the public security. Upper Canada recognized the worthy private banks and permitted them, under supervision, to continue their business. Lower Canada, through the Special Council, prohibited only such banks as would not obtain licenses, furnish and publish returns, and submit to the regulations imposed by law. The chartered banks had accepted Government regulation in return for the concessions of incorporation, the currency of their notes in the revenue, assured protection against forgery, the power easily to enforce stock subscriptions, and the like. The charters confirmed and limited the right to issue notes, but they could not depute it. For the Lower Canada banks, at least, it was a pre-existing right which they had already exercised. The first proposition implied by Mr. Galt is, therefore, not to be accepted.[2]

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1 CHITTY on the Law of the Prerogatives of the Crown (London, 1820) contains no mention whatever of prerogatives in respect to the currency other than the establishment of the standard of value and the minting of specie. The lack of the prerogative of note issue in the positive public law of Great Britain was satisfactorily established by TOOKE, in his History of Prices. *Cf.* also, WAGNER Die Geld u. Credit-theorie der Peel'schen Bank Acte, Wien, 1862, pp. 65, 73, 74.

Confirmation of the principles just formulated in the text will be found, for the first, in the preamble of the Act to protect the public against injury from private banks, quoted on p. 101; for the second in the statements of the petitions for incorporation presented to the Legislature of Lower Canada in 1821, and in the preambles of the charters passed in answer to the prayers, p. 11, *supra*.

2 I am aware that this position is quite opposed to that held by the late Premier of the Dominion, Sir John A. Macdonald. Speaking to the House of Commons, the 4th April, 1880, in reply to Mr. Mills, of Bothwell, upon the currency resolutions brought down by the Minister of Finance, Sir Leonard Tilley, he said. "If it was admitted that the same power, sovereignty and nation had the right to issue gold or any other circulating medium, it must of necessity have the right, if it chose to claim it, of issuing what was equal to gold and silver." Then, after a reference to the undisputed prerogative of the State to prepare or cause to be prepared coins of gold, silver, copper or what not, and give them legal currency, "if paper promises to pay were accepted as equal to gold and silver, the argument was clear." He had always thought the people and the government synonymous. The banks had no vested right to issue, the right to make money is in the Crown—in the people. "It was a matter of grace, of expediency, of legislation, by which the Crown gave up a portion of its exclusive right to issue what was called money to the banks, whether private or public." But it is easy to judge from this how, by a false analogy, the great statesman confused money with those instruments of credit which, in a popular sense, are often spoken of as money, and are conventionally used in substitution for it. Resting, as it does, upon this fallacy, even Sir John Macdonald's reasoning cannot be approved. We must still reject the theory of a Crown prerogative of issue.

In the second place, the power to issue a fiduciary currency concurrently with the banks, or even the right to emit a legal tender paper, had never been independently exercised by a Canadian Government either before or after the Union. The Army Bills of 1812-15 are not a pertinent case, inasmuch as in that affair the initiatory steps were taken by the commander of the troops, sent out from England, and the transactions conducted largely under his direction. What the local legislatures did was to give the bills currency. I will not deny that the right existed, for in Nova Scotia there were some £100,000 of legal tender provincial notes in circulation. But to the theory of its possession by the Upper Province before the Union, the refusal of the Imperial authorities in 1839 to allow the issue of legal tender notes payable in one year after date, is a serious obstacle of fact. Lord Sydenham's proposals in 1841 were for the creation of a Bank of Issue, not of a currency issued directly by the Government. The nearest approach to Mr. Galt's scheme was the device employed by Sir Francis Hincks in 1848-49, viz., the payment of current debts of the Government in short date, interest-bearing debentures for small sums, negotiable only under par. Yet this, or anything else revealed by rather careful research into the history of Canada previous to 1866, will not satisfactorily establish the actual existence of a government right to emit fiduciary currency. Much less will it justify the pretence of a government prerogative of note issue. The second proposition implied by Mr. Galt fails as completely as his first.

For the discussion of a bank note currency, or of any currency, it is indispensable to rest upon the correct theoretical and legal basis. Once it is recognized that the business of issuing notes for circulation, promising payment, and payable upon demand, is essentially similar to any other business in instruments or forms of credit—once it is seen that, historically and practically, note issue is no more a prerogative of Government than life insurance, receiving deposits at call, or drawing foreign exchange, the way is barred to many a fallacy and delusion. The cry that "the profits of the circulation should belong to the Government," then appears no less ridiculous than the plaint, "the profits of the flour mills, the shoe factories, the building societies, should belong to the Government." The business of note issue, rightly conducted, requires capital just as other economic activities; like them, it pays profits, for the saving of the interest on a currency of intrinsic value accrues, in the first instance, directly to the issuers. The public, however, derive advantage from this saving, as they gain from other economies and improvements in production, viz., through the reduced costs of production and the consequent lower prices to consumers. Those who deal with the banks get their services at rates which, without the issue profit, would be impossible. With those who do not so deal, the gains of those who do are divided through the cheapening of the commodities exchanged or produced with the assistance of the banks. Under a *régime* of competition, the capital invested in a bank issue cannot, in the long run, earn a higher return than other capital invested at equivalent risks.

The contracts which result from issue operations, must be enforced,

like other contracts, by the legal and judicial organization of the State. To provide for the security of such contracts, prevent frauds and avert public injury, the Government may regulate and supervise the note issue as it does the operations of common carriers, insurance companies and monied corporations of other kinds. The gain from the note issue, in common with other income, will be a legitimate subject for taxation, but not for such as violates the canons of equality and uniformity. If a necessitous government is constrained to derive greater revenue from the note issue than is possible by leaving it in private hands, it may by the exercise of sovereign power, exclude all but itself from this department of economic activity. This practically is what many European states have done. But those who guide a nation's policy may well weigh carefully the commercial disadvantages attending such a usurpation, and the tendencies towards forced circulation, fiat money, depreciation and repudiation which it is likely to release.

CHAPTER VI

NEW BRUNSWICK AND NOVA SCOTIA

§ 33.—THE BANK CHARTERS OF NEW BRUNSWICK

THE first bank established in this Province was chartered as the President, Directors and Company of the Bank of New Brunswick, by an Act of the local Legislature, which received Royal assent the 25th March, 1820. As expressed in the preamble, it was the opinion of the House of Assembly that "the establishment of a bank in the city of St. John will promote the interests of the Province by increasing the means of circulation." (60 Geo. III. cap., 13, N.B.) The capital stock was limited to £50,000, and the payment of the whole required within eighteen months. In 1821 the stock limit was reduced to £30,000, and four years later raised again to £50,000, on "account of the increase of the trade of the Province." The President, Directors and Company of the Charlotte County Bank, to be situate at St. Andrews, were incorporated in 1825, with a capital stock of £15,000, all to be paid up within a year and a half. (2 Geo. IV., cap. 20.) Both these banks were smaller than those established in Montreal, Quebec and York in 1817, 1818, and 1822, and it is manifest that they were intended to be local affairs, but the New Brunswick charters are different in only a few essential respects from those passed in Upper and Lower Canada. The limitation upon the total debts which might be owed by these corporations was more strict, being twice the amount of their paid-in capital stock, and the term of their charters was twenty years. In 1834 the Central Bank of New Brunswick was incorporated, and provision made for establishing it at Fredericton. (4 Wm. IV., cap. 44.) The Act of incorporation contained a number of new provisions similar in effect to those recommended by the Committee for Trade of His Majesty's Privy Council in 1830 and 1833.

No bank bill, *e.g.*, was to be issued until £7,500 (one-half

the authorized stock) were paid in. The Governor was empowered to appoint commissioners who should count the money in the vaults and ascertain whether it were *bonâ fide* capital. (This authorized stock was raised in 1836 to £50,000.) The stockholders were made chargeable in their private and individual capacities for the payment and redemption of any bills issued by the corporation, and for the payment of all debts at any time due from the corporation, in proportion to the stock they should respectively hold, but not to exceed the amount of the stock actually held by them, nor in exemption of the joint stock of the corporation from liability for its debts and engagements. Loans on the pledge of the bank's own stock were forbidden. Provisions were introduced with respect to the distribution of the capital stock and profits among the shareholders in case of dissolution of the bank, and to the continuation of their liability to redeem the notes in circulation for two years and no longer after the date of the dissolution. Debts of the directors to the bank, either as principals, sureties or indorsers, were limited to one-third of the paid-in capital stock, and semi-annual returns to the Secretary of the Province were required. No note or bill offered for discount was to be excluded by a single vote. A list of the delinquents was to be furnished to the Board upon discount days, and the presence of his name in the list was to disqualify any director from sitting on the Board.

In 1834, the Commercial Bank of New Brunswick was incorporated by Letters Patent,[1] The charter of the St. Stephen's Bank passed in 1836 (6 Wm. IV., cap. 32) created a corporation capitalized for £25,000, and subjected to the provisions already described. It added the rules that no stockholder should own more than twenty per cent. of the capital stock and that "no action shall be brought or maintained upon any bank bill or bank note issued by the corporation, before such bill or note shall have been presented at the bank for payment, and default in payment thereupon shall take place." Upon shares seized and sold under execution, the bank did not enjoy the prior claim for stockholder's debts which it could enforce be-

[1] The Charter Acts of the General Assembly of the Province of New Brunswick, 1853, p. 81.

fore transfers of stocks in other ways became valid. The limitation upon total debts was altered by excluding deposits from the amount which should exceed twice the capital stock paid-in. The City Bank was incorporated the same year. Its location was to be St. John; its capital £100,000, half to be paid in one year, and half within five years. But the City Bank had a short existence. The Bank of New Brunswick received permission to double its capital in 1837, and was subjected to new provisions similar to those detailed. (6 Wm. IV., cap. 57.) By an Act of 1839 the City Bank was united to the Bank of New Brunswick and merged within it. (2 Vic., cap. 26.)

The year 1837, however, was not altogether one of diminished banking competition. The Legislature in this session granted the Bank of British North America powers to sue and be sued in the name of a local officer, and facilitated its business in other ways. (8 Wm. IV., cap. 16.) Afterwards, between 1841 and 1866, various additions to the capital stock of the four existing banks were permitted, and their charters extended to dates between 1870 and 1876. The Shediac Bank was incorporated in 1856 (19 Vic., cap. 66), the Miramichi Bank in 1857 (20 Vic., cap. 28), and the People's Bank of New Brunswick in 1864. The Miramichi Bank was proposed for Chatham, N.B., and the authorized capital was £20,000. The People's Bank was established at Fredericton with a capital stock of $60,000.

In this and the subsequent legislation, provision was made for increasing the capital stock of the banks upon the initiative of the shareholders and without further legislative sanction. New stock was always, according to law, to be disposed of at auction, and the premium paid upon it divided *pro rata* among new and old shareholders. But in other respects the bank charters granted in 1856, 1857 and 1864 are in no way different from those of 1834 and 1836. All the banks, however, had been forbidden by an Act of 1838 (1 Vic., cap. 18), to issue notes of a less denomination than five shillings or notes of denominations not multiples of that sum. For violation of the Act there was imposed a penalty of £25, recoverable in courts of competent jurisdiction by the first person suing therefor, one-half for himself and one-half to the use of the Province. Receiving the

notes and checks denounced by the Act rendered one liable to forfeit a sum equal to the nominal value of the instrument.

Some years previous to 1865, the Charlotte County Bank ceased its operations and business and paid off, so far as they had been presented, all claims upon it. In the year named it was authorized, after newspaper notice for twenty-four months, to wind up its affairs, and divide the assets remaining among the shareholders, the further liability of whom for the debts of the bank was thereupon to cease and determine. (28 Vic., cap. 44.) A similar Act was passed in 1868 with respect to the Central Bank of New Brunswick. (31 Vic., cap. 56.) In the sessions of 1865 and 1867, on the contrary, the establishment of a number of new corporations was authorized; the Albert Bank, the Woodstock Bank, the Northern Bank, the Merchants' Bank of New Brunswick and the Eastern Bank of New Brunswick were all granted charters. I am not aware, however, that to any of these undertakings was subscribed and paid the capital required by law before they could begin business. In this they were as unsuccessful as the Miramichi and Shediac banks of the preceding decade.

At the time that New Brunswick entered the Confederation the Bank of New Brunswick, the Commercial Bank of New Brunswick, the St. Stephen's Bank and the People's Bank were in operation, the Westmoreland Bank in liquidation, and the five other charters just named were still available.

§ 34.—NOVA SCOTIA

The banks in Nova Scotia were neither so many nor so old. The establishment of a bank at Halifax had been mooted, to be sure, in 1801, and £50,000 of the capital subscribed, but it was proposed in this connection that no other bank should be established by any future law of the Province during the continuation of the corporation. The feature of monopoly was probably fatal to the plan's success,[1] as the bank was not started. Another project for a joint stock bank was published by the Halifax Committee of Trade in February, 1811, but no action was taken in

[1] MURDOCH, History of Nova Scotia, Vol. 3, p. 205.

the matter by the Assembly.[1] In 1825, however, a private bank of issue, discount and deposit, was started in Halifax, the advertisement of opening, upon the 3rd September, being signed by eight partners.[2] This was the Halifax Banking Company, which in 1872 was sold out to the present chartered bank of the same name.

There can be little doubt that the extension of the banking system was somewhat delayed by the circulation, as money, of the Treasury notes of the Province. Since 1812 the Province had had in these a paper currency which was seldom, in large amounts, immediately convertible into specie, and never, in point of elasticity, comparable to a bank note circulation. Yet it sufficed to work a certain economy of specie, to give some help to the Treasury, and to serve the colonists as a medium of exchange at a time when the specie circulation was neither abundant, uniform, nor satisfactory.[3]

Finally, the Legislature became convinced that the "establishment of a public bank will be greatly advantageous to trade and commerce, and otherwise advance the interests of the Province by increasing the circulating medium of business, and promoting a more extensive and beneficial employment of the resources and industry of all classes of its inhabitants."[4]

To further such purposes, and to grant the prayer of certain petitioners, the Bank of Nova Scotia, the first chartered bank in the Province, was incorporated by an Act approved the 30th March, 1832. (2 Wm. IV., cap. 50, N.S.) Its authorized stock was £100,000 in 2,000 shares of £50 each. Business might begin when £50,000 were subscribed and paid up in specie or Treasury notes. Land might be owned in fee simple to the value of £5,000. But loaning upon the bank's own stock, upon mortgage or upon real estate, was prohibited. Each director was required to hold twenty shares, and might not be a director in any other bank either within or without the Province. Shareholders with one to two shares had one vote. For more than

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[1] *Ibid*, p. 308.

[2] *Ibid*, p. 538.

[3] The principal details of the Treasury Notes legislation are given in the note at the end of this chapter.

[4] *Vide* preamble, 2 Wm. IV., cap. 50, N.S.

two shares they voted according to a scale, by which the holder had one vote for each two shares above two and not above twelve, for each three above twelve and not above thirty, one vote, and for each five above thirty, one vote; but no shareholder was allowed more than fifteen votes, or to hold more than three proxies.

In case of loss or deficiency in the capital stock of the bank on account of the official mismanagement of the directors, the shareholders were liable for debts of the bank in their private and individual capacities, but not liable to pay a sum exceeding the amount of stock actually held by them respectively, in addition to the stock so held. This was the Nova Scotian expression for the double liability of stockholders, adopted by New Brunswick in slightly different phrase a few years later. The debts of the corporation, exclusive of the sum due on account of deposits, were limited to thrice the amount of the capital stock paid in. As in New Brunswick, this restriction was the only limit upon the amount of the notes which might be issued. In case of excess, both the corporate property, and the directors in their individual and several capacities, were to be liable. The bills and notes of the corporation were to be payable on demand in gold and silver. Notes for less than twenty-six shillings were forbidden. If the bank should refuse to redeem its notes in specie, it incurred the penalty of paying interest at twelve per cent. per annum upon their face value, from the time of refusal to the time of payment. A statement of the bank's affairs was to be made to the annual meeting of the shareholders, and a copy sent to the Secretary of the Province. Either by order of the Governor-in-Council or by a joint committee of the Legislative Council and House of Assembly, the bank might be investigated. And if it should then appear that the capital stock had been diminished by loss and bad debts to half the sum subscribed, it was provided that the corporation should be dissolved.

Such were the important provisions of the first bank charter passed in Nova Scotia. The structure of the corporation, its powers and the restrictions upon it were of the same general type as of the banks of the other Provinces. There is no need to describe in complete detail legislation so like that already fami-

liar. But in (*a*) the stipulations for payment of capital, (*b*) the double liability of shareholders, (*c*) the minimum placed upon the denomination of bank notes issued, (*d*) the penalty for suspending specie payments, and in (*e*) the provision for winding up the bank in case the stock were badly impaired, the charter is distinctly in advance of any previously passed by other British North American Provinces, and in force in 1832. In the first three of these peculiar restrictions, the reader will unquestionably detect the influence of the suggestions made by the Committee of the Privy Council for Trade in 1830. The purpose of the fourth and fifth is evidently the same as that sought by the Imperial authorities, viz., maintenance of redemption and preservation of a capital guarantee, but the means most closely resemble those adopted in the legislation of Massachusetts.

For five years the Bank of Nova Scotia was the only chartered bank in the Province. In its first ten years it divided among the shareholders profits at the average rate per annum of 8.9 per cent. of its capital and increased that capital to £140,000.[1] After 1842, however, dividends rarely exceeded 6 per cent.

One reason was the competition of the Bank of British North America, which had begun business in Nova Scotia in 1837, and secured the right to sue and be sued in the name of a local officer in 1838. (1 Vic., cap. 24.) Then there was the statute of 1834 (4 Wm. IV., cap. 24), which prohibited the issue of bank notes for sums less than £5, and thus closed to the banks the profitable and important business of circulating the one and two pound notes necessary for retail exchanges. It also provided that all bank notes should be made payable in gold and silver to the amount of their face value to the bearer or holder of the undertaking and upon demand, or bear interest at 12 per cent. per annum from the day of refusal to the day of final payment. Notes payable to real or fictitious persons and transferable by indorsement were made negotiable by delivery merely and the indorsement declared unnecessary. The penalty of £10 imposed for each note, bill of exchange, draft or check issued for less than £5, was recoverable by action for debt,

[1] Journal of the House of Assembly of the Province of Nova Scotia, 1846, Appendix 18.

one-half to the prosecutor and one-half to the Crown. Forgery of the notes was punished by not more than seven years in the Bridewell at hard labor, and all the costs of prosecution; theft, by the same penalties as were imposed for stealing other things of equal value.

Another cause of the lower profits of the Bank of Nova Scotia may be found in the constitutional struggle which was carried on in the Province in the earlier part of this period, and the commercial disturbances due to it. To compel the Executive annually to convene it, the Legislature adopted the policy of continuing necessary Acts for one or two years only. Between 1841 and 1846 the charter of the Bank of Nova Scotia and the amending Act of 7 Wm. IV., were thus continued no less than five times, in order annually to prevent their expiry.

At last, in 1847, the charter was continued for 10 years. The form of semi-annual returns to the Government recommended by the Lords of the Treasury was adopted, and the penalty of charter forfeiture imposed for note issue in excess of the statutory limit (thrice the capital stock paid up). (10 Vic., cap. 57, N.S.) The charter was again extended in 1856 for a period of 15 years, and permission granted to increase the capital stock to £400,000. (19 Vic., cap. 95.) By another Act of the same session, the Legislature incorporated the Union Bank of Halifax. In 1859 the Bank of Yarmouth was chartered; in 1864 the People's Bank of Halifax, and the Mutual Bank of Nova Scotia; and in 1865 the Commercial Bank of Windsor.[1]

These later charters repeated almost *verbatim* the provisions of the amended Act governing the Bank of Nova Scotia. The banking system as originally worked out caused so few difficulties and promoted so much the convenience and prosperity of the colonies, that they felt very little temptation to change it. The banking history of Nova Scotia, therefore, is

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[1] For these banks the charters provided

	Authorized Capital	Charter Expires	Required to be paid up before beginning business
Union Bank of Halifax	£250,000	1871	£50,000
Bank of Yarmouth	50,000	1871	12,500
People's Bank of Halifax	$400,000	1879	$160,000
Mutual Bank of Nova Scotia	1,000,000	1869	250,000
Commercial Bank of Windsor	200,000	1885	50,000

not eventful. The private banks carried on all branches of banking, including note issue, in competition with the chartered banks. Their proprietors were men of wealth; they enjoyed the confidence of the community, and conducted their business according to recognized banking principles. The currency law, with its penalty for suspending specie payment, sufficed to keep the note circulation secure and within proper bounds. Down to 1873 a bank had never failed in the Province of Nova Scotia, nor had the finger of suspicion been pointed at any of them, either chartered or private.[1] When the province joined the Confederation five banks were acting under local charters, viz., the Bank of Nova Scotia, Bank of Yarmouth, People's Bank of Halifax, Union Bank of Halifax, and Merchants Bank of Halifax; the charter of the Commercial Bank of Windsor was still available.

§ 35.—RELATION OF BANK LEGISLATION IN THE MARITIME PROVINCES TO THAT OF THE DOMINION

I. In the two greater Provinces whose bank charters have been discussed, we found that the first legislation was shaped on almost the same lines as that of the Canadas. Still, the banking history of Nova Scotia and New Brunswick is much simpler. The system originally established was subjected to no such energetic and repeated attacks, either by scheming individuals or by the Government of the day, as we meet in the Provinces of Upper Canada and Canada. On the other hand, we may detect a certain similarity in the forces moving in the later stages for the improvement of the system. Whether the safeguards latterly inserted in bank charters were a purely local development, is a question that hardly needs to be raised in the cases of New Brunswick and Nova Scotia. The constitutional governments of these Provinces were in no substantial respects different from that of the Canadas. The Eastern colonies were kept in pretty much the same sort of tutelage by the Colonial Office in Downing Street as those in the West. We know that the Treasury regulations were transmitted, as cir-

[1] Journal of the House of Commons, Canada, 1869, Appendix I., p. 62, Evidence of Messrs. Rowley, Killam and Lewin.

culars, to the colonies generally, with instructions for their observance. Lord John Russell's despatch of 1840 appears in the legislative documents of New Brunswick. Reference to the actual statutes shows that subsequently to the receipt of the Treasury regulations, provision was made in bank charters that the spirit of the more essential rules should be observed.

