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JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

JANUARY—1900

PROCEEDINGS OF THE EIGHTH ANNUAL MEETING OF THE CANADIAN BANKERS' ASSOCIATION

THE eighth annual meeting of the Association was held in the Windsor Hotel, in the City of Montreal, on Wednesday and Thursday, the 25th and 26th days of October, 1899.

The chair was taken by the President, Mr. Thomas McDougall.

The following members were present:

BANK	REPRESENTED BY
The Bank of Montreal	A. Macnider
" Bank of Toronto	D. Coulson
" Imperial Bank of Canada	D. R. Wilkie
" Ontario Bank	Wm. H. Smith
" Dominion Bank	T. G. Brough
" Bank of Ottawa	R. B. Kesson
" Quebec Bank	Thos. McDougall
" Bank of British North America	H. Stikeman
" Canadian Bank of Commerce	B. E. Walker
" Merchants Bank of Canada	Thomas Fyshe

The Union Bank of Canada	Geo. H. Balfour
" Merchants Bank of Halifax	E. L. Pease
" Traders Bank of Canada	G. Strathy
" Western Bank of Canada	T. H. McMillan
" Banque d'Hochelaga	M. J. A. Prendergast
" Standard Bank of Canada	G. P. Reid
" Eastern Townships Bank	W. Farwell
" Bank of New Brunswick	G. Schofield
" People's Bank of Halifax	D. R. Clarke
" Commercial Bank of Windsor	A. E. Lawson

The following associates were also present and registered during the various sessions: George Hague, J. H. Plummer, C. Bogart, J. A. Richardson, A. B. VanFelson, G. deC. O'Grady, D. Hughes Charles, B. Austin, F. B. McCurdy, C. White, E. A. McCurdy, F. H. Mathewson, Sir Chas. Forrest (Bart). There were also a considerable number present who neglected to register.

Z. A. Lash, Q.C., counsel for the Association, was present.

The President called the meeting to order at noon and extended a hearty welcome to the visiting members.

MR. FARWELL made reference to the events in South Africa, and in response the meeting rose and sang the national anthem with enthusiasm.

The minutes of last annual meeting, as of record in Vol. VI, No. 2, of the Journal of the Canadian Bankers' Association, were taken as read, and confirmed, on motion of MR. WALKER, seconded by MR. HAGUE.

The Secretary then read the report of the Executive Council as follows:

REPORT OF THE EXECUTIVE COUNCIL

To the Members and Associates:

The Executive Council beg to report as follows concerning the work of the Association since the last annual meeting on October 26th and 27th, 1898.

Three meetings of Council have been held, in addition to the final meeting this morning.

LEGISLATION

There was legislation of interest to the Association in the Dominion Parliament and the legislatures of Quebec, Ontario and Prince Edward Island.

In the Dominion House an Act was passed as an amendment to the Bank Act, authorizing the issue of notes by Canadian Banks in other British Colonies and possessions, the total amount of the circulation issued being determined by clause 51 of the Bank Act.

During 1897 the Council then in office urged upon the Postmaster-General the desirability of so amending the Post Office Act as to permit the insurance of money parcels carried by registered mail. No action was taken in the matter by the Minister until last session, when an Act was passed amending the Post Office Act in this direction. It is with regret, however, that your Council has to announce that the amendment does not meet the requirements of the Association, as the maximum amount to be insured under the Act is twenty-five dollars.

A Usury Bill was introduced in the Dominion House but was withdrawn, it being found that it would not accomplish its object without exposing legitimate and honourable transactions to undue restraint under certain possible conditions.

In the legislature of the Province of Quebec the bill to amend and consolidate the Charter of Montreal caused your Council not a little trouble and anxiety in connection with unfair taxes which it was sought to impose upon banks doing business in the city. Your Council succeeded in having the objectionable clauses removed from the Bill.

In the legislature of Ontario a revenue Bill was introduced seriously affecting banks, in opposing which your Council was not so fortunate. In the interest of banks having their head offices in Provinces other than Ontario your Council is of opinion that an attempt should again be made to secure the modification of the Act, so as to bear less heavily upon such banks.

At the last annual meeting your Council was desired to prepare a memorial to the Governor-General in Council praying for the disallowance of the Prince Edward Island Evidence Act. The memorial was duly prepared by our solicitor and transmitted through the Hon. Minister of Justice. Your Council is pleased to state that the Province has, on its own initiative, amended the Act so as to remove the objectionable feature.

By the original Act any creditor selling goods through a commercial traveller in Prince Edward Island could not sue for payment of the debt, nor could suit be entered for payment of promissory notes or acceptances given in payment of the debt without giving proof that the commercial traveller had a license from the Province at the time the sale was made. The amendment permits the license to be taken out any time before suit is entered.

INSOLVENCY

Preparations were made during the session of the Dominion Parliament to bring forward once more the Fortin Insolvency Bill. Your Council again considered the Bill very carefully, and the affiliated sections of the Boards of Trade were enabled to come to an agreement with the Boards of Trade of Montreal and Toronto satisfactory to your Council and conserving the interests of the banks. The Bill, however, was not brought forward.

A CANADIAN MINT

It having appeared that a resolution favouring the establishment of a mint in Canada was likely to be introduced into the Dominion Parliament last session, your Council addressed a strong memorial to the Governor-General in Council opposing the proposition as both unwise and unnecessary.

BANK MONEY ORDERS

When the system of Bank Money Orders was being discussed, it was suggested by several of the members of the Association that the issuing bank should retain the entire commission. During the past year, after practical experience with the money orders, this opinion became stronger and your Council issued a circular recommending the adoption of the plan instead of the issuing and cashing banks sharing the commission equally. With the exception of three banks this recommendation was adopted, and the change seems to be working satisfactorily.

CHEQUES PAYABLE TO ORDER

In a circular issued 4th May last your Council recommended the discouragement of the practice of making cheques payable to order when the payee is not a firm or individual or corporation capable of giving an endorsement, but an abstraction such as "Bills Payable." From the replies received it is apparent that all the members of the Association are not of one mind on the question, but several have adopted the policy recommended.

BANK TROUBLES

Your Council regret to announce that La Banque Ville Marie, suspended on 25th July last, is now being liquidated under the Winding-Up Act. Your President, acting with the advice of other members of the Council and with the consent of the bank officials, appointed Messrs. F. W. Taylor of the Bank of Montreal, and W. H. Nowers of the Merchants Bank of Canada, to investigate and report upon the circulation account of the bank.

The Banque Jacques Cartier suspended on the 31st July last, but its resumption is announced for to-day.

THE BANK ACT

The Committee appointed by the Executive Council at its meeting of August 16th last to consider the renewal of the bank charters, viz: Messrs. Clouston, Walker, Thomas, Stikeman, Schofield, Wilkie, and Gillespie, will meet to organize in room 96 of the Windsor Hotel this evening at eight o'clock, and all general managers are requested to be present with a view of offering suggestions to the Committee.

INCORPORATION

With the view of extending the sphere of action of the Association it has been decided by your Council to apply for a charter of incorporation. The committee appointed to consider the Bank Act has been given charge of this matter also.

RELATIONS OF THE SUB-SECTIONS TO THE ASSOCIATION

Your Council regret to announce the formal withdrawal of the Bank of Nova Scotia from the Association on 21st September last on account of a misunderstanding between that Bank and the Winnipeg section. Your Council exerted its powers in the effort to bring about harmony, but without success.

In view of this unfortunate misunderstanding, and to prevent the possibility of its recurrence, your Council appointed the following gentlemen a committee to determine the relations between the sections and the Association, and to define the powers of the former, viz: Messrs. McDougall, Walker, and Fyshe. This Committee will meet for organization to-morrow morning at 10.30 in room 96.

BANK BURGLARY AND FORGERIES

The frequency of burglary this past year calls for discussion in regard to the best means of bank protection, either electrical or otherwise, and your Council think it might be well for the Association to offer a prize for the cheapest and best method of electrical protection.

The attention of the Council having been drawn to a defect in the law of the Province of Quebec in regard to forgeries, the matter is recommended to be taken up by the incoming Council.

It was moved by MR. MACNIDER, seconded by MR. STRATHY, and unanimously carried, that the report of the Executive Council, as just read, be and is hereby accepted.

FINANCIAL STATEMENT

The Secretary-Treasurer then submitted the financial statement, duly audited, for the year ending June 30th, 1899:

GENERAL STATEMENT

Charges	$4,461 81	Balance June 30th, 1898	$ 165 67
JOURNAL expenditure	1,287 75	Revenue from members	3,610 00
Bank interest	51 35	Revenue from associates	1,288 00
Office furniture	224 70		
		Due bank $1,252 85	
		Less cash 290 91	961 94
	$6,025 61		$6,025 61

GROSS REVENUE ACCOUNT

Charges	$4,461 81	Balance June 30th, 1898	$ 165 67
Net JOURNAL expenditure	1,287 75	Revenue from members	3,610 00
Bank interest	51 35	Revenue from associates	1,288 00
		Balance	737 24
	$5,800 91		$5,800 91

On motion of MR. MACNIDER, seconded by MR. STRATHY, the statement was adopted.

SCRUTINEERS

Messrs. Richardson and Kesson were appointed scrutineers for the taking of votes on any question which might require a ballot.

ESSAY COMPETITION

The Secretary then read the report of the Prize Essay Committee. Their award was as follows:

SENIOR COMPETITION

First Prize.—T. G. McMaster, Canadian Bank of Commerce.

Second Prize.—A. Gordon Tait, Merchants Bank of Halifax.

JUNIOR COMPETITION

First Prize.—H. G. P. Deans, Bank of British North America.

Second Prize.—B. V. Gomery, Molsons Bank.

REPORTS OF SUB-SECTIONS

The report of the Halifax Bankers' Association was presented by Mr. McCurdy as under:

HALIFAX BANKERS' ASSOCIATION

The Halifax Bankers' Association was organized early in March of this year with President, Vice-President, Secretary-Treasurer and various committees.

The object of the society was the association of senior and junior bank officers, with the diffusion of knowledge and experience, essential to the development of efficient bank officers.

The term, as the summer months set in, was necessarily short and consisted of six fortnightly meetings.

The work of the term was:

The opening address.

A debate.

A study of "The Bank Act."

Seven papers on as many subjects of interest to a society of bankers with discussions arising from them.

A formal summing up of the work of the session.

There was a membership of thirty-five, ascertained on a footing of payment of fees. Maximum attendance 28, minimum 14.

The first meeting of the ensuing term is at the close of the present month of October, when with the election of new officers it is hoped the work of the society will not only be continued, but be carried on with greater vigor.

It is right to say that so far from sports and games being deterrents to progress, the Association found those members who were most active in these matters were also ready and earnest in study and debate.

A. ALLAN, President
H. W. JUBIEN, Secretary

The Secretary read reports of the sub-sections as follows:

BANKERS' SECTION OF THE MONTREAL BOARD OF TRADE

The Bankers' Section of the Montreal Board of Trade has much pleasure in submitting its first report since affiliation.

At the annual meeting of the Section, held on the 11th January last, it was decided to become affiliated with the Association in order to be in line with the various sections throughout the Dominion.

The Section has since received the intimation that the Association has formed a committee to determine the relations between the Association and the affiliated sections. It has felt in the past that the absence of well defined rules for the guidance of sections in their relations to the Association exposed the organizations to friction, and in framing its own by-laws, even before affiliation was anticipated, it did so in such manner that all important questions referred to the general managers were in reality referred to the Executive Council, on which it has ever had a large representation.

During the past year the Section took part with the Association in opposing the unjust tax clauses aimed against banks, as proposed in the Draft Bill for the amending and consolidation of the charter of Montreal. The first move in this matter was made through the Section, and when the Association decided to deal with the question the Section loyally supported your President and Council, and is pleased to have had a share in the success which attended these efforts.

The object of the Section is to obtain conformity of action amongst bankers in Montreal on matters pertaining to the interests of banking, particularly local matters. With this object, the Section has twice during the past year accomplished through its proper officers certain agreements regarding the rate of interest upon call loans, which in the past were wont to be brought about by individual action with consequent loss of time, much trouble and occasional annoyance. It is hoped that local bankers will avail themselves still more of the Section in many matters requiring solution, such as uniformity of warehouse receipt forms, inland and ocean shipping bills, deposits of married women and minors, endorsement by married women under the Quebec code, which is the subject of considerable courtesy, as well as other matters such as the minor profits of banking.

The Montreal Clearing House is not as yet affiliated with the Section, but its officers are practically the same, and the constitution of the Section provides for affiliation if desired. In this connection the Section is pleased to be able to report an unprecedented increase in the volume of clearings during the past few years, and confidently anticipates that the total clearings of the present year will approximate eight hundred millions of dollars, a figure that will place it on a par with last year's record of San Francisco, the eighth among the clearing house cities of America, Montreal being the ninth.

The proceedings of the Clearing House during the past two years have been remarkably free from errors on the part of the clearing banks. It has not been found necessary to call a meeting of the committee during that period.

The Section has to deplore the demise of two of the most respected members of its committee, Jeffrey Penfold, Esq., late manager of the Bank of British North America in Montreal, and Francis Kennedy, Esq., late manager of the Bank of Nova Scotia here. Both gentlemen were widely and favourably known throughout the banking community, and their absence from the Council Board of the Section is a serious loss.

The Section is delighted to welcome the Association to Montreal, and had it not been trammelled by the custom which places the preparation of

entertainments in the hands of the head offices of the Convention city, it would have testified to the sincerity of its welcome in a more practical manner.

Yours respectfully,

A. M. CROMBIE, Chairman
ARTHUR WEIR, Secretary

BANKERS' SECTION OF THE BOARD OF TRADE, TORONTO

The Bankers' Section of the Board of Trade, Toronto, beg to submit to the Canadian Bankers' Association the following report relating to the proceedings of the Section during the year:

As this is the first report which has been submitted to the Association, it may not be out of place to state that the Section was organized in March, 1886, and has since that time interested itself in all matters connected with the interests of the banks represented. Its membership is made up of all bank officers in the City of Toronto who are members of the Board of Trade, and every chartered bank doing business in the city is represented in its membership.

The Chairman for the past year was Mr. Angus Kirkland, of the Bank of Montreal, and Vice-Chairman, Mr. R. D. Gamble, of the Dominion Bank.

The most important matter dealt with by the Section was in connection with the legislation introduced by the Government of the Province of Ontario imposing taxation on banks doing business in that Province. As soon as information reached the Section that it was the intention of the Government to introduce such legislation, a Committee, consisting of Mr. Kirkland (chairman), and Messrs. Wilkie, Coulson and Walker, was appointed to meet with the Government and deal with the matter. This Committee at once waited upon the Government, but were unable at their first interview to gain any definite information as to the scope or details of the proposed tax.

When the Bill was introduced the Committee again waited upon the Government and had an interview with the Executive Council, at which they protested against the undue amount of taxes which the banks were being asked to contribute, and especially directed the attention of the members of the Government to the unfairness of the tax upon those banks that had their organization and head offices outside the Province. Upon this latter point they had a lengthened discussion with the members of the Government. The Government were not disposed at this time to make any changes in the Bill, but the Chairman of this Committee had subsequently another interview with the Provincial Treasurer specially relating to this question, and finally obtained the assurance that amendments to the Act would be made which would afford some relief, and especially to those outside banks that had few offices in the Province.

As a result of these conferences the Act was amended in some respects, although we cannot regard the legislation as being satisfactory either to the banks having their head offices in the Province, or to those whose head office organization is elsewhere.

Under an agreement, made some time prior to the year just closed, all the banks in Toronto and Toronto Junction were (and still are) paying three per cent. per annum as the maximum rate of interest on all deposits, and the system of paying interest on the minimum monthly balance in savings bank accounts was very generally in force. During the year it was thought well to make an effort to bring about an understanding on both these points which should be applicable at every bank office in Ontario. An agreement was drawn up which was signed by all the banks having head offices in

Danville (Que.) Bank Robbers.

ARRESTED AND ESCAPED FROM JAIL.

JOSEPH HUDDLE.

Age, 21; height, 5 ft. 4¼ in.; hair, dark chestnut; eyes, chestnut; complexion, dark.

WILLIAM DAVIS or DOWD.

Age, 25; height, 5 ft. 3½ in.; dark hair, brown eyes, dark complexion; large Roman nose; oblique scar left eyebrow; two small scars centre of forehead above root of nose.

JOHN BROOKE.

Age, 28; height, 5 ft. 8⅛ in; brown hair and eyes; medium dark complexion.

MOORE.

Age, 20; height, 5 ft. 6¾ in.; reddish fair hair; blue eyes; medium fair complexion.

Toronto and by one bank in the Province of Quebec, but this has not been carried further. We are glad to be able to report, notwithstanding the absence of a former agreement, that most of the banks doing business in Ontario are working on the lines covered by the agreement.

At the recent annual meeting of the Section, the following officers were appointed for the ensuing year:

Chairman—Mr. R. D Gamble, Dominion Bank.

Vice-Chairman—Mr. Joseph Henderson, Bank of Toronto.

Toronto, 20th October, 1899 ANGUS KIRKLAND,
Chairman

MR. VAN FELSEN, seconded by MR. PRENDERGAST, moved the adoption of the Section reports.

PROVINCIAL TAXATION OF BANKS

MR. MCDOUGALL—You have heard the different reports read, that is, the Section reports of Toronto, Montreal, Halifax and Winnipeg, and I would like that they should be referred to the Council to take whatever action the matters referred to may call for. I do not think there is anything to have a discussion upon just now. The Toronto Section refers to the matter of taxation. I may say that the Council discussed this a little this morning, and it was decided to take no action at present.

MR. PLUMMER—I think, Mr. President, that the incoming Council should take the matter up.

MR. MCDOUGALL—It was decided at the Niagara meeting that the Toronto Section should deal with legislation in Ontario. Do you mean that this matter should be referred to the Council?

MR. PLUMMER—The Toronto Section of the Board of Trade is the agent of this Association to deal with matters of legislation in the Province of Ontario, but I think the Council should take this matter up, because it affects not so much the banks in Ontario as the banks outside the Province. They feel that they suffer most.