II. As Newfoundland is no part of the Dominion, it is unnecessary to treat of banking there. Prince Edward Island, though within the Confederation, is of no such importance that its banking laws could have affected the measures adopted by the Dominion. We may, accordingly, disregard the banking history of this colony until it becomes a part of the broader study.

III. Even Nova Scotia and New Brunswick, before the Confederation, were, in great measure, self-contained communities. Though exporting some natural products and buying manufactured supplies abroad, they were not, on the whole, strongly affected by the commercial movements in other parts of the world. Nova Scotia, for instance, suffered practically nothing from the crises of 1837 and 1857. New Brunswick, however, experienced severe commercial depression in 1848, in consequence of heavy importations during the preceding period, and a falling off in the demand for its principal exports.

Banking was chiefly confined to the cities of St. John and Halifax, and two or three of the seaports next in importance. The other towns carried on their business through the cities. Branch banking had not yet received that extension which, since Confederation, has brought the office of a strong bank to every town and almost every considerable village. Besides the ordinary business of receiving deposits, issuing notes, and discounting for local purposes, the banks enjoyed a profitable business in exchange. The trade with Upper and Lower Canada was small, but they bought and sold large amounts of bills upon Boston, New York and London. During the period of Reciprocity the American trade was especially important, as that market for fish and timber was wide and active. Indeed, the principal business of Nova Scotia at this time was shipping fish and timber to the West Indies and the United States. The returns from these shipments were mostly in sterling exchange, which

was sent to London and drawn against to pay for dry goods, hardware, and other colonial necessities. The banks also obtained large amounts of sterling bills from the Imperial authorities at Halifax, in exchange for specie to pay the troops and buy supplies for the garrisons.

The growth of business between 1832 and 1841 was especially remarkable in New Brunswick. It is best illustrated by the returns made to the Provincial Governments in these years. For purposes of comparison, returns for 1851, 1861 and 1867 are given in the same table. Such returns of Nova Scotia banks as I have been able to secure are also given. They are few, as there appears to have been no regular publication of statements from the chartered banks of Nova Scotia, either in the legislative documents or the *Royal Gazette* of that Province.

Statements of banks acting under charter in the provinces of N. Brunswick and N. Scotia for various dates between '52 and '67[1]

	[a] New Brunswick					Nova Scotia		
No. chartered b'ks in operation	1832 2	1841 4	1851 5	1861 5	1867 4	1841 1	1846 1	1867 5
LIABILITIES[b] (s. & d. omitted)								
Capital stock paid-in	£ 64,007	£329,693	£325,000	$1,600,000	$1,480,000	£125,000	£140,000	$1,552,389
Balances due to other banks	..	11,299	10,515	79,286	142,653	21,398	330	69,766
Bills in circulation	88,098	160,220	192,179	1,175,209	991,633	88,939	65,946	798,420
Cash deposited not bearing int.	15,902	50,197	73,488	419,054	525,792	70,712	73,173	470,973
Cash deposited bearing interest	..	6,824	29,017	163,811	509,687			1,451,811
Drafts on the bank *in transitu*	..	..	..	..	..	2,482	1,277	..
Nett profits on hand	1,239	10,230	30,990	243,040	..	6,830	6,560	..
Profit and loss	180	..	..	..	..	..	..	..
Total	169,428	568,474	661,197	3,680,403	2,168,766	315,364	287,288	2,590,971
ASSETS								[c]
Gold, silver & other coined metal	11,825	36,218	48,726	179,151	348,634	20,774	27,899	467,398
Provincial Treasury notes	..	..	..	..	..	2,507	2,002	..
Due from other banks	..	29,102	48,817	235,843	217,927	10,575	4,915	38,809
Bills of other banks	3,872	41,569	12,121	84,181	103,527			50,752
Real estate and bank premises	3,242	15,000	16,133	84,714	58,739	4,171	3,158	58,938
Due by agents abroad	..	..	..	..	..	8,698	46,440	..
Notes, bills of exchange and funded debts	150,325	446,575	535,395	3,096,507	3,027,345	268,637	202,872	3,713,365
Government securities	..	..	..	..	..	..	..	135,000
Other assets	163	..	..	..	212,201	..	..	108,404
Total	169,428	568,474	661,197	3,680,403	3,968,369	315,364	287,288	4,590,867

[1] Compiled from the Journals of the House of Assembly of N.B. and N.S. respectively, and the Canada *Gazette*.

a None of these returns, except those for 1867, were drawn up at the same date of the same year, so that the figures given are at the best typical rather than accurate.

b In no case do the footings represent the exact sum of the items given; the differences are due to the omission of shillings and pence.

c Figures in the "assets" half of this column are approximate.

IV. Finally, the Provinces of Quebec and Ontario were to enjoy in the councils of the Dominion a certain preponderance, as well on account of their greater wealth, population and trade, as of their larger representation in Parliament. Where the precedents and laws of the Maritime Provinces differed from those of the Province of Canada, the legislation of the Dominion was generally drawn up according to the Canadian lines. Especially is the effect of this tendency to be remarked in the legislation with regard to the banks. Those in Canada, both in the aggregate, and for the most part individually, were superior in power, resources and influence, to those of the Maritime Provinces; their efforts to preserve the continuity of their own development were destined to prevail over similar attempts by weaker rivals. It is the more necessary, accordingly, to know well the charters granted in Canada, and the forces there at work. This study was the purpose of the chapters II to V.

For the four reasons offered in the preceding paragraphs, a further study of the banking history of the Maritime Provinces need not be undertaken. It cannot materially serve our present purpose to trace the development of the banking system which prevails in Canada to day.

NOTE.—THE TREASURY NOTES OF THE PROVINCE OF NOVA SCOTIA

The Treasury Note issues began in 1812. The first amounted to £12,000 of notes bearing interest at six per cent., receivable at the Treasury for public dues and not re-issuable. Warrants on the Treasury were made payable in gold, silver or Treasury notes, at the option of the payee. (52 Geo. III., cap. 7, N.S.) The subsequent legislation is an example, in many ways, of the course usually run by fiduciary issues of governments. The ultimate redemption, however, was somewhat more creditable than the average.

This issue of 1812 was withdrawn in 1813 and a new issue authorized of £20,000 in non-interest bearing and re-issuable notes. There were provisions for funding the notes in amounts of not less than £100, by interest-bearing certificates, in case the Treasury had no gold. The notes issued under this statute were not payable on demand in specie until three years after the date of publication of the Act. (53 Geo. III., cap. 15.) Thus in the second year of its existence this government currency became irredeemable on demand.

In 1817 a new issue of £50,000 was authorized, the notes bearing date the 30th April, and being payable on demand in gold or silver after the 31st December, 1817. They were non-interest bearing, fundable quarterly and re-issuable in like manner as the preceding issue. (57 Geo. III., cap. 17.) £10,000 more notes of denominations of £1, £2, and £5 were authorized in

1819. Loan offices, under the direction of commissioners, were established at Annapolis, Halifax and Kings, for loaning in amounts of not more than £200 to each borrower, the notes upon real estate security at the interest of 6 per cent. Repayment of one third of the principal was to be exacted at the end of three, six and nine years after the 31st December, 1819. Loans were made only upon unencumbered estates of treble the value of the sums secured. Provision for funding the notes at six per cent., after 1822, and cancelling all thus retired, was included in the statute. Notes unpaid or unfunded after the 31st December, 1820, were made payable on demand in gold and silver, and thereafter not re-issuable.

The next year (1820) an issue of £20,000 more was authorized, the notes being payable the 31st December, 1822. At the same time the total circulation was limited to £70,000. (60 Geo. III., cap. 18.) During the session of 1820-21, the circulation was further limited to £66,227 in notes for five shillings, ten shillings, £1, £2, and £5. The notes bore no interest, were to be dated on the first Monday in January or July, according to the half year in which they were issued, were re-issuable and payable on demand in specie after three years from the day of date. The Treasury being then unable to pay it in gold and silver, was empowered, as usual, to fund the notes with certificates at 6 per cent. (1 and 2 Geo. IV., cap. 4.) In 1826, new commissioners were appointed to issue some £40,000 of Treasury notes and to cancel the old ones in circulation. These were also re-issuable, receivable for public dues, and fundable after three years. But the notes were now made payable in payment of warrants upon the Treasury, *whenever the Treasury should not have the needful gold and silver.* The payee being deprived of his election between specie and Treasury notes, the notes, therefore, became a legal tender in discharge of Government debts. (7 Geo. IV., cap. 14.) Two years later the Provincial Treasurer was directed to apply what gold and silver should come into his hands exclusively to the payment of the funded debt. In 1829 the limit of the circulation fixed at £40,000 in the preceding year was raised to £55,000, and in 1832 to £80,000. (9 Geo. IV., cap. 3; 10 Geo. IV., cap. 43; 2 Wm. IV., cap. 64.)

The next year the defective state of the currency and the desire to provide for its specie redemption led the Legislature to enact that the payment of customs duties should be in gold and silver alone. The Treasurer was instructed, whenever he had the specie, to pay treasury notes in sums of £10, upon presentation; when notes in sums of £100 or over were presented for payment, and sufficient gold or silver were lacking, the holder was entitled to receive interest bearing certificates for like amounts. When the Treasurer had both specie and notes, the commissioners provided for the payment of government dues, certificates of funded debt which bore interest at 4 per cent., and were limited to an outstanding total of £20,000. The commissioners might issue new notes for amounts equal to those retired by certificates, and these new notes were payable in discharge of warrants upon the Treasury. (3 Wm. IV., cap. 38.)

According to an Act of 1834, the notes were received for customs duties at the rate of 16s. cy. per £ stg. (4 Wm. IV., cap. 1.) In 1835 the interest on

certificates by which the notes were funded was reduced by statute from six to five per cent., while the interest on £11,500 of the certificates of funded debt, issued under the Act of 1833, was raised to five per cent. The Legislature further provided for funding the notes, prohibited the re-issue of notes funded, and limited the amount of certificates issued under the Act and outstanding to £18,500, while pledging the payment of the whole sum by the 1st January, 1838, or as soon as possible thereafter. (5 Wm. IV., cap. 22.) The province was still liable in 1846 for some £30,000 upon certificates, a large amount of Treasury notes were outstanding, and the Government owed £27,000 to the Savings Bank at Halifax. The former laws relating to Treasury notes were repealed, and the substitution of a new issue for the notes in circulation authorized. But according to the new statute, the notes were still payable to holders of warrants upon the Treasury, if there should be no gold or silver available. They might be re-issued. The amount in circulation was limited to its then figure. Notes were receivable at the Treasury, and by Collectors of imposts and light duties at their par value. Customs duties were payable in gold, silver and Treasury notes only. (9 Vic., cap. 14.) This, apparently, was discrimination against bank notes. The banks, indeed, already suffered somewhat by the partiality of the Legislature for Treasury notes, for they were prohibited by an Act of 1834 (4 Wm. IV., cap. 24), from issuing notes for less than £5 currency.

Under the law of 1846, notes were issued down to the time of Confederation. Assistance granted to railways in 1854 was the excuse for an addition of £50,000 in notes of 20 shillings, to the £100,000 currency, or thereabouts, already in circulation. (17 Vic., cap. 3.) These, like the issue of 1846, were nominally payable on demand in gold or silver. The form of the note was as follows:—

One Pound. £1 One Pound.

Province of Nova Scotia.—The bearer hereof is entitled to receive at the Treasury, Twenty Shillings.

Dated at Halifax the.....day of.....18....

.....} *Commissioners.* .....*Treasurer.*
.....}

But practically the Treasury notes of Nova Scotia were irredeemable; large sums could not be converted into specie at the option of the holder; nor could they, for example, be safely used by banks as a part of their reserves.[1] The only transactions in which, so far as I can discover, they were legal tender, was in payment of warrants upon the Treasury, when there was insufficient gold or silver to meet the debts of the Government. A qualified redemption was kept up by the possibility of using the notes at their par value in payment to the Government; but this did not suffice at all times to prevent a depreciation. The indebtedness of the Province upon this paper was assumed by the Dominion of Canada in 1867. The amount was then $605,859 12. Redemption was so rapid during the next five years that by 1872 only $61,685 were still outstanding, and by 1890, $39,743. (Public Accounts, Canada, 1890, p. 38.)

[1] Journal of the House of Commons, Canada, 1869, Appendix I, p. 46, Evidence of Messrs. Lewin and Rowley.

CHAPTER VII

BANKING REFORMS 1867-1871

§ 36.—PRELIMINARY MEASURES

By the British North America Act of 1867, the Parliament of Canada was given exclusive legislative authority in all matters coming within the subjects of currency and coinage, banking, incorporation of banks and the issue of paper money, savings banks, bills of exchange and promissory notes, interest and legal tender.[1]

"An Act respecting Banks" (31 Vic., cap. 2), was the earliest statute enacted under these powers which concerns the present study. This was merely a temporary measure, the expiry of which was fixed for the end of the first session of Parliament, after the 1st January, 1870. Yet some interest attaches to it as an early indication of the force with which Canadian precedents influenced the legislators of the Dominion. It first extended the powers of banks previously incorporated by any of the Provinces to the territory of the whole Dominion. Banks in Nova Scotia and New Brunswick were subjected to the tax of one per cent. upon the excess of their average circulation, above the average weekly amount of coin and bullion kept in their vaults, and reported, with other items, semi-annually to the Dominion Government. The remainder of the law is practically a re-enactment for the Dominion of Canada of the general legislation upon banks previously in force in the province of the same name. Banks were empowered to hold and dispose of mortgages taken as additional security for debts transacted in the usual course of their business, to purchase and hold lands thus mortgaged to them, to bid in lands as auctioned at their suit, acquire absolute title therein, to act on power of sale, etc., etc.

The Dominion Parliament also adopted the law as to loans

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1 Imperial Statutes, 30 and 31 V., cap. 33, section 91, clauses 14 to 16, 18 to 20 inclusive.

on warehouse receipts, described in the last chapter but one. The period for which the banks might hold the commodities described by the instrument was limited to six months, except in the case of timber, when a twelve months' holding was allowed. Section 9 of the Act provided for the case where the warehouseman and the borrower were one and the same person; section 10 declared that advances granted by banks upon the security of warehouse receipts, bills of lading, specifications of timber, and the like should have priority over claims of the unpaid vendors. Both these features had been added to the Province of Canada statute in 1861, the first because the courts had decided that the warehouseman, etc., must be the bailee and not the owner of the goods; the second, in order to make the law certain, as the unpaid vendor previously had the prior lien in some cases.[1] All banks were exempted from penalties for usury, but were not permitted to recover at law any higher rate than 7 per cent. Graduated charges for the expenses of agency and collection, not to exceed one-half per cent. for ninety day paper, were permitted to banks discounting notes payable at some office of their own, other than the place of discount. The usual charge of one-half per cent. in addition to the regular rate of discount, was permitted when the note should be payable at any other place and not at a branch of the same bank.

A second re-enactment of Canadian legislation occurred in 1868: "An Act to enable Banks in any part of Canada to issue notes of the Dominion instead of issuing notes of their own." (31 Vic., cap. 46.) It was the Provincial Note Act of 1866, phrased in the same general terms, extending the same general offers. But aside from its fiscal object, it was manifestly intended merely to continue the arrangements with the single bank which already had charge of the Government issue under such an agreement that, even had they wished, it would have been impossible for other banks to take advantage of the Government's ostensible offer.[2] The eight millions of Province

[1] The whole development is fully treated by Z. A. Lash, "Warehouse Receipts, Bills of Lading, and Securities under Sec. 74 of the Bank Act," *Journal of the Canadian Bankers' Association*, Vol. II., p. 54. The work first came to my notice after this and the subsequent references were written.

[2] Journal of the House of Commons, Canada, 1870, Appendix 2, p. 5, A Letter of Sir Francis Hincks, Minister of Finance, to R. B. Angus, Esq., General Manager of the Bank of Montreal, 14th February, 1870.

of Canada notes prepared in 1866, and the five millions thereof in circulation in 1868, were declared to be Dominion notes, for which the Dominion alone should be responsible. It was also provided that the Governor might, in his discretion, establish branches of the Receiver-General's department in Montreal, Toronto, Halifax and St. John for the issue and redemption of Dominion notes, or might make arrangements therefor with any chartered bank or banks, and allow for such services a commission of not more than one-quarter of one per cent. for every three months upon the average amount of notes in circulation during that period. Owing to the difference of currencies, notes made payable in Halifax were legal tender in Nova Scotia only, and at the rate of $5 per pound sterling.

In 1869 their charters being about to expire, the Parliament continued till the end of the first session of Parliament, after the 1st January, 1870, the corporate existence of the Quebec Bank, City Bank, Banque du Peuple, Bank of Toronto, Ontario Bank, Bank of Brantford, Canadian Bank of Commerce, Royal Canadian Bank, La Banque Nationale, the Gore Bank and Niagara District Bank.

§ 37.—THE QUESTION OF BANKING REFORM

By the measures of 1867-69, time was gained to consider the great problem of assimilating the currency and banking systems of the several provinces, and of creating out of the diversity one general, uniform system for the whole country. Upon the day that Confederation became a fact, there were eighteen banks carrying on business in Ontario and Quebec, under charters granted by the Province of Canada, five working under Nova Scotia charters, and four under Acts passed by New Brunswick.[1] The Bank of British North America, acting under its Royal charter, operated in all the Provinces, but it also was to be subject to such Dominion legislation as did not interfere with the single liability of its shareholders, and a few other peculiar features of its constitution. Of charters granted, not yet forfeited for non-user, and still available for future oper-

[1] See Note 1, next page.

ations, there were in Canada three, in Nova Scotia one, in New Brunswick five.[2] If the interested banks were to continue their business, the renewal of seventeen of these charters would become necessary before the 1st July, 1871.

But the problem confronting Parliament, and interesting people, was more than the renewal of certain bank charters. In the case of new banks, it was more than the passing of certain private Acts, framed on the lines which hitherto had been followed in the several Provinces. It was more, indeed, than the amendment of charters in such manner and details as experience might have suggested. The creation of the Confederation and the establishment of a united Parliament marked the close of one period of Canadian history. Acts and decisions immediately subsequent, and the earlier legislation passed by authority of the British North America Act, became, to a

[1]

ONTARIO AND QUEBEC	Capital Paid-up
Bank of Montreal	$6,000,000
Quebec Bank	1,476,250
Commercial Bank of Canada	4,000,000
City Bank	1,200,000
Gore Bank	809,280
Bank of British North America	4,866,666
Banque du Peuple	1,600,000
Niagara District Bank	279,376
Molsons' Bank	1,000,000
Bank of Toronto	800,000
Ontario Bank	1,999,100
Eastern Townships Bank	375,386
Banque Nationale	1,000,000
Banque Jacques Cartier	953,135
Merchants' Bank of Canada	941,182
Royal Canadian Bank	806,626
Union Bank of Lower Canada	748,865
Mechanics' Bank	227,725
Bank of Commerce	384,181
	$29,467,773
NOVA SCOTIA	
Bank of Yarmouth	$128,600
Merchants' Bank	64,000
People's Bank	399,789
Union Bank	400,000
Bank of Nova Scotia	560,000
	$1,552,389
NEW BRUNSWICK	
Bank of New Brunswick	$600,000
Commercial Bank of New Brunswick	600,000
St. Stephen's Bank	200,000
People's Bank	80,000
	$1,480,000

[2] These were, in Canada, the charters of the Bank of Northumberland, the Bank of London and the Bank of Simcoe; in Nova Scotia, the Commercial Bank of Windsor; in New Brunswick, the Albert Bank, the Woodstock Bank, the Merchants' Bank of New Brunswick, the Northern Bank and the Eastern Bank of New Brunswick. *Vide supra*, Chapters V. and VI.

great extent, precedents for guidance of the future. No stronger example could be adduced than the statutes with respect to banks. The question, therefore, as it appeared to the first Parliament of the Dominion, was serious, difficult, momentous. Upon their decision depended not only the temporary continuance of the banks, and the security of the public's claims, but also the permanent efficiency of the system, the later policy of the Government and the future development of bank legislation.

The discussion by people and press had been stimulated by the failure of the great Commercial Bank, and the financial crisis that followed in October, 1867. We are already familiar with the result of the meeting of representatives from the various banks held upon the 21st of that month, with the hope of arranging for some plan to assist the Commercial Bank and prevent its failure. The official account of this meeting was published upon the 28th.[1] But it did not disarm popular and newspaper criticism of the Government's fiscal policy. The Hon. A. T. Galt, Minister of Finance for the Dominion, became convinced that public opinion in Ontario to some extent held him responsible for the loss which had been suffered by investors in the Commercial Bank; he felt that his usefulness was marred, and that he could not expect the same support from representatives of Ontario that he had previously been accorded.[2] On the 7th November, 1867, he resigned his seat in the Privy Council.

On the 15th November appeared explanations which the Board of the Bank of Montreal had embodied in resolutions adopted the 4th.[3] The directors, apparently, had felt constrained to publish them with some hope of mollifying the hostility to their bank, which the events of the autumn had only served to increase among the people of Ontario. The

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[1] Toronto *Globe*, 28th October, 1867.

[2] Ottawa *Times*, 8th November, 1867.