MR. MCDOUGALL—In reference to the clause in the report of the Section concerning legislation, my idea is that the matter be referred to the Council for whatever action they see fit.

MR. WALKER—One word more. I think it would be a pity if we disperse without some discussion on the question of Provincial taxation. It will be regrettable if we show no evidence that we feel dissatisfied at what has been done. I do not want to prolong discussion, but we should say something and put it on record to show that we think the Ontario tax unfair.

After some further discussion, it was proposed by Mr. Walker that the following gentlemen be appointed a committee

to formulate the arguments against the present system of bank taxation adopted in Ontario, viz: Messrs. Macnider, Fyshe, Stikeman, Prendergast, and McDougall.

The proposal was adopted.

BANK NOTES

MR. MCDOUGALL—There is a subject to which I should like to call your attention in connection with the printing of bank notes. The American Bank Note Co. have shown me some notes that have been in use in Brazil, printed in light blue and violet colors, and decorated around the border with an intermixture of colors, the object being to prevent successful photography. I have specimens of these, and will have them here at the afternoon session. I notice that the colors of these bills are, in substance, those adopted in printing the notes of the Bank of France, which are said to defy photography. In connection with this it seems that the matter might be referred to the Committee of the Bank Act. I do not see why the banks should have different designs, and so varied. The national bank notes of the United States, for instance, have but one form. I am right in this statement am I not, Mr. Walker?

MR. WALKER—Yes, they are absolutely alike, but I would not like to see that system adopted here.

MR. MCDOUGALL—I just want to bring the matter to your attention. I will have the notes up here, and you will see by some photographs of them that they could not be successfully photographed.

—

The Secretary read and laid on the table a letter from Mr. D. Cameron referring to collections through clearing houses.

—

The President referred to the absence of Mr. Wolferstan Thomas through illness, and suggested that the Association express its sympathy with the veteran banker and the hope that he would be shortly restored to health. Mr. Coulson made reference to the absence of Mr. R. D. Gamble through serious illness, and at his suggestion the name of Mr. Gamble was included with that of Mr. Thomas in the vote of sympathy.

AMENDMENTS TO THE BANK ACT

The President read a letter from Mr. Geo. Burn in connection with a proposed amendment to section 84 of the Bank Act, set forth on page 322 of Vol. I of the JOURNAL.

The Secretary was instructed to make a note of this communication for consideration by the Committee on the Bank Act.

The President read a letter from Mr. G. H. Balfour, on behalf of the Union Bank of Canada, under date of October 13th, 1899, respecting changes desired in the Bank Act.

This was also referred to the Committee on the Bank Act.

The meeting then adjourned for luncheon, to reassemble at 2 p. m.

AFTERNOON SESSION

The PRESIDENT delivered his address, as published on a subsequent page of the JOURNAL.

MR. WALKER—I beg to move that a vote of thanks be tendered the President for his admirable address.

MR. HAGUE—I second Mr. Walker's motion that our very hearty thanks be given to Mr. Macdougall for his admirable and practical address.

Carried unanimously.

THE JOURNAL

The Secretary then read the report of the Editing Committee of the JOURNAL, as follows:

TORONTO, October 24th, 1899.

To the Members and Associates:

With the issue of July last the 6th volume of the JOURNAL was completed. It contained 475 pages, including a complete index of the entire six volumes, the preparation of which latter was rendered desirable especially in connection with the Legal and Questions columns.

The financial results will no doubt be regarded as satisfactory. The net cost of publication, after deducting the revenue from subscribers' fees and from advertising contracts, amounted to $1,287, which sum is as usual to be considered in connection with the Association's revenue from Associates' fees ($1,288).

The feature of the JOURNAL in the past year—which your Committee note with satisfaction—has been the increased use made by Associates of the column for questions and answers; 103 questions were published in volume VI., as compared with 151 questions in all published in the preceding five volumes.

Your Committee think it well to ask authority for a net expenditure of $1,400 in the publication of the current volume.

Respectfully submitted.

J. H. PLUMMER
J. HENDERSON. } Editing Committee
E. HAY

MR. PLUMMER—Mr. President, I move the adoption of that report, and I suppose it is proper to move also that the

incoming committee be empowered to expend $1,400 for the work of the JOURNAL for the ensuing year. I do not want to make any speech about the JOURNAL; I think, on the whole, it is a very satisfactory dollar's worth for the associates and subscribers, and I believe it is going to be more and more useful. I have been feeling for some time that we have had a long turn with the JOURNAL at Toronto, and whenever you wish to change the headquarters of the JOURNAL to Montreal you will find the Committee ready to lay it down.

MEMBERS—No. No.

A short discussion ensued as to the propriety of including in the JOURNAL a list of branches and agencies, but it was concluded that such an addition was not at the present time necessary.

MR. FARWELL—I move that the thanks of the Association be tendered to the Editing Committee, and that they be asked to continue their labours. I think they have performed their duties in a creditable manner, and have given us a magazine which is really very valuable. I think too much cannot be said in this particular, and I have very much pleasure in making the motion.

MR. STIKEMAN—I have great pleasure in seconding the motion. I know by experience among my own staff that they all derived, not only great pleasure, but a great deal of good in the way of education from reading it, and I think the members will join in the thanks to the Editing Committee who voluntarily spend so much time. I think it would be a mistake to crowd more work on these gentlemen by adding anything. I think they already have enough to do.

The motion was carried unanimously, and the Editing Committee were authorized to expend $1,400 on Vol. 7.

MR. PLUMMER—As I am the only member of the Editing Committee present I wish to thank you on their behalf for the resolution just passed. I may say that we owe a great deal to Mr. Lash, who has given much of his time to the work. A great deal has also depended on the work done by Mr. Brown, the sub-editor. I think that their names should not be omitted from the vote of thanks.

MR. MCDOUGALL—I am adding the names of Mr. Lash and Mr. Brown to the vote of thanks.

MR. FARWELL—I think Mr. Lash should have a special vote of thanks.

MR. WEIR—With regard to the work done by Mr. Lash, I nave had enquiries from subscribers as to whether the questions and answers published from the commencement of the JOURNAL could not be gathered into a special volume.

MR. LASH—This has been discussed with Mr. Plummer several times and will probably be done. My work on the JOURNAL in connection with answers to questions has been chiefly to read the answers prepared by the Committee, with which I seldom differ. Whenever I do differ from Mr. Plummer as to any answer, I generally find it necessary to consult the authorities, but it happens very seldom that there is any difference of opinion.

COMPETITION BETWEEN BANKS

MR. D. HUGHES CHARLES then read a paper on the subject of competition between banks, which was listened to with much interest. A cordial vote of thanks was tendered to Mr. Charles for his paper.

STOCKS AS SECURITIES

MR. LASH read a paper on transfers of stock, which is published on another page of the JOURNAL, in which he discussed chiefly the practice of accepting as security certificates of stock endorsed with a blank transfer and power of attorney. An interesting discussion followed the reading of the paper.

The PRESIDENT—I do not know what the practice is with the banks of this city, but when the decision in *Smith v. The Walkerville Malleable Iron Co.* became known many of the banks adopted the plan of having certificates taken out in the name of their manager. The manager then endorses the power of attorney on the back of the certificate.

A MEMBER—Does not this system prevail in the United States? I am under the impression that stock certificates pass there just on the endorsation of the shareholder.

MR. LASH—I think it is an almost universal practice in the United States to treat those certificates as negotiable, but I am not aware that the courts have ever recognized that as the law of the land. I am informed that in the New York Stock Exchange, in which so much of this kind of business is done, they treat certificates endorsed by their own members as negotiable, and that through their powers of discipline over their members there is no trouble. Their power is so great that they can practically make the law. I think there is no decision, although I have not exhaustively investigated the United States authorities.

MR. MACNIDER—I think there is a decision in the Western States.

MR. LASH—In the Western States you might find decisions, but I do not think there are any in Massachusetts or New York in favour of the practice.

A MEMBER—The western decision Mr. Macnider speaks of supports Mr. Lash's view.

MR. LASH—The English cases are exactly in line with the Court of Appeal in Ontario. I think if the matter was threshed out in the United States courts they would have to go that way.

A MEMBER—I think companies issuing certificates requiring their return as a condition of transfer would be bound to insist on their return, and responsible if they should permit a transfer without the certificate being returned.

MR. LASH—I think they may waive the condition if they like, and that they are under no responsibility to anyone if they should do so.

MR. WALKER—Millions of money are lent in New York on certificates endorsed in blank, but the holders are careful to see that the names are those of reputable members of the Stock Exchange. If presented bearing the endorsements of outside people they would usually be refused. Then the certificates are issued by great railroads and corporations who would not think of making transfers unless the certificates are returned, knowing the use that is made of them, and being interested in the maintenance of absolute good faith. Then, again, such certificates are usually issued and countersigned by a Trust Company, who are still more bound to prevent irregularities.

A MEMBER—If the companies issue certificates in terms which imply that the shares will be forthcoming when the certificate is presented with a proper power of attorney, should they not be bound to have the shares? If not, why issue them?

MR. LASH—The certificate shows the legal title at the time of its issue. A transfer outside of the company's books (as *e.g.* by endorsement on the certificate) creates an equitable title in the transferee. If the legal title has passed to someone else (as in the case referred to by the President) before the holder of the equitable title seeks to complete it, the company is not responsible. The law regards the condition as to the return of the certificate as merely a matter of internal regulation.

MR. PRENDERGAST—I am aware that the decision you quote exists. But is it not strange that the law gives two different dispositions in the same form?

MR. LASH—It is the legal title that is involved. The endorsement gives a mere equitable right. The law cannot decide between them except on the principle that where rights conflict, the legal title must prevail.

A MEMBER—Is it impossible to devise something by which this difficulty about certificates can be got over?

MR. LASH—Quite possible, if the Company were willing to pass a by-law voiding transfers unless the certificates were produced. Then, unless some form were gone through to account for its not being surrendered, the transfer would not be complete without the return of the certificate. But when neither the charter nor the by-law of the Company has placed that safeguard, then the courts have held that the Company can waive that.

A MEMBER—I would like to ask Mr. Lash whether if a judgment creditor of a registered holder of shares attached them in the hands of the Company the attachment would hold against a transfer endorsed on the certificate.

MR. LASH—Not where the English rules of law prevail. The sheriff can seize and sell only the actual existing interest of the defendant, not what he appears to own but what he does own. He appears on the books of the Company to own these shares, but, as a matter of fact, he has transferred them by an equitable assignment to somebody else, and, therefore, he appears as trustee in the books of the Company. The sheriff may seize and sell them, but as a matter of fact, anyone buying shares under an Ontario execution takes his chance about the title. If it turn out that the debtor had previously transferred them, then the purchaser would only acquire any right the debtor might have to redeem those shares.

A MEMBER—Supposing a case where a transfer of shares was floating around for a year, the Company pays dividends on them to the ostensible holder, and a claimant notifies them he owns those shares and claims the dividends?

MR. LASH—If the Company has been notified, those dividends were not properly paid, but if not it is a question only between the ostensible holder and the transferee.

—

It was moved by MR. D. COULSON and seconded by MR. REID, and resolved, that the thanks of the Association be given to Mr. Lash for his able paper, and that he be requested to permit the paper to be published in the JOURNAL of the Association.

The meeting then adjourned.

SECOND DAY

The meeting was convened at noon.

ELECTION OF OFFICERS

On motion of MR. WILKIE, seconded by MR. WALKER, the President was requested to cast one ballot for the election of the following officers for the ensuing year:

PRESIDENT

E. S. Clouston, General Manager Bank of Montreal

VICE-PRESIDENTS

Thos. McDougall, General Manager Quebec Bank.
Duncan Coulson, General Manager Bank of Toronto
Geo. A. Schofield, General Manager Bank of New Brunswick
Geo. Burn, General Manager Bank of Ottawa

EXECUTIVE COUNCIL

B. E. Walker, General Manager Canadian Bank of Commerce
Thos. Fyshe, Joint-General Manager Merchants Bank of Canada
D. R. Wilkie, General Manager Imperial Bank of Canada
H. Stikeman, General Manager Bank of British North America
M. J. A. Prendergast, General Manager La Banque d'Hochelaga
W. Farwell, General Manager Eastern Townships Bank
J. Turnbull, Cashier Bank of Hamilton
H. S. Strathy, General Manager Traders Bank of Canada
G. Gillespie, Superintendent and Inspector of Branches Bank of British Columbia
R. D. Gamble, General Manager Dominion Bank
E. E. Webb, General Manager Union Bank of Canada
T. Bienvenu, General Manager Banque Jacques Cartier
G. P. Reid, General Manager Standard Bank of Canada
E. L. Pease, General Manager Merchants Bank of Halifax
C. McGill, General Manager Ontario Bank

EDITING COMMITTEE

J. H. Plummer, Ass't Gen'l Manager Canadian Bank of Commerce.
J. Henderson, Inspector Bank of Toronto
E. Hay, Inspector Imperial Bank of Canada

BANK MONEY ORDERS

MR. CHARLES again brought up the question of bank money orders, urging strongly that the banks should meet the rates given by the express companies for the smaller amounts. In this he was supported by Mr. O'Grady, and after a lengthy discussion

It was moved by MR. O'GRADY and seconded by MR. CHARLES that the Executive Council be requested to consider the advisability of reducing the rates charged for bank money orders, in order to conform more closely to the express money orders. Carried.

REDEMPTION OF CIRCULATION

MR. O'GRADY—Just one word before proceeding to other business. Can you give me an answer to this question of circulation, respecting the propriety of our being burdened with express charges for the transfer of circulation paid out at points where the issuing bank has not an office? We are not much troubled that way at present, but when the circulation begins to go down we will feel it.

MR. MCDOUGALL—I think the law provides for the redemption of circulation at certain points. You may call it unnatural, but it is confirmed by the Government. It costs you as you know, but you have to put the thick with the thin.

MR. O'GRADY—If I circulate a note at my office I must redeem it at my office.

MR. COULSON—A bank might be asked to redeem the notes of another bank issued by it, but the law would have to be changed.

MR. HAGUE—What would a bank do that was paying out notes of another bank?

MR. O'GRADY—Simply redeem them.

MR. COULSON—I think they should act as a redeeming agent. But it might mean that every bank would have to make an arrangement with every other bank and with its agencies.

MR. O'GRADY—I think not. It would involve your making arrangements with a bank at Woodstock, for instance, to redeem your circulation, if the branch there was issuing it, but only while they are issuing it. I only object to a customer presenting a cheque in a bank and being handed out a bundle of notes whose redemption is refused when they are brought back to that bank.

MR. WHITE—In our town one of the banks is now circulating the notes of another bank and they tell us they will redeem them at par.

MR. O'GRADY—I think it is a very reasonable arrangement. We cannot object to their circulation, but during the time in which they are being paid out, the bank paying them out should redeem them, otherwise the remaining banks are at a disadvantage.

MR. STRATHY—I do not see why they should not redeem the notes as long as they continue to issue them.

MR. WALKER—It seems to be a question of etiquette. It may not be possible to make a regulation, but I think this Association might give an expression of opinion that when a bank pays the bills of another bank regularly across its counter, the bank paying them out ought to redeem them. We cannot get at it in a legal way, but I think we might agree that it is unfair.

MR. MCDOUGALL—This expression of opinion is accepted by the Association.

PROTECTION FROM BURGLARY

Sir Charles Forrest introduced the subject of protection from burglary, advocating the formation of a fund for the following up of burglars, and after a full discussion

It was moved by SIR CHARLES FORREST, that the Executive Council of the Canadian Bankers' Association be asked to take into consideration the proposal for a special fund for the following up of persons supposed to be interested in bank burglaries. Also that the Executive Council keep in touch with the American Bank Burglary Association in regard to the same question.

The motion was seconded by MR. KESSON and carried unanimously.

RESOLUTION OF THANKS TO THE PRESIDENT

MR. WILKIE—Mr. Macdougall has had a particularly anxious year as President, and I beg to move a vote of thanks to him for the admirable manner in which he has conducted the affairs of the Association during the past year.

MR. HAGUE—I second this motion with very great pleasure. The duties of the President are very onerous, far more so than they were some years ago, and in Montreal it has been a particularly trying year. I am sure we are all very much obliged to Mr. McDougall.

MR. MCDOUGALL—I am very grateful for your kind words. I have had a busy year, but it has done me much good. It has given me a great deal of experience which is always useful, and if the Association has benefited I am only too glad.

The meeting then adjourned.

ADDRESS OF THE PRESIDENT OF THE CANADIAN BANKERS' ASSOCIATION

DELIVERED AT THE EIGHTH ANNUAL MEETING OF THE ASSOCIATION

ON this, the eighth Annual Meeting of the Association, it is my great privilege to address you as I am about to relinquish the duties of office into other and better hands.

In giving you an account of my stewardship for the past year, I am sensible of many things but half accomplished, yet in the light of some things done, I hope to leave the impression upon your minds that I have not been altogether unprofitable to the Association.

The events of this year lead me to speak of the intention and scope of the Association. The idea of forming it was first suggested by the circumstances attending the last renewal of the Bank Act. It was then seen that the work of revising an Act which regulates the powers of all the banks in the Dominion should not be left to be undertaken at a few hurried meetings held during the Session of Parliament when the changes are to be made; but that this work should be taken up beforehand in a systematic manner by such an organization as we now have. It was felt besides, that there are other matters of legislation affecting banks which are continually cropping up, and which require more vigilant and careful treatment than they formerly received. The promoters of this Association were amply justified as to the need of it for legislative purposes alone even by what happened this year.

At the last session of the Quebec Legislature, the city of Montreal endeavored to impose a tax on the capital or the dividends of banks doing business in the city. This formidable attempt was successfully resisted, but not without a vigorous struggle on the part of the Association. The Province of Ontario, at its last session of Parliament, following the example

of the Province of Quebec, imposed a tax upon the capital of Banks, but in so doing it paid less regard to justice than this Province. It has adopted a plan the principle of which is not reasonable and the effect of which is unduly severe upon banks having their head offices outside of the Province. The discriminating nature of this law was, at the time, pointed out by the Association to the Government, but its representations did not avail to the extent expected.

One important advantage, however, is obtained through this Act, namely that it puts a limit upon municipalities in Ontario regarding the taxation of banks.