[3] Most of these explanations, to be sure, were denied by the President of the City Bank, Mr. William Workman, in a letter published in the Toronto *Globe* of the 14th November, just as the Ministerial explanations were criticised and riddled on their appearance. The sources for an account of the Commercial failure and the action of the banks and the Government in regard to it, are more contradictory than the evidence in a case at admiralty law. Their further consideration would be interesting doubtless, but not particularly advantageous.

original cause of the unpopularity, no doubt, was the restrictive policy followed in Canada West after 1862-3, at the instance of the extraordinarily able man then at the head of the bank, Mr. E. H. King. The western business was regarded as thoroughly unsound, being based on accommodation paper. Mr. King had no reverence for "names" upon securities offered for discount; he resolved to bring the business down to a solid basis. And so he did, although at the cost of more than a million dollars, written off between 1863 and 1866, by the Bank of Montreal on account of bad and doubtful debts in Upper Canada. Canada West also suffered by the process, and much of its loanable capital, accumulated as deposits in the Bank of Montreal, was drained away from the producers of the Province either to supply the importing merchants of Montreal, or to be sent to New York, there to serve the bank's exchange and gold speculations in Wall Street.[1]

In spite of these facts, the influence and power of the bank were relatively enormous. Two of its great competitors, the Commercial Bank and the Bank of Upper Canada, had fallen victims to the stress of events and their own mismanagement. The Bank of Montreal had nearly a fourth of the total paid-up banking capital in Ontario and Quebec; its assets were 19/72 of a like total, over a fourth; and its liabilities by circulation, deposits, etc., were nearly a third of the $39,000,000 owed by all the banks. By adding to these, the facts that the bank was the Government's depositary and fiscal agent, and that it enjoyed peculiar advantages as the sole issuer of provincial notes, one has ample explanation of the remarkable prestige enjoyed by the Bank of Montreal and its leading officers.

Now, at the same meeting of the 4th November, the Board had approved a memorandum of a proposed system of banking submitted by the General Manager, E. H. King. "The General Manager," it ran, "believes that the interests of the country will be best served by the diffusion of banking interests in different localities, leaving to the greater banks, in large measure, the care of the mercantile and foreign trade of the country, and to the lesser in their own districts the care and support of local

[1] *The Shareholder*, Montreal, 5th September, 1890, Reprint of the article on the Bank of Montreal, Toronto *Globe*, 15th November, 1867.

enterprise. He sees no reason why there should not be perfect freedom and equality in banking, and why the greater and smaller banks could not exist in harmony, each within its own sphere contributing to the general prosperity."[1] The suggestion of "free banking," given in these words, becomes unmistakeable as the scheme is unfolded. It was to extend the Government's issues; to deprive the banks of their powers of circulation; to allow only the issue of notes prepared by Government, and delivered to banks only after the deposit of Dominion Government bonds, to be held as special security for the circulation; to permit the establishment of local banks with small capital in each county; and to provide for elasticity of the currency, by means of maximum deposits of bonds as note security, and by the periodical movement of currency from east to west, as in the United States.

The author of this scheme was not the only Canadian to be won over to the National Banking System. To bring 1,600 banks and $420,000,000 of banking capital under uniform legislation and to achieve the reforms which the founders of the National System could justly claim, had been no mean task. So far, moreover, the system had worked well. There was a decided attraction in the much vaunted security of the National Bank note, an attraction that often overshadowed the rigidity of such a circulation, and the lack of any daily test of convertibility. Then the pleasant notion that a local bank, founded on local capital, and managed by local magnates, is best able to assist the local interests, had often appeared in Canada as an argument for increasing the number of banks, and received frequent acceptance, particularly among the more needy borrowing classes. Furthermore, the National Banking Law had created a market for nearly $340,000,000 of United States bonds. Free Banking was believed to have increased, in New York, the demand for the State's securities, and thus to have raised the price. Canadian leaders were anxious in every possible way to strengthen the credit of the new Government, and they were inclined to favor any practicable plan for the creation of new financial resources.

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[1] Toronto *Globe*, 15th November, 1867.

The Select Committee of the Senate struck in the session of 1867-68, roundly condemned in their report the Bank of Issue system, started under Mr. Galt, and recommended the return to the system of banking that obtained previous to 1866. Whether they were influenced by the scheme of Mr. King, or converted by the American experience, it is needless now to enquire ; as a *pis aller*, however, they did approve of the American plan. It will be best to quote literally the statement of their position. " Your Committee recommend that if the financial requirements of the Dominion should induce the Government to desire the introduction of a new system, including the taking possession of the currency of the country (which your Committee would strongly deprecate), the issue of a paper currency be based upon the deposit with the Government of the public securities of the Dominion under a system analogous to the National Banking System of the United States, but redeemable on demand, the Government regulating the issue under the authority of Parliament ; the banks through which the notes are issued being responsible for their instant redemption."[1]

On the 14th April, 1868, the Hon. John Rose, successor to Mr. Galt as Minister of Finance, proposed to the House of Commons the appointment of a Select Committee upon Banking and Currency. It would be the duty of the committee, he said, to inquire into the position and circumstances of all the banks in the Dominion. Mr. Rose himself anticipated that the House would agree upon at least two great fundamental principles, viz., that the amplest security should be given, not only for the circulating medium in common use, but also for the deposits confided for safe keeping. He proceeded then to review the charters in force in the different provinces, and the questions growing out of them. In neither part was his speech distinguished for accuracy as to facts or correctness in theory. But his committee was struck, and the Minister appointed chairman. The Committee then drew up questions covering subjects as follows : the past services of the existing banking system ; expediency of issuing Government paper, practicability

[1] Journal of the Senate, Canada, 1867-8, Appendix I.

and advantages of introducing a system of banks issuing currency based on deposits of Government securities analogous to the American system; the practice and business of the Canadian banks; the defects of the Canadian system, and the means of improvement. Among others, eleven high bank officials, including one president and ten cashiers, three eminent public men, three boards of trade, and five capitalists and leading business men, replied to the questions submitted by the committee. The testimony was by no means unanimous, but the weight of it was no wise in favor of the system of specially secured bank issues, for the introduction of which events proved the Committee to have been barely more than a cloak.

We need no more than mention the faults they found with the plan of Government issues suggested by the questions; the temptation to extravagant expenditure arising from such sudden and easy sources of financial aid; the principle that the Government should borrow in the open market at fixed times of maturity, for which provision could be made without disturbance; the fact that every existing Government currency was then at a discount; the absence of any sympathy between the demand for currency and a bureaucratic source of supply, Government issues being ordinarily emitted in payment for public works, or, perhaps, the current expenses of the state, rather than in provision for exchanges about to occur; the fact that Government issues are not subjected to the regular redemption made necessary for bank notes by the daily repayment of loans, the accumulation of deposits, and the competition of the issuers; that the convertibility of the Government issue is protected by no regular replenishment of the reserves or constant liquefaction of the assets of the issuer, as in the case of bank notes; and that, finally, to abolish the bank circulation would lead to a great contraction of discounts.

§ 38.—THE CASE AGAINST BANK CIRCULATION SECURED BY PLEDGE OF BONDS

In their criticism of existing charters, the bankers were even more explicit and full than when testifying to the Senate Committee of the previous session, but this was constructive criticism,

to follow which would have been to better Canadian banking law.[1] Against the implied proposals of the Committee, on the other hand, they objected that the system of banking and currency there suggested was costly, rigid, comparatively inefficient and calculated to diminish rather than increase the loanable funds ordinarily at the disposal of the commerce and industry of the country. The question now was not one of bank extension, and the creation of local facilities, nor did it turn particularly upon the functions and prerogatives of Government. So it was necessary to urge the more strictly economic objections against "free banking," and that possibility of a further increase of Government paper which the question also implied.

As an economic question it was of the highest significance. In their business of issuing notes, receiving and employing the spare funds of the people, discounting commercial paper and bills of exchange, and making miscellaneous advances, the banks were in close relations with nearly all classes of the producing, trading, and lending communities which then made up Canada. The loanable funds of the banks were derived from their capital, deposits and circulation. To force the banks to furnish bond security for the notes previously issued upon their

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1 The following are the chief improvements suggested by the bankers, the list being compiled, for the most part, from the replies of MESSRS. CARTWRIGHT, HAGUE, LEWIN and STEVENSON; the replies of any one witness, of course, never comprising the whole list.

(*a*) To establish a minimum capital to be required from newly chartered banks, and to limit the number of branches in proportion to the paid-up capital stock.

(*b*) To prevent the beginning of business until a certain part of the capital stock is paid up, held in specie, and the fact certified to by a Government officer.

(*c*) To make the double liability available in case of need within a reasonable period, *e.g.*, by assessment of shareholders for the deficiency at the end of say six months after suspension, and by provision that the subsequent proceeds form the dividend of the shareholders, rather than the creditors.

(*d*) To make transfers within three months of the suspension, and at any time thereafter, void.

(*e*) To require such statements of accounts as would check illegitimate operations.

(*f*) To prohibit any but moderate dividends till a reserve fund should be accumulated, such to be made good if impaired.

(*g*) To make the circulation a first charge upon the assets of an insolvent bank.

(*h*) To prohibit the issue of notes for less than four dollars.

(*i*) To require a certain proportion of demand liabilities to be held in specie, say twenty per cent.

(*j*) To limit the circulation to paid up capital stock and Government securities, and provide that any excess should be covered by specie in hand over and above the amount required to fulfil the previous recommendations.

(*k*) To require each half year the publication of a certified list of the shareholders.

(*l*) To prohibit the reduction of capital stock, and to compel the stock-holders to make good the capital if it should be impaired.—*Vide* Journal of the House of Commons, Canada, 1869, Appendix I.

general credit, would be to close one of the sources of supply, and by consequence to diminish the amount of capital employed in furthering commercial enterprise. For in order to get the bonds, value of some sort must be given—and the portion available for loans, either of capital or deposits, would inevitably be lessened, even though circulation remained at the same height. Bank profits, probably, after paying the first cost of adjustment to the new conditions, would not materially suffer. The rate of discount would rise sufficiently to recoup the loss of working in less favorable circumstances. But the financial interests of the country, the shipping and the railways, the commerce, domestic and foreign, the industries of the farms, factories, fisheries, forests and mines, were too closely and strongly connected with the banks, too dependent upon them, to be unaffected by the conversion of eight to ten millions of dollars of active banking capital into Government debt.

So far as men could foresee, the change was altogether likely to produce a commercial stringency, and the mercantile failures that follow a great and swift contraction of credit. A complete recovery would scarcely be possible. From the trade and the development of the country there would have been withdrawn a part of the accustomed measure of bank accommodation. Should the change be gradual, a positive diminution of banking funds might not occur, *e.g.*, should the completion of the change be delayed till capital stock plus deposits should equal the total (in 1868) of capital stock plus deposits plus circulation. The pressure in this case would be more slowly applied, and never so great at a given instance; but during the period of transition, the business of the country would be deprived of all benefits from that increase of accumulation which is a feature of any progressive national economy. Increasing bank capital during such a period would not make up the deficiency. The moneys available for the purpose, it was argued, were already help by the banks as deposits. To take from deposits to add to capital stock would hardly improve the financial situation.[1]

Under the system of issue against special security, less

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[1] *Vide Monetary Times and Insurance Chronicle*, Vol. 2, p. 614, Resolutions adopted at a meeting of bankers, held in the Merchants Bank of Canada, on the 17th April, 1869.

attention is apt to be paid to the safeguard of requiring a large paid-up capital from each bank within the Legislature's jurisdiction. The tendency is to permit the establishment of small companies, who often lack the means to extend their business beyond the locality of their principal office, and frequently have no wish to do so. By the original free banking legislation, branches were forbidden. Less stable, more dependent upon the prosperity of the single district whence comes their support, less ably managed, because the salaries paid by a great bank would be ruinous to a small one, the little local banks are more likely to suspend their payments, and more likely to become insolvent in times of difficulty, than larger, stronger institutions. Americans need but recall the crisis of 1893 to find the statement of the Canadian bankers confirmed. The risk from loose banking is merely shifted from note holders to the depositors and other creditors; it is not avoided. Then, too, the Canadian Government would be liable under the proposed system to redeem the notes of failed banks, by no means a frivolous obligation when the needs arising from a crisis should drive in the notes to be exchanged for gold, and the call for ready money was breaking the market even for the Government securities held against the bank circulation.

A stronger argument than the insufficient guarantee for the immediate convertibility of bond-based bank notes and Government issues, was the lack of elasticity in such systems of currency. This objection, presented by the bankers and others with especial force in 1869, has since been emphatically proven by the experience of the United States during the last two decades with National Bank notes. The tendency of him who issues bond secured notes is to invest only so much of his capital in bonds as will, with his capital otherwise invested, bring in the maximum profit on the whole amount. The motive, therefore, to the issue or retirement of notes is only remotely governed by the number and amount of payments to be effected by this medium of exchange. On the contrary, the motive is *directly* dependent upon the rate of interest borne upon bonds receivable on deposit—a rate determined by the Government, and in large measure arbitrarily determined.

For the automatic expansion of a currency issued upon the

general credit of the issuer, the attendant profit, always equal, practically, to the market rate of interest, is an infallible impulse. It is doubly effective, because it permits an increase of his credit, and thereby an added gain to the issuer, which generally could not otherwise be enjoyed. But when the commercial rate of discount is higher than the interest paid on the Government debt, the banker has no inducement to divert his capital to the purchase of bonds to exchange for notes. Nor will he have until the supply of loans shall have been so increased by proffers of capital and the loanable credit which is based upon capital, and utilized, *e.g.*, by the creation of deposits, that the rate of discount falls to a point equal at most to the interest borne by the bonds. This contingency has seldom happened where a Government is solvent and in good credit. The consequence is, as in New York and the United States, that the bankers working under free banking laws retire almost as many notes as the law will permit, in order more profitably to use the capital by which they were secured. Expansion of the bank note currency then occurs only in circumstances of peculiar stringency, when, as in 1893, a money famine forces the banks to use every available device for increasing the currency, though not so much for profit as to oblige their customers.

With the currency system reorganized on the American plan, there would be no satisfactory provision for the periodical expansion and contraction, the causes of which were conveniently summarized as "moving the crops." Mr. King, to be sure, relied upon a regular movement of money from East to West and back again, such as occurs each year in the United States. But this plan concentrates large sums in the financial centres at one time, and stimulates speculation, only to draw them off at another, and tighten money. The process is costly, and highly artificial. It cannot be used without considerable friction. The tasks of moving the crops and meeting other periodical demands of the community for increased currency and credit, *e.g.*, for marketing the wool clip, paying import duties, negotiating the lumber cut, buying the cargoes of the fishing fleet, paying dividends, etc., were not those which would employ through the whole year the funds of the banks who undertook the work. In each of the provinces the demands

caused by the harvest and the fall trade were the greatest, and the circulation highest, in October, November or December. The difference between the highest and lowest amount of notes outstanding at any time during the year, was from twenty to fifty per cent. of the minimum.

The ability of the banks to meet these brief but periodical and heavy demands was derived from the elastic qualities of the form of credit in which the advances to lumbermen, farmers, produce buyers and the like were made. Deprived, however, of the advantages arising from an expansion of their circulation, the banks would have slight inducement to provide for a business active during only three months of the year. That they should, for this purpose, be content to receive during eight or nine months the meagre rate of interest paid by Government on an amount of capital equal to this expansion and invested in bonds, was not to be expected. Yet this was the essence of the proposed provision for elasticity by deposit of government securities to cover the maximum circulation. The banks would find more attractive investments in the commercial paper of manufacturers and importers engaged in a steady business, and usually requiring money throughout the year. The larger banks might still have the money for moving the crops, in the heavy reserve funds kept in London and New York, but they were unlikely to withdraw these sums unless moving the crops were more profitable than loaning at call in New York or London. During the autumn of 1868, gold was worth 1/16 to 1 per cent., per diem, in New York.[1] The substitution of a bond-based for a credit currency, and the forced retirement of the latter necessarily involved comparative rigidity and lessening of discount accommodation. For the farmers and those dependent upon them, the most important class, numerically at least, in the whole community, these results meant scarcity of money during harvest time, reduced prices for cereals and other products, and serious annual injury.

In yet another way were the interests of the farming community opposed to the introduction of the American system. Upon this point I prefer to quote the admirable discussion by

[1] *Ibid*, reply of MR. JAMES STEVENSON to question 9.

Mr. George Hague: "The question of bank circulation is essentially a question for the agricultural districts, and the small towns and villages which derive their existence and support from them. Withdrawing bank circulation or covering it with Government securities, would be felt far more severely in such districts than in commercial centres. There is no considerable volume of circulation in large towns and cities, either in Canada or anywhere else; business being transacted mostly in cheques, and the system of depositing in banks being almost universal, very little interruption would be caused to business there by the withdrawment of circulation, except by reaction from the smaller towns. But in the country districts bank circulation is a matter of vital importance, for the banking facilities which are essential to their development are largely derived from it. In case of an alteration of the currency laws, there can scarcely be a doubt that the loans of the banks in country towns would be largely cut down. Many agencies would become so unprofitable under this process that they would be discontinued altogether, and all of them would be injuriously affected."[1]

§ 39.—MR. ROSE'S BANKING SCHEME

It would be hard to estimate in what measure the Minister of Finance was influenced by the evidence obtained through his Committee. The characteristic points of the currency and banking resolutions, which he presented to the House of Commons on the 14th May, 1869, were decided upon, it is highly probable, before the original Committee was struck. The resolutions had been prepared under the supervision of Mr. E. H. King, and as in the memorandum approved by his Board of Directors a year and a half before, the leading feature was the reconstruction of Dominion bank law upon the model of the "National Bank Act" of the United States.[2]

The Government proposed to leave the banks alone until the 1st July, 1871, but after that (*a*) to oblige them gradually to reduce their unsecured circulation by 20 per cent. a year, until

[1] *Ibid*, Reply to question 2.

[2] Letter of MR. GEORGE HAGUE, Montreal *Gazette*, 30th January, 1890.

the whole should be retired; (*b*) to permit the banks to issue instead, up to the amount of their capital stock paid in, notes of uniform appearance, furnished by the Government, and bearing on their face the statement of their being secured by the deposit of Dominion securities; these notes were to be procurable by the deposit of gold or Dominion notes with the Government, whose officers were, in return, to furnish the bank with notes to an equal amount, and to hold against them securities issued for the purpose, and bearing interest for ten years after the 1st July, 1871; (*c*) to make the secured notes, so long as they were redeemed in specie, legal tender throughout the Dominion, except at the office of the issuing bank, and a redemption office to be established and kept at Montreal, or the capital city of the province in which the bank should be situate; (*d*) to require the banks to hold reserves of specie equal to 20 per cent. of the secured notes in circulation, and one-seventh of the deposits at call; (*e*) to make the notes the first charge upon the assets of the bank in case of insolvency. the deposits at call and not bearing interest, the second charge; (*f*) to impose upon the banks a variety of safeguards and restrictions similar to those already in force, and to others recommended by the bankers; to prohibit note issue, except by incorporated banks and the Government, to grant no new charter, and to renew no old one except upon the conditions set forth in the resolutions.[1]

In the speech introducing his resolutions, Mr. Rose averred that the Government had no hostility towards the banks, and felt that for the important commercial operations essential to the country's prosperity, it was indispensably necessary that the banks should be prosperous. The Government, he said, had no especial object of its own to gain by the substitution of a system of banking different from that then existing. For the proposals which I have included under group "f," there is neither time nor need to analyze his arguments. These questions must be treated further on. With respect to the proposed changes in the system of note issue, the Minister declared that, "It is the duty of the Government not to interfere with banking proper, but to see that the circulation which the public at

[1] Hamilton *Spectator*, 17th May, 1869.

large is bound to take, should be placed on as sound and wholesome a footing as possible." Or again, "It is of essential importance to the interests of the country that the circulating medium should be placed on a sound and uniform basis."[1] If the conclusions of Chapter V.,[2] as to the legal and economic character of bank notes, are correct, we cannot accept the Finance Minister's implication that the note issue is not a function of banking in the strictest sense of the term. As to his protest that "the Government has no especial object of its own to gain; the Government is not embarrassed by any pressing wants," it will be well to remember that, by the terms of the British North America Act, the Dominion was obliged to construct the Intercolonial Railway between Quebec and the Maritime Provinces. The twelve millions odd which could have been obtained by requiring the currency of the country to be covered by Government bonds, may or may not have affected the attitude of the Minister of Finance towards the banking system. The reader can judge.

Further than that the currency of Canada should be secured and uniform throughout the Provinces, Mr. Rose found little to say. These desiderata were certainly important, and we may acknowledge now that during the next twenty years they would have been more nearly gained under his plan than under the policy that finally prevailed. But they would have been secured at the cost of elasticity and adequacy in the currency, relative shrinkage of discount accommodation, and artificial rise in the average rate of discount. So great a cost can hardly be compared with the few losses caused by the nominally unsecured currency that Canada retained.

Some intimation of the Government's plans had gotten out before the resolutions were presented. On the 17th April, 1869, the banks of Ontario and Quebec adopted resolutions,—"That in any renewal of the charters, it is important for the best interests of the public that no changes of fundamental character be made in the system, and particularly that the note circulation be

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[1] Ottawa *Times*, 15th May, 1869.

[2] *Vide* Note at end of Chapter V.

preserved."[1] On the same day the Halifax banks declared that the system in force in Nova Scotia had proved satisfactory, that any change was neither asked for nor desired. During the session, some seventy-two petitions, either against the resolutions of Mr. Rose, or, "that no changes of a fundamental character be made in the present system of banking," or, "that the circulation of the banks may be preserved on substantially the present basis," were presented to the House of Commons. Of these petitions, some ten, to be sure, came from the banks; the others were from the leading towns, cities, boards of trade, and the like, throughout the Dominion, and respectable as well for the number of signatures as for the character and influence of the signers.