Along with the main intention of the Association, it was justly supposed that the habit of meeting together for discussion would lead to agreements to mitigate competition, or at any rate to regulate it where it is wasteful. A happy result of this kind is the arrangement to pay a uniform rate on savings deposits. This arrangement has worked along very smoothly for about four years, but in spite of the fact that it is plainly advantageous to the banks, and in spite of the circumstance that its continuance has been made possible by the efforts of the Association, there is yet a feeling among members that the Association has fallen short of the hopes entertained concerning it, because it has not done more in conciliating the rivalries of banks for business. It is true that the competition between Banks, at present, has become very keen, and it has taken on a new phase owing to the policy of bank extension which obtains at present whereby branches are opened not only in new territory, but upon ground the financial needs of which had not been previously neglected.

The movement towards bank extension like all things earthly will "have its day and cease to be;" it will bring its own banking problems along with it, one of which is the system of divided accounts—an artificial arrangement in banking which can be effectively met only by that spirit of affinity and mutual forbearance among banks which this Association is intended to foster.

The trade situation of the Dominion as shown by the recent official returns at Ottawa, gives signs all around of vigorous growth and prosperity. The Customs receipts at the port

of Montreal for nine months past indicate a continuous enlargement of imports as compared with the corresponding period last year. As illustrating the activity in trade, the bank clearings in Montreal, month by month this summer exhibit larger totals than they have done at any time since the establishment of the Clearing House.

In regard to exports—the published returns for July and August show a marked increase in the shipments of farm produce.

The lumber trade has at length thrown off its languor of several years' standing and it would appear to have recouped itself at a bound. Prices for timber and deals for the English market are said to have been satisfactory this season. A large advance in price has obtained for low grades of lumber shipped to the United States. The accumulation of small stuff which had been blackening in the mill yards for some time has been cleared out and the American competition for merchantable common lumber has whipped up its price about $3.00 per 1000 feet. Those on this side of the line who have been steadily growling for years past at the high duty imposed upon inferior lumber going into the United States, seem suddenly to have subsided into silence; and this is probably because they are certain, that so far as this season's trade is concerned at any rate, they are not paying the duty.

The dairy interest in Ontario and Quebec shows handsome returns to the farmer, and there is this flattering feature about it—that in the competition between the Colonies of the Empire, each for a share of England's needs, Canada is forging ahead of the others. The Province of Manitoba would appear to have saved the largest wheat crop which it has ever had, and the price thereof at points of delivery is better than usual. So that if we take the agricultural position as it appears in these three Provinces, it may be said that Abundance, from her golden horn, has scattered her treasures throughout them with a pretty even hand.

AN INSOLVENCY ACT

Repeated reference is made in the English papers to the anomalous state of our laws regarding insolvent estates, and the

desire is expressed by English merchants, having to do with this country, that we should have one Federal Act applicable to all parts of the Dominion, instead of having half a dozen Provincial Acts for the distribution of assets as now.

The same desire for the reform of the bankruptcy Act exists among the merchants in Canada, and representations to that effect have been made in Parliament through the Boards of Trade in the larger cities for several years past.

The reasonableness of these requests is only too apparent, and it is surprising that the Government at Ottawa should continue to treat the matter with such indifference as it has done during two sessions of Parliament past; at the session of 1898, Mr. Fortin's bill was thrown out on a frivolous pretext, and last year, when it was again introduced, it did not meet with any countenance or support from Government, for the alleged reason that the Provincial Acts are satisfactory. Now these Acts provide each a different mode of procedure so that a merchant at a distance having debtors in trouble in several Provinces has to study several Acts, and besides that he has to employ a lawyer in each Province to interpret each local Act.

There is this defect also about these Acts that they do not provide for the settlement of estates by way of composition and discharge. Inasmuch as about half the failures at any rate are settled by composition, would it not be better to recognize the fact by legislation, and regulate it? It is to the knowledge of every one concerned in failures that the large creditor enters into the deed of composition but the small one does not, and he generally succeeds in getting paid in full. The question of composition and discharge is a difficult one, but it appears to have been fairly solved by the English Act of 1883 and 1890.

That Act provides for a preliminary examination of the debtor to determine in the first place whether he has been honest or not. In cases of misfortune or unforeseen loss, fully accounted for, and when the debtor can secure $\frac{8}{8}$ of his debt, a composition is permitted, and a discharge without compromise is allowed when the estate of an honest insolvent has realized half his debt; but when wrong doing is apparent, or reckless a vagance in living, or speculation at the expense of credit-

ors, even they are not allowed to give a discharge with simple reference to what the debtor may be able to pay for it. The State steps in as the guardian of trade morals to decide how the fraudulent or the incompetent trader shall be dealt with.

THE BANK ACT

The Bank Act of 1891 provides that the charters of the several banks to which it applies are continued in force until the 1st July, 1901. It is probable that at the next session of Parliament this Act will come up for consideration in order that these charters may be extended for another term. The term of ten years as provided for in this Act, is in accordance with what was done at previous renewals of the first general Banking Act of 1871.

Before that time, the duration of bank charters was variable, being in some cases ten years, and in others as much as twenty-five. It seems desirable at this renewal, and after a third revision of the Act, to extend the charters for a longer period, namely, for twenty or thirty years.

At the last revision of the Act, the most important addition made thereto was the creation of a fund in the hands of the Minister of Finance for the redemption of the note issues of insolvent banks. Circulation had previously been made a first charge on assets, and this amendment was intended to save the bill holder from delays of liquidation; and in order to fully insure that the bill holder should receive par after the suspension of a bank, the note was made to bear interest at 6%. The effect of this latter proviso has been such that in the four suspensions that have occurred since the fund was established, it has not been applied to.

THE BANK FAILURES

On the 26th July, La Banque Ville Marie closed its doors, and it has since gone into liquidation under the Winding-up Act. Irregularities of management have been revealed to the public in connection with the prosecution of the directors now going on, and it is not necessary therefore, that I should particularly refer to them. The penalties for wrong-doing in this respect

are under the Act made very severe, and the prosecution now on foot will in time show how far they are effective. The failure of this Bank has caused suffering and inconvenience to a large number of people, who will no doubt demand remedies from Parliament at its next session, calculated to prevent the recurrence of a calamity of this kind. I shall not forestall this discussion, or venture to express an opinion as to any remedies to be provided; I know that a committee of this Association exists whose special care it is to collect opinions from bankers and others as to the amelioration of our banking law, and I have no doubt that when this law is up before Parliament for discussion, that committee will be prepared with suggestions expressing a consensus of opinion among bankers as to the manner in which the evils of mismanagement in this case may, if possible, be obviated.

On the 31st of the same month La Banque Jacques Cartier also suspended payment. It is pleasing to note, however, that it is in position to resume operations as by notice to the banks given to-day.

For a month past the financial world has been perplexed and made nervous by the disturbances in the Transvaal, which have culminated in a declaration of war. It is not for us now to say what might have been done to avoid the dire resort to arms. The nation, of which this country forms a part, is committed to the contest, and it is well that we in Canada should lend her a willing hand, in order that, by a clear demonstration of unity and strength throughout the Empire, the horrors of bloodshed, of which this century has been so full, may be as little added to as possible.

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THE LATE R. D. GAMBLE

SINCE our last issue there has passed away from us one of the youngest chief executive officers in Canada, Raynald D'Arcy Gamble, the late General Manager of the Dominion Bank, who died at sea homeward bound on board the "Oceanic," on Sunday, the 5th day of November.

Mr. Gamble was born in Toronto on 12th May, 1853, and was the son of Clarke Gamble, Q.C., an eminent and highly esteemed barrister, who at the great age of ninety-one years still lives to mourn the loss of his much loved son. Mr. Gamble was educated at Upper Canada College, Toronto, and Hellmuth College, London, and entered the Dominion Bank in February, 1871. He passed through the training usual in our Canadian banks, filling the various junior positions, and in this way securing a thorough knowledge of the different departments of the bank's work. In 1878 he was appointed manager at Brampton; in 1884, manager at Napanee; in 1885, inspector; and manager of the Toronto Office in 1890.

During these years the bank was under the singularly successful management of the late Mr. Bethune, and Mr. Gamble was very closely associated with him and had an intimate knowledge of the policy and motives which were influential in the direction of the bank. When Mr. Bethune died in April, 1895, Mr. Gamble was looked to as his natural successor, and was duly appointed General Manager. The results of his management have amply justified his appointment. The bank has grown in resources and largely extended its business under his administration, having, amongst other branches, established those in the important centres of Montreal and Winnipeg. Mr. Gamble formed his judgments carefully, and his opinions once

formed were firmly held. His mind was well balanced and his judgments usually sound, and he had a singularly even tempered and sunny manner that brightened his most important business relations with his customers and with his fellow-bankers. He was a member of the Executive Council of the Canadian Bankers' Association, and had filled the position of Chairman of the Toronto Clearing House, and was, at the time of his death, Chairman of the Bankers' Section of the Toronto Board of Trade. The Section attended his funeral in a body, and joined in paying this last tribute to the memory of one who was highly esteemed by all and beloved by those who had more intimate relations with him.

6

COMPANIES' STOCKS AS SECURITIES

AS banks lend so largely upon stocks of incorporated companies, some explanations as to the legal questions involved in the acquisition of these securities may be useful. What I have to say is with reference to the law of Ontario.

It is not essential that a person should receive from the company a stock certificate in order to constitute him a holder of shares, but for practical banking purposes such a certificate is necessary. Indeed so common have they become that many persons, if not the majority, regard them not only as essential, but as constituting the very shares themselves. This is an erroneous idea, and in order that the true legal position may be appreciated and the reasons for the existing law, as subsequently stated, understood, I will here explain the nature of a share in the capital stock of a corporation and the effect of a stock certificate.

By special act of Parliament or by Royal Charter, or by some other legal and authorized mode, a new creation, having an existence in the eye of the law, capable of suing and being sued, of contracting and being contracted with, springs into being, and has an entity and identity of its own, separate and distinct from that of any other. This new being is called a body corporate as distinguished from a body natural, and is composed, not of flesh and bones and blood, but of whatever the creating power thinks fit. Its structure may be made up of a number of other bodies corporate, or it may be of one or more bodies natural.

A corporation constituted of one individual only is called a corporation sole. Her Majesty the Queen is an illustrious example of this. A corporation constituted of more than one individual is called a corporation aggregate. It is of the latter this paper will speak.

A corporation aggregate may be constituted in such manner that the individuals of which it is constituted are members having a status and rights as such, but having no right to trans-

fer the membership to another. Or it may be so constituted that each member has the right to transfer his membership. If the objects of the corporation be for the purposes of trade or gain it is essential to its smooth and successful working that the membership should be transferable, and to enable this to be readily and easily accomplished the system of shares was invented. At first the fund with which the corporation commenced business was contributed by the various members in varying proportions; this common fund was called the "stock," and the members were interested in it in proportion to their contributions. The expedient of fixing the number of shares instead of the number of members, and of placing upon each share a stated money value soon followed, till now we have in all our modern trading and business corporations an artificial creation within the corporation itself called the capital stock, limited to a stated aggregate sum and divided into shares of a stated sum each—the holder of one share or more is a member or shareholder of the corporate body, and (subject to certain limitations in special cases which it is not necessary to refer to here) he can at any time transfer one or more of his shares to another or others.

This right of membership, this holding or ownership of shares, or whatever it may be called, is a species of property of an incorporeal nature. It exists in no tangible shape, but is the creation of the law, and is a right which the courts will recognize and give effect to if it be proven by proper and sufficient evidence to exist. Therefore the right itself, and the evidence of it must not be confounded. The evidence of the right may be given in different ways, but the most common and satisfactory evidence is a certificate under the seal of the corporation itself, stating that the person named in it is the holder of shares in its capital stock.

Such a certificate is usually in some such form as the following:—

"This is to certify that A B is the holder of shares "of $ each in the capital stock of the Company, "fully paid, (or on each of which the sum of $ has been "paid) and transferable on the books of the company (in person "or by attorney), on surrender of this certificate."

On the back is usually printed a form of assignment and appointment of attorney to transfer, in some such form as the following :—

"For value received I hereby sell and transfer to "of shares of the within capital stock, and I hereby "appoint of my attorney to transfer said "shares on the books of the company."

Sometimes the certificate omits all mention of the amount paid on the shares, and sometimes no mention is made of the surrender of the certificate on transfer of the shares.

The courts have held that as between the company and a person who, in good faith and in reliance upon the statement in the certificate that the shares are fully or partially paid, acquires the shares, the company and its liquidator are estopped from disputing the statement and cannot even though the statement be erroneous make the holder liable upon the shares for more than, upon the face of the certificate, he appears to be liable for ; but if no statement of the amount paid on the shares appears on the certificate there is no estoppel, and the person taking the shares would be liable for whatever amount as a matter of fact was unpaid upon them.

This estoppel only arises if the person acquiring the shares has no knowledge of the true position and relies in good faith upon the statement in the certificate held by the person from whom the shares are acquired.

The Courts have also held that the company is, as between itself and the person acquiring the shares estopped by the statement in the certificate that the person mentioned in it was on the date named the holder of the shares, and if through error or fraud it turns out that the statement in the certificate is erroneous the company must nevertheless make it good or pay damages to the extent of the value of the shares.

You will therefore see how necessary it is, before advancing upon the security of shares, that the stock certificate be produced, and that it state not only the number of shares held, but also the amount paid upon each share.

Assume that an advance is applied for on the security of shares and that the stock certificate in the form I have given is produced, and that the shares are stated to be fully paid ; assume

also that the applicant has signed the proper pledge, or hypothecation agreement. What should be done so as to make the bank's control over the shares effective and secure?

I have heard the question asked—"What more do you "want than the stock certificate with the form on the back "signed? You can fill up the blanks at any time and go to the "company and make the transfer on the books, and in the "meantime no transfer can be made to anyone else, as the "certificate says 'transferable only on the books of the company "on surrender of this certificate,' and I'll take good care that "no one gets this certificate to surrender unless I want him to."

This is what the plaintiff in the case of *Smith v. The Walkerville Malleable Iron Co.* (Vol. III of the JOURNAL, p. 318) thought, but the Court, unfortunately for him, thought otherwise. In that case White held a certificate for 22 shares in the defendant company, containing the words, "transferable only "on the books of the company on surrender of this certificate," and containing on the back the form of transfer and appointment of attorney to transfer above given. Smith acquired the 22 shares in good faith. White filled in and signed the form on the back and handed the certificate to Smith, who put it in his safe, thinking he could take his time about transferring on the company's books.

White had, however, previously sold the twenty-two shares to Hunter, and had appointed an attorney to make the transfer on the books. This transfer the company allowed to be made without production or surrender of any certificate, and when Smith went to make his transfer he was told that White had no shares left. Smith then sued to compel the company to permit the transfer or pay him the value of the shares.

There was no evidence that the company acted in collusion with White, or knew anything of the transfer by him to Smith. The Court of Appeal dismissed the action.

OSLER, J., in his judgment in the case, said: "Share certificates are not negotiable instruments, nor do they purport to be so, passing the title to the shares by their mere delivery. The certificate issued by the company stated that White was entitled to 22 shares, transferable only on the books of the company (as the statute provides) and adding, 'in person, or by

attorney, on the surrender of the certificate.' The latter provision is not required, either by statute or by the by-laws of the company (which we called for) and it has been held in more than one case that the stipulation is one which the company may waive, if satisfied, or otherwise, of the right of the transferee to be registered. In other words, the title of the transferee, or rather his right to have his transfer registered or entered, and thus to have his legal title, does not depend in the case of shares of the character of those we are now dealing with, upon his possession of the share certificate. On the face of the plaintiff's certificate there is no other representation than that White was then the holder of the number of shares mentioned therein. There is no warranty that his title would continue, or representation that the holder for the time being would, by merely having it in his possession, become entitled to the shares. The certificate purports to show the legal and not the equitable title, and if persons are content to deal on the faith of the certificate with the registered holder, without inquiring into the beneficial ownership, and without obtaining a legal title by transfer, they may find themselves ousted by an earlier equitable title. Everything stated in the certificate was true when it was issued, so that, as said by the Court of Appeal *In Re Ottos Kopje Diamond Mines*, the plaintiff's cause of action must be looked for outside the certificate, and upon the assumption that the company cannot dispute the facts stated therein. In what respect then has the company failed in its duty to the plaintiff, if the whole of White's stock had been transferred in their books at the time when the plaintiff produced his power of attorney, and required it to be acted upon? If the transfer to Hunter—earlier than the plaintiff's transfer—could be shown to be invalid, the plaintiff would have made one step in the direction of proving his case, but if Hunter's right did not depend upon the possession or surrender of the certificate, afterwards transferred to the plaintiff, or of any certificate (and the shares themselves not being numbered, the assignment of them was not connected with any certificate otherwise than by being endorsed thereon), I cannot see how his title can be successfully impeached. Twenty shares, generally, were assigned to him, and were duly transferred without fraud on his part, into his name on the books of the company. When the plaintiff took his assignment and power of attorney on the 3rd April, 1893, the whole of White's shares were still at his credit on the company's books, and the shares assigned to him might, had he so desired, have been duly transferred to him, and his title thereto perfected under the 52nd section of the Act. By his own laches he enabled the holders of the other assignment to register before

him, so that when he came forward the whole of White's holding had been exhausted, the legal title having passed into the hands of other *bonâ fide* purchasers.

"If no title as between the parties can be made so as to entitle a transferee to register except upon production of a certificate, then plaintiff ought to recover, because if that were the case the transfer to Hunter should not have been made on the books, but if that, as I think, be not the case, he would fail because Hunter's transfer was lawfully entered in the register, and the plaintiff did not acquire this certificate and agreement until after Hunter's right to have it so entered was acquired."

MACLENNAN, J., said: "The certificate contains these words: 'Transferable only on the books of the company in person or by attorney on the surrender of this certificate.' The plaintiff's contention is that no transfer of these shares could be validly made without surrender of the certificate, and that the transfer to Ellis was invalid to the extent of 22 shares, because White had not the certificate to produce, and did not produce it, for surrender, when that transfer was made, and the question is what is the meaning and legal effect of the stipulation in the certificate above quoted." (The learned Judge here quoted from the Companies Act, under which the company had received its charter.)

"I think it clearly follows from these enactments, and from the terms of the stipulation in the certificate, that when on the 3rd of April, 1893, White executed the assignment of twenty-two shares to the plaintiff, on the back of his certificate, the plaintiff did not thereby become a shareholder; he merely acquired a right to go to the company's office, and to have a proper transfer made on the company's books, but the certificate itself distinctly notified him that no valid assignment could be made elsewhere than in the company's books.

"It is not alleged that the company had any notice of the plaintiff's claim, and no enquiry appears to have been made for the certificate. Was the company bound to refuse, or could they lawfully refuse, to transfer without the production of it? It is not necessary to decide that they could lawfully refuse, but I think it is clear they were not bound to refuse. The shares were standing in White's name. There had been no transfer made on the books; there could be no valid transfer made elsewhere; a transfer on the back of the certificate could be no better than if made by a separate document; the certificate itself could be of no value to anyone else. It was not negotiable, and I confess I see no obligation, nor any good reason why the company should think it necessary to insist on its production. I think *Williams v. The Colonial Bank* is a decision in favour of the defendants, and the other cases cited do not

help the plaintiff, for they were cases of estoppel, and only went to hold companies bound by their certificates, even when they were not true. Here the certificate was true, and the plaintiff might have had his shares if he had applied in due time, and might have had a transfer made on the company's books. The company have done him no wrong, and his only redress must be sought against White, who has defrauded him."

It is quite conceivable that under a company's charter or by-laws special provisions might exist which would make it necessary to the completion of a transfer on the books that the stock certificate should be surrendered or accounted for; but the company in the case quoted was incorporated under the Ontario Joint Stock Companies' Act, and the provisions of that Act, and of most other general and special Acts relating to the incorporation of companies are, with respect to the transfer of shares, similar.

It would therefore be safe to assume that the decision in the Walkerville company's case would be applicable to most other companies doing business in Canada, and as the general principles involved are in accordance with the laws of England, the decision would probably be followed by the courts of all the provinces except Quebec. I except Quebec, not because I think the law there is different with respect to this question, but because I am not sufficiently familiar with it to warrant me in saying that it is the same.

Some companies, like banks, have the right under their charters to refuse to allow a transfer of stock by a shareholder who is indebted to the company, and it may some day be held that companies whose charters do not expressly confer this right may properly assume it by by-law. In making an advance on the security of shares before transfer on the company's books there is the additional danger that the company itself may refuse to allow the transfer until an indebtedness of the shareholder has been discharged. Theoretically the risks above referred to are serious, and they may prove so in isolated cases now and then, but practically they are not so serious as they appear to be, for the majority of men holding shares in companies and having bank accounts would not be guilty of the fraud involved in White's conduct in the case mentioned, even

if they could find a purchaser of their shares without producing the certificate, and if they could induce the company to allow the transfer without surrender of the certificate. As a rule the company will refuse to allow the transfer when the certificate states that it must be surrendered, and as a rule a purchaser of shares or a lender upon their security will not pay the purchase money or make the advance unless the certificate is produced or the shares are actually transferred.

Many companies instead of attending to the transfer and registration of their own stock in their own offices, entrust this duty to an independent trust company, and require their stock certificates to be countersigned by such trust company before being valid. This tends to greater regularity and accuracy, and minimizes the risk of a transfer being made without production of the stock certificate.

I will in a few minutes point out some additional risks connected with the transfer on the back of the stock certificate, but I do not wish to be understood as implying that the risks I have mentioned and those to be mentioned, make it practically unsafe, as a rule, to make advances upon the security of stocks prior to the actual transfer on the books. On the contrary a very large and practically a very safe business has been done in this way, and it is greatly to the advantage of an important and progressive part of the commercial community, that no unnecessary difficulties should be thrown in the way of such business.

By pointing out the risks and the ways of avoiding them as far as possible this paper may be the means of facilitating rather than of interrupting *bona fide* and desirable transactions of the kind in question.

If care be taken to make advances to none but well-known and reliable customers when the stock is not at the same time actually transferred on the books, and if the stock certificate contains the statement that it must be surrendered when transfer on the books is made, and if as soon as practicable after making the advance the transfer on the books be made, the bank will in the majority of instances practically run little risk, and if a Trust company be the stock transfer agent the risk is still further minimized.

The question of the shareholder's indebtedness to the company and the risk of refusal to transfer on account thereof should be borne in mind.

Our banks as a rule, and many other companies issue their stock certificates merely as a receipt or piece of evidence that on a certain day the person mentioned in it held so many shares. They do not require production or surrender of the certificate when the shareholder in person or by attorney desires to transfer the shares on the books, and the certificate itself contains no statement as to its surrender.

There are some points connected with the transfer and appointment of attorney on the back of the certificate which need explanation.

In form it is a transfer of the shares, but as a rule it amounts only to a transfer between the parties, and does not as against the company constitute the transferee a shareholder, still, being good as between the parties it gives to the transferee an equitable title to the shares.

By our law, sale under an execution in the sheriff's hands passes to the purchaser the right, title and interest only which the execution debtor owns. Therefore our courts have held that a sale, under execution, of shares standing on the books of the company in the defendant's name does not pass to the purchaser a good title as against a person to whom the defendant has, previous to the execution, made an equitable transfer of the shares, good as between the parties, but not completed by transfer on the books. This would, I believe, be different in Quebec; the effect of a sale under execution there being very different from the effect in Ontario. It is a well known rule that where the equities are equal the legal title will prevail, and that he who is first in time is in the strongest legal position; the importance, therefore, of having the equitable title turned into a legal title as soon as practicable, by a transfer on the books of the company, is apparent, and when an advance has been made upon the security of stock before the actual transfer upon the books, a safe rule to follow is to have the transfer made without delay and a new certificate issued in the name of the bank, or of some of its officers in trust. The appointment of an attorney to make transfer on the company's books would, if value were given for

the shares, probably be irrevocable by the appointor; but if not acted on in his lifetime it would as a mere power of attorney be revoked or ended by notice of his death. We have a statute in Ontario which enacts that where a power of attorney provides that the same shall not be revoked by the death of the person executing the same, such provision shall be valid and effectual to all intents and purposes according to the tenor and effect thereof, and in such case the power may be exercised in the name of the executors or administrators of the person granting it. Very few, if any, powers to transfer shares, endorsed on the stock certificate, make any such provision.

A very common practice is for the person named in the certificate to sign the transfer on the back in blank, leaving the blanks to be filled up by anyone who desires to make a formal transfer on the books. Meantime the certificate is passed from hand to hand as if it were a negotiable instrument transferable by delivery. In many cases, probably in most, this turns out all right, but under our law, as the certificate is not a negotiable instrument, this practice is open to serious objections. For instance, if the person applying for the advance be not the person named in the certificate, there is no telling how many hands it may have passed through, and in addition to the risk of forgery or other complications respecting the signature, there are risks with respect to the ownership of the shares themselves and with respect to the right of some intermediate holder of the certificate to deal with it or with the shares mentioned in it. The instrument not being negotiable the bank would take only such title as its customer had, and if a contest with some other claimant of the shares arose before the bank's title was completed by transfer on the books, the rule just mentioned, that the equities being equal he who is first in time is in the strongest legal position, might prove fatal, unless under all the circumstances the court could properly hold that the party claiming the shares was estopped from setting up his claim. Again, the charter or by-law of some companies, or the form on the back of the certificate, requires a seal to the power of attorney. Now, if a document under seal be signed and delivered in blank, it requires to be re-delivered after the blanks are filled in, otherwise it does not

become effectual. This objection was held fatal in a case which was decided in England, not very long ago, and in which the precise question arose.

With reference to the question of estoppel just referred to, the case of *Smith v. Rogers** is instructive and goes a long way to lessen the risks to which I have been alluding. The plaintiff in that case had signed the blank transfer and power of attorney on the back of the certificate and given it to a broker with instructions to sell the stock. The broker in fraud of the plaintiff procured from the Molson's Bank an advance upon the security of the shares as if they were his own, and handed to the bank the certificate endorsed as mentioned.

Evidence was given of the custom under which these certificates so endorsed are dealt with and the shares transferred on the books after the blanks have been filled in. The plaintiff having discovered her broker's fraud, sued the bank to get back the certificates, but the court held that she could not recover, not because the stock certificate was a negotiable instrument, "but upon the equitable principle that where a person confers upon another all the *indicia* of ownership of property, with comprehensive and apparently unlimited powers in reference thereto, he is estopped to assert title as against a third person, who, acting in good faith, acquires it for value from the apparent owner."

To sum up—

1. The stock certificate is not a negotiable instrument. It is not the stock itself, but is merely evidence.

2. As against an innocent purchaser or pledgee of the shares mentioned in the certificate, who made his purchase or advance in reliance upon it, the company is estopped from denying the truth of the statements in the certificate, respecting the number of shares and the amounts paid thereon.

3. The company may, notwithstanding the statement in the certificate, allow transfer of the shares without surrender of the certificate.

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*Reported in this issue of the JOURNAL.

4. The transfer endorsed on the certificate is good as between the parties, but gives to the transferee an equitable title only.

5. The transfer endorsed should be filled up when signed. There are too many risks involved when a transfer signed in blank is accepted.

6. If an advance be made before actual transfer on the books, such transfer should be completed as soon as practicable afterwards.

7. Bear in mind the question as to the shareholder's indebtedness to the company and the risk of refusal on that account to allow transfer to be made.

October 25th, 1899 Z. A. LASH

A DOMINION INSOLVENCY ACT

ITS ESSENTIAL FEATURES, AND THE SPECIAL MACHINERY WHICH WOULD BE REQUIRED TO SIMPLIFY ITS ACTION

BEING THE ESSAY IN COMPETITION I, TO WHICH THE FIRST PRIZE WAS AWARDED

IN considering this question I might note at the outset that as it would be ultra vires for the Provincial legislature to pass an Act dealing with bankruptcy and insolvency, this subject lies wholly within the province of the Dominion Parliament, hence if we are to have an Insolvency Act it must necessarily be a Dominion Insolvency Act and have operation equally in all the Provinces of the Dominion.

Aside from this however, one of the strongest arguments in favor of the passage of an Insolvency Law would be a unifying of the law and practice in the different Provinces, in so far as they deal with the assets, rights and liabilities of persons who are unable to pay their debts in full. Such a unification would be a matter of great convenience, not only to those in one Province extending credit to traders in another, but also, I should think, to merchants and manufacturers in the United States, Great Britain and other foreign countries who have dealings with traders in several of the Provinces of the Dominion, and who if they are to thoroughly understand their position and the risks which they are taking in each case, must under present conditions be familiar with as many different systems and laws as there are Provinces.

For this reason amongst others there is no question but that the establishment of a common and equitable law throughout the whole Dominion would greatly improve this country's foreign credit.

THE FIRST ESSENTIAL FEATURE THEREFORE WOULD BE An Insolvency Act to apply, with the slightest possible variation, to all Provinces alike. The force of this will be seen when we remember that up to a year or two ago, while the laws in Ontario provided for a reasonably equitable distribution of an insolvent's assets, yet in some of the other Provinces it was possible for a bankrupt, even when making an assignment ostensibly for the benefit of his creditors, to declare a preference in favour of one or more of them, which had in the result the effect of enabling them to be paid in full, while the remainder of his creditors received absolutely nothing.

The next essential feature of such a law would be to place a creditor in a position to force his debtor to assign, upon proper grounds being shown and upon the creditor making a demand to that effect, and I would suggest in this regard that on a debtor committing an "act of insolvency" (which term might be broadly defined as doing anything which would unjustly prejudice all or any of his creditors—for example, absconding from the country, concealing himself or his effects, or conniving at any seizure), or in the event of his ceasing to pay his debts generally, which might also be termed an act of insolvency, his creditor or creditors having claims of one hundred dollars or over should be at liberty to apply to the Court for an order adjudging the debtor a bankrupt. The court upon being satisfied by affidavit or otherwise that there is just cause for making such a declaration should issue an order directing the sheriff of the district or county in which the debtor resides to take possession of the assets of the estate, and to hold them in trust until a liquidator shall have been appointed by the creditors. The sheriff, pending the appointment of such liquidator, should not incur any expense beyond that necessary for the simple and effectual guardianship of the assets. This plan would, I think, do away with the greatest causes for complaint under the Act of 1875, for

First.—It would make the creditor certain that upon short notice he could deprive the debtor of further control over, and further power to make disposition of his property, and have the property transferred into judicial hands. Feeling certain of

being able to do this at any moment, the creditor could then afford to treat the debtor as leniently as the case justified, and give him every opportunity to "pull through," to use a common phrase, contrary to the present state of affairs, where the creditors, urged by uncertainty as to what might become of the assets of the debtor before they could get judgment and execution, are sometimes unnecessarily harsh and exacting.

Second.—Under the old Act official assignees were appointed, whose duty and business it was to handle the estates of insolvents, and who depended for a livelihood on their fees in connection with these estates. As may be very well imagined these men were too anxious that debtors should go into insolvency, and when they did so, were far from sparing in their charges. The result of this was that many debtors were tempted, so to speak, into bankruptcy as a profitable venture, that others were forced into it without reasonable cause, and that the assets were eaten up by fees and charges. It is even alleged that official assignees at that time lent themselves to local rings formed against creditors at a distance.

All this I think would be overcome by putting the estate in the first instance as above suggested in the hands of the sheriff, an officer who is already comfortably fixed in regard to income, and is almost always a man of somewhat superior position, and by having the estate afterwards transferred to such person as the creditors might appoint.

If such an order is granted without previous notice to the debtor, a limited time might be given him, say three days, after receiving the notice that he had been declared a bankrupt, in which he might protest against the order if he so desired, and take steps to have it rescinded, and in the event of his being able to show to the satisfaction of the court that he had done nothing with intent to defraud, that his embarrassment, if any, was but temporary, or for any other reason that the order had been improperly or unnecessarily made, the court should have power to cancel the same.

Upon receiving such an order it would be the sheriff's duty to take possession of all the assets of the debtor, including his books; to go through the books and ascertain as far as possible

all the creditors of the debtor, and to notify such creditors by mail and also by advertisement of the fact of the bankruptcy, and to call a meeting at his office or other convenient place as early as might be reasonable under the circumstances in each case. At this meeting the creditors would then have power to appoint a liquidator satisfactory to themselves, but who, after his appointment, ought also to be approved of by the court.

Upon such appointment and approbation the liquidator would take over the assets of the insolvent from the sheriff and proceed to wind up the estate on behalf of the creditors. The appointment of a liquidator should only be made by the votes of the creditors representing a majority in amount of claims provable against the estate.

Provision should likewise be made for the appointment of inspectors, if the creditors so desired. Whether they should receive a stated fee, or whether it should be left to the discretion of the creditors to vote them remuneration at the meeting at which they were appointed or some subsequent meeting, is a matter which may be open to discussion. I am inclined to think that the latter would be the proper course.

The next essential feature is that there should be reasonable provision for an insolvent getting a discharge if his insolvency has come about without dishonesty, and if his estate pays a fair dividend, or shows that he has exercised ordinary commercial prudence; but in no case should anyone get a discharge who has not kept proper books of account.

The condition above mentioned that a discharge should only be obtained where proper books, etc., have been kept, is most important, because it seems to me that one of the chief faults of the present law, and of some of the previous Acts, is that too often through the selfishness of creditors looking only to their own immediate interests, or what they think to be their immediate interests, men are discharged or allowed to make compositions and settlements, who, speaking commercially at any rate if not legally, would be much better sent to jail. Nothing I think could be more ruinous to the growth of trade, or to the ultimate commercial standing and commercial integrity of a community than the discharge of a debtor, who by

dishonest or fraudulent practices or by gross carelessness, which is almost another word for dishonesty, has become insolvent. I feel very strongly that people generally look too lightly upon the practice of defrauding one's creditors, and are altogether too ready to trust again the persons who have been guilty of such practices. There should be no distinction whatever between the position of a man in the community who deliberately and intentionally defrauds his creditors, and that of a man who obtains money or property by false pretences or forgery.

At the same time it must be remembered that it is possible for an honest and capable man to be forced by unforeseen and unfortunate circumstances into bankruptcy, and when such is really the case it is certainly in the interests of the country and of trade in general that such a man should not for the future be prevented from carrying on business, and that he should receive a full discharge.

Now I cannot help thinking that as long as the matter of a discharge is left to the discretion of the majority of the creditors there will always be room for fraudulent collusion between a certain number of the creditors and a dishonest insolvent, such as an arrangement with the creditor to vote for a discharge of the debtor in the hope that he will receive a large percentage of his future business, or even, in spite of all laws to the contrary, that he will, owing to some secret bargain or understanding, receive a future additional payment on the old account. This might be largely overcome by allowing the creditors simply to recommend to the court the granting of a discharge or the contrary, which the court, after hearing the evidence in the case and allowing time for any objections to be raised, might or might not act upon. In this case, of course, due notice would have to be given to all known creditors by mail and advertisement, in order that they might take the opportunity to protest if they so desired.

Even this, however, although a great improvement on simply leaving the whole matter to the creditors, still seems to come short of the desired mark, for creditors when they come to consider the question of whether they will grant a discharge or not are more apt to look to the size of the dividend which they re-

ceive than to the honesty or dishonesty, ability or lack of ability of the debtor. I therefore think that while the estate may be handed by the sheriff to a liquidator, who shall on behalf of and pursuant to the instructions of the creditors or the inspectors, if such have been appointed, wind it up to the best possible advantage, yet there should be some judicial officer appointed whose duty it would be at the request of any creditor, or even in a proper case on his own motion, to require that the books of the debtor be handed over to him for a thorough inspection, and that the insolvent be held for examination on oath.

This officer should be paid by the Federal Government, and should have no remuneration derived from the estate, and consequently no end to serve in connection with the estate, or in either prejudicing or favouring the insolvent. It should be his duty to minutely examine all the insolvent's books and statements of account, and by questioning him under oath in regard to the same to discover the cause of his insolvency, and whether he has been guilty of any dishonesty or carelessness in connection with his business, and I think that this course ought to be adopted in every case where the debtor makes an application for a discharge, and that the decision of the court ought to be to a large extent based upon the report of this officer.