On the 1st June, the resolutions came up for consideration. Mr. Holton believed that such radical changes in the long-established banking system of the country should not be made without mature deliberation in Parliament and in the country. He immediately moved, in amendment, to postpone the consideration of the resolutions until the next session.[2] The debate that followed was acrimonious, able and suggestive. Mr. Mackenzie seconded the motion, and bore witness to the nearly unanimous opposition of the press to Mr. Rose's policy. As a whole, the scheme had been universally condemned.[3] Mr. Cartwright conceded the few tolerable arguments that the Government had urged, and thus conceded all they were to urge, for in his first speech Mr. Rose quite exhausted his arsenal. But, Mr. Cartwright objected, the plan involved a radical change. If the Government should issue new securities to cover the notes, the loan was practically compulsory. The measure would especially affect Ontario, where the annual expansion of the currency and the need for it were the greatest. The proposal utterly wanted provision for elasticity. Mr. Rose had miscalculated the amount necessary, after his plan became law, to restore the banks to their previous position. In Ontario, alone,

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1 *Monetary Times and Insurance Chronicle*, Vol. II., p. 614.

2 Hamilton *Spectator*, 2nd June, 1869.

3 Ottawa *Times*, 4th June, 1869.

it would need eight or nine millions.[1] Mr. Galt argued that the National Banking System had never been tried by the sufficient test of working on the gold basis. He objected to the plan for maximum deposit of security as unlikely to work, and declared the time unpropitious for so radical a change. Friends of the Government, among them Mr. Tilley, spoke in reply. Debate was continued with spirit until midnight. General and strong opposition to the plan, even by staunch supporters of the Government, was thoroughly and ably manifested.

The next day the resolutions were considered in the Privy Council, and rumors of a cabinet disagreement became current in Ottawa.[2] Certain it is that during the next fortnight, many of the earlier converts lost faith in the banking theories of Mr. Rose. The Government had more important ends than forcing a rejuvenated currency scheme upon the country, approved though it was by their own Finance Minister, by the general manager for their fiscal agents, and even by worthy statesmen in the great republic on their south. They could ill afford to imperil their majority, and they left the banking question undisturbed until the 15th of June. The Minister of Finance then announced to the House of Commons that "the Government would have been glad if there had been a ready acquiescence in the principles involved in the resolutions. But, believing as they still did, that the reforms embodied in them were such as to meet with the general acceptance of the country," the Government was willing temporarily to withdraw their pro-

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[1] In case the plan was carried through, and the banks accepted it, said Mr. Rose, they would need, to cover maximum circulation, as

On the 31st October, 1868	$15,120,000
20 per cent. of the maximum circulation to be held as specie reserve	3,024,000
1/7 of deposits at call, not bearing interest, to be held as specie reserve	1,968,000
	$20,112,000
Less specie, Dominion notes and Government debentures, already held by the banks	11,785,000
Difference under Mr. Rose's plan	$ 8,327,000

equivalent to 7.05 per cent. upon the highest circulation, for seven years (the period of transition), or 2.03 per cent. upon the highest figure yet reached by the item of discounts (Ottawa *Times*, 15th May, 1869.)

Mr Rose, however, omitted all account of the large amounts of unissued notes, which as till money in the hands of branches, were ample and costless substitutions for equal amounts of specie, and yet never appeared in the returns of the "Notes in Circulation." This advantage would have been lost under his scheme, as well as the peculiar benefits derived by country districts from branch banks and the note issue according to the existing system.

[2] Hamilton *Spectator*, 3rd June, 1869.

posals. "In the next session of Parliament the Government would again bring before the House the consideration of these resolutions."[1]

Two and a half months later, the Hon. John Rose had resigned the Ministry of Finance. Upon his departure from the Government, the defeat already inflicted on the dangerous banking policy which he advanced, became certain and, in great measure, permanent.

§ 40.—THE BANKING POLICY OF SIR FRANCIS HINCKS

Neither the precedents of Mr. Galt nor the plans of Mr. Rose were followed by the next Minister of Finance. Sir Francis Hincks, having spent the preceding fifteen years as a Crown Governor in the British Colonial service, was now returned to Dominion politics, and had accepted a seat in the Cabinet. Sir Francis resolved to consult the banking experts before he prepared his proposals for a general Dominion Bank Act. In the conferences which were held the bankers found opportunity to express their views directly to the Government.[2]

What, probably, was the attitude of the bankers towards the question in 1870? They believed, presumably, that good banks were conducive to the general well-being of the country, that upon this well-being their own prosperity was largely dependent. The natural and preferable view is that the principal object of the bankers was to secure the revision of banking law best calculated to promote the soundness, security and efficiency of the banking system. Whatever their ultimate purposes in 1859, 1868 and 1869, it was not the advantages which they might themselves enjoy under carelessly constructed legislation that appeared to determine the proposals for reform submitted by the several banks. It was the desire for restrictions upon loose, unsound and illegitimate practice by their rivals and competitors. The same remark is true for 1880 and 1890. One

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1 Hamilton *Spectator*, 16th June, 1869.

2 I am informed by the Department of Finance that of these meetings no minutes were kept. From the student's point of view, the lack of such records is most unfortunate. They would, no doubt, have filled many volumes; a vast amount of contemporary evidence upon that stage of Canadian banking would have been preserved, and much light thrown upon the real position both of the bankers and of the Government.

may conclude, therefore, that had their ends in 1869-71 been purely selfish, the practical action of the bankers would have been no different from what might have been expected according to our other view of their motives. We should have had then an apt Canadian example for Adam Smith's observation of man's strife for personal gain: "By pursuing his own interest, he frequently promotes that of the society more effectually than when he really intends to promote it."[1]

The policy of the Government was indicated in the speech with which the Governor-General opened Parliament, the 16th February, 1870: "A measure intended to secure safety to the community, without interfering with the legitimate operations of the banks, will be submitted for your consideration, and will, I trust, be found calculated to place these important interests upon a sound and stable basis."[2] On the 1st March, Sir Francis Hincks brought down to the House of Commons his Resolutions on Banking and Currency.[3] In the speech introducing his measures the Minister of Finance emphasized the need of adopting a general and uniform banking law for the whole Dominion, a need rendered the more imperative by the charters about to expire, and the petitions then before Parliament for new incorporations. The safeguards about the currency were different in the different Provinces, and the limitations upon issue different. Experience taught that the note holders should have greater security. Yet the people were used to the credit accommodation based upon the note issue, there being not less than eight or nine million dollars of such loans in Ontario and Quebec alone. Owing to the necessity, under the American system, to withdraw this accommodation, it was not expedient to have the currency covered by deposit of Government securities. Public opinion, said Sir Francis, was against a Government Bank of Issue, and he disclaimed any plan of that character. He deprecated appeals to sectional feeling.

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[1] *Wealth of Nations*, Bk. IV., Chap. ii.

[2] Parliamentary Debates, Canada, Vol. I., p. 27. This is the first of the two volumes of reports published as a private undertaking before the official series began, and ordinarily known as "Cotton Debates."

[3] The resolutions are to be found in the Canadian newspapers of the 2nd March, 1870, and in the report of the Debates for the previous day.

And that they might be brought to the greatest possible perfection, he urged the House to treat the resolutions in an unpartisan spirit.[1]

The debates in the House turned mostly upon questions of minor detail. It is characteristic of ministerial government that the trenchant and decisive discussions are frequently carried on and concluded in council chambers or departmental offices long before the final measure is submitted to the Legislature. Under Sir Francis Hincks, moreover, the banking policy of the Government had been almost completely reversed within the year. The retention of the bank note issue against general credit, for which the Opposition fought in 1869, was now conceded. Still, the resolutions were in some respects a compromise, and, as a compromise, open to objections.

One of the more important contests occurred over the minimum of capital on which a bank should be permitted to begin and to continue its business. This discussion was stimulated by Sir A. T. Galt, who objected to the original proposal of the Minister to require $1,000,000, of which $200,000 should be paid up before the beginning of business, and twenty per cent. in each year thereafter. Branch banks, he said, were not the best provision for rural districts; in times of pressure the larger banks contract their rural loans to meet urban drains. Others said that managers of local banks are more interested in the welfare of the surrounding country, and know more of rural necessities. Local banks, they thought, better serve the country. Rural districts cannot raise the larger capital, and have no business which requires it.[2] To permit the existing small banks to go on, and not to provide for new ones, was to perpetuate an objectionable anomaly.[3]

Sir Francis replied that it was necessary, under the system of note issue adopted, to provide the security of a large paid-up capital. Any person desiring to invest in banks would have no difficulty in obtaining shares in some of the established banks. "There was no difficulty in establishing agencies in all places

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[1] This condensed *exposé* of the Minister's principal motives is collated from his introductory speech, and the remarks afterwards made by him in the course of the debate.

[2] Debates *ut supra*, pp. 265, 267, 311, MESSRS. GALT, COLBY and PICKARD.

[3] *Ibid*, MESSRS. MACKENZIE and CARTWRIGHT.

where agencies should be established. His impression was that both in the United States and in this country, where you found in any district a demand for small banks with small capital, the truth was the people who wanted it were borrowers and not lenders. * * * * * Existing banks could get their charters renewed without increasing their capital."[1] Small banks, he concluded, were always looked upon with a certain amount of suspicion. But in the Maritime Provinces, local banking was in more general favor and better established than in Ontario and Quebec. Chiefly to meet their needs, Sir Francis Hincks conceded the reduction of the minimum authorized capital to $500,000, the payment of 40 per cent. of which was required before the corporation should begin business.

The clause of the resolutions limiting the total liabilities of any bank to thrice the paid-up capital stock, plus its specie and Government debentures, was withdrawn. It was not the same restriction upon the debts of a bank which appears in the Province of Canada charters and the circulars from Downing Street, for, according to that, deposits with the bank were expressly excluded from the reckoning. The sole effect, had it been retained, would have been to prevent a large accumulation of deposits in one bank. Depositors are influenced by the bank's reputation; to limit the amount of deposits would have been to impair the motive to enhance that reputation by careful management.

When he first took up the question, Sir Francis Hincks believed that the banks should be required to hold as minimum reserves an amount of specie equal to a fixed proportion of their liabilities. But in the conferences with the bankers, the Finance Minister was convinced by the unanimous opinion and strong arguments offered against such a provision. The regulation was omitted from the resolutions, and the omission justified by the principle that a reserve which must not be used is no reserve at all, that if the proportion required were only moderate, the tendency would be to regard that as sufficient, and that all of the immediately available funds of a bank, *e.g.*, the New York and London balances, are not specie.[2]

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[1] *Ibid*, p. 310.

[2] GEORGE HAGUE, "Bank Reserves," *Journal of the Canadian Bankers' Association*, Vol. I., p. 107; Debates, *ut supra*, p. 217.

The scheme to give increased security to the note holders by making its notes a first lien upon a bank's assets in case of insolvency, was also rejected. The bankers had officially suggested it in their resolutions of the 17th April, 1869; they had mentioned it in evidence given to several of the Parliamentary Committees. It was also approved by such publicists as the Hon. R. J. Cartwright and Sir A. T. Galt. Sir Francis Hincks held to the view that through such a provision the stability of the banks would be jeopardized by the tendency of depositors to start runs in order to convert their ordinary claims into privileged liens.

Some objections were made to the plan by which the banks lost the right to issue notes for sums under $4, but the banks deliberately and avowedly surrendered this right for valuable considerations, to wit: abolition of the tax of one per cent. per annum upon their note circulation, and repeal of the requirement to keep one-tenth of actual capital in Dominion securities. For some years, moreover, the bankers had not thought the privilege an unmixed benefit. In times of difficulty the small notes always gave the most trouble. The majority of holders were usually poor, ignorant, or easily alarmed; a run upon a bank once started, they always joined the attack in great numbers, and among them the fear of loss reached its most violent manifestation. The restriction had been frequently urged by bankers themselves as a necessary reform.

The severest struggle of the whole debate occurred on the question suggested by the preceding change, and closely connected with it. Pursuant to his policy of placing all the banks upon the same footing, the Minister, on the 14th February, 1870, notified the Bank of Montreal of the Government's desire to terminate at the end of six months the arrangement made with it for the issue and redemption of provincial notes. The plan of paying for that service by commission was disadvantageous to the Government.[1] Sir Francis now proposed that the Govern-

[1] He had further freed the Government from the agreement of the 9th November, 1865, by which they were obliged to keep from $400,000 to $500,000 at their credit in the Bank of Montreal without interest, not to retire their account without six months' notice, not to give such notice while the bank was under advances to the Government, and not during the same term to deposit the public moneys elsewhere than in the Bank of Montreal. To Sir Francis Hincks is also due the competition in buying or selling Government exchange, established by the practice of inviting telegraphic tenders from all the banks. Previous to this one bank had enjoyed a scarcely qualified monopoly. *Vide* Journal of the House of Commons, Canada, 1870, Appendix 2, pp. 4, 5 and 10.

ment should assume the issue, as Dominion notes, of the paper currency under $4, and that the banks should be required to hold 50 per cent. of their cash reseves in Dominion legal tenders. He had devised a system of regulating the Dominion note issue different from the one in force.

The principle of this regulation was that admired and advocated by the Minister, even before it was adopted by Sir Robert Peel in the Bank Act of 1844. He believed that the "functions of the Issue Department should be automatically confined to the exchange of gold for notes, and *vice versa*: that an amount can be established which may, with perfect safety, be issued upon public securities, and all beyond that fixed amount should be held in gold."[1] The practical measures embodying this principle were :

(*a*) The management of the Dominion note circulation directly by the Government ;

(*b*) The establishment of branch offices of the Receiver-General's Department in Montreal, Halifax, St. John and Toronto, for the issue and redemption of notes ;

(*c*) The authorized extension, by Order-in-Council, on report of the Treasury Board, of the issue to $9,000,000, in amounts of not more than $1,000,000 at a time, and at intervals of not less than three months ;

(*d*) The requirement that the Receiver-General should hold specie and Dominion debentures to cover the outstanding circulation ; the debentures to be issued and held for the purposes of the Act, or to be disposed of temporarily or absolutely in order to provide specie for redemption ; the debentures not to exceed 80 per cent. of the circulation ; the specie, as a rule, to be a sum equal to 25 per cent. of the debentures, and never less than 15 per cent.

(*e*) Provision for the issue of any amount required by the public convenience, so long as the excess over $9,000,000 should be covered by equivalent amounts of specie.[2]

The Opposition favored the provision concerning bank reserves as little as they did the plan to augment the legal tender issue. Mr. MacKenzie advocated the policy of non-interference by Government, emphasized the tendency of Government issues to depreciate, and accused Sir Francis of resorting to the proposed increase as a help in concealing the million dollar deficit

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[1] *Monetary Times and Insurance Chronicle*, Vol. VII., p. 725, Letter of SIR FRANCIS HINCKS.

[2] Statutes, Canada, 1870, p. 41, 33 Vic., cap. 9, "An Act to amend the Act 31 Vic., cap. 46, and to regulate the issue of Dominion notes."

which Mr. MacKenzie detected in the country's finances.[1] Mr. Cartwright objected to the first proposal, because, first, it tended unduly to diminish the amount of gold reserves which should be held in the country; second, it was a scheme to borrow a large sum of money at call, or at short time; third, it appeared to him to be an expedient of somewhat objectionable morality in a political sense. Others complained that the rule would be simply a means of forcing from the banks a permanent loan equal to half their reserves. Their arguments will be more or less approved according to the reader's point of view.

In any case these measures of the Government must be regarded as a fiscal expedient rather than a banking reform. The Government, without doubt, was obliged to do something with Dominion notes already in circulation. The Minister's plan for regulating the issue was a marked improvement on that adopted by his predecessors. Even had he so wished, he would have scarcely been able to provide the means for redemption of this debt. Furthermore, the banking interests demanded certain privileges, among them, a monopoly of the circulation of the country. Sir Francis felt obliged "to contend in the interests of the public at large, that they were entitled to some share in the profits of the circulation." Though, in the preceding pages, we have not accepted this view of the State's relation to the currency, it must be said, nevertheless, that to many the reserve requirement seemed only a fair price for the concessions granted by the Government to the banks. The regulation was modified slightly while under discussion and finally adopted by Parliament in the following form: "The bank shall always hold, as nearly as may be practicable, one-half of its Cash Reserves in Dominion notes, and the proportion of such reserves held in Dominion notes shall never be less than one-third thereof." (33 Vic., cap. 2, § 5.)

§ 41.—THE "ACT RESPECTING BANKS AND BANKING," 1870

The "Act respecting Banks and Banking," embodying the resolutions prepared by the Minister, was passed by the House

1 Debates *ut supra*, pp. 256 and 822; *ibid*, p. 504.

of Commons the 5th April, by the Senate upon the 12th, and received the Royal assent the 12th May, 1870. (33 Vic., cap 2.)

It provided that in any Act establishing a new bank, or renewing the charter of any existing bank, the following restrictions should be incorporated, certain exceptions being granted in order to confirm peculiar features in the charters of the Bank of British North America and La Banque du Peuple:

(*a*) The bank shall not issue notes or begin a banking business till $200,000 of its capital shall have been *bonâ fide* paid up, and the fact certified to by the Treasury Board.

(*b*) Twenty per cent. of the subscribed capital shall be paid each year after the beginning of business.

(*c*) The notes in circulation shall not exceed the amount of the bank's unimpaired paid-up capital, and no note shall be issued for less than $4.[1]

(*d*) Notes of the bank shall be received in payment at any of its offices, but shall not be payable in specie or Dominion notes at places other than where they may be made payable. One of such places shall always be the bank's chief seat of business.

(*e*) Usually half, and not less than one-third, of the cash reserve shall be held in Dominion notes.

(*f*) No loans or discounts shall be made on the security of the bank's own stock, but the bank shall have a privileged lien for any overdue debt on the shares and unpaid dividends of its debtors, and may decline to transfer such shares until the debt is paid.

(*g*) The paid-up capital shall not be impaired by any division of profits. Directors concurring in such impairment shall be individually liable for the amount as for a debt due to the bank. Capital lost shall be made up forthwith by calls on the shareholders for any unpaid portion of the subscriber's capital stock, and by application of all net profits. * * * (This clause was designed to prevent that reduction of capital stock on account of losses which had been a potent source of evil in the past.)

(*h*) No division of profits by way of dividend or bonus shall exceed 8 per cent. per annum until the rest or reserve fund, after deducting all bad and doubtful debts, shall equal 20 per cent. of the paid-up capital stock. * * * (An obstacle to such extravagant and disastrous divisions by way of bonus as characterized the policy of the Bank of Upper Canada.)

(*i*) Suspension of payment of any liabilities as they accrue, continuing for ninety days, shall constitute the bank insolvent and determine its charter, except for the purpose of making certain calls, and for winding up the business.

(*j*) The property and assets of the bank being insufficient to pay its liabilities, the shareholders shall be liable for deficiency to the amount of

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[1] By a separate statute, the banks in Nova Scotia acting under provincial charters, were empowered to issue notes for $4 and upwards, $20 having been the lowest denomination permitted by the laws of the Province. (33 Vic., cap. 12.)

their respective shares, in addition to any amount on those shares not yet paid up. This liability shall be enforced to the extent that the directors deem necessary to pay all the debts of the bank, without waiting for the collection of debts to the bank, or the sale of its property. The directors shall make calls for not more than 20 per cent. of each share at intervals of thirty days, and on notice given thirty days prior to the day on which the call shall be payable, as soon as the suspension shall have continued for six months, the first call to be made within ten days after the expiry of six months. Shareholders failing to pay any call as it becomes payable shall forfeit any claim in the assets of the bank without preventing the recovery of such a call, or of further calls. In the case of a bank *en commandite*, the unlimited liability of the principal partners shall accrue against them immediately, without waiting for any preliminary proceedings whatever. * * (This improvement in the double liability clause, largely one of procedure, was a highly important reform, the need for which had been well taught by the failure of the Bank of Upper Canada. Under the amended law, it became possible immediately to enforce the liability of shareholders, and promptly to pay off the debts of the banks. The hardship of waiting for dividends had formerly oppressed the bank's creditors; it was now justly transferred to the bank's proprietors.)

(*k*) Upon shares the transfer of which shall have been registered within a month of the bank's suspension of payment, the liability of the transferors, saving their recourse against the transferees, shall continue as if the shares had not been transferred. Directors, refusing to make and enforce calls, or to concur in such action, shall be guilty of misdemeanor, and personally liable for damages suffered by their default.

(*l*) The bank shall be subject to any general winding up by Act passed by Parliament.

(*m*) Each shareholder shall have, whenever shareholders' votes are taken, one vote for each share held by him during the previous three months. No person, not a shareholder, shall act as proxy, and no bank employe shall hold proxies or vote in person or by proxy.

(*n*) The shareholders shall have power to regulate, by by-law, matters incident to the management and administration of the bank, but the directors shall not be less than five, or hold in the aggregate less than one per cent. of the paid-up stock. They shall be elected annually by shareholders, and be eligible for re-election, and the discounts or advances to any director, or firm of which the director is a partner, shall not exceed one-twentieth of the total discounts of the bank at the same time.

(*o*) Certified lists of shareholders, the stock respectively held by them, and their residences, shall be transmitted to the Minister of Finance each year before the day appointed for opening of Parliament.

(*p*) The monthly returns to the Government of bank's assets and liabilities shall be made according to an expanded and improved form.[1]

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[1] The form of these returns appears in Appendix I.

(*q*) The making of wilfully false statements in such returns shall be a misdemeanor, and bank officers signing, approving, or concurring therein, with intent to deceive any person, shall be responsible for damages sustained by him in consequence.

(*r*) Giving unfair preference to any creditor shall be a misdemeanor on the part of an officer of the bank.

(*s*) The charter of the bank shall run to the end of the session of Parliament next after the first of January, 1881, and no longer.

The directors of any existing bank were permitted, on authority of the shareholders given in general meeting, to apply for an extension of its charter with amendments subjecting the bank to the first eighteen restrictions outlined above. The Governor-in-Council was empowered, upon favorable report of the Minister of Justice and the Treasury Board, to continue the amended charter, by Letters Patent, from the date of its expiry to the established date in 1881. The charter was to take effect either from the date of its expiry, or, the shareholders consenting, from any earlier time fixed for its commencement. If it were shown, at the time of the application for the renewal, that the capital stock of the bank was impaired, the Governor-in-Council might permit a reduction, not to exceed 25 per cent. of the amount paid-up, and not to reduce that amount below $200,000. This regulation, apparently a reminiscence of the free banking which he supported twenty years before, was a part of his policy specially favored by the Minister. He insisted upon it as essential to his banking measures, and also wished to provide for granting new charters by Letters Patent. But Parliament would not consent thus to strip itself of jurisdiction in the matter.