Under these provisions no interested creditor could procure the discharge of a dishonest debtor, nor could creditors through mere annoyance and petulance prevent the discharge of an honest but unfortunate one.

It seems to me that the expense of maintaining such an officer in each Province would not be such a heavy charge upon the Federal Government. In fact the duties might almost be added to those of some of the present minor judicial officers.

While considering the question of discharging debtors, it must not be thought that I would for a moment suggest that a debtor could clear himself in respect of all and every debt or liability. On the contrary there are several classes of liabilities which the debtor ought not to be relieved of in this general way; for instance, claims which under the Insolvency Act are privileged claims would certainly have to be paid in full before the court could grant a discharge. Further, any debts incurred

by the insolvent in the capacity of a trustee, executor or administrator could not fairly be included in any composition with his trade creditors.

The same rule would apply to all debts incurred by reason of fraud or fraudulent breach of trust to which the insolvent had been a party, as well as to any judgment recovered in respect of damages, especially when the damages involved any malicious act on the part of the debtor, such as libel or assault, or any debt incurred for the maintenance of a parent, wife or child.

I also think that the suggestion made by Hon. Mr. Fortin, who introduced an Insolvency Act last year, was a very fair and proper one, namely: that the discharge should not apply, without the express consent of the creditors, to debts of a non-commercial nature due to non-traders. This would serve to protect a large class of the community who might have casual transactions with traders, and only casual transactions, and who could not themselves be ranked as traders, and should therefore be specially safeguarded.

One objection to this provision is that there might be danger of a dishonest man on the eve of his insolvency getting together enough money to pay off all such liabilities, leaving only such debts as he could get a discharge in respect of, but I think such danger would be reduced to a minimum by the appointment of the Government officer as suggested above, who would certainly be able to discover any such conduct upon his investigation of the insolvent's accounts. It would also be prevented to a large extent by the provision previously suggested, that the estate of the bankrupt must pay a fair dividend before he could get a discharge. It would be just as well to leave the question of what is a fair dividend open for decision in each particular case, instead of stipulating any definite rate on the dollar, as a dividend might be a fair one under the circumstances of one case which would be an altogether inadequate dividend in another case, either through special circumstances peculiar to the case, or through the difference arising from loss and shrinkage on winding up different classes of businesses. Nor should the discharge free any person who might be secondarily liable to the creditors, such as the drawer or endorser of

negotiable paper, except to the extent to which the estate may pay the creditor. If, however, the surety himself paid the creditor in full or in part, the surety would then be entitled to rank on the estate for as much as he had paid.

The next essential feature is that there should be provision made for the fair and equitable ranking on the estate of all having claims provable against it. Under this head there will come of course some items which clearly should have a distinct preference over the ordinary creditors. First among such claims would come the remuneration of the liquidator, the Government tax, if any, levied for the support of the special Government officer which I have suggested, and any remuneration which may have been voted to the inspectors, together with the other necessary expenses incurred in winding up the estate. After these would come any arrears of salaries or wages due to persons in the employment of the insolvent. A limit might be placed on this item of three or six months' wages, and on any arrears over that time the employee would have to rank simply as an ordinary creditor. A similar arrangement should also be made in reference to arrears of rent, which should rank as a privileged claim for the six months immediately preceding the date of insolvency, and in the event of the insolvent having leased the property for a period which has not expired at the time of his insolvency, some provision ought to be made allowing the lessor to prove against the estate for a reasonable sum to compensate him for having his property again thrown upon his hands.

Any debts owing by the insolvent and not yet due should, notwithstanding this fact, be provable against the estate, but interest should be allowed for the period of credit yet to run.

A creditor who holds security should be obliged to set a value upon it, and to rank upon the estate for the balance only of his claim, or if the liquidator so requires it, should be obliged to assign his security at the value placed upon it, and should thus be entitled to rank upon the estate for the full amount of his claim.

In the event of a creditor discovering that he has made an erroneous estimate of the value of his security, or if prior to the final distribution of the estate its value is materially altered, he

should be at liberty to re-value it on showing, to the satisfaction of the court, that the original valuation was honestly made on a mistaken estimate, or that the change which has since occurred has in fact altered its value. Such an alteration in value would be very evident in a case where for instance the security was in the form of a promissory note endorsed by the insolvent, which at the time of the valuation the creditor expected would be paid at maturity by the maker, but which the maker has in the meantime allowed to be dishonored.

It must of course be understood also that if the liquidator and inspectors were satisfied to allow the new valuation to be made it would not be necessary to go to the expense of bringing the matter before the court.

There should be a very clear understanding as to the position of creditors holding negotiable paper, the maker and endorser of which have both become insolvent.

It has been held by many that the creditor, in this case usually a bank, should value both securities, which would plainly make it impossible to obtain one hundred cents on the dollar.

I beg leave to think that this is most unjust for this among other reasons: that whereas the average trader makes from ten to thirty-five per cent. upon goods sold at one, two, three or four months, a bank stands to make only about two per cent. for the same time. It would seem, therefore, only fair that these institutions, so necessary to the carrying on of any extensive trade, should be specially safe-guarded against a loss for which their meagre profit can by no means be expected to provide. Provision could of course be made against their obtaining by such double ranking more than one hundred cents.

It is almost unnecessary to state that the Act should require all claims against the debtor to be proved by affidavit filed with the liquidator, and should also provide that the liquidator may, where it appears proper, refuse to pay and may contest any claim, and that he should also have power under the direction of the inspectors to settle and compromise any claims against the estate which may be in any way questionable, and which it may be cheaper or wiser to settle than to contest.

TORONTO T. G. MCMASTER

ON THE BEST SAFE-GUARDS AGAINST ROBBERY OF A BANK BY AN EMPLOYEE OR AN OUTSIDER

BEING THE ESSAY IN COMPETITION II, TO WHICH THE FIRST PRIZE WAS AWARDED

THIS is a very interesting subject, and one which perhaps affects bankers in a greater degree than any one of the subjects selected by the Committee in the past.

It is proposed in this paper to treat the matter briefly, and to endeavour to touch upon every phase of the subject which may present itself.

We all know that robbery by an employee of a bank occurs more often than we should like to have it. Robbery of this class may be effected in many ways, but is most frequently the act of one official unconsciously assisted by the collective negligence of his fellow clerks. Instances in which two clerks have been concerned are rarer, as the risk of detection is greatly increased, and the fear that before or after the robbery has been accomplished one may inform against the other, perhaps through a desire to save himself, will always operate as a deterrent.

The system of joint custody of cash and securities now so general, combined with a rigid and thorough checking of the teller's cash at frequent periods, has proven itself a satisfactory method and an excellent preventative of crime.

Let it ever be the manager's or accountant's duty to prove all things, to assume nothing, to satisfy themselves that for every dollar represented in the teller's blotter there is an actual dollar on hand. Frequent counting and inspection of the cash lodged in treasury compartment of the cash safe should never be neglected. Arrange to have this done at irregular as well as regular intervals. The manager should never omit this duty, notwithstanding that he may be the joint custodian of the

cash and securities, and that the safe may never have been opened except by him or in his presence. Constant vigilance in this regard cannot be too closely insisted upon, as long immunity from loss is very apt to make us less watchful than we should and must be. It is of little use or avail to argue that your staff is honest. All are until proved otherwise; and we should ever remember that when a bank official robs a bank he is going to do it just as skilfully and as largely as he possibly can. Subterfuge and cunning, such as we little suspected young "Smith" or "Jones" of being capable of, will be resorted to when either or both have the robbery of their employers under consideration or in execution.

Well do they know that they are risking everything, imperilling their futures, recognizing fully in the well-known words of the "private secretary," that if "discovered they are lost," to prevent which we may be sure that much cleverness will be resorted to to carry their act of wrong doing to a successful conclusion. It is only by careful watching, thorough checking and general supervision that these unfortunate acts can be prevented or detected. It is the duty of every officer, senior and junior, to see to this, for I hold that every junior clerk of a bank ought not only to know his own duties well, and to do them, but to acquire as great a knowledge of every others' duties as he can, consistently with his relation toward his seniors.

It would be of no service to enter into a detailed account of the method of book-keeping in vogue in any one bank, as the terms of one bank differ so much from those of another as in many instances to render such a description of little value. Suffice it to say that most of the banks, if not all of them, adopt "double entry," which means a pretty thorough check upon every transaction, attested in many cases by the initials of the checking officers, or of those making the entry. The conception of individual responsibility cannot be carried too far. Each officer must fully recognize that he alone is responsible for what he may have in hand, until he has passed it on, or otherwise disposed of it, and seen his receipt or authority therefor duly and properly recorded in the books of the bank.

As the teller is the clerk most closely connected with the

bank's cash, and as it is with him that a shortage most usually occurs, he possibly comes in for a greater share of checking and inspection than do the officers outside the "box," and this is just the point which I consider should be emphasized. While not relaxing watchfulness in his direction, we must keep a careful eye upon the other members of the staff, with whom in event of contemplated robbery, he might be in collusion or he might not. While it is heartily conceded that one should consider every clerk an honest man until he has proven himself to be a rogue, this acceptance must not be permitted to interfere with the discharge of our duty, with which we must always proceed fearlessly and conscientiously. If an official's conduct seems to invite suspicion or call for investigation, such investigation shall be gone through with, no matter who is hurt, honesty and integrity must always be upheld. Justice has never been a respecter of persons, and if the suspected one afterwards emerges from under the cloud with a clean record, such fact clearly established can only add to his good standing and increase the trust and confidence hitherto reposed in him by his employers.

This course is the only proper one to adopt, and will prevent many an incipient plan of robbery from becoming anything else.

To briefly illustrate what is meant by a rigid and systematic form of checking perhaps it might be profitable to follow briefly the progress of a cash remittance from one branch of a bank to another.

For instance, a Winnipeg branch has been requested to supply a country branch with a remittance of $10,000 for circulation, and we find that it proceeds in the following manner: The Winnipeg teller having been instructed by his manager or accountant to make up and despatch a package of $10,000 to the country office will, we shall say, select ten packages of one hundred tens, and entering the total sum in a "register of remittances despatched," credits himself with the amount, passes out the cash to two clerks, who count it, and having satisfied themselves that there are $10,000 in the package, seal it up ready for despatch, and both initial the register, certifying to

the amount of the remittance. The package is then taken to the express or post-office and a receipt obtained for it; two officers always accompanying the package to the express or post-office. The correspondence clerk, from particulars furnished him by the "remittances despatched register," now advises the country branch that there has gone forward to it, by express or registered mail, a remittance, as the case may be, No. so and so, consisting of one thousand tens (ten thousand dollars) and requests acknowledgment by return mail, at the same time despatching a memorandum of the transaction to head office. In due time the remittance is received, and after the seals have been carefully examined and the package opened by manager or accountant, it is counted by the teller in presence of a second clerk, and if found correct is duly entered in the "register of remittances received" and initalled for by the teller, who receives the money into his cash and charges himself with it. Advice of receipt is then sent to Winnipeg as well as per memorandum to head office, which has meantime been keeping a record of its own of the despatch and receipt of branch remittances. Should money be required to replenish, or as an addition to the "treasury," then the joint custodians, manager and teller, or any other two officers holding such custody, must separately count the notes and make entry in writing, as well as in figures, of the amount in a journal familiarly known as the "treasury" book which must be signed by both and lodged with the cash in the treasury compartment of the safe. Full particulars of this addition must be supplied to head office which is thereby enabled to keep a record of the total notes held at its various branch establishments as a cash reserve. It is almost superfluous to observe that if these precautions, devised and planned by a careful head office, were always executed with the exactness that it is intended they should be, we would hear very seldom of the lost or stolen remittance. These few remarks merely form an index to the code of general rules laid down for the guidance and governance of their staffs by most banks, and if each particular rule in regard to each particular transaction were as faithfully carried out as it ought to be, disappearing treasuries and other unfortunate things of that kind would soon become very much rarer than they are even at the present time.

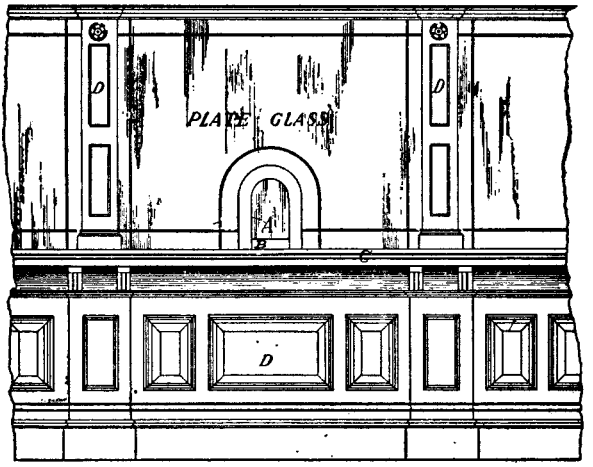
It is the neglect of these safeguards that causes much of the trouble. To carefulness in minor matters may be attributed half the success of a bank, or indeed any business; to carelessness half of its losses.

For carelessness there can be no excuse, and those who expect any to be accepted must meet with disappointment.

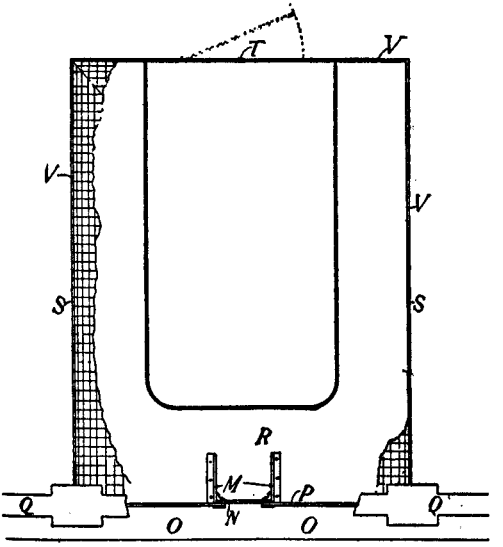
Every member of a bank's staff has had the importance of carefulness and exactness inculcated in him since he began his career. He has been surrounded by head office circulars, by rules for this and that, by books of regulations, none of which are very difficult to observe, he has had high examples in the persons of many of his superior officers which he might have emulated, but neglected, and as a result loss has ensued, loss which is sometimes more far-reaching in its effects than can ever be estimated, and this must be charged to nothing more, nothing less, than carelessness, the most fruitful source of trouble that general managers, inspectors and others in high places have to guard against and contend with.

THE TELLER'S BOX

It is a duty which every bank owes to its teller to give him a good strong telling box. On the teller devolves heavy responsibility and great risk, and every aid should be afforded him to lighten that responsibility by giving him greater security and minimizing the risk of loss. There is such a thing as foolish economy, and it is well brought to our notice when we find, as we do find occasionally, a poor, rickety, shaky cage doing duty as a teller's box. The accompanying illustration conveys come idea of what seems to me to be a most satisfactory style of telling box. It will afford as nearly perfect security from loss by counter robbery as it is possible to obtain, assuming that the teller uses ordinary care in the keeping of his cash and endeavours to observe the few rules for the managing of his box which are given a little further on. The telling box illustrated here it will be seen is supplied with a heavy plate glass front, which, while affording the teller a full view of the office, closes it in entirely, with the exception of the space reserved for the wicket, which is also composed of heavy plate glass encased in



A—Plate glass
B—Open space
C—Outside counter
D—Oak panel



M—Plate glass, interior of wicket rising from counter to height of 2 ft. N—Open space under front wicket, 2 in. O—Outside ledge counter. P—Plate glass front telling box. Q—Oak uprights. R—Telling table or counter. S—Slides for vouchers. T—Door. V—Wirework sides and roof.

brass frame, locking on the inside with a spring lock. The space of say two inches at foot of wicket is sufficient for the ordinary passing out and in of cash. The box is roofed with extra strong brass wire mesh. The sides, beginning at say three and one-half feet from the floor, are of the same material, resting on a strong oak frame or foundation. The door, which is the same as the sides, is fitted with a powerful spring, and opens only to a key or keys in the absolute possession of teller, or teller and manager. On either side of the interior of the public wicket there is a glass plate as illustrated in the cut. These afford protection from the hooked stick manipulator who has been known to operate with more or less success on past occasions. The cash drawers are also supplied with a spring lock, to be used in event of necessity calling a teller from his post. There is nothing intricate, elaborate or unnecessary about a box of this style, and it will be found to commend itself to the use of bankers solely by its simplicity and security.

A FEW RULES FOR THE GUIDANCE OF TELLERS

Too great stress cannot be laid upon the injunction given to every teller to keep his cash off the counter. Keep it out of sight, in its proper place, the cash drawer. Have a separate drawer or tray under your telling table whereon to place the cash received from customers as counted, but which you may not be able to sort at the moment. Get rid of one customer's deposit before you attempt to receive a second. Do not endeavour to pay two customers at one time; this will cause loss. Tellers shall never leave telling box except in case of necessity. Any books which they may require must be handed them by some officer of the staff.

Always look closely at the person who requires you to change a one hundred dollar bill, also at the bill. Tellers should not accept packages of silver, said to contain "so much," from any but the oldest and most trusted customers of the bank, in dealing with whom the custom may perhaps be indulged in to a limited extent. These hints it will be seen contain nothing novel, but if adhered to will prove invaluable to good telling.

CASH AND BOOK VAULTS

What constitutes a burglar proof vault?

The question is a difficult one to answer. In the light of recent events one is almost tempted to reply that such a thing does not yet exist. The genius of the scientific bank burglar appears to triumph over everything so far invented.

Love, it has been said, laughs at locksmiths, but our nineteenth century vault breaker hardly has a smile for the best and most ingenious of our many contrivances for the safe keeping of our cash.

It is apparently a matter of little difficulty to him to gain ingress to the best class of vault or safe of which we can at present boast.

It would be extremely hard to single out any particular make of safe as being less susceptible to wrecking than another. All seemingly offer about as little or as much resistence to scientific burglary as to make selection nearly impossible.

The safe does not appear to be in existence which affords absolute security from the attack of the safe-cracking fraternity of the day.

We construct our fire-proof vault to resist fire, built of hard compressed brick, let us say four deep, with the usual air chamber of one inch and a half in the centre of the wall. We build upon a solid stone or concrete foundation, we line with fine steel and asbestos, we brace the walls at top to prevent spreading with strong iron rods, we fit it with a modern double iron door, and it withstands the fiercest and hottest fire, and establishes its claim to be recognized as a fire-proof vault. But such satisfactory results cannot always be expected of our burglar-proof vault, and we must reluctantly admit that the term as at present applied savours somewhat of a misnomer.

It would seem as though our only hope lay in night watchmen. But someone remarks, "Are not night watchmen liable to be surprised or overpowered?" They are, we grant it; and it must therefore be our duty and endeavour to so safeguard our night watchmen that they will be the better fitted to in turn safeguard our vaults. An arrangement whereby the sleeping guard (and by the term "night watchmen" let it

be understood we include the ordinary bank clerk on guard at night, and at his desk by day, who must necessarily get his sleep) shall be protected from attack, without ample warning. Such might be achieved by a system of electric alarms which could be attached to door and window. This can be done without entailing any very great expense.

Alarms which ring in response to a foot fall have long been in operation in Europe. They are sunk almost level with the flooring and can scarcely be distinguished from it even in daylight, so similar in appearance is the material of which they are constructed.

The flooring for some considerable distance round and in front of the vault door might be prepared in this manner, and so prevent approach to the vault without due warning.

The electric alarm is in high favour with many continental banking houses, and there is no reason why it should not prove itself an even more popular and efficient alarm throughout Canadian banks than it perhaps at present is.

These alarms are connected with the sleeping apartment of the clerk or other official on guard. Where practicable it is always better to have the guard's sleeping chamber immediately over the vault, as by having a hole cut through the floor of this apartment to communicate with the office below, a clear view may always be had of the vault door, and the guard would be enabled to use his revolver in case of necessity. In many large offices a special night watchman is employed whose duties commence at or about seven o'clock in the evening and continue uninterrupted until relieved by the arrival of the caretaker in the morning. In cases of this kind nothing further would appear to be necessary, but without one or other of these plans, it must be conceded that we leave ourselves very much exposed to night robbery.

In connection with the matter of night protection, the remarks of a Toronto inspector of police, in regard to the Bowmanville robbery of a few months ago, are singularly appropriate. He says: "Banks as a general rule do not take enough precautions to prevent robberies, as in a majority of cases they have no watchman sleeping on their premises. In

many private and corporate banks (the Bowmanville bank being a case in point), bankers rely entirely on the protection afforded by the town or village policeman." In the case of the Standard Bank robbery, circumstances seem greatly to have aided the robbers, the night policeman being, we were informed at the time by the press, an undersized and aged man, utterly incapable of making any resistance against burglars, while the safe was alleged to be some twenty-five or thirty years old, and could not well be considered very modern. Had it been so, it might have presented greater difficulties to the men in the insertion of their explosives.

Modern safes whose doors are supplied with rubber tubing (which, by the way, to be of much service must be frequently renewed so as to keep it soft, pliable and air-tight) might perhaps make it harder to insert an explosive than in the case of those safes in which the rubber has been allowed to become hardened and contracted.

In brief, and speaking generally, most bank robberies may be attributed to carelessness, and the neglect of the most ordinary precautions against burglary. A man on guard, a good watch dog, an electric alarm, or an able-bodied night policeman, might have prevented the Bowmanville episode; and these remarks may be generally applied to other burglaries of more or less recent occurrence.

It would not be difficult to cite several instances of bank robbery in Canada, and indeed in England, of late years, which are attributable—if not in every case directly, certainly indirectly—to neglect of duty.

No duty is so unimportant that we can neglect its full and perfect performance; no duty so minor that it can be overlooked. The banking business is one which is fraught with large risks and great responsibilities, and its successful conduct requires careful attention to its minutest detail. All must strive to make and keep the profession a profession to be proud of, and so conduct themselves that their profession may be proud of them.

THE SAFEKEEPING OF COMBINATIONS

Some laxity appears to prevail in certain Canadian banks in the matter of combination figures, these being made known by one officer to another in a very unwise degree. It has been the practice in some offices, where the tellers have been given a day's absence on bank or private business, to surrender their combination figures to the clerks who take their places during their absences, the same figures being made use of by the tellers on their return. It is only necessary to briefly attract attention to this point, and to urge that every precaution be observed in keeping each officer's combination figures absolutely secret. It is surely no great burden to impose upon tellers and others entrusted with the safe keeping of cash that they exercise the greatest care in this particular. Let them always realize that absence, no matter how brief, from the telling box necessitates the setting of a new combination. Without the strict observance of this rule it is idle to talk of safe-guarding the teller's cash. Different courses are pursued with regard to the keeping of the envelopes containing combination figures. One bank perhaps lodges them with its head office; another with a neighbouring branch; a third with some other bank. All plans appear reasonably safe and satisfactory; but of the three, that of depositing these sealed envelopes with a bank's own head office must commend itself as the most natural and most secure.

Too much stress cannot well be laid upon the paramount importance of keeping every accessory modern and up-to-date. In this particular, attention may be directed to the "time lock" for safes and vaults. The banker who has one of these ingenious contrivances not only increases his protection against burglary, but places himself in a very much securer position against the safe locks being tampered with by any members of the staff. Such a lock gives and assures a degree of security which is otherwise unattainable.

Canadian bankers realize this and are going in for the "time lock" much more extensively of late. While time locks are by no means inexpensive, we do not consider that they are so costly that a bank should neglect them. A small robbery (which a "time lock" might have prevented) would in many

instances pay for a large enough number of locks to equip a bank's branches many times over. This has rightly been termed the age of invention, and doubtless ere very long the "time lock" will have been superseded by something newer, safer and more efficient. In the meantime, however, it is the most modern contrivance of which we know, and it behooves bankers to avail themselves of the measure of protection which it affords.

In concluding this paper we think it a matter of fact upon which Canadian banks may felicitate themselves, that robbery by their employees is of such rare occurrence as it is. That it does occur is of course a matter of deep regret, but we cannot disguise from ourselves the fact that it is one of those unfortunate things which will be a burden upon us as long as the world goes on. Our object has been and will be to prevent robbery of this nature as well as every other, and while we may never entirely succeed, we cannot fail by constant care and vigilance to greatly diminish it.

The comparative rarity of improper conduct by bank officials often tempts us to praise the honesty and integrity which seems so large a part of Canadian banking life.

This, however, is simply what every banker has been trained to expect, and is another evidence of the care which has been aforetime exercised in the selection of those who were afterwards to fill responsible positions. Honesty and integrity, the ability to read and understand men and conditions; these qualities constitute a successful banker's stock-in-trade. With these attributes he must become a power in his profession.

A few words anent a bank's attitude towards its employees and we have done. Something is due the faithful officer in the way of a fair and generous salary. Let us not be misunderstood here. What the rank and file of a bank's staff want is not an inducement to be honest, but a recognition of merit and a recompense for services honestly and faithfully rendered.

Every bank is asked to see to it that its clerks receive a "living" salary. This will always prove a paying investment.

Salaries vary largely in different Canadian banks, and while it cannot be said that any institution is prodigal in this regard, it must be remarked that some banks pay much more liberally than others. Instances of tellers in large and busy centres who

are paid not more than $500 per annum are not altogether unknown. This is less than many a grocer's assistant receives, whose responsibility is light when compared with that assumed by a bank teller.

This is a matter which merits the attention of every bank, as it is becoming recognized that if a bank would keep its service up to a satisfactory and efficient standard, it must pay in proportion. While the assumption is that every bank officer—irrespective of the salary paid him—will use his best efforts in the promotion of his employer's interests, we cannot conceal from ourselves the fact that these efforts will be strengthened and stimulated by his employer's generous recognition of them.

Finally, let every bank officer lay to heart the knowledge that he must stand or fall by his own personal conduct and action. That if he is careful and conscientious in the performance of his duty, he must be successful in his profession. Some men are created with carefulness and exactness embodied in their natures; others, less fortunate, must cultivate these excellent and necessary qualities. None may hesitate about taking the right course as against the wrong, although they may imagine that they see a right end to be attained through following a wrong method. Probity must always rule their actions, honesty govern their dealings, and honour control their conduct. By keeping these qualities ever with them, they will find their positions strengthened in a possible time of temptation or doubt.

H. G. P. DEANS

BRANDON, Man.

CORRESPONDENCE

NEGOTIATING CHEQUES ON OTHER BANKS— BANK COLLECTION ACCOUNT

THE following letter is addressed to the President of the Canadian Bankers' Association by Mr. D. Cameron, Manager of the Merchants Bank of Halifax, Shubenacadie, N.S.:

"DEAR SIR,—As you are aware, when a bank cashes a cheque on another bank which has to be mailed direct for returns, the amount has to stand for several days at the debit of 'Bank Collections.'

"It occurs to me that there is a possible method whereby entries, time and postage could be economized.

"Let the cashing bank mail the cheque to the drawee for credit of *drawee's head office* (or other principal city office).

"At the same time let the cashing bank forward to its own head office (or other principal city office) a clearing house voucher. This voucher will be self-explanatory. It will be numbered and show on its face its import. It will serve as a demand upon the drawer's head office to pay on presentation through the clearing house the amount, or proceeds of the cheque on the drawee. On receipt of the cheque the drawee will advise its own head office, but it should not be necessary to acknowledge receipt of the remitting bank's letter.

"In case of dishonour the cheque would be returned through the clearing house with costs, if any, added.

"If you think this suggestion worth discussing I shall be glad.

"I trust the annual meeting will be very interesting and successful. I am, yours truly,

D. CAMERON"

A SUGGESTED FORM:

CANADIAN BANKERS' ASSOCIATION

CLEARING HOUSE VOUCHER

No.....

Remitted { by Atlantic Bank, Dundee Branch, to Pacific Bank, Gorton Branch

C. No..... One thousand dollars ($1,000), for settlement hereby through Montreal Clearing House.

.....Manager

THE TRAINING OF BANK CLERKS.

To the Editing Committee:

GENTLEMEN,—As the education of bank clerks, in practical banking, is to my mind of vital importance, perhaps you would give attention and space in your columns to some suggestions from one who experiences the lack of opportunities.

It is a fact that the majority of bank clerks receive no education in banking beyond their own experiences, which oftentimes amount to very little. Would it not, therefore, be a good idea for the bank clerks in the large towns and cities, where they are in sufficient number, to form themselves into associations for mutual improvement? I am sure the banks would lend their financial assistance if required.

The members might all be associates of the C. B. A. and have the benefit of the JOURNAL of the Association. All the best authorities on banking should be in the library. Reading, studying and discussing these books together could not help but improve the mind of the average bank clerk, and would tend to keep him away from places and pleasures that would do him less good.

Then, say once a month, it might, perhaps, be arranged to have some eminent banker deliver an address or lecture on some interesting banking subject. The only objection I see to the above is that our bank clerks in the country (where I am) would be unable to reap any benefit until they have the good fortune to be moved to a town where such an organization exists.

Yours truly,

M. B. C.

Nov. 25th, 1899.

A FORMULA FOR THE CONVERSION OF STERLING INTO CURRENCY

To the Editing Committee:

DEAR SIRS,—I do not know if the subjoined simple formula for the converting of sterling into dollars is very generally known to the majority of bankers in Canada, and I am of the opinion that it will be new to some, at least, of the younger members of the banking world, so I take the liberty of sending it to you, and if you think it worth publishing, I will hope to see it appear at some time in the JOURNAL.

There are occasions when an exchange table is not at hand, and this formula may be of use to someone at some time. I would also suggest that someone posted in the matter of

Sterling Exchange and kindred subjects, should write an article on the reason for the enclosed formula, and generally explain the subject, so that bank clerks, generally, may get a better understanding of this subject, which is not too well known to a great many of them, especially the younger officers.

Yours truly,

W. F. COOPER

PETROLIA, Nov. 29th, 1899

TO CONVERT STERLING INTO DOLLARS

Multiply the amount by four times the rate of exchange, and divide that sum by 90.

It should be said that the rate is to be taken as say 109½ for example, and that multiplied by four.

EXAMPLE

£100 @ 9½d.

Four times the rate of exchange would be—

109½ multiplied by 4, equals..... . .... 438.

£100 multipled by 438, equals ..... 43800.

Divide 43800 by 90, equals .....486.66.

It will be found that this will apply to any other rate, this one being given as an illustration.

QUESTIONS ON POINTS OF PRACTICAL INTEREST

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value, the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee:

Bill at three months sent by the holder for collection—Neglect of collecting agents to present for acceptance until near the date of maturity

QUESTION 273.—A bill dated 30th August, at three months, drawn by A in favour of B on the —— Mfg. Co. in the State of New York, was endorsed by B and discounted with a branch of the Y— Bank. It was forwarded at once by the Y— bank to their branch at Niagara Falls for collection and promptly sent on to the latter's Buffalo correspondents, who held it unaccepted until a few days before maturity. Acceptance was then refused and the bill was protested and returned to the Y— Bank. The drawer and endorser claim to be released from liability because of want of diligence in the presentation of the bill. Could the amount be recovered from the Buffalo Bank, and if not, what is the position of the Y— Bank as regards the drawer and endorser?

ANSWER.—The above question was submitted to counsel by the Y— Bank, and by their courtesy we are permitted to publish the opinion given in the matter, as follows:—

"On this state of facts, we cannot advise that the Buffalo Bank is liable to the Y— Bank for anything more than nominal damages. If the Buffalo Bank had been a holder of the

bill in the same way as the Y— Bank, it would have been under no obligation to present the bill for acceptance. Any obligation on its part so to do, arose because of its duty to the Y— Bank, as agent of the latter for collection.

"We are of opinion that the Buffalo Bank should, as such agent, have promptly presented the bill for acceptance, such a presentation being advisable from the point of view of the Y— Bank, because of the further security it would obtain should the bill be accepted, and because, should it be dishonoured a right of immediate recourse against the drawer and endorser would accrue, and that for its want of diligence in this respect the Buffalo Bank is liable to the Y— Bank in damages.

"But, beyond merely nominal damages, the Y— Bank could not, in an action against the Buffalo Bank, recover except for loss actually sustained by reason of the negligence of the latter bank, and, on the assumption that the bank's rights against the drawer and endorser have not been affected by the delay in presentation for acceptance, and that the drawer and endorser are financially responsible for the amount, we do not think that the bank has, in fact, sustained any actual loss by the negligence of its agent. It must be borne in mind that the Buffalo Bank was agent of the Y— Bank only, and not of the drawer and endorser. Had the Y— Bank been bound to the drawer and endorser to use diligence in presentation, so that failure to effect prompt presentation might have given the drawer or endorser a remedy against the bank, then, it might well be that the Y— Bank would have a corresponding remedy against its agent, but, on the state of facts given us this does not appear to be the case.

Joint and several note charged after maturity to the account of one of the makers—Rate of interest chargeable for the time over-due

QUESTION 274.—A and B are liable jointly and severally on a note which has been discounted by the bank, B being, in effect, a surety only. The note is unpaid, and some time after maturity the bank charges it to B's account, who has had a balance with them at all times exceeding the amount of the note. Can they charge him with the full rate of interest, or only such a rate as they allowed on his deposit?

ANSWER.—The bank is entitled to collect the full amount of the note and interest until it is paid by the parties, or either of them, or until the bank chooses to charge it against B's account. In the province of Ontario the bank has a right of set off, but is not bound to exercise it, and pending its exercise the deposit on the one hand and the note on the other, remain

as two separate liabilities, each carrying its own results as to interest, etc. The law in Quebec as to set off differs somewhat from that in Ontario, and what we have said above might not apply there.

Note drawn in favour of a bank with no place of payment specified

QUESTION 275.—A joint and several note made by three parties is drawn in favour of a bank, but there are no words indicating that it is payable to its order or to bearer. The note is dated at the place where issued, but no place of payment is specified in it.

In the event of the bank having to sue the parties, is its position quite as good as if the note had been made payable at its office, and to its order?

ANSWER.—The bank is under no disadvantage as regards the place of payment, except in respect to the matters mentioned in Sec. 86 of the Act, and this can be obviated by presenting the bill, at any time before proceedings are taken, to each of the promissors.

The point as to the omission of the words "or order" or "or bearer," is not material. Under sec. 8, sub-sec. 4, a note drawn as above described is payable to order.

Certified cheque—Would the drawee bank be justified in refusing payment on the drawer's instructions?

QUESTION 276.—Would a bank be justified in refusing to pay a certified cheque if instructions had been received from the drawer to stop payment?

ANSWER.—The bank by certifying or accepting a cheque has come into privity with the payee, and the drawer's right to countermand payment is at an end. This question is dealt with fully in previous issues of the JOURNAL.

Draft with bill of lading attached, cashed by a bank. Has the acceptor any recourse against the bank if the bill of lading should prove to be forged, or if the goods are not as ordered?

QUESTION 277.—A bank has cashed a draft with bill of lading attached, the goods being shipped to order of the bank. Has the drawee any recourse against the bank if the goods are not as ordered, or in the event of shipping bill being a forgery? Does the bank in any way guarantee its genuineness?

ANSWER.—We think the bank assumes no responsibility to the drawee in such a case. He has been instructed by the drawer to pay so much money, which he has done. Even if it be said

that the instructions were conditional on the documents attached being surrendered, this would involve nothing further than that the bank should surrender the documents received from the drawer, whatever they may be. We think, however, that if the bank should negotiate the draft to another bank, it might be held responsible to the latter for the genuineness of the documents.

Cheque to the order of "John Smith, collector of customs," endorsed by the assistant or acting collector

QUESTION 278.—A cheque is payable to "John Smith, collector of customs." Are the following endorsements in order:

James Brown, assistant collector, or
William Jones, acting collector?

ANSWER.—The above endorsements are not in order, although it is quite likely that the circumstances would justify the bank in accepting them. The payment to the assistant or acting collector would not be valid if the cheque were given to John Smith as his personal property.

Bill drawn payable at one bank, and accepted payable at another

QUESTION 279.—A draft drawn as follows: "Pay to the order of myself at the Canadian Bank of Commerce, Montreal," is sent to the Merchants Bank of Canada, Montreal, for collection, and accepted payable at the latter bank. Where should the draft be presented when due? Should the latter pay it, seeing that there may be doubt as to where it is really payable?