The monopoly of issuing notes for circulation was assured to the banks by imposing on private or unauthorized issue a fine of $400, recoverable with costs in any court having civil jurisdiction, one-half for the person bringing suit, and one-half for the public uses of the Dominion. Previous legislation in conflict with the present Act was repealed, and the "Act respecting Banks" of 1868 continued to the end of the session of 1872.

§ 42.—"THE ACT RELATING TO BANKS AND BANKING," 1871

The account of Sir Francis Hincks' banking policy is

incomplete without some reference to his financial measures. He was a Minister fertile in schemes to keep the Treasury full. One of his measures, for the passing of which he relied, probably, more upon a disciplined majority than on the arguments advanced in its behalf, I have already noticed in his increase of the Dominion note circulation. The cognate plan to secure the permanent loan of one-half the cash reserves of the banks in the Dominion is also familiar. Another device, adopted in 1871, was the assumption of the Government savings banks established in the maritime provinces before Confederation. He further provided for starting new offices, and for converting Savings Bank deposits into five per cent. debentures. (34 Vic., cap. 6.) Post Office savings banks had been provided for under his predecessors.

The competition of the Government savings banks was a serious factor in the general banking situation for many years. The high interest (4 to 4½ per cent.) paid on deposits, and the lack of adequate restriction on the amount which individuals might deposit, diverted a considerable part of the sums ordinarily kept by the banks to the chests of the Government. Only in 1886 were precautions taken to correct these faults and limit the banking functions of the Government to custody of the savings of the poor, ignorant, and those unable to judge for themselves as to the security of their investments.

By a third scheme, chartered savings banks were now obliged to reorganize under general legislation, to provide a comparatively large paid-up capital, and to invest it in Government debentures. (33 Vic., cap. 7.) Insurance companies, both domestic and foreign, had been compelled in 1868 to maintain deposits with the Minister of Finance. All these measures were supported by the plausible plea of guarding the public interest, but it is not unlikely that they served that interest as much by helping to find the Government of the day with ample funds as by protecting individuals from loss.

The last item of the list, though hardly a financial measure, is quite as germane to our subject. In a statute of 1871 (34 Vic., cap. 4), provision was made for (*a*) expelling from the circulation the large amount of American silver by which Canada had been flooded since the suspension of specie payments

in the United States; (*b*) substituting therefor, the Canadian silver coinage in pieces of five, ten, twenty-five and fifty cents, and copper coinage in pieces of one cent, the silver being legal tender to $10, and copper to twenty-five cents; and (*c*) for establishing *throughout Canada* as the compulsory money of account, *an uniform currency* in the denomination of dollars, cents and mills, at the equivalence of $10 Canadian = the American eagle, coined since 1832, and weighing 10 dwts., 18 grs. Troy, and $4.86⅔ Canadian = the British sovereign, the two coins mentioned and fractions thereof being made a legal tender in Canada.

On the 3rd March, 1871, the Minister explained to the House of Commons that in only one single instance had a charter been renewed according to the Act of the previous year. "Banks," he continued, "almost unanimously expressed themselves in favor of having Parliamentary charters. When this was ascertained, and it was only quite recently, the Government determined that they would endeavor to embody in one general banking Act, not only the provisions of the previous Act of the last session, but also the general provisions of what he might term the internal regulations of banks, and which they themselves seemed desirous should be, as nearly as possible, assimilated. This was the extent of the Government's intentions, but there seemed to be a very general desire that in the Bank Act the charters should be extended for ten years."[1]

The Act drafted in accordance with this purpose was passed with very slight discussion in either House, and, on the 14th April, received the Royal assent. (34 Vic., cap. 5.) This statute was the first general law under which the banks really worked, and may be regarded as practically the first Bank Act of the Dominion. Still, the measure of 1870 contained the essence of the Government's policy. We have to note one change in the capital requirement, no new bank being now permitted to issue notes or begin business with less than $500,000 capital *bonâ fide* subscribed, and $100,000 similarly paid-up. The payment of a further sum of $100,000 was required within two years from the beginning of business. An idea of the comprehensiveness of the

[1] Parliamentary Debates, Canada, Vol. II., p. 255.

Act may be gained from the titles, General Regulations §§ 4 to 16, Internal Regulations §§ 17 to 29, President and Directors §§ 30 to 38, Powers and Obligations of the Bank (loans, interest, advances on warehouse receipts, etc.) §§ 39 to 54, Bank Notes, Bonds, etc. §§ 55 to 56, Insolvency §§ 57 to 59, Offences and Penalties §§ 60 to 67, Notices § 69, Future Legislation §§ 70 to 71, Special Provisions as to certain banks §§ 72 to 75, Repealing and Saving Clauses §§ 76 to 77.

The law as to loans on warehouse receipts and similar documents was thoroughly revised, difficulties of procedure removed, and some amendments added. A considerable advance was made here in the legislation which allowed banks making advances to take, instead of personal security, the security of commodities stored against the time to market them, passing into, out of, or through Canada, or undergoing conversion from the raw state to products such as pork, bacon, hams, malt, flour and sawn lumber. How important this possibility was, not only to the development and maintenance of the country's trade, but also to the safe conduct of banking, will appear as the careful attention to the "warehouse receipts" clauses and the wide extension of the underlying principle, are noticed in later pages.

It was also declared that the bank might acquire and hold as collateral security for any advance, "shares in the capital stock of any other bank, the bonds or debentures of municipal or other corporations, or Dominion, Provincial, British or foreign public securities." If the original debt were not paid when due, the bank might dispose of such collateral after thirty days' notice to the debtor.

A further discussion of the statute is unnecessary. It would be tedious to repeat at length the substance of its seventy-seven sections, and twenty-four octavo pages; to amend the Minister's description of its purpose would be difficult. And in the end, we should have discovered almost no provision completely unfamiliar, a large part of the Act being devoted to the re-enactment and consolidation of legislation with respect to banks already in force. Aside from certain technical amendments in 1872, 1873, and 1875, the Bank Act remained without change until 1879.

The achievement of first bringing the Canadian banking system into the form on which later legislators merely built, has

frequently been ascribed to Sir Francis Hincks. It is true that he proposed certain reforms to Parliament, that his Resolutions were adopted with little substantial change, that the Act of 1871 is still the basis of the statute governing banks and banking. But the characteristic provisions of the Acts of 1870 and 1871 did not originate with Sir Francis Hincks. One of the few features for the invention of which the Minister *was* responsible, viz., the renewal of charters by Letters Patent, failed within the year; another, the reduction of the minimum capital to $100,000, adopted probably for political reasons, was afterwards changed, and was never found to exact sufficient cash guarantee of intention to carry out a *bonâ fide* business; a third, the power to loan upon stock of other banks, was proved pernicious in less than three years, and was repealed in less than eight. The bank reforms of practical value which he introduced, had all been suggested and justified by bankers, investors in banks, and business men, some one, some two, and some eleven years before they were adopted by the Government. To unify the banking system, the Minister extended the law of old Canada to the Provinces of Nova Scotia and New Brunswick; to reform it, he followed, not original schemes of his own, but the suggestions of the bankers called in consultation. Yet the banking policy of their successor formed a distinguished and admirable contrast to Mr. Galt's injurious attempt to establish a currency of Government paper, and to Mr. Rose's effort to revolutionize the system of bank note issue. They wished to remodel it according to personal hobbies; he allowed the Canadian banking system to keep to the natural lines of its growth. Of the wisdom of his decision, each year of the twenty-three since elapsed has afforded new and stronger proof.

NOTES ON THE ORIGIN OF MONEY TERMS—9½% AS THE PAR OF EXCHANGE

THE Editor's note at the foot of a contribution in the December number prompted a research by the writer into the precise facts bearing upon the origin of the present par quotation for sterling exchange, the result of which research is appended, together with a few preliminary notes on currency terms, which will not lack interest for some Associates.

The Origin of Money Terms, etc.—Authorities differ as to the origin of the term "sterling" as applied to British currency. It is ascribed by some to the circumstance that about the time of Richard I. money coined in the East of Germany was noted in England for its purity and was called *Easterling* money, those Germans being called Easterlings, and that shortly afterwards some of their best coiners were sent for by the English Government, from which time the money was called Easterling and sterling. The other account derives the word sterling, Esterling or *starling* (as according to one writer it was sometimes called) from the little stars which were frequently on the English penny, and the weight of evidence appears to be in favor of this origin. Among other testimony to the latter effect, it is cited that David I. of Scotland, who reigned before coiners were ever said to have come from the east into England, ordained that *the sterling* should weigh 32 grains of wheat.[1]

A "pound" sterling was originally, and for 234 years after the Norman Conquest, a pound weight of standard silver, and this was coined into 20 shillings. The shilling underwent a succession of degradations after this period until in 1601 a pound of silver was coined into 62 shillings, which division was adhered to until 1816, when it was altered to 66 shillings in order that silver should be token money only. It is possibly due to the fact that the earlier degradations were surreptitious, that 20 shillings continued to be termed a pound long after they had

[1] DE MORGAN, "Notes on the History of the English Coinage."

ceased to be equivalent to that weight of silver; but at any rate it is not difficult to surmise the process by which a "pound" in money came to be dissociated from its original meaning and to signify first 20 silver shillings, and afterwards, with the change to a gold basis, to stand for the unit of value, *i.e.*, the weight of fine gold contained in a sovereign, which at the time of the change of the monetary standard was of the same actual value as 20 shillings.

The word "dollar" was first applied to a Spanish coin, though the Spaniards have no such term, their word for the coin to which it was applied being peso, for the piece of eight reals. These coins were formerly called in English "pieces of eight," hence the sign $ for *eights*. "Dollar" is said to be of German origin, being equivalent to *thaler*. The first coinage of the latter was issued in 1518 from the mining district of Joachim-thal (Valley of Joachim) in Bohemia, whence it was called thal-er.

Origin of the par of "9½."—The first money used by the colonies in America consisted of Spanish and French coins, principally the former. The Spanish peso, or piece of 8 reals, called a "dollar," had a legal value attached to it widely differing according to the colony, a condition of affairs which led the Imperial Government to pass an Act in 1707 declaring the value of the Spanish and Mexican pieces of eight reals to be 4s. 6d., at which value £1 sterling was equivalent to $4.44\frac{4}{9}$, which was thus made the (old) par of exchange. This valuation was, when declared, not strictly accurate. Silver was at this time the standard of value in England; 20 English shillings contained 1,718.709 of pure silver, and the Spanish peso containing 385 grains pure, the value of the latter coins in English money was 4s. $5\frac{4}{9}$d. within a fraction, or a par of $4.46\frac{1}{5}$ about. But the Spanish-Mexican dollar, as coined in 1772, contained only 377.06 grains pure silver, so that the par of 4s. 6d., which was only approximately true of the earlier coin, was now quite far astray; nevertheless, by an Act passed in 1789, the same value was attributed to the debased coin. Consequently arose the practice at this time apparently of quoting the currency equivalent of a pound sterling at so much per cent. premium upon the legal par of $4.44\frac{4}{9}$, the premium based on

the relative value of the coins being at this time, as will be seen, about 2½%.

The Act establishing the United States Mint was passed in 1792. It authorized the coining of gold eagles to contain 247.5 grains pure metal, and silver dollars to contain 371.25 grains pure. The Act recited that the latter was "the same as the Mexican dollar" as then current (*i.e.* the coin issued in 1772), but this weight (371.25 grains) was arrived at by assaying a large number of coins in actual circulation and which had been reduced by abrasion to nearly 1.6 below the standard at which they were issued from the mint. The actual par of sterling exchange thus became still further removed from that fixed by the Act of 1707, and affirmed by the law of 1789, and the quotation representing par was simply in terms of an increased per cent. premium.

In 1837 the quantity of pure gold in the eagle was reduced to 232.2 grains, which altered the ratio of value between the two metals in the coinage from 15.1 parts silver to 1 part gold, to 15.988-1. This was an undervaluation of silver, and it brought about such an expulsion from circulation of that part of the currency as to leave gold practically the standard of value. Silver had been demonetised in England in 1816, and between that date and some time after 1837, the money of account in the one country being gold and in the other silver, the real par of exchange depended from time to time upon the market value of silver, but with the expulsion of silver which ensued upon the depreciation of the gold eagle in 1837, the rate of exchange came to be reckoned upon the pure gold contained in the sovereign and the $\frac{1}{10}$ part of the eagle respectively. The sovereign was first coined in 1817, to replace the guinea, and by enactment ever since in force it was to contain 113.0016 grains pure gold. Pre-Victorian sovereigns were deficient in weight (the mint "remedy" prior to 1829 allowing of their issue from the mint at 112.14 grains), and the actual par of exchange based upon them was about 9% premium on the old statutory par of $\$4.44\frac{4}{9}$, but the currency equivalent of the full weight sovereign is precisely 4.866564, or 9.497% premium upon the old legal par —approximately 9½.

It will be seen that the custom of quoting the par of ster-

ling exchange at 9½ came about quite naturally. The only difficulty is to understand the reasons which induced the American legislators of 1789 to declare the legal par at the old rate of $4.44⅘ to the £, since such a real par had ceased to exist in 1772, as already shown.

But though the custom has come about naturally, it is nevertheless on its face a most curious thing that in buying or selling a sterling bill of exchange we should quote its par value —instead of at $4.86⅔ to the pound—at 9½% premium upon a par of $4.44⅘ which came into existence in 1707 by virtue merely of an inaccurate valuation attributed by law to Spanish-Mexican coins, a par which quite ceased to be recognizable as early as 1772, even as related to Mexican coins, and which was never within 4% of the real par as between any American coin and the legal tender coins of England.

The quotation lasted in the United States until 1873, when, owing to an agitation which had gone on for several years, Congress passed an Act rendering null and void all contracts based upon an assumed par of $4.44⅘, which Act came into force on 1st Jan., 1874. Newspaper reports of that period show that the old quotation was adhered to until the last legal day, and ceased of existence on the first day of the operation of the new law.

ASSOCIATE

CORRESPONDENCE

THE BANK OF UPPER CANADA

To the Editing Committee:

DEAR SIRS,—In the very interesting and valuable resumé of "The Canadian Banking System 1817-1890," by Mr. Breckenridge, published in your number of December last, a doubt is raised as to a statement of mine respecting the manner in which the capital, necessary to start the Bank of Upper Canada, was obtained.

Mr. Breckenridge remarks that "the evidence for this has not yet been advanced."

This is true enough, and for the very good reason that the statement has never been disputed.

The facts of the case are these :

At the first meeting of the stockholders of the Bank of Toronto—nearly forty years ago—the Hon. Henry John Boulton, in contrasting the *then* condition of banking with what he had known it thirty years before, stated as a fact of his own knowledge that after the promoters of the Bank of Upper Canada had obtained their charter, which required them to have £10,000 currency paid up before they commenced business, their utmost efforts in collecting subscriptions from the stockholders all over Upper Canada yielded only £8,000; and that in the last extremity an advance was obtained from the Military Chest of the £2,000 required to enable the bank to commence operations.

This was Mr. Boulton's statement. I remember his words to this day.

That he was well qualified to speak from actual knowledge, every one that knows who he was will readily admit.

I have more than once, both in speech and writing, referred to this incident as an illustration of the extraordinary growth of wealth in the Province of Ontario. And certainly it is striking enough, when we consider that it was beyond the power of the whole Province, in 1821, to pay up forty thousand dollars—contrasted with the very many millions it has raised for the same and kindred objects since, with perfect ease.

Yours truly,

G. HAGUE

Montreal, 1st Feb., 1895

NOTES AND REVIEWS

WAREHOUSE RECEIPTS AND SECURITIES UNDER SEC. 74 OF THE BANK ACT

THE January number of *The Barrister* contains an article on warehouse receipts and other securities on goods under the Bank Act, by Mr. George Kappele, who writes from an experience as solicitor for one of the larger Toronto banks. The ground he covers is in the main, as far as practical questions go, that which Mr. Lash went over in his important paper, and Mr. Kappele's article need not, therefore, be discussed at any length. There are a few points on which his deductions may be questioned, or in which he has not stated the law with sufficient definiteness, and it may be useful to point these out.

We pass with a mere mention the statement, evidently made through an oversight, that the Privy Council has determined that the Dominion Government has exclusive jurisdiction respecting warehouse receipts and bills of lading. It has that jurisdiction so far as banks are concerned; can declare what constitutes warehouse receipts or bills of lading for banking purposes, and the power of banks in connection therewith, but with this exception, the authority of the provincial legislature in such matters is supreme. We need also mention only the statement that these securities are transferable by endorsement or delivery. If the latter means delivery after endorsement, or delivery of a document made in favor of the bank, the statement is of course true; delivery otherwise would make a very unsatisfactory title.

The definition of a warehouse receipt as that of a bailee in good faith, who is in real possession of the goods, is well explained, but the statement that the goods must be in premises kept by the bailee for the purpose of warehousing goods in general, or the goods mentioned in the receipt in particular, whichever is meant, is erroneous and misleading. A receipt granted by any person who has actual possession in the sense of the Act, and is not the owner, is valid, whether he keeps a ware-

house or not; *e.g.*, if a person puts some furniture in his neighbor's house, and takes a receipt in proper form therefor, that is a warehouse receipt under the Act, though not a desirable banking security.

The difficulty Mr. Kappele finds with regard to the party to whom a receipt is given is one which does not trouble bankers in practice. We cannot conceive of a case where a receipt would be made in favor of anyone but the owner or his agent, or, at the owner's request, of a bank or other lender of money. If the owner procured its issue to a private lender, the rights of the latter would be governed by provincial law; if after a receipt had been thus issued the owner wished to have it transferred to a bank, we think the circumstances would be sufficient to constitute the private lender the agent of the owner, and so bring the receipt within the terms of section 73; and if the private lender himself wished to borrow on the security, it seems clear that a bank could acquire it from him as holder as security for an advance. This, of course, on the assumption that the receipt he holds is a warehouse receipt within the terms of the Bank Act. Much more difficult points arise in cases where the warehouse receipt is a valid document under the Ontario Mercantile Amendment Act, and not under the Bank Act; but this point need not be discussed here.

The comments on the new form of security provided by the Act, best described as "Assignments under Section 74," are useful. On the practical point of the form of the security we must, however, differ from the cast-iron rule suggested, that Schedule C should "never be departed from." A form "to the like effect" might be framed which would leave much fewer blanks to fill, and so avoid the risk of error always present when such documents have to be filled up by clerks of perhaps limited experience. Schedule C, in addition, is not well fitted for an advance made by discounting a promissory note, for the advance in such a case is the net amount of the bill or note after deducting all charges, and it would, in most cases, be highly inconvenient if this had to be calculated before the assignment could be completed.

As to the nature of the "Written Agreement" to give security, there is admittedly much room for trouble in this, and

until the point has been judicially discussed it is difficult to say how rigidly the courts will construe this part of the Act. They might say that there must be an express promise referring to the particular note, and covering expressly the security afterward acquired; as *e.g.*, "In consideration of your discounting my note dated ..... for ..... payable ..... after date, I agree to give you as security John Smith's warehouse receipt for ..... bushels wheat, stored in his warehouse at ....." Such a promise would be quite satisfactory, but it would almost be impossible to work a grain or produce account in that way. An advance made to a grain dealer with which he goes on the market to buy whatever grain comes to hand, oats, peas, wheat or what not, would clearly seem to be within the line of transactions which it was thought that the Act would cover, but the borrower's written promise to give security could in such a case be of the most general kind only. However, following the line of reasoning which Mr. Kappele adopts, based on the practice and law in kindred questions about chattel mortgages, it would seem that a promise to give security on "all the grain" which the borrower might at any time have in his warehouse, would be a proper promise on which afterwards to base an assignment of all such grain, described in the identical terms of the promise, and that description, as Mr. Lash and Mr. Kappele have both pointed out, is a highly satisfactory one.

There is one slip in the more theoretical part of the article to which we may refer; the assertion that the policy of the law is to confine banks to the safest lines of business, and that, therefore, they are not allowed to lend on real estate, is not sound, nor is it quite true that the Australian banks made such a mess of their business merely because of their power to lend on real estate. The boards of direction of our banks could probably conduct a business of lending money on real estate as safely as the best of our loan companies who make that their specialty; the objection to such loans is not on the point of safety, but of availability. The business of banks is to provide means for handling the commerce and manufactures of the country; their obligations are practically all payable on demand; their capital, deposits and circulation represent a mass of credit which is or should be constantly flowing in and out (as

Mr. Kappele says), and he covers the real situation by the statement that "the money of the bank must be easily available, and its assets must be of the kind that are most readily liquidated."

A RECENT DEVELOPMENT IN MUNICIPAL TAXATION

IT has become quite common in the last few years for municipalities in granting or renewing franchises to public companies, such as street car lines, light and water companies, to stipulate that a percentage of the receipts should be paid over to the municipality, and in at least one of our Canadian cities we have been accustomed to hear a similar arrangement with a street railway corporation spoken of as a masterpiece of municipal policy, the yield to the city from this percentage being regarded as so much extracted from the pockets of a monopolistic corporation on the people's account. It is undoubtedly a method of taxation which tends to protect the public as a whole from paying too dearly for a service rendered by a Company controlling a natural monopoly under a public franchise, but whether it is the best method of attaining this very desirable end is extremely doubtful.

In a brief article in the January number of the *Annals of the American Academy of Political and Social Science*, by JEROME DOWD, this subject is thus referred to :

> "There is a large school of thinkers who advocate this scheme of taxation as an easy means of bringing in revenue. The idea seems to be a popular one and a number of cities already derive a considerable portion of their income from this source.
>
> "Nevertheless, it is a species of indirect taxation and very unequal in its bearings upon individuals. The revenue from franchises and percentages on gross receipts, had better be left in the pockets of the people who patronize the monopolies. The highways belong to the people of the city, and to tax themselves for using their own highways is an absurdity. It would seem more statesmanlike to require the monopoly to serve the people at the lowest price that would bear a given dividend. If the special taxes were removed from car lines many of them could afford to reduce the fare from five to three cents, which would effect a saving to the wage-earner of ten to twenty dollars per annum."