ANSWER.—Section 19, 2a., declares this acceptance to be "not conditional or qualified," therefore it is a general acceptance, that is, an unqualified assent by the drawee to the order of the drawer, in this case an undertaking to pay as the drawer has instructed, namely, at the Canadian Bank of Commerce. The bill may therefore be presented for payment at the latter bank.

Sub-section 2 of section 45 (see d. 1.) declares that where a place of payment is specified in the bill or acceptance and the bill is there presented, such presentment is properly made. Under this rule it would seem proper to present the bill at the place named by the acceptor, so that the effect of the whole is to give the holder the right to present for payment at either place. The provisions in the Act were evidently intended to legalize the previously existing practice of naming the place of payment in the acceptance and not in the body of the bill (a practice of unquestioned convenience), and there has been no

case before the courts since, where a different place of payment has been named in each. As the cases must be rare we should think it best to present such acceptances at both places named and so avoid all doubt.

There is, we think, no question of the right of the bank at which the acceptor has domiciled the bill to pay it on his behalf if this payment is otherwise in order. In doing so it is acting on the acceptor's authority.

Power of attorney to accept bills in favour of a bank manager—Omission to accept

QUESTION 280.—The manager of a bank which holds a bill for collection receives from the drawee a power of attorney on the form in common use authorizing him to accept the bill. This he neglects to do, but attaches the power of attorney to it. Would this give the holder of the bill a right to sue the customer?

ANSWER.—Clearly not, on the bill. We understand that the form in general use contains an undertaking to pay as well as authority to accept, and it might be said that this is a contract with the collecting bank entitling it to a remedy on contract. There is no reason why the power to accept should not be exercised after maturity.

Surviving partner's right to operate the firm's bank account

QUESTION 281.—Is the surviving partner of a firm legally entitled to operate the banking account of the firm upon the death of his partner, notwithstanding the absence of any agreement to that effect, and to use the funds in hand or any other firm funds deposited, by checking it out in the name of the firm?

ANSWER.—The deposit being a joint one the surviving partner becomes entitled to withdraw it under the law of survivorship.

Bill of Exchange payable to a married woman in the Province of Quebec

QUESTION 282.—May a cheque or bill, payable to a married woman residing in the Province of Quebec, whether she has or has not a marriage contract, be properly paid or negotiated on her endorsement alone, and without her husband's consent?

If the act of payment or negotiation took place outside of the Province of Quebec, would that make any difference in the position of the parties?

ANSWER.—We are of opinion that the provisions of the Bills of Exchange Act must govern with respect to the powers of a married woman in the matter of endorsing or negotiating cheques and bills of exchange, and wherever these differ from the Quebec law they must prevail.

So far as her capacity to incur liability as an endorser is concerned, the Act leaves the matter untouched. Section 22 makes "capacity to incur liability co-extensive with capacity to contract." If under the code she is not able to contract, her endorsement on a bill does not create any liability on her part as an endorser.

This does not, however, affect her power to endorse or negotiate a cheque or bill in such a way that the drawee may lawfully pay it, or the transferee become the lawful holder.

Under sections 54 and 55 of the Act, both the acceptor and the drawer are precluded from denying the capacity of a payee to endorse, and a subsequent endorser is precluded from denying the regularity of the previous endorsements. Under these sections, therefore, if a bank should accept a cheque payable to a married woman, it is bound to pay it on her own endorsement, for it is precluded from denying her capacity to endorse. If the bank is so bound it clearly has the right to charge the cheque when paid to the drawer's account, but apart from this the drawer also is precluded from denying the capacity of the payee to endorse.

Considering that a bank is bound to pay its customers' cheques according to their tenor, and that in making a cheque payable to a married woman, the drawer in effect declares (because of such preclusion) that the amount is to be paid to her notwithstanding any disability she may be under, we think that a bank in the Province of Quebec is not only not bound to require the husband's authorization, but might be liable to its customer for damages should it refuse his cheque because of the absence of such authorization only.

The question being a very important one, we thought it well to submit it to counsel in the Province of Quebec, from whom we received the following reply:

> "I am of opinion that under the law of this Province "the wife may endorse so as to pass the title to a bill of "exchange, even though she does not make herself liable, "and that a plea of her incapacity could not be raised by "an endorser, drawer, or acceptor, as they are precluded "from doing so by the Bills of Exchange Act, sections 54 "and 55."

As regards the second part of the question, the effect of payment or negotiation outside of the Province of Quebec, we think that the relative rights of the parties would depend upon

the law where the transaction took place. A married woman is under no disability that would call her endorsement into question in any Province other than Quebec.

Presentment of a cheque for payment—Due Diligence

QUESTION 283.—A suburban office of a city bank (or a bank not a member of the Clearing House) receives a cheque from a customer on Saturday at ten o'clock a.m., hands the same to its city office (or its clearing bank) on Monday, and such city office (or clearing bank) presents it for payment on Tuesday through the Clearing House. Was the said cheque, in your opinion, presented for payment within a reasonable time within the meaning of the Bills of Exchange Act?

ANSWER.—We think so. The question is to be determined by the nature of the instrument, the usage of trade, and the facts of the particular case (section 45*b*). It is customary for persons receiving cheques to deposit them with their bankers, for such bankers to forward them to their correspondents for collection, when they are not drawn on banks with which they make direct exchanges, and for these correspondents to present them for payment through the Clearing House or otherwise on the following day. If such a mode of collection is admitted to be reasonable, and each party negotiates or forwards the cheque within twenty-four hours after it is received by him, the procedure is clearly in order. The Act contemplates a negotiation of cheques, which might delay their presentment without necessarily discharging the endorser. (See section 36 (3), and compare section 40 as to sight bills).

Cheque cashed by a branch of a bank other than the branch on which it was drawn—Sent for collection and lost in the mails

QUESTION 284.—A cheque on a bank in Hamilton in favour of A, was cashed for him by a bank in Toronto. It was forwarded by mail in due course for presentment, but the letter has not reached its destination, and the drawer has since failed. What are the bank's rights against the drawer of the cheque and against A?

ANSWER.—Under clause 46 of the Bills of Exchange Act, "delay in making presentment for payment is excused when the "delay is caused by circumstances beyond the control of the "holder." Delay through loss in the mails is, we think, such as comes within this definition. The bank's right against the drawer and endorser of the above cheque are therefore just such

as they would be against similar parties to a bill which is not due, and they continue liable thereon until the cause of delay ceases to operate.

The bank's remedy in the case is provided by sections 68 and 69 of the Act. It has a right to demand a duplicate cheque from the drawer on giving suitable indemnity, and if this is then duly presented, and, if dishonoured, notice given, suit can be brought against the drawer and endorser.

The maker of an endorsed note assigns his estate for the benefit of creditors—Should the note be protested without waiting for maturity?

QUESTION 285.—The maker of a note (discounted for a customer—payee) becomes insolvent. The note is not yet due, and has another endorser who has lent his name as surety for the maker. Should the note be protested as soon as the assignment is gazetted? Or should no action be taken till maturity.

ANSWER.—Nothing can be done until the note matures and is dishonoured.

QUESTION 286.—(submitted in continuation of the foregoing).

You say that nothing can be done until the note matures and is dishonoured. If this is the case, what is the meaning of sub-section 5, section 51, Bills of Exchange Act, which is as follows?:—

"Where the acceptor of a bill becomes bankrupt or sus-
"pends payment before it matures, the holder may cause the
"bill to be protested for better security against the drawer and
"endorsers."

ANSWER.—Under this provision the bill may undoubtedly be protested for better security, but the Act gives no remedy against any party until the bill matures. The only result under our law of such a protest would be to enable any friend of the drawer or endorser to accept for honour if he wished to do so. The holder, except in such a case, would get no advantage under our law from the protest. The provision was no doubt for the purpose of enabling the Canadian holder of a foreign bill to obtain any remedy in such cases which foreign laws give, *e.g.*, in France.

Bill drawn to mature on 31st October (including grace), accepted "payable 31st October"

QUESTION 287.—A bill dated 28th August, and payable two months after date, which would make it due on 31st October, is

accepted by the drawee, who adds to his acceptance the following words: "Payable 31st October." Does this affect the due date?

ANSWER—We presume our correspondent thinks that if the acceptor's statement is to be treated as part of the bill, three days of grace must be allowed after 31st October, but we do not think that it has this effect. The bill, according to the Act, is "due and payable on the last day of grace," and the acceptor has merely noted this in a concrete form.

If it were otherwise, the acceptance would not be one which the holder should take.

Deposit in name of "A B for C D"—Right of A B's creditors to garnish the moneys

QUESTION 288.—A B deposits money as follows: "A B for C D," but C D to have no power to draw. Can a debtor garnish this money for a private debt of A B?

ANSWER.—If the money, as a matter of fact, is A B's money, it can be garnished. If it is C D's money, of which A B is trustee only, it cannot be touched by A B's creditors.

Request for payment of a note sent to the maker in an unsealed envelope

QUESTION 289.—A bank notifies the promissor on a note held by it, requesting payment. The envelope containing the notice was not sealed. Can the party claim damages from the bank for the open letter?

ANSWER.—This gives the party no claim for damages, unless the statement in the notice is false and it is sent maliciously.

New stock issued by a bank—Allotment to executors who are not authorized to invest more money in bank stocks

QUESTION 290.—The trustees of an estate are entitled to an allotment of new stock about to be issued by a bank, at a price which would give them considerable profit, but they are debarred by the terms of the trust from investing further moneys in bank stocks. Is there anything in the Bank Act which would authorize their disposing of their rights to the new shares, or are they under any disqualification as trustees in this respect?

ANSWER.—Leaving out of consideration the right of the directors to make regulations respecting the transfer of shares,

which would not be likely to affect the question, no special authority in the Act is necessary to enable shareholders to sell their rights to the new shares, and trustees have the same power in this respect as other shareholders, which they would, we think, be bound to exercise.

Circulation Redemption Fund—Notes issued in excess of paid-up capital

QUESTION 291.—Does the Circulation Redemption Fund guarantee the notes of a bank where they are (1) issued in excess of the paid-up capital, or (2) signed or issued by an unauthorized officer?

ANSWER.—If the notes are in either case notes of the bank for which it is legally liable, then they must be paid out of the Redemption Fund if not redeemed by the bank.

Right of a bank to hold funds at credit of a deceased depositor against unmatured obligations of the latter

QUESTION 292.—(1) A bank's customer at his death has a deposit in his own name, believed to be his own money. The bank holds unmatured paper on which he is a promissor or endorser. Can the bank hold the money until this paper has matured and then charge the same against his account? How if the estate is insolvent?

(2) How would it be if it were shown that although the money stood in his own name, it was really trust money?

ANSWER.—(1) The bank could not hold the money if an executor or administrator duly appointed should bring suit for the amount before the bills mature, but would be entitled to set off any bills maturing before action brought. We think the same result would follow if the estate were insolvent.

(2) The fact that the money was trust money, if not known to the bank, would not affect the right to set-off. (See *Union Bank of Australia v. Murray Aynsley*, in the JOURNAL for April, 1899.)

Cheque payable to the order of a failed firm

QUESTION 293.—Referring to question No. 237, supposing an assignment for the benefit of creditors were made by a *firm*, say John Smith & Co. Would the endorsement of this firm, which is *commercially dead*, be a discharge to the bank cashing a cheque payable to the firm's order? Would it not be necessary to have the endorsement of the assignee?

ANSWER.—We assume that the assignment by the firm worked a dissolution of the partnership. The law is well settled that the dissolution of a firm operates as a revocation of the authority of each partner to bind the other by new contracts, etc; but this statement must be modified with respect to the authority of the partners to arrange, liquidate and settle the affairs of the firm. As an assignment by the firm would vest in the assignee the ownership of the assets, he only has authority to wind up the business, by collecting the assets.

It must be borne in mind that the assignee is assignee only of the assets of the firm; he does not represent the firm generally, nor has he power to use its name unless expressly authorized to do so by the assignment or by some statute. If the cheque was given for a debt due to the firm the receipt of the money by the assignee and his endorsement of the cheque would probably for all practical purposes end any question as to the sufficiency of the endorsement.

But this practical question must not be confounded with the legal question involved. The assignee (unless expressly authorized as already mentioned) would have no power to endorse the firm's name, and the endorsement of his own name would not answer the order of the drawer of the cheque. The drawer's direction is to pay to the order of the firm. We do not think that, under the circumstances indicated in the question, the cheque could be treated as payable to a fictitious or non-existing person, and, in the absence of express authority from the other partners, we think that the endorsement of the name of the firm by one partner would not be technically sufficient; it would require the endorsement of each member, or of someone authorized by each member to endorse the dissolved firm's name.

As indicated above, the question would not be likely to arise if the money got into the proper hands. It would be more likely to arise if the cheque were presented, not by the assignee, but by some other person claiming title through the previous endorsement.

Joint deposits

QUESTION 294.—John Billings opens a Savings Bank account in the name of "John Billings and Mary Billings or either." John Billings dies. Is the bank justified in paying the amount to the executors of John Billings, or must it only pay on a cheque of Mary Billings? Should Mary Billings be the executrix, would it make any difference?

ANSWER.—The executors have no control. The money is payable to Mary Billings alone. See the reply to question No. 233.

Legal Bank holidays

QUESTION 295.—What holidays may a bank observe? In the case of a civic holiday, where all the banks in the place, finding by 12 o'clock that the bills they hold have all been arranged for, close their offices at that hour, what is the result if some private holder of a bill due that day, or of a cheque, presents the same after the bank is closed, and it is thereby dishonored?

ANSWER.—Banks in Canada may legally observe any holiday they choose to keep, provided that in closing up their offices they are not breaking their contract with their customers, which may be either expressed or implied. A bank which opens a current account in effect agrees with the customer that it will be ready to honour his cheques if presented within the ordinary business hours recognized among bankers. If it should without notice decide not to open or not to keep open the office on any particular business day, and the customer's cheque should thereby be dishonored, we think it would be liable to him for damages.

The existing practice among banks, of keeping someone in the office on holidays which are not statutory holidays, to answer demands such as the above, seems to imply an understanding on this point which amounts to a contract, but this may be modified, on reasonable notice, to any degree. We would think it reasonable that banks, in common with their neighbours, should keep the local holidays, and that it should be understood that as soon as all notes and acceptances due have been arranged, the offices will be closed for the day. The closing of the offices on any day after reasonable notice involves no responsibility.

Warehouse receipts

QUESTION 296.—Referring to your answer to question 269 (Vol. VII., page 39), is not the description of the place where goods are stored an essential point in a warehouse receipt? The statement of Mr. Lash in his article (Vol. II., p. 71) would seem to indicate that the description is necessary.

ANSWER.—In the statement mentioned Mr. Lash has reference to security under Sec. 74, which, to be valid, must comply strictly with the terms of the Act. These are, among other requirements, an assignment in the form given in Schedule C (which provides for a statement of the place where stored) or in a form "to the like effect." If a form were used which contained no reference to the place, it could scarcely be said to be "to the like effect."

A warehouse receipt, on the other hand, is defined as "Any receipt given by any person for any goods, wares or "merchandise in his actual, visible and continued possession, "as bailee thereof in good faith, and not as his own property." Nothing is said as to the place of storage, and there are only two conditions laid down: that it shall be receipt given for goods belonging to another, and that they shall be in the actual possession of the one who gives it.

Bill payable "two and one-half months after date"

QUESTION 297.—What do you think is the correct due date of a bill dated 24th August, 1899, and payable two and a-half months after date?

ANSWER.—Two months from 24th August would be 24th October, and apparently the question to be determined is when a half month from the latter date would end. In our opinion this is not determinable and the bill in consequence is not a bill of exchange within the meaning of the Act, as it is not payable at a fixed future time. See a discussion of this point in answer to question 189, Vol. VI., p. 211.

Cheque received from a customer on deposit, with a prior endorsement forged

QUESTION 298.—A cheque in favour of one T. A., and purporting to be endorsed by him, is received from a customer of ours on deposit; he endorses the cheque after T. A. We send it to another bank, which collects the amount from the drawee bank, but first stamps on the cheque a guarantee of the prior endorsements. This guarantee is given without the authority of the prior endorsers. T. A.'s endorsement proves to be a forgery. Is the liability of our customer affected by the guarantee, and what is its effect generally?

ANSWER.—Assuming that notice of the forgery has been given within reasonable time, as required by the amendment to section 24 of the Bills of Exchange Act, your customer must repay the amount. His liability is not affected by the guarantee of the prior endorsements, which in this case is a contract only between the bank which guarantees and the drawee bank.

The effect of such a guarantee generally is to make the guarantor liable to return the amount to a subsequent holder if the endorsements prove to be forged or unauthorized. The law imposes practically the same liability without the guarantee, but liability under Sec. 24 (as amended) is conditional on reasonable notice being given after discovery, while liability under a

guarantee is a matter of contract, which might exist until barred by the statute of limitations. The guaranteeing bank might therefore be liable under its contract of guarantee, under circumstances in which the prior endorsers would be discharged, by reason of want of notice within reasonable time.

We do not think guarantees should be asked or given except for irregular endorsements, as provided in the rules adopted by the Association, but that each bank paying or negotiating a cheque should do so on the protection afforded by the Statute, and subject to the performance of its duty in connection therewith.

Bank Money Orders

QUESTION 299.—A branch of a bank which has agreed to cash orders at par, cashed a bank money order and sent it to their agents in Montreal. These agents had not entered into the agreement to cash these orders at par, and acting under the old agreement they retained half the commission for themselves. Is the bank as agent for the cashing bank entitled to half the commission?

ANSWER—It is difficult to say what the legal rights of the bank would be, but we certainly think that on equitable grounds they should not collect commission.

Demand draft with bill of lading "For Payment"—Goods delayed in transit

QUESTION 300.—A demand draft with bill of lading attached, to be held for payment, is received for collection. The goods, owing to delay in transit, will not arrive for three weeks, and the drawee refuses to pay until the goods arrive. No instructions have been given to hold the draft. Is the collecting bank excused from protesting it?