In the case of the municipality referred to above the bearing of the last point is very important. Perhaps in no city are the street cars patronized by a greater proportion of the workingmen. And if it were true in this case that with a removal of

the special tax on their gross receipts, the railway company could afford to make so great a reduction in the fare as the writer quoted claims, then the percentage system, as compared with a reduction of fares, is equivalent to taxing those who are compelled to patronize the cars, the workingman and the more well-to-do man of business alike, four cents a day each towards the general cost of municipal government—a very ill-proportioned distribution of the burden.

Select Chapters and Passages from the "Wealth of Nations" of Adam Smith. Edited by PROF. W. J. ASHLEY. New York and London, MacMillan & Co.; Toronto, The Copp, Clark Co., Ltd. 8vo., $0.75.

OF Adam Smith's *Wealth of Nations* Bagehot said, writing in 1876, it "still, in its effects more than in its theory, occupies mankind." Written, however, over 100 years ago, it naturally contains some propositions that, by the light of modern economic development, require to be modified. The fruit of ten years absorbed and exclusive attention, its dimensions are formidable. Abounding in historical and descriptive passages, with a wealth of elaboration and illustration, it is calculated in these days to engage only a mind bent on a much broader study than that merely of the author's economic theory; and the student interested as to the latter has in many instances been deterred from pursuing its study by the magnitude of the task it involved. Thus it is that a work that earned for its author the title "founder of the science of business" has now comparatively few students.

These are no doubt the considerations which prompted Prof. Ashley to undertake the work of selection and elimination. The portions now printed make up between a fifth and a sixth of the book. They have not been selected, the editor states, as containing necessarily the most interesting or well-written or important parts of the book, the intention being rather "to present in a brief compass a general view of the whole of Adam Smith's economic philosophy," and nothing has been omitted which he believes to enter into the real structure of the argument.

It is a matter for congratulation that the task fell to be undertaken by thoroughly competent hands. Of the publication itself we need only say that we regard it, for the purposes of the ordinary student, as one of the most welcome additions to economic literature that has been made for a very long time.

It is issued in unique binding, the typography is very good, and altogether it is a most attractive little volume.

Honest Money. By ARTHUR I. FONDA. New York, MacMillan & Co.; Toronto, The Copp, Clark Co., Ltd.

THIS is one of the most extraordinary contributions to monetary literature that it has been our privilege to peruse. The author's preliminary statement of certain fundamental economic principles, and his outline of what a fair standard of value should effect, seem to promise that the proposal to follow for an "honest money" will possess merit, even if it may not, as its author believes, "meet requirements." Its sole merit, however, consists in its originality.

The proposal is based on the assumption that gold and silver are in no way necessary to foreign commerce or domestic trade, and it contemplates their shipment abroad in payment of debt, and the replacement of the money now in use by a new paper currency to be issued by the government, and to consist of promises to pay a "dollar *of value*," the latter meaning whatever the exchange value of a dollar of gold might be at the inception of the new system, as arrived at by averaging the price of a number of important commodities. The new money could be made redeemable in any of the commodities on which it would be based, but this "would be only a form and might be "omitted, as of course the government would never be called "on to so redeem money, since the holder could exchange it for "the commodity wanted in the open market to equal advantage."

A Government money bureau would be started whose business it would be to examine from day to day the course of prices, to promptly check any tendency of the latter to fall, by an increase of the volume of "promises to pay value," and to withdraw these

promises from circulation whenever prices required correction the other way!!

Among the merits of the plan, as enumerated by the author, apart from the furnishing of a standard of value as nearly invariable as it is possible to obtain in practice, is that of being "wholly American."

MISCELLANEA

Early Notions Concerning Bank Notes.—The story has been oft repeated of the Irish mob, who being incensed at the officers of a bank for closing its doors, sought revenge by gathering together all the notes of the bank they could lay hands upon and with them creating a bonfire, but the following episode having its origin nearer home, and for which we are indebted to an old number of *Harper's*, is equally worthy of preservation:

About the beginning of the present century the old Bank of Albany, since defunct, then presided over by thirteen distinguished representatives of fatherland, issued its first circulating notes. Immediately after their receipt from the printer an application for a loan of a few thousand dollars was made to the bank, by a drover well known in Albany for his ability and financial soundness.

The loan was "passed" by the Board, and the cashier ordered to pay the money, who, like a faithful officer, bethought himself as to what kind of money he would pay—whether their own currency or gold. The currency was new; so he re-convened the directors at once, and laid the subject before them. Chairs were drawn to the great fireplace, thirteen clay pipes were lighted, and discussion ensued upon the proposition to pay out the new currency. No satisfactory conclusion was likely to be arrived at until the following speech was made by one of the number:

"Gentlemen of the Board: These bills of ours, received "to-day, have cost this bank a large sum of money. The "engraver, the printer, the papermaker, and incidentals, all

"have to be paid. The thought of these expenses, so justly "incurred, does not stagger me in the least; for the bills are "very fine and an ornament to the bank. But, gentlemen, when "it is proposed to send these new bills into the far West, there to "be traded for cattle, torn, soiled, and perhaps utterly de- "stroyed, I, for one, most solemnly protest. I venture this "moment, gentlemen, to assert the opinion that should you be "so unwise as to allow these new bills to be sent North and "West, beyond Lansingburg, Schenectady, and away to the "other side of Utica (as I understand this man proposes to "take some of them), you will never see them again so long as "the Bank of Albany has an existence or a name!"

The motion was lost, and the gold was duly paid.

The Scotch Deposit Rate.—The lament of the Scotch depositor over the recent deduction of the deposit rate to one per cent., is thus versified by a contributor to the *Pall Mall Gazette:*

Ye banks that prey on ony loon,
How can ye act sae gey unfair?
How can ye gie me ane per cent.
And I sae weary, fu' o' care?
Ye'll break my heart, ye grasping banks
That wantonly my interest's shorn,
Ye'll mind me o' departed rates,
Departed—never to return.

QUESTIONS ON POINTS OF PRACTICAL INTEREST

QUESTION 6.—A Miss Smith has a store. She marries, and the day *before* her marriage she gives a power of attorney, witnessed by an unmarried woman only, to her sister, Miss M. Smith.

The store will be carried on in Miss Smith's name by her sister, Miss M. Smith. Acceptances come on Miss Smith as usual, and are accepted under power of attorney by Miss M. Smith. The firm is registered in the old name I believe.

Does this in any way affect her banker or the other bank which presents acceptances?

ANSWER.—We presume the statement that the firm is registered in the old name is an error ; there being no firm, but simply one person carrying on business, no registration is necessary. As to the main point, the marriage of Miss Smith does not rescind the power of attorney, and if she chooses to carry on business in her maiden name, she is quite free to do so. The liability is her liability, and the only question involved is one of identification.

QUESTION 7.—Is there any law relating to part payment of a bill (by promissor or acceptor or his agent) held by a collection agent ? A case came to my notice where a part payment was left with a bank to apply on a bill payable there, but held by another bank. The bill was duly presented, and the part payment left by the acceptor was offered to the collecting bank and refused by them. The bill was protested and returned for non-payment, and the money intended as a part payment returned to the acceptor. What I would like to know is if the bank did right, according to the law, in refusing to accept a part payment. Is any liability or risk incurred in accepting a part payment, endorsing it on the bill, protesting (if necessary), and returning the bill along with the remittance ? This latter is the course I should think to be the best business, but I have been unable to find a law covering the point.

Will you kindly tell me the publishers of the following, and could you suggest other books that would be of practical use in the banking profession : *Notes on Canadian Banking*, Hague ; *Gilbart on Banking ; Byles on Bills ; The Country Banker.*

ANSWER. —There is no direct statute that we know of relating to partial payment of a bill. It is established, however, that the holder may accept partial payment without in any way affecting his claim on the drawer or endorser for the balance, provided he does nothing otherwise that would release him, but he is quite free to refuse to accept anything but payment of the whole amount of the bill, and this appears to be the English practice. We think, however, that the plan suggested is quite permissible, namely, to take the money tendered, if offered strictly as a partial payment, and then protest the bill so as to retain recourse against the other parties to it—indeed under some circumstances any other course might be prejudicial to the interests of the owner of the collection.

With regard to the last clause of the enquiry, *Notes on Canadian Banking* is an annotated edition of *Bullion on Banking ;* the latter work is fully covered by *The Country Banker*, which is by the same author (Rae). We recommend *The Country Banker* as probably the best book of its kind yet

issued. There is a smaller publication entitled *On the Bank's Threshold* (Miller), which is in some degree useful.

For legal text books, we would consider Chalmers' *Law of Bills of Exchange and Promissory Notes* much the best, for the reason that the author was the framer of the English Bills of Exchange Act, which is almost identical with our own, and the last edition of his book is practically a commentary on each separate clause of the Act. It is much more useful for our purposes than *Byles on Bills*.

Of the commentaries on the Canadian Act, that by MacLaren is the fullest, but we are not in a position to express an opinion as to which of them is otherwise the best. These books, and the others named, can be obtained by ordering through local booksellers.

Legal Decisions Affecting Bankers

EDITORIAL NOTES

Assignments under Sec. 74.—We had intended reporting at length in this number the case of the *Banque d' Hochelaga* v. *Merchants Bank of Canada*, which came up in the Court of Queen's Bench, Manitoba. The case has been a good deal discussed, as being the first important judgment in respect to security under Sec. 74. We find, however, that the question really involved was the right of the Merchants Bank to retain certain goods of which they had taken possession by virtue of an assignment, and we learn that the provisions of the Bank Act in such matters did not necessarily come into the case at all. The assignment under which the Merchants Bank claimed was not authorized by the Bank Act, but that held by the Hochelaga Bank was equally defective, in the former case having been taken in substitution for previous assignments, and affecting a different lot of goods; while in the latter the security was taken for a pre-existing debt. The facts were briefly as follows: Prior to the 27th March, the Merchants Bank held certain notes of one Allen, secured by certain assignments of goods in his possession, which goods had been partially removed and other goods substituted without the knowledge of the bank. On that date they amalgamated the notes into two, and took a new assignment of goods to secure the amalgamated debt. These goods were set apart by Allen in the presence and with the approval of the manager of the Merchants Bank, and marked with their mark.

On the 1st May, Allen gave the Hochelaga Bank an assignment of goods to secure a pre-existing debt. There is no reason to believe that he had enough on hand to represent the quantity assigned to the two banks.

Between March 27th and June 21st all the goods on hand at the former date had been sold, and new goods substituted, without the consent of the Merchants Bank, but the substituted goods were marked with their mark.

On the 21st June, because of a visit of the officers of the

Hochelaga Bank, a portion of the goods marked as the property of the Merchants Bank was shifted and marked as the property of the Hochelaga Bank. These goods were examined and approved by the officers of that Bank.

About this date Allen absconded, and the Merchants Bank took possession of the goods still bearing their mark, and also of those moved from their piles to be marked for the Hochelaga Bank.

The facts indicate that the assignment to the Hochelaga Bank was taken to secure a pre-existing debt, and as no mention is made of any "written promise" in connection with their debt, it may be assumed that the security was invalid under Sec. 75.

Bank of Hamilton v. *Shepherd*, which overruled the case of *Bank of Hamilton* v. *Noye*, may be taken as settling the law that to substitute a new assignment for an old one, as security for a note which is a mere renewal of an existing debt, is not authorized by the Bank Act. Had the Merchants Bank relied only on their assignments, and had the Banque d' Hochelaga obtained a judgment and execution, the latter would no doubt have succeeded in an attack, as an execution creditor, on the security of the former.

Under the circumstances that existed, the learned judge had simply to settle the relative rights of two claimants, each holding an assignment of goods which was good in Common Law between the parties, but not under the Bank Act, these rights being further complicated by the fact that the goods which had been set apart for the Merchants Bank and had been accepted by them, had all been removed, that other goods had been set apart in their place by Allen, but without their knowledge or consent, and that of these goods a portion had again been removed by Allen and set apart for the other Bank.

The finding of the Court was that the assignment of the Merchants Bank was earliest in date, that by virtue of the assignment and of the setting apart of the goods which took place on March 27th, when it was given, the bank acquired a valid title to the goods, that the Bank had never consented to the removal and substitution that took place, and was entitled as against Allen and his subsequent transferees to the substituted

goods, and that the assignment to the Hochelaga Bank was ineffectual, inasmuch as it could not convey goods the title to which had already passed to the Merchants Bank.

As there is no question of preference under any insolvent Act to be considered, this case resolves itself into a very nice point of the respective rights of two assignees under the common law. Had the Merchants Bank taken possession on the morning of the 21st June, before Allen set apart goods for the Hochelaga Bank, there could be no doubt that they would have thereby made good their title beyond question ; the defect up to that time was this, that while Allen had appropriated the substituted goods to them by the marking, they had not accepted the appropriation, and the act of taking possession would have been an acceptance. Whether at Common Law such an appropriation without any privity on the part of the assignee of the property is good, is, we are advised, an extremely doubtful question, but the fact that possession followed would have much weight. The learned judge took the view that the Merchants Bank had a good title to the substituted goods, quoting in support of the principle involved *C. W. R. Co.* v. *Hodgson*, 44 U.C.R., and the *Bank of Hamilton* v. *Noye* above referred to, and gave judgment in their favor.

There are certain other points in the judgment of interest to bankers. Reference is made to the description of the goods in the assignments as probably not in conformity with the form in schedule "C." This is a point on which it is clear that much more definiteness than is customary among banks is desirable, if not absolutely necessary.

On another point the learned judge says:

"I agree with the contention of the plaintiff's counsel that in lending money to the classes of persons and upon the security of the goods mentioned in Sec. 74, the bank is not limited to taking security in the form set out in the schedule, but may take it in any form known to the law. The clause as to the form is permissive only, and cannot, I think, control the general enabling powers contained in the earlier portions of the section."

He refers to Sec. 64, prohibiting loans on security except as authorized by the Act, as affecting the substance and not the form of transactions under Sec. 74.

On the question of the value of an assignment at common law, the following remarks possess interest:

"I also agree with the contention of the plaintiff's counsel that instruments in the form in the schedule to the Act do not depend for validity upon this statute, but would be apt to pass the legal property in the goods at Common Law."

On the question of the transfer of goods without delivery he takes the following view:

"A gift of chattels does not pass the property, unless made by deed, without an actual or constructive delivery of the chattels. But the reason of this is explained by Sir Wm. Blackstone in his Commentaries, vol. 2, page 441. Until delivery the transaction is considered to be executory only, and being without consideration it cannot be enforced unless made by deed. * * * But an agreement of present sale of goods where the property is sufficiently designated passes the property, though made by parol. The principle is that parties by parol agreement for consideration can pass the property in goods as between themselves without delivery. The only question is to ascertain whether the parties so intend. These instruments are expressed to be for consideration, and the word 'assign' and the general tenor and object of the instrument appear to me to indicate sufficiently an intention to pass the property at once."

On these principles he finds that when Allen set aside and appropriated certain goods for the Banque d'Hochelaga, and the Bank's officers accepted the appropriation, then as between Allen and the Bank, the property passed to the latter, but on the same principles this appropriation was not good as against the Merchants Bank, because at that time the property in the goods was in the latter.

Fraudulent Alteration of a Bill of Exchange.—In noting the judgment in the English case of *Scholfield* v. *Londesborough*, in our December number, we expressed the opinion that it conflicted with the generally accepted view of bankers in Canada as to the law in such cases. Since then the Court of Appeal (Lord Esher, M.R., and Rigby, L.J.; Lopes, L.J. dissenting) has confirmed the judgment of the Lower Court. It is clear, therefore, that Banks are by no means as well protected in cases of bills of exchange which are fraudulently dealt with before reaching their hands, as has commonly been supposed. On another page we quote the judgment, which is of great importance, especially

because of its criticism of the principle laid down in the case of *Young* v. *Grote*, which has hitherto been the leading case on this point. The facts in the latter were as follows: The plaintiff delivered some printed cheques to his wife, signed by himself, but with blanks for the sums, requesting her to fill the blanks up according to the exigency of business. She permitted one to be filled up with the words "fifty pounds, two shillings," the "fifty" being commenced by a small letter and placed in the middle of a line. The figures "50, 2" were placed at a considerable distance from the printed "£." In this state she gave the cheque to her husband's clerk to receive the amount, whereupon he inserted the words "three hundred and" before the word "fifty," and the figure "3" between the "£" and the "50." The banker having paid the cheque in the usual course of business, it was held that the loss must fall on the plaintiff on the ground that the customer had misled the banker by want of proper caution in drawing the cheque in a manner which admitted of easy interpolation.

In the course of one of the Gilbart lectures delivered at King's College, London, the lecturer, J. R. Paget, Esq., B.A., LL.B., remarked that he confessed to a feeling of regret whenever he saw the authority of an old banking case on the wane, such as that of *Young* v. *Grote*, which had been cited authoritatively since 1827. Examining the effect of the decision of the Court of Appeal in the case of *Scholfield* v. *Londesborough*, that such a breach of duty (supposing there to have been one) as was charged against the defendant, did not work an estoppel because it was not connected with the endorsement of the innocent endorsee—a fradulent act intervening, Mr. Paget remarks:

"It means that no negligence is to be regarded as the proximate cause of a loss. No negligence is to be taken into account for the purpose of turning the scale as to which of two innocent persons should suffer. It can never now be said that a person accepting a bill has facilitated a felonious act, and that therefore upon him the loss should fall. In other words, no one is bound to anticipate the possibility of a felony. By the present case this doctrine is established, and entirely upsets the authority of *Young* v. *Grote*. Unless and until the House of Lords reverses this decision, it must be regarded as settled that there is no estoppel on the ground of negligence, where that

negligence would not have entailed any loss had it not been for the commission of a felony, even if that felony would not and could not have been committed except for negligence.

"It appears that a bank customer may now accept a bill on a stamp sufficient to cover a bill of any amount in such a way as to facilitate fraud, and when the natural result happens, can refuse to be responsible beyond the original amount; tell the banker he was not bound to anticipate a felony, and was not negligent, but that if he was negligent, the felony, and not his negligence, was the proximate cause of the loss.

"The decision will work great hardship on bankers. There is scarcely any case of negligence of a customer for which they will not have to suffer, since nearly every loss which has its start in negligence will have its culmination in felony, and a consequent loss to the bankers.

"Was it reasonable to suppose crime to be such an abnormal thing that, however much negligence invited it, that negligence could never be the proximate cause of the loss if crime intervened? The nearest cases on the point were those of *Evans' Trustees* v. *Bank of Ireland* and *The Merchants' Staple* v. *Bank of England*, in each of which the negligence consisted in the Corporation entrusting its seal to a person who used it for purposes of fraud. There it was held that the negligence was not the proximate cause of the loss, but those cases were scant authority for the general proposition. There was high authority, the lecturer said, for going thus far—if the felony itself were the natural, or likely, or direct consequence of carelessness, that negligence estops. Might it not be said, despite the decision in *Scholfield* v. *Lord Londesborough*, that if a man draws a cheque or bill with blanks left in it, which no reasonable person would regard to be other than a premium on fraud, the natural, likely, or direct consequence will be that a fraud will be committed?"

Mr. Paget said, if a case arose in which a cheque thus carelessly drawn was presented to and paid by a banker in good faith, he would not despair of seeing a court uphold the banker's right to debit.

"The difficulty would be in knowing where to look for the banker's protection against similar risks, but the one which commends itself more than others is that of the implied contract between banker and customer. Assuming the relationship of principal and agent, the banker might have right to be indemnified by his principal in the event of his incurring loss owing to ambiguous instructions having misled him. Lord Macnaghton, in the Vagliano action, recognized this in referring to the case of a principal introducing among genuine bills an indistinguish-

able counterfeit: but that doctrine does not go far enough, for a cheque with blanks is not a counterfeit. What is wanted is a rule laid down that the agent is entitled to indemnity whenever the principal by his own act enables a fraud to be committed, and by which the agent suffers damage. But there is no such authority, and the relation of principal and agent therefore gives no real help, neither is help derived from the principle of a course of dealing. Could any assistance be derived from the implied contract between banker and customer? On the part of the banker there is an implied contract that he will not disclose the state of the customer's account. If that arose simply on the general principle that he should do nothing to damage his customer, then the same principle would establish the customer's reciprocal obligation not to draw cheques or bills in such a way as to entail loss upon the banker.

Equities Affecting Overdue Notes.—The case of *MacArthur* v. *McDowall*, the chief points in which are reported on another page, is very suggestive of the ease with which a bank may drift into a very serious position with regard to securities.

MacArthur, the appellant, bought from the assignee of the bank's debtor, certain notes which were held by the bank as security. The bank took MacArthur's note instead of the debtor's, and to all appearance held the same security as before, with a new obligant for the debt. But one of the chief securities was an accommodation note of McDowall's, which had been used in breach of an agreement with him, and the effect of what was done was that instead of having a claim on McDowall for this note, neither the bank nor MacArthur, after the sale to the latter, had any title to it. If, as might readily have been the shape which the transaction took, MacArthur had bought the notes from the bank, with the approval of the assignee, this result would not have followed, as he would have acquired the bank's title. As it happened, the loss in this particular case fell on MacArthur only, as the bank was otherwise fully secured, but the result might have been quite the opposite.

COURT OF APPEAL, ENGLAND

Scholfield *v.* Earl of Londesborough

Liability of acceptor for amount of altered bills negligently drawn.

Appeal from the judgment of Charles, J., in favor of the defendant. The action was to recover £3,500 on a bill of exchange drawn by one Scott Sanders upon and accepted by the defendant. The plaintiff was the holder in good faith and for value. When the defendant accepted the bill it was for £500 only, and afterwards and before endorsement it was fraudulently altered by Sanders into a bill for £3,500. The bill bore a £2 stamp, sufficient to cover £4,000. In the left-hand corner at the time of acceptance were the figures "500" preceded by the sign "£." Between the £ and the 500 was a space sufficiently wide to admit of another figure being inserted. The body of the bill was in three lines. On the first were the words, "Three months after date"; on the second the words, "Pay to me or my order the sum of"; and on the third, "Five hundred pounds for value received." After the word "of" in the second line there was sufficient space for the addition of another word, and before the word "Five" in the third line there was also space for the addition of another word without carrying the line further to the left then the word "Pay" in the line above. Sanders, having obtained the defendant's acceptance, inserted the figure "3" between the £ and the 500, and in the body of the document added the words "Three Thousand," writing the "Three" after the word "of" on the second line, and the "Thousand" on the third line, and in this shape he negotiated it. The defendant paid £500 into court. Charles, J., held that the defendant was not estopped, either by having accepted the bill with the blank spaces in it or with a stamp sufficient to cover £4,000, from setting up the truth, and that he was not liable for the £3,500, but that he was liable under section 64, sub-section 1, of the Bills of Exchange Act, 1882, upon the bill for £500. The plaintiff appealed.

The Court (Lord Esher, M.R., and Rigby, L.J.; Lopes, L.J., dissenting) dismissed the appeal.

Lord Esher, M.R., said that no evidence had been given as to the circumstances at the time the acceptance was obtained.

Before the Bills of Exchange Act, 1882, the defendant, if he were not prevented from setting up the truth, would not have been liable on the bill at all. But by section 64, sub-section 1, of that Act, the defendant was liable on this bill for £500. But it was said that the defendant was estopped from setting up what really did happen, and must, therefore, pay the £3,500. It was not said that the defendant made any representation to the plaintiff. It was said that the estoppel was founded on negligence in accepting the bills with gaps in it, and with a stamp large enough to cover £4,000. Negligence consisted in the neglect of a duty, and the plaintiff must show that the defendant owed a duty to the plaintiff not to accept a bill so drawn. What was the position of the acceptor? Before acceptance there frequently was a contract, express or implied, between him and the drawer, that he would accept the bill. The contract was distinct from the contract created by the acceptance. The drawer would draw the bill, and he was the master of its form; and the proposed acceptor agreed to accept the bill as drawn. A bill was often negotiated before acceptance. It might be that the drawer himself would present the bill for payment. The acceptor had no control over the persons into whose hands the bill might pass. By the acceptance the acceptor agreed to pay the amount of the bill which he had accepted to the drawer or to the person to whom it was transferred. There was a promise to the drawer to pay that bill, and the drawer could only transfer what he had himself. There was no duty towards the drawer not to accept the bill with spaces left in it. The drawer, therefore, could only transfer the promise to pay the bill as accepted, and, therefore, he owed no duty at all to the indorsee except to pay the bill he had accepted. But, even supposing that there was such a duty on the part of the acceptor, where was the negligence? The alleged duty was that he ought not to accept a bill in such a form as to render a forgery easy. It was suggested that the acceptor was bound to anticipate that the bill might get into the hands of a dishonest person, and that, therefore, he ought to have filled in the spaces. It was either conclusive evidence of negligence, or it was evidence from which a jury might infer negligence. If the latter, then one jury might find one way and another jury another way upon the same facts. That would paralyze business altogether. He protested that the question was not one of fact for a jury. In his opinion, even if there was such a duty, there was no evidence of negligence. But again, even assuming negligence, the alleged neglect of duty did not work the estoppel, because it was not connected with the indorsement to the indorsee, and therefore was not the immediate cause of the loss, the felony of the drawer intervening. As regards the decision in *Young* v. *Grote* (4 Bing.

253), that was a case between banker and customer. That case seemed to have been decided upon the principle that the customer was estopped. But if that was the true principle, what became of the other cases which said that the interposition of a fraudulent act by a third person prevented the negligent act being the immediate cause of the loss. The only way in which that case could be supported was by saying that the customer had signed a blank cheque, in which case the person into whose hands it got would have authority to fill it in. That was not estoppel. If that was the ground of the decision, it was not worth quoting as an authority. *Young* v. *Grote*, therefore, could not be supported for the doctrine laid down by it. That case ought not any longer to be quoted. The defendant, therefore, was not estopped, and the code applied, and section 64 made him liable only for £500.

Lopes, L.J., dissented. He thought the acceptor of a bill owed a duty to subsequent holders. Bills were negotiable instruments intended to pass readily from hand to hand. The acceptor owed to subsequent holders the duty of taking reasonable care that the document should be so framed, when accepted, as not to offer obvious opportunities for the commission of a crime. The decision in *Young* v. *Grote* involved that, and that case had been recognized in subsequent cases. That being so, in his opinion there was a breach of that duty, that is, such negligence by the defendant in accepting the bill framed as it was as disentitled him to set up its alteration in material particulars as a good defence to the action. The negligence was in the transaction. There was an absence of such care as a reasonably prudent man would and ought to take when accepting a negotiable instrument. Estoppel might not be the correct legal ground upon which to rest the decision in *Young* v. *Grote*. He adopted the language of Cleasby, B., in *Halifax Union* v. *Wheelwright* (23 W. R. 704, L. R. 10 Ex. 183), that a man could not complain of the consequence of his own default against a person who was misled by that default without any default of his own. That, in his opinion, was the principle of *Young* v. *Grote*, a case which had been recognized in the House of Lords in *Bank of England* v. *Vagliano* (39 W. R. 657; 1891, A. C. 107). The defendant here by his want of care had enabled Sanders to commit the forgery, and he must suffer the loss. The last question was whether the negligence was the proximate cause of what happened, namely, the leading the plaintiff into the belief that the bill indorsed to him was for £3,500. In his opinion the interposition of a crime did not make the negligence the less the proximate cause. The forgery was the result to be anticipated from the negligence. He therefore thought that judgment should be entered for the plaintiff for £3,500. He agreed with Charles, J., as to the stamp objection.

Court of Appeal, England

Wegg-Prosser *v.* Evans

Where there is an unsatisfied judgment in respect to a dishonored cheque given by one of two guarantors for the amount of the guarantee, the creditor is not debarred from proceeding against the co-surety for payment of the amount due under his contract.

This was an appeal from the judgment of Mr. Justice Wills on a guarantee given by the defendant Evans, for the payment of the rent of a farm, for which one Williams was joint surety with one Thomas. The plaintiff applied to Thomas for half a year's rent which was in arrears, and received Thomas' cheque for the amount. The cheque was dishonored, whereupon he sued Thomas and got judgment, which, however, remained unsatisfied. He then brought the present action against Evans to recover the half year's rent. The defendant contended that as the plaintiff had already recovered judgment against the other joint guarantor, the cause of the action against himself was extinguished. The Court held that the cheque was not taken in payment of the debt, but only as a conditional payment, and that the proceedings on the cheque did not affect the plaintiff's right to look to the defendant under his contract of surety. The judgment of the Court was delivered by Lord Esher, M.R.:

When the tenant of the farm did not pay the rent the plaintiff might have brought an action upon the guarantee against both the joint guarantors. If he had sued one joint guarantor upon the guarantee, the one sued could have taken out a summons to have the other joint guarantor joined as defendant. The plaintiff, instead of suing upon the guarantee, took a cheque from Thomas, one of the joint guarantors. Taking that cheque was not a satisfaction of the debt, but only a conditional payment. If the cheque were paid, that would be payment of the guarantee, and the present defendant could not have been sued upon the guarantee, though he would have been liable to a claim by Thomas for contribution. The present defendant's position was not altered in the slightest degree by the cheque being given. The cheque, however, was dishonored, and judgment was obtained upon it against Thomas, but that judgment was unsatisfied. The cause of action on the cheque was that Thomas had failed in his promise to pay the amount of the cheque on demand. It was said that there was a rule of law which prevented the plaintiff from suing the defendant upon the guarantee. That rule of law was mere technicality, and, unless he (the Master of the Rolls) was bound by some decision, he would

not apply it to this case. If the plaintiff had already sued Thomas upon the guarantee instead of upon the cheque, and recovered judgment against him, according to the rule of law laid down in *King* v. *Hoare*, and by the House of Lords in *Kendall* v. *Hamilton*, the plaintiff could not have sued the present defendant. Was there any case which said that when the judgment against the one joint contractor was not upon the guarantee, that rule of law applied? The case of *Drake* v. *Mitchell* was directly to the contrary, a case decided in 1803 by Lord Ellenborough and three other great judges. That case showed that the action must have been for the same particular cause of action. There had been no judgment recovered against Thomas in respect of the particular cause of action upon which the present action was brought against the defendant. The former cause of action was upon the promise by Thomas on the cheque to pay on demand. The present cause of action was upon the guarantee, and Thomas had never been sued in respect of that cause of action. No doubt the decision in *Cambefort* v. *Chapman* was contrary to this view. Which decision ought the Court to act upon? *Drake* v. *Mitchell* had been standing since 1803, and his judgment went with that case, and not with *Cambefort* v. *Chapman* and the earlier case had not been overruled or touched by *Kendall* v. *Hamilton*. The argument that the defendant could not have Thomas joined as a co-defendant in the present action, and that therefore the plaintiff ought not to be allowed to recover in the present action against the defendant, was not well-founded. The present action was upon the joint contract, and the defendant could have taken out a summons to have Thomas joined, but he did not do so. The case was within the decision in *Drake* v. *Mitchell* and the decision in *Cambefort* v. *Chapman* was wrong and must be overruled.

Ropes and Rigby, LL. JJ., delivered judgment to the same effect.

Court of Appeal, England

Wigram v. Buckley

The doctrine of *lis pendens* is inapplicable to *choses in action* and to all personal property other than chattels real.

The plaintiff, being first mortgagee of the book debts owing to the defendant, brought an action to enforce his mortgage, and obtained the appointment of a receiver and an injunction to restrain the defendant dealing with the book debts. This action (which was still pending) was registered as a *lis pendens*. Neither the plaintiff nor the receiver gave any notice whatever to the book debtors of the defendant, nor did the receiver take possession. Afterwards the defendant executed another mortgage of the book debts to B., who thereupon gave notice to the book debtors. B. had then no

notice of the mortgage to the plaintiff, or of the pending action, or of the appointment of a receiver, or of the injunction.

On seeking to enforce his mortgage, B. first became aware of these facts, and thereupon took out a summons in the action pending between the plaintiff and the defendant, claiming priority over the plaintiff's mortgage.

Held (1) that B., being the first to give notice to the book debtors, was *primâ facie* entitled to priority over the plaintiff; and (2) that such priority was not prevented by the fact of the registration of the plaintiff's action against the defendant as a *lis pendens*, nor by the appointment of a receiver and the granting of an injunction in that action, B. being no party to that action and having no notice of these facts.

The facts in this case are for our purpose sufficiently set out in the head note above. The judgment in the Lower Court delivered by Mr. Justice Chitty, was in favor of the plaintiff, the first assignee of the book debts, on the ground that because of his action and *lis pendens*, the subsequent assignee did not acquire any right to the property in litigation which would be prejudicial to the claim of the plaintiff. This decision was reversed on appeal, the view of the Court being set out in the judgment. This was delivered by Lindley, L.J., concurred in by the Chancellor, as follows:

It was not disputed that if the plaintiff's action had not been registered as a *lis pendens*, and if there had been no injunction or receiver, the banking corporation, having no notice of the plaintiff's title, would have acquired a better title than the plaintiffs to the debt assigned to them, although they were comprised in the plaintiff's earlier security. This was conceded on the authority of *Dearle v. Hall*, and is not open to controversy. But the plaintiffs contended, and the learned judge held, that, as the debts were the subjects of an action to recover them, and such action was registered as a *lis pendens* and a receiver of those debts had been appointed, and the defendants had been restrained from dealing with them, the title of the defendants could not be allowed to prevail over that of the plaintiffs. The doctrine involved in this decision is very far-reaching, and is of great practical importance to business men, and it requires very careful examination. For the reasons which I will state, I am clearly of opinion that the doctrine is unsound and cannot be supported.

The learned judge then discussed at length the practice with regard to *lis pendens* in respect to actions affecting real estate, and reaches the conclusion that so far as goods and chattels are concerned the doctrine that no title can be made to

them by an unsuccessful defendant, pending proceedings for their recovery, had no foundation in common law. He adds:

Any such doctrine would, if logically carried out, practically greatly embarrass ordinary trade, and be, to say the least, highly inconvenient to every one except plaintiffs claiming goods. If the doctrine of *lis pendens* were applicable to personal property generally, bankers and others could not safely make advances on ships or goods and that which represents them in commerce—*e.g.*, bills of lading, dock warrants, wharfinger's receipts, nor upon stock and share certificates, nor upon debentures or policies, nor even on negotiable securities, without making searches in the Judgment Registry Office. Such a doctrine would paralyze the trade of the country, and there is no warrant for it either in the statutes relating to *lis pendens* or in the decisions of the courts. The first statute on the subject is 2 & 3 Victoria, c. 11, s. 7. The language of this statute shows that the Legislature was dealing with "estates"—*i.e.*, land and land only. ** Again, reliance was placed on the practice of conveyancers who advise purchasers and mortgagees of personal estate to search the *lis pendens* registry. This is intelligible and reasonable enough. Conveyancers advise on abstracts of title and always try and keep their clients out of difficulties and possible litigation. If an abstract of title to personalty is laid before a conveyancer, he naturally advises an intending purchaser or mortgagee to make such inquiries as experience shows to be prudent in order to avoid trouble and vexation in the future. There is no case in the books which warrants the notion that the doctrine of *lis pendens* applies to personal property other than leasehold property. * * *

Upon principle and authority I am of opinion that the doctrine in question is inapplicable to personal property other than chattel interests in land. The inconvenience of extending the doctrine to ordinary personal property is so extremely serious, that it would, in my opinion, be very wrong so to extend it now for the first time, even if such extension could be justified by reasoning from well-established general propositions which might serve as premisses for arriving at such a conclusion.

But then it is said that in this case there was not only a registered *lis pendens*, but an injunction and a receiver. But of these the present appellants had no notice whatever when they advanced their money and obtained and perfected their security. Their title is in no way affected by those orders, nor have the appellants, the bank, been guilty of any contempt of court. The case would have been different if the bank had had notice of the order appointing the receiver or granting the injunction, or even if the receiver had given notice to the debtors to pay

their debts to him. Such a notice would have been equivalent to notice by the plaintiffs of the assignment to them.

Lastly, I am of opinion that, in addition to all other grounds, the *laches* of the plaintiffs disentitles them from invoking the aid of the court against the bank. The plaintiffs gave the debtors whose debts were assigned to them no notice of the assignment, nor of the action, nor of the injunction, nor of the appointment of the receiver. They left the defendants to carry on their business and deal with the debts owing to them as if no assignment of them had been made. The action was not prosecuted with diligence; no step was taken in it between July, 1892, and the end of November, 1893, by which time the bank had not only acquired and perfected their title, but had obtained judgment and sought to enforce it. This *laches* alone is fatal to the plaintiff's case, and would be so even if the doctrine of *lis pendens* could be invoked by them: see Sugden's Vendors and Purchasers, citing his decision in *Drew v. Lord Norbury*, 3 Jo. & Lat. 267. The appeal must be allowed, with costs here and below.

Davey, L.J., delivered judgment to the same effect, in which he specially dissents from the judgment of Lord Romilly in *Berry v. Gibbons*, that the doctrine of *lis pendens* applied to goods and chattels as well as land. In discussing the general aspect of the case, he remarked:

Is it reasonable or in accordance with the habits of business persons who deal in shares of joint-stock companies, bills of exchange, bills of lading, book debts, and other similar property, to search the register of *lis pendens* before concluding any contract of sale or mortgage, at the risk of losing their money, if the property in question is the subject of an action or of an order for an injunction or a receiver? Suppose an action to enforce a trust against the legal registered holder of shares in a railway company; he sells them, in breach, perhaps, of an injunction, and the purchaser (probably not the immediate purchaser from him) takes a transfer. Would it be right or just to hold that transferee subject to whatever equitable rights may ultimately be established in the action? Could the multifarious business of life be carried on on such terms? Real estate and leaseholds stand on a different footing, because they are the subject of title, and no prudent person in this country deals with them without at least some investigation of title, and this is known and recognized among business people.

QUEEN'S BENCH, ENGLAND

Daun & Vallentin *v.* Sherwood

When no payee is named in a promissory note, the note will be valid and payable to bearer if it contains a definite promise to pay, and is handed to another person.

This was an action brought by the plaintiffs, against the defendant, as one of the makers of a joint and several promissory note. The instrument upon which the action was brought was as follows:

London, 29th Oct., 1889 — Star and Garter Hotel, Kew-bridge

We separately and conjointly promise to pay one day after demand the sum of Five Hundred Pounds at the rate of Five pounds per centum per annum for value received.

It was contended upon the defendant's behalf that the instrument was not a promissory note as the payee was not named in it. The instrument had never been endorsed or negotiated in any way.

Mr. Justice Kennedy, in the course of his judgment, said: —The action is brought upon a document called a promissory note, signed by the defendant. The defendant raises, among others, the defence that the document is not a promissory note. The document was handed by the defendant to the plaintiffs' agent with the intention that it should operate as a promissory note. Is it a promissory note? It is objected that there is no specified person in the document, nor are the words "to bearer" in it. I do not think the absence of the words "to bearer" is fatal to the promissory note if, in fact, it is a promise to pay, and it is handed to another person. I think in such a case I ought to treat it as payable to bearer, because that is the natural legal effect.

QUEEN'S BENCH, ENGLAND

Criddle *v.* Scott

A bill of sale in which consideration is erroneously stated as *now* paid, is invalid.

In this case a bill of sale was executed, in which it was stated to be given to secure £30 now paid. The money was in fact not paid for three days afterwards, when the bill of sale was registered. In the County Court the security was declared to be bad, and the Court of Appeal upheld the view of the County Court judge.

Mr. Justice Wills said the consideration of the bill of sale was stated to be £30 now paid ; but dropping the word "now," the money was not "paid" at the time of execution. The money was in a bank from which the lender proposed to draw it out in three days. But there was nothing to prevent him from keeping it in his pocket for three months, and there was nothing to make it the money of the borrower at the time of the granting of the bill of sale. There was only a promise or agreement to pay it at some indefinite future time. The consideration, therefore, was not truly stated; and the learned Judge was right in holding the bill of sale bad.

Queen's Bench, England

T. and H. Greenwood Teale v. William Williams Brown & Co.

A banker with whom a customer has opened several accounts, has a lien upon all the accounts except (1) where there was a special agreement, (2) where specific property of a third person had been paid to the bank, and (3) where the banker had notice that when a customer drew upon a particular account it would be a fraud or breach of trust.

The plaintiffs in this case were solicitors, and the defendants bankers, both carrying on business in Leeds, and the claim was for £5,287 alleged to be moneys received by the defendants to the use of the plaintiffs. In 1887 the late Mr. Thomas Greenwood Teale, then a partner in the plaintiffs' firm, opened three accounts with the defendants, to be kept under the heads (1) "office account," (2) "deposit account," (3) "private account." At the time the accounts were opened the defendants were told by Mr. Teale that the deposit account would be mostly clients' money. On December 30, 1891, the deposit account was closed and transferred to the office account. From that time down to the final balance being struck in June, 1893, the plaintiffs paid clients' money into the office account alone, and during the whole course of dealing the office account was in credit and the private overdrawn. In June, 1893, the office account was in credit £5,287; but the debit balance on the private account far exceeded that sum, which the defendants now claimed they had a right to set off against the credit balance on the office account.

It was contended for the defendant bankers that it must be shown that the bankers were informed that Mr. Teale had no right to open the account with the bank in his own name, that it was money of clients and earmarked as such. If it were

trust money, the *cestui que trust* could not follow the money into the hands of the bank, unless he could show that it was earmarked as trust money. For the plaintiffs it was argued that when a solicitor opened several accounts, it must be assumed that one of them was opened for the purpose of paying clients money, and that the heading of the account should have given the defendants warning of the nature of the moneys held.

Mr. Justice Wright, in giving judgment, said, as he understood the law, a banker with whom a customer opened several accounts had lien upon all the accounts except (1) where there was a special agreement; (2) where specific property of a third person had been paid to the bank; (3) where the bankers had notice that when a customer drew upon a particular account it would be a fraud or breach of trust. In this case there was no special agreement. The correspondence showed that the bank and Mr. T. Greenwood Teale treated the account as one on which the bank were entitled to a lien. With regard to the third exception, such a case could not arise where it was merely the office account. It would be a strange thing if a bank was called upon to assume that moneys standing to an office account were affected with a trust. There was nothing to put the bank upon inquiry. The bank was justified in treating the accounts as mixed accounts, as having been opened by Mr. T. Greenwood Teale personally, and that he had authority from his partners to deal with them. The bank, in claiming a lien upon the office account, were treating Mr. Teale as having a right to charge that account. There must, therefore, be judgment for the defendants, with costs.

Supreme Court of Canada

MacArthur *v.* McDowall

An agreement between the maker and payee of a promissory note that it shall only be used for a particular purpose constitutes an equity which, if the note is used in violation of that agreement, attaches to it in the hands of a *bonâ fide* holder for value who takes it after dishonor. Strong, C. J., and Taschereau, J., dissenting.

Appeal from the Supreme Court of the North-West Territories. The facts of the case are these:—MacDowall had given Knowles, a private banker, his accommodation note, which the trial judge found was given on the express understanding that it was only to be used to meet any demands for deposits, and then discounted only at the Bank of Ottawa.

It was, however, deposited, with other notes, as security for

advances from the Commercial Bank of Manitoba. Knowles made an assignment to one Coombs for the benefit of his creditors; subsequently Knowles negotiated with the Bank and Coombs for the purchase of all the notes held by the Bank, which purchase was carried out between Coombs as assignee and MacArthur, not between MacArthur and the Bank, although the notes were never out of their possession. The Bank acquiesced in the arrangement; on the assignee's instructions they held the notes for MacArthur's account, and made him an advance thereon, with which his cheque in favor of Coombs for the value of the notes was covered.

It was held that the effect of this dealing was that the advances of the Bank to Knowles were paid off, that the note made by McDowall then came back to Knowles or his assignee subject to the special agreement above referred to, and that MacArthur did not acquire a good title to it by virtue of the transfer from the assignee.

The Chief Justice dissented from the judgment of the Court on the ground that MacArthur was entitled to receive the note with whatever title the Bank had, as in effect he had paid his money to the Bank:

Assuming as I must on the findings of the Court below that the note was given on the particular agreement which the respondent states, it is clear that the appellant had no notice, and I do not consider a holder for value who takes a note signed and delivered by the maker upon such an agreement as this, in good faith, without notice, though overdue, can be affected by any collateral agreement controlling the use which was to be made of the note, though it may have been negotiated in fraud and in violation of that agreement. It appears to me that the appellant was not entitled to recover the full amount of the note, but was entitled to stand in place of the bank who were paid off with his money, that is, he is entitled to be subrogated to the rights of the holder from whom he acquired title. * *

It is pretended, however, that the appellant acquired his title to the note not from the Bank, but from Coombs, the assignee in insolvency of Knowles. The evidence establishes directly the contrary of this proposition. Coombs was, it is true, an assenting party to the arrangement in pursuance of which the Bank transferred the notes to the appellant, just as a mortgagor is, on a transfer of a mortgage property, made for precaution an assenting party to the transfer, but beyond this

the transfer was not a transaction between Coombs and the appellant, but between the latter and the Bank. The appellant's money paid off the Bank and the securities were handed over directly by the Bank to the appellant. Neither the law, business usages nor common sense authorize us to characterize such a transaction as a payment of the note by the maker and its re-issue by him. The circumstance that the draft and cheque for the amount paid to the Bank passed through Coombs' hands can make no difference; it is clear that the appellant intended to acquire, and supposed, as he had a right to do, that he was acquiring, the title from the Bank directly to himself. I am therefore of opinion that by force of the explicit statutory provisions I have referred to, the appellant was entitled to recover the amount for which the Bank, as pledgee of the note, could have maintained an action against the respondent.

After discussing the legal principles involved the learned Chief Justice adds:

If therefore the evidence fails to establish, as I think it does, that there was a payment by or on behalf of the maker, and a re-issue of the note, the law clearly entitles the appellant to recover the amount for which the Bank as pledgee was entitled to a lien on it. I do not refer the appellant's title to recover to the general doctrine of subrogation merely, but to those independent rules of the law merchant which I have pointed out, rules founded in commercial convenience, and necessary, not only to protect holders in good faith of negotiable paper, but also to ensure the negotiability of such securities.

Gwynne, J.—I am of opinion that this appeal must be dismissed. The sole question in the case really is whether the plaintiff MacArthur purchased the note sued upon from the assignee of the insolvent estate of Knowles, the payee of the note, or from the Commercial Bank of Manitoba. If from the assignee of Knowles the action cannot be maintained, for there can be no doubt that the note was given to Knowles under such circumstances that he never could have maintained an action upon it against the defendant, and the plaintiff MacArthur became purchaser of it after it had become due. I cannot entertain a doubt that the transaction was one of purchase by the plaintiff MacArthur from the assignee of Knowles of a whole batch of notes, including the one sued upon, as part of the estate of the insolvent Knowles. MacArthur, it is true, knew that the draft which he gave to the assignee of Knowles for all the notes which he purchased would go to the Bank, but that was necessary to enable MacArthur's title as purchaser from the assignee of a portion of the notes which were held by the

Bank to be made perfect. The oral and documentary evidence is, to my mind, absolutely conclusive upon the question.

The learned judge discusses the facts at full length, bringing out the numerous references in all the negotiations to the fact that MacArthur was dealing only with the assignee for the purchase of the notes, and concludes thus:

Now upon this evidence there cannot be entertained a doubt that the transaction whereby MacArthur acquired the note sued upon was one of purchase from the assignee of the Knowles estate of the whole batch of notes, amounting in the whole to $16,086 and including the note sued upon, as one purchase for the sum of $13,673.56, for which he gave to the assignee of Knowles his draft upon the Commercial Bank. Upon that draft being accepted by the Bank, and the amount being by them applied to the credit of their claim against the estate of Knowles, the Bank ceased to have any claim or title to or interest in the note which became the absolute property of MacArthur, but his title, as the note was overdue when purchased by him from the assignee of the Knowles estate, was only such as could be acquired by purchase of a *chose in action* belonging to the estate of Knowles in the hands of the assignee of that estate for sale, and as the transaction between Knowles and the defendant upon which the note was made by the defendant was such that Knowles could not have recovered against the defendant in an action brought against him, so neither can MacArthur, and the appeal must be dismissed with costs.

Patterson, J., also delivered judgment affirming the decision of the trial court.

Chancery Division, H. C. J., Ontario

Henderson *v.* Bank of Hamilton

The damages recoverable by a non-trading depositor in the savings bank department of a bank, who has made his deposit subject to special terms, on the wrongful refusal of the bank to pay it to him personally, are limited to the interest on the money.

A bank having received a deposit subject to certain notice of withdrawal, if required, cannot set up as a defence to an action for the deposit the absence of such notice, unless the refusal to pay was based on that ground.

The defendants having paid into Court twenty cents less than the correct amount due by them, the plaintiff was held entitled to full costs.

This was an action tried before Street, J., at Stratford, in October, 1894, for the recovery of moneys on deposit, and for damages for refusal to pay the same. The facts of the case are

set out in the judgment, which was in favor of the plaintiff, as follows:

On December 20th, 1893, the plaintiff had at his credit in respect of deposits in the savings bank department of the defendants the sum of $657.34, all of which was subject to certain special terms, amongst which were the following:

"*** The bank reserves the right to require fifteen days' notice when all or any portion of a deposit is withdrawn."

On December 20th, 1893, the plaintiff personally applied to the defendants' manager to withdraw $100 of the moneys at his credit. The manager refused, upon instructions from the head office, to allow any part of the money to be withdrawn, claiming a lien upon it for some costs of a litigation then in progress between the plaintiff and the bank in connection with another matter. The plaintiff required the $100 in order that he might lend it to a third person, and he so informed the manager at the time. Failing to get it from the manager he took a train to a brother of his living at Blyth, and paid $1.10 railway fare, and procured the amount. He made a further demand on the bank for the $100 on December 27th, when it was paid to him. The plaintiff on January 4th, 1894, demanded the remainder of his money, and was refused, the bank claiming to be entitled to hold it as security for the costs above mentioned, and this action was brought on January 8th, 1894, to recover it. In it the plaintiff claims his money and damages for the trouble, loss and disgrace to which he alleges he has been put by the defendants' refusal to pay him his money. After the commencement of the action, namely, on February 3rd, 1894, the plaintiff gave the defendants an order on his account for $236.96, being the amount at which certain costs payable to them by him had been taxed, and on the same day he gave security for $235.54, the amount of certain other costs which had been taxed against him on January 9th, 1894, pending an appeal by him to the Court of Appeal.

On February 12th, 1894, the defendants filed their statement of defence, setting up the terms of the deposit, and brought into Court $322.21 as being the balance of the deposit account, with interest to date, and $3.66 for other damages, and offered to pay the plaintiff's costs. The plaintiff joined issue, and replied that the defendants never put their refusal to pay the money upon the ground that they were entitled to notice, nor did they notify the plaintiff that they would require the notice, and that in any event more than fifteen days had elapsed between the first demand and the issuing of the writ. * * *

A trader who gives a cheque to his creditor upon a bank at which he has funds, is almost necessarily injured in his credit by the dishonor of the cheque, for it is a slur upon it of a

similar character to that which is caused by the utterance of a slander throwing doubt upon his solvency. In both cases he is allowed to recover substantial damages without proving any special damage. But a clergyman or other non-trader who has opened a savings bank account with a bank, and who goes to withdraw a part of it, is put, by the refusal of the banker, to no greater or other loss than is experienced by any ordinary creditor of any ordinary debtor when the debtor answers the creditor's demand by saying that he cannot or he will not pay. The damages in the one case as in the other must be limited to the interest on the money.

The defendants, however, admittedly had in their hands on January 4th, 1894, when the plaintiff demanded it, a sum of $320.38 beyond the $236.96 at which the defendants' costs of appeal in the other action had been taxed. It is true that they had judgment against the plaintiff for a further sum for costs in the Divisional Court which had not at that time been taxed, but they had no right at the time to set off these costs against the plaintiff's demand, because the amount had not then been ascertained, and they had no right at the time of the trial to set them off because payment of them had after taxation been suspended by the giving of security in the Court of Appeal for their payment. The plaintiff then when he made his demand, when he issued his writ, and when the action came on for trial, was entitled to payment of this $320.38, with interest from the time of his demand on January 4th, 1894. The defendants might, upon his making his demand, have required fifteen days' notice, but they did not do so—their refusal to pay was put upon other grounds, and as they have only reserved in their conditions a right to require it, which they have not exercised, they are in the same position as if they had reserved no such right. At the date when the defendants paid into Court $322.21, namely, on February 12th, 1894, as being in full satisfaction of the plaintiff's deposit and interest, he was entitled to $320.38, with interest from January 4th, 1894, at 6 per cent., that is thirty-nine days, and the interest would amount to $2.05, making the plaintiff's proper claim $322.43, or 22c. more than the amount paid in. The plaintiff did not take out the amount, but went on with his action. Both parties are standing on their strict rights, and the defendants cannot complain if the plaintiff has refused to take an offer which is a tittle less than he was entitled to recover.

I think the plaintiff should recover $320.38, with interest from January 4th, 1894, and his costs of an action to recover that sum, and that the claim to unliquidated damages should be dismissed with costs, which are to be set off. Money in Court to be applied *pro tanto* in payment of plaintiff's claim.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Quarter ending Sept.:	1893		1894	
Free	$12,768		$12,275	
Dutiable	19,089		15,288	
	31,857		27,563	
Bullion and Coin	2,404	$34,261	3,376	$30,939
Quarter ending Dec'r:				
Free	$12,375		$10,685	
Dutiable	13,756		12,759	
	$26,131		$23,444	
Bullion and Coin	501	$26,632	189	$23,633
Total six months		$60,893		$54,572

EXPORTS

Quarter ending Sept.:				
Products of the Mine	$ 1,428		$ 1,515	
" " Fisheries	3,986		3,970	
" " Forest	10,588		9,529	
Animals and Produce	11,088		11,647	
Agricultural Produce	3,717		2,588	
Manufactures	1,941		1,925	
Miscellaneous	54		46	
	$32,802		$31,222	
Bullion and Coin	717	$33,519	449	$31,671
Quarter ending Dec'r:				
Products of the Mine	$ 1,502		$ 1,617	
" " Fisheries	3,737		3,493	
" " Forest	6,823		6,341	
Animals and Produce	11,640		12,960	
Agricultural Produce	8,782		9,608	
Manufactures	2,207		1,995	
Miscellaneous	46		34	
	$34,737		$36,048	
Bullion and Coin	292	$35,029	826	$36,874
Total six months		$68 548		$68,545

SUMMARY (actual figures)

Total Imports for six months, other than bullion and coin	$57,988,305	$51,007,489
Total Exports for six months, other than bullion and coin	67,540,439	67,268,623
Excess of Exports	$ 9,552,134	$16,261,134
Net Imports Bullion and Coin	1,896,159	2,289,997

STATEMENT OF BANKS acting under Dominion Government charter for the month ending 31st Dec., 1894, with comparisons:

LIABILITIES

	Dec., 1894	Nov., 1894	Dec., 1893
Capital authorized	$ 73,458,685	$ 73,458,685	$ 75,458,685
Capital paid up	62,510,552	61,669,355	62,099,243
Reserve Fund	27,470,026	27,287,526	26,459,815
Notes in circulation	$ 32,375,620	$33,076,868	$ 34,418,936
Dominion and Provincial Government deposits	7,684,148	5,134,883	6,377,276
Public deposits on demand	68,917,542	69,364,659	62,594,075
Public deposits after notice	113,163,127	113,842,322	107,885,149
Bank loans or deposits from other banks secured	6,272	27,820	.....
Bank loans or deposits from other banks unsecured	2,534,463	2,947,418	2,421,394
Due other banks in Canada in daily exchanges	158,380	158,087	200,476
Due other banks in foreign countries	166,115	156,752	166,966
Due other banks in Great Britain	3,531,682	3,089,477	4,151,804
Other liabilities	368,128	799,520	446,796
Total liabilities	$228,905,558	$228,597,876	$218,662,965

ASSETS

Specie	$ 8,018,151	$ 7,958,432	$ 7,691,331
Dominion notes	15,209,730	14,790,407	13,287,292
Deposits to secure note circulation	1,810,736	1,810,736	1,818,571
Notes and cheques of other banks	8,614,221	7,343,825	8,323,753
Loans to other banks secured	6,272	27,820	.....
Deposits made with other banks	3,065,345	3,789,942	3,630,883
Due from other banks in foreign countries	25,299,986	25,274,625	18,229,248
Due from other banks in Great Britain	3,097,628	4,401,819	3,540,220
Dominion Government debentures or stock	3,124,594	3,124,844	3,191,383
Public municipal and railway securities	18,352,643	18,508,488	15,674,536
Call loans on bonds and stocks	17,791,638	17,722,565	14,236,629

	Dec., 1894	Nov., 1894	Dec., 1893
Loans to Dominion and Provincial Governments	$ 1,424,196	$ 1,296,720	$ 2,263,712
Current loans and discounts	195,836,141	195,823,973	200,397,498
Due from other banks in Canada in daily exchanges	107,672	146,324	173,697
Overdue debts	3,425,752	3,457,178	3,040,078
Real estate	919,938	893,260	834,480
Mortgages on real estate sold	575,679	603,895	636,640
Bank premises	5,480,573	5,459,813	5,132,156
Other assets	1,750,899	1,741,257	1,129,385
Total assets	$313,911,995	$314,176,123	$304,231,696
Average amount of specie held during the month	$7,723,589	$7,748,339	$7,511,931
Average Dominion notes held during the month	14,765,140	15,164,916	12,901,539
Loans to directors or their firms	8,034,039	7,978,669	8,380,891
Greatest amount of notes in circulation during month	34,450,532	35,640,491	36,850,205

STATEMENT OF BANKS acting under Dominion Government charter for the month ending 31st Jan., 1895, with comparisons:

LIABILITIES

	Jan., 1895	Dec., 1894	Jan., 1894
Capital authorized	$ 73,458,685	$ 73,458,685	$ 75,458,685
Capital paid up	62,510,552	62,510,552	62,103,027
Reserve Fund	27,545,341	27,470,026	26,580,282
Notes in circulation	$ 27,545,341	$ 32,375,620	$ 35,571,375
Dominion and Provincial Government deposits	8,502,928	7,684,148	6,821,516
Public deposits on demand	66,601,119	68,917,542	60,152,080
Public deposits after notice	114,269,862	113,163,127	108,966,924
Bank loans or deposits from other banks secured	69,103	6,272	.....
Bank loans or deposits from other banks unsecured	3,384,740	2,534,463	2,361,656
Due other banks in Canada in daily exchanges	151,324	158,380	271,184

	Jan., 1895	Dec., 1894	Jan., 1894
Due other banks in foreign countries	$ 153,708	$166,115	$188,480
Due other banks in Great Britain	3,627,031	3,531,682	4,174,864
Other liabilities	268,431	368,128	296,245
Total liabilities	$225,945,606	$228,905,558	$213,804,414
ASSETS			
Specie	$ 8,466,410	$ 8,018,151	$ 7,400,013
Dominion notes	15,579,051	15,209,730	13,918,640
Deposits to secure note circulation	1,810,736	1,810,736	1,818,571
Notes and cheques of other banks	6,935,631	8,614,221	6,520,505
Loans to other banks secured	69,103	6,272	.....
Deposits made with other banks	3,653,529	3,065,345	3,082,626
Due from other banks in foreign countries	23,949,166	25,299,986	17,570,408
Due from other banks in Great Britain	3,452,532	3,097,628	3,356,703
Dominion Government debentures or stock	3,096,674	3,124,594	3,188,463
Public municipal and railway securities	18,238,007	18,352,643	17,339,570
Call loans on bonds and stocks	18,086,905	17,791,638	14,013,729
Loans to Dominion and Provincial Governments	1,100,140	1,424,196	1,974,925
Current loans and discounts	193,754,865	195,836,141	198,037,104
Due from other banks in Canada in daily exchanges	96,441	107,672	67,003
Overdue debts	3,406,348	3,425,752	3,167,026
Real estate	927,269	919,938	798,381
Mortgages on real estate sold	575,028	575,679	641,712
Bank premises	5,486,265	5,480,573	5,200,167
Other assets	2,058,462	1,750,899	1,461,771
Total assets	$310,742,757	$313,911,995	$299,557,507
Average amount of specie held during the month	$ 8,358,817	$ 7,723,589	$ 7,348,904
Average Dominion notes held during the month	15,102,715	14,765,140	12,496,372
Loans to directors or their firms	7,734,021	8,034,039	8,245,956
Greatest amount of notes in circulation during month	32,146,473	34,450,532	34,166,689

STATEMENT OF BANKS acting under Dominion Government charter for the month ending 28th Feb., 1895, with comparisons :

LIABILITIES

	Feb., 1895	Jan., 1895	Feb., 1894
Capital authorized	$ 73,458,685	$73,458,685	$75,458,685
Capital paid up	62,510,552	62,510,552	62,105,409
Reserve Fund	27,545,341	27,545,341	26,655,024
Notes in circulation	$ 28,815,434	$ 27,545,341	$ 30,603,267
Dominion and Provincial Government deposits	8,754,475	8,502,928	6,533,882
Public deposits on demand	64,555,403	66,601,119	59,561,162
Public deposits after notice	115,083,710	114,269,862	108,570,761
Bank loans or deposits from other banks secured	67,781	69,103	.....
Bank loans or deposits from other banks unsecured	2,999,779	3,384,740	2,370,423
Due other banks in Canada in daily exchanges	234,293	151,324	201,277
Due other banks in foreign countries	156,427	153,708	156,572
Due other banks in Great Britain	3,691,063	3,627,031	4,666,497
Other liabilities	781,024	268,431	276,704
Total liabilities	$225,139,473	$225,945,606	$212,940,625

ASSETS

Specie	$ 8,058,278	$ 8,466,410	7,521,281
Dominion notes	15,863,550	15,579,051	13,951,326
Deposits to secure note circulation	1,812,301	1,810,736	1,818,571
Notes and cheques of other banks	5,865,781	6,935,631	6,385,758
Loans to other banks secured	217,728	69,103	.....
Deposits made with other banks.	3,305,977	3,653,529	2,800,550
Due from other banks in foreign countries	23,508,848	23,949,166	15,469,984
Due from other banks in Great Britain	3,106,880	3,452,532	2,892,089
Dominion Government debentures or stock	3,096,917	3,096,674	3,188,463
Public municipal and railway securities	18,477,478	18,238,007	17,696,817
Call loans on bonds and stocks	18,054,628	18,086,905	14,780,002

	Feb , 1895	Jan., 1895	Feb., 1894
Loans to Dominion and Provincial Governments.....	$ 1,277,675	$ 1,100,140	$ 1,583,244
Current loans and discounts ..	195,622,126	193,754,865	199,523,609
Due from other banks in Canada in daily exchanges.....	169,637	96,441	125,103
Overdue debts	3,216,112	3,406,348	3,006,637
Real estate	1,051,068	927,269	818,119
Mortgages on real estate sold..	564,182	575,028	629,959
Bank premises	5,482,995	5,486,265	5,231,824
Other assets	1,932,393	2,058,462	1,628,895
Total assets.....	$310,684,728	$310,742,757	$299,052,441
Average amount of specie held during the month	8,189,027	8,358,817	7,387,537
Average Dominion notes held during the month	15,671,774	15,102,715	13,667,880
Loans to directors or their firms	7,618,378	7,734,021	8,311,889
Greatest amount of notes in circulation during month	29,875,664	32,146,473	31,523,316

Monthly Totals of Bank Clearings at the cities of Montreal, Toronto, Halifax, Hamilton and Winnipeg

(coo omitted)

	Montreal		*Toronto		Halifax		Hamilton		Winnipeg	
	1893-4	1894-5	1893-4	1894-5	1893-4	1894-5	1893-4	1894-5	1893-4	1894-5
	$	$	$	$	$	$	$	$	$	$
March ...	50,791	45,715	26,282	22,893	4,759	4,744	3,124	2,739		3,510
April	42,274	40,942	26,974	21,473	4,906	4,467	3,122	3,078		2,958
May	49,629	45,585	25,747	24,173	5,334	4,871	3,510	2,977		3,455
June	47,244	44,704	25,823	21,965	5,105	4,471	3,204	2,753		3,329
July.....	49,301	45,223	27,043	23,763	5,510	5,492	3,274	2,682		3,570
August ..	47,414	44,383	22,311	21,779	5,414	5,407	2,847	2,546		3,695
September	45,767	46,855	24,505	20,078	4,993	5,062	3,091	2,686		3,975
October ..	47,266	55,730	25,264	25,750	5,489	5,452	3,227	3,155		6,786
November	47,291	51,838	25,997	25,214	5,158	5,021	3,150	3,093		6,607
December	45,108	47,351	25,398	25,700	4,884	4,874	3,747	2,834	4,970	5,199
January ..	42,796	48,376	27,267	27,961	4,931	4,997	3,087	2,831	4,318	4,067
February	35,478	37,793	19,209	20,493	3,981	4,118	2,671	2,461	3,132	2,721
	550,365	554,501	301,824	281,248	60,467	58,982	38,061	33,841	12,421	49,878

*Note.—These totals do not include the Bank of Toronto.