ANSWER—The drawer would be discharged if the draft were held over without notice of dishonour being given him, and the collecting bank would be responsible for the bill.

Cheque to "order" endorsed by the payee "without recourse"

QUESTION 301.—(1) A cheque payable to order is presented for payment by the payee, bearing above the endorsement the words "Without recourse to me." Should the bank refuse payment?

(2) Is there any danger in negotiating a marked cheque so endorsed by the payee?

ANSWER—(1) If the payee of a cheque, who is receiving payment thereof from the bank on which it is drawn, chooses to write over his signature the words "Without recourse to me," we do not think that need affect the willingness of the bank to pay. The bank has in such a case no claim on him as endorser, and this disclaimer is mere surplusage. It would not relieve him from liability to return the money if it should prove that he is not the proper person to whom the money should have been paid, *i.e.*, that he is not really the payee.

(2) The danger in negotiating a marked cheque on another bank so endorsed, is that the endorser would not be liable if the bank were to repudiate the marking or were to fail. Such an endorsement would not relieve the endorser from liability to return the money if it has been wrongfully paid him.

Pass books—Current account and Savings Bank

QUESTION 302.—(1) Is there any legal reason whereby a savings bank pass book is different from an ordinary current account pass book?

(2) If not, why is there generally an impression that the savings bank book is different from the other and more important?

(3) A savings bank book states on the fly leaf that "the pass book must always be brought to the bank when money is withdrawn." Can the bank decline to pay if the pass book is not produced?

(4) Are the rules laid down by the bank in the pass book binding upon the customer?

ANSWER—(1) The difference is purely a matter of convenience.

(2) It is no doubt regarded as more important because it must be produced when money is drawn, and because it serves as a receipt for special deposits often left untouched for a long period.

(3-4) The conditions in the pass book are binding on the customer, and the bank is entitled to demand the production of the pass book as a condition of payment. Of course if it were destroyed the same results would follow as in other similar cases; the bank could not withhold payment on proof of loss. On the other hand it incurs no risk if payment is made without production of the pass book to the true owner of the money.

Funds of a Society at credit of a deceased depositor

QUESTION 303.—A married woman who has some money at her credit, believed to be held by her for a church society, dies,

leaving a husband and minor children. The society claims the money. What should the bank do? Would it be liable to the children if the money were paid to the society?

ANSWER.—If it is quite clear that the money was in fact held by the deceased in trust for the society, there would be no risk in paying it to the society. A bond of indemnity should be taken, and the husband's admission of the society's rights. It would be well also to have a statutory declaration from some other person who knows the facts. The children could only get at the matter by procuring letters of administration of the estate. The administrator would undoubtedly have control of the deposit, but he would be bound under the conditions mentioned to pay it over to the society; so that the children would gain nothing.

Trust Companies

QUESTION 304.—Why do Trust companies in Canada require such large paid-up capitals? How do they employ their money?

ANSWER—Trust companies doubtless find that their business and credit are best subserved by having large capitals, and that their shareholders prefer to have the stock paid up in full rather than partially paid, because of the liability attached to the latter. The Government returns show what investments are made of the capital.

Debentures held by a Bank as collateral—Neglect of Bank to present the coupons promptly

QUESTION 305.—A bond with coupons attached is held by a bank as collateral security. They neglect to collect the coupons as they mature, and ultimately when the bond matures it is found to be uncollectible. The customer claims credit for the overdue coupons. Is the bank responsible?

ANSWER.—The relations between the bank and the customer are scarcely indicated with sufficient clearness to enable us to answer this question definitely. On the bare facts stated we should say that as the customer was not entitled to receive the coupons, but was bound to leave them, or their proceeds, with the bank as security, the duty of collecting them fell on the latter. If then, as a matter of fact, the coupons would have been paid if duly presented at maturity, the bank would be responsible for the loss caused by their non-presentation.

Government Bank statement—Directors' liability

QUESTION 306.—Can you inform me why the wording in the bank returns to the Government in regard to directors' liabilities was changed from

> "Aggregate amount of loans to and liabilities, direct and indirect, of directors and firms and partnerships in which they or any of them have any interest"

to the present wording, viz.:

> "*Aggregate amount of loans to directors or firms of which they are partners.*"

It has been suggested that the latter refers only to the direct liability of directors, or firms of which they are partners, and not to the indirect, as it is contended there is a difference between making a loan to a party or firm and discounting business paper for them.

Those who hold the other view do not consider there is any difference, and that the latter form of return requires just the same information former ones called for.

ANSWER.—The change in the Government Statement respecting Directors' liabilities was adopted, we believe, on the ground that it was not reasonable to show the "indirect" liabilities of directors, and that a bank should not be exposed to criticism merely because it took the precaution of requiring a good endorsement on its loans, even if this endorsement were that of one of its own directors.

As to the difference between the meaning of the present phrase and that previously used, the chief difference is, that where a director (or his firm) is liable on paper which has been discounted for other parties, it is not now shown as part of the directors' liability. This, however, is quite distinct from the question raised, as to whether, under the present clause, business paper discounted for directors should be shown. No doubt the discounting of such paper is not, speaking strictly, a *loan*, but it is so regarded and spoken of in ordinary language, and we think that business paper discounted for a director or his firm should be shown as a liability. We believe that to be the general practice.

Legal

NOTES

Liability of a person who endorses a note before it has been endorsed by the payee.—At various times in the past, relying on the cases in our Courts, we have advised our correspondents that where a person endorses a note for the purpose of becoming surety to the payee for the due payment of the note by the promissor, he is liable to the payee, even if the note had not already been endorsed by the latter. The decision of the English Queen's Bench Division in *Jenkins v. Coomber*, which was reported at page 69 of the current volume of the JOURNAL, and to which we have already called special attention, was quite contrary to the views which had been taken by the Courts in Ontario. In the cases which have since come up here the finding in *Jenkins v. Coomber* has necessarily been followed, and the opinion which we have expressed on this point must be modified.

The case of *The Canadian Bank of Commerce v. Perram*, reported in this number, is in some respects distinguishable from *Jenkins v. Coomber*, inasmuch as the endorser had admittedly put his name on the note for the purpose of guaranteeing payment to the payee, while in *Jenkins v. Coomber* it was not clear that the endorser had placed his name on the bill with any other object than to help the holder to negotiate it. The Perram case was probably as strong on the part of the payee as any case likely to occur, nevertheless under the decision of the Court the endorser was declared not to be liable. This being an appeal from a County Court, the matter cannot be carried further, but we understand that an appeal in a similar case is pending in the Divisional Court.

It would still appear to be the law that where one gives such an endorsement as that under consideration (that is, where

the second endorser becomes a party to the note for the purpose of assuring payment to the payee or first endorser) after the payee has endorsed, he is liable to the payee notwithstanding the order of their names. But an endorsement placed on a note before it has been endorsed by the payee is of no avail to him. As the payee's rights against such an endorser require in any case special proof, outside of the document, it would seem advisable that this form of transaction should be abandoned.

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Claim on the estate of one who has guaranteed payment of unmatured notes.—The finding of the court in *Clapperton v. Mutchmor* suggests some serious considerations for banks which are relying on guarantees for loans made to customers. If it be actually true that an estate assigned under the Ontario Act is held only for the benefit of the then existing creditors, and that one who holds a guarantee from the insolvent for the payment of an unmatured note has no status among these creditors, the value of security given by way of a guarantee is less than is generally supposed. The learned Chancellor's statement of the law is very sweeping: "There would be no debt until the "notes matured and default arose in their payment. * * * * "I do not think the status of a creditor obtained after the "assignment can entitle the plaintiff to rank with those who "were creditors at the date of the assignment." To the ordinary business mind the wording of the Ontario Act would seem wide enough to cover a guarantor as well. The phrase "if a creditor holds a claim based upon negotiable instruments, "on which the debtor is only indirectly or secondarily liable, "and which are not mature or exigible * * *" (Sec. 20, s. s. 5) surely implies some liability on bills other than by endorsement. It is, at any rate, conclusive on the point that there is a liability, and a valid claim, in respect to unmatured bills of other parties, giving the status of creditor under the Act, to one who has not at the time of the assignment any actual claim on the debtor, and who may never become his actual creditor. And it is to be noted that this clause was not inserted for the purpose of enabling such a person to rank as a creditor

under the Act. On the contrary, it takes for granted that one holding such a claim is nevertheless a creditor, and he is mentioned only to have his rights limited and the estate protected.

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Bills of sale not drawn in conformity with the statutory form.—The case of *DeBraam v. Ford* is chiefly interesting as bearing on the strictness with which the Courts may be expected to construe statutory forms in which some classes of securities are required to be taken, and it is specially interesting as showing the need for adhering strictly to the terms of schedule " C " to the Bank Act. The question involved in this case was whether the form given in the schedule to the Bills of Sale Act had been properly complied with. If the view of the Court, that a promise to pay " on or before " a given day is an agreement to pay at an uncertain date, should hold good generally, it would no doubt affect many promissory notes held in Canada, where it is not an uncommon thing to have them made payable in this way. The point is a very narrow one, and we think the phrase might well be interpreted according to its commonly recognized meaning among business people, which, we think, is in effect this: " I promise to pay on (1st November), but I am to have the right to pay before that date if I wish to do so."

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Crossed cheques—meaning of the term " customer " in sec. 82 of the Bills of Exchange Act.—We are glad to have, in *Great Western Railway v. London & County Banking Co.*, a sensible definition of what constitutes a " customer " of a bank, within the meaning of sec. 82 of the Bills of Exchange Act. Hitherto it has been generally supposed that no one would come within this definition except a person having a regular account with the bank, an account at that not merely opened in connection with the particular transaction in dispute. In the case above mentioned, the court has decided that one who has been in the habit of employing a bank to perform banking services for him, in the way of the encashment of cheques, is a customer within the meaning of the Act, notwithstanding that he had no account with the bank.

Stock certificates with power of attorney to transfer endorsed in blank.—As Mr. Lash's article, published in this number, deals very fully with that form of stock exchange security which forms the basis of the dispute in *Smith v. Rogers*, and as the concluding part of the article discusses this particular case, we need not therefore do more now than call our readers' attention to the judgment, which is reported at length in this issue. There are few subjects of greater importance to banks than their rights to stock transferred to them by the delivery of a stock certificate, with a blank power of attorney endorsed thereon. This judgment will set at rest some at least of the doubts which have troubled bankers in respect to these securities.

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Following moneys in the hands of an insolvent.—At the time of the Newfoundland bank failures many of our readers were interested in considering the right of other banks to follow in their hands the proceeds of bills collected but not remitted for. The question is of general interest, and although there is nothing new in *Mutton v. Peat* apart from the special facts that had to be considered, we have thought the case worth reporting.

LEGAL DECISIONS AFFECTING BANKERS

CHANCERY DIVISION, ENGLAND*

Mutton v. Peat

A firm of stockholders had two accounts with their bankers—namely, an ordinary current account and a loan account. The firm became bankrupt, and the bankers thereupon closed the current account and transferred both the balance thereon, being 1,362 l., and an indebtedness on the loan account of 7,500 l., to a special liquidation account. They, however, did not require to appropriate the 1,362 l. to meet the loan account, and repaid themselves by selling securities wrongfully deposited with them by the bankrupts for the purposes of the loan.

Held, that as there had been no appropriation by the bankers of the cash balance, the rule in *Clayton's Case* did not apply, and that there was no equity entitling cestuis que trust of the deposited securities, as against cestuis que trust whose money formed part of the current account, to be paid out of the cash balance.

Messrs. Tatham & Co., stockbrokers, had two accounts with their bankers, Messrs. Glyn, Mills, Currie & Co., one an ordinary account current, the other a loan account.

On January 11, 1896, Messrs. Tatham & Co. paid to the credit of their current account a sum of 790 l. 4 s. 6 d., which they had received from a customer named Parker for investment.

On January 13, 1896, Messrs. Tatham & Co. were declared defaulters on the Stock Exchange. On January 21 a receiving order was made against them, and on January 24 they were adjudicated bankrupt.

On January 20 the bankers closed Messrs. Tatham & Co.'s account, and transferred the balance then standing to the credit of that account—namely, 1,362 l., 10 s.—to a new account opened in the name of Messrs. Tatham & Co. in a book of the bankers devoted to bankruptcies and liquidations. This balance included and was made up in part by the 790 l. 4 s. 6 d. paid by Parker for investment, but which was never in fact invested. It appeared from the loan account of Messrs. Tatham & Co. in the loan book of the bankers that on December 30, 1895, a sum of 7,500 l. was owing on that account, becoming due in course of ordinary dealings on January 16, 1896.

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The bankers held, and had held since March 30, 1895, certain securities wrongfully deposited by Messrs. Tatham & Co. for securing this indebtedness, and prior to January 20, 1896, the bankers proceeded to realize such securities. On January 20, 1896, the bankers credited Messrs. Tatham & Co.'s new account (hereinafter called the liquidation account) with sums amounting to 3,342 l. 15 s., being proceeds of sale of some of the securities; and on January 22, 1896, they debited the same account as follows: "Loan (part) discharged, 3,340 l.; 20 days' interest to January 20, 3 l. 13 s. 2 d."

On January 24, 1896, the same account was credited with 574 l. 10 s. in respect of a further sale of securities, and was debited as follows: "Loan (part) discharged to 570 l.; 20 days' interest, 15 s."

Further sums were received by the bankers on January 25, 27 and 30, 1896, in respect of sale of securities, all of which sums were duly credited to Messrs. Tatham & Co. in the liquidation account, and on the other side of the same account there appeared the entry under date January 30: "Loan (balance) discharged to 570 l.; 30 days' interest, 5 l. 17 s. 11 d."

It appeared from this account that, so far as entries in their books showed, no part of the balance of 1,362 l. 10 s. transferred from the current account was applied in reduction of the loan account, and that the proceeds of the sale of securities were specially appropriated in discharge of the loan account, leaving a small balance in the hands of the bankers.

On March 20, 1896, the bankers wrote to Messrs. Foyer & Hordern, the solicitors acting for some other person interested, a letter in which they stated that the balance in their hands at the time of the suspension of Messrs. Tatham & Co. would not be needed for the repayment of advances, which were met by the sale of securities, and that they retained the amount of that balance pending possible judicial decision.

The secretary to the bankers made an affidavit in which he exhibited a copy of the liquidation account, and stated that he had in it shown the proceeds received by them in respect of the securities, the dates of receipt of the proceeds, and how such proceeds as well as certain dividends received in respect of some of the said securities were applied by the bankers.

This was a summons taken out by Parker, claiming to be repaid the sum of 790 l. 4 s. 6 d., so paid by him to Messrs. Tatham & Co. for investment, out of the 1,362 l. 10 s., tbe balance transferred to the liquidation account.

BYRNE, J., after stating the facts, continued as follows: It is conceded that the bankers might, had they been so minded, have applied the balance transferred from current account in part discharge of the amount due to them on loan account, but they did not do so. They were entitled to appropriate the proceeds of the sale of securities as they did—namely, in discharge of the indebtedness on loan account, to secure which the securities had been deposited. It is to be noted, moreover, that interest is charged in the liquidation account on the amount due in respect of loan account, a part of which would not have been chargeable had the balance of current account been applied in part discharge of loan account.

But it is argued on behalf of owners of securities which have been realized, and which were wrongfully deposited by Messrs. Tatham, being securities belonging to customers of theirs, that it does not matter, as between rival claimants to the funds, what entries the bankers made in their books or what they in fact did by way of appropriation; that as between banker and customer all the accounts make but one account (which is true for certain purposes), and that the rule in *Clayton's Case* ought to be treated as applicable not only as between the bankers and other persons, but as between third parties claiming the balance.

The rule in *Clayton's Case* applies where there is one unbroken account, and it applies as between *cestuis que trust* in an appropriate case. In *The Mecca* Lord Macnaghten cites what was said by Jessel, M.R., in *Hallett's Estate, In re:* "It is a very convenient rule, and I have nothing to say against it unless there is evidence either of agreement to the contrary or of circumstances from which a contrary intention must be presumed, and then of course that which is a mere presumption of law gives way to those other considerations"; and after citing a passage to a similar effect from the judgment of Lord Justice Baggallay in the same case, proceeds to deal with the case before the House of Lords upon the footing of the qualification referred to.

Suppose the bankers had not made any appropriation of the moneys received by them from the sale of securities, but had simply made one account, by means of transfer to the credit of the liquidation account, of the balance on current account, and had added the amount received by them from sale of securities, entering items on the debit side without distinguishing, it may

well be that the rule in *Clayton's Case* would have applied; but I have, in what was actually done by the bankers, clear evidence that they appropriated, as they were clearly entitled to do, specific receipts to payment of a specific balance due from the customer. I think that this excludes the application of the rule in *Clayton's Case*, and I cannot find authority for saying that there exists any equity entitling the *cestuis que trust* of the deposited securities as against the *cestuis que trust* of the transferred balance from current account to require the application of the rule in *Clayton's Case*, or to maintain a right to say that the moneys ought to be deemed to have been dealt with otherwise than they in fact were. I think that Mr. Parker has established his claim. This decision applies also to the other claimants to the cash balance if they succeed in tracing their moneys into the fund.

CHANCERY DIVISION, ENGLAND

De Braam v. Ford *

The moneys secured by a bill of sale were made payable "on or before" a certain date.

Held, that this was not an agreement to pay at a definite date as required by the schedule in the Bills of Sale Act, and that therefore the bill was void.

This was a motion raising an extremely narrow point on the Bills of Sale Act, 1882, which provides (section 9) that bills of sale must be in accordance with the form given in the schedule to the Act. The form provides for payment of the debt secured by instalments "at stipulated times or time." In this case the plaintiff, Jean André de Braam, had borrowed money from the defendant, a money-lender, of Cork-street. The borrower and his wife gave a bill of sale to the lender over certain furniture. It was agreed that payment of the principal sums secured should be made "on or before the first day of November, 1899." The money purported to be secured was not paid, and the defendant was taking steps to realize. The plaintiff issued a writ claiming a declaration that the bill of sale was void, and an injunction to restrain the defendant from removing or seizing the furniture. This motion was made on the part of the plaintiff for an interim injunction.

MR. JUSTICE NORTH said that there was here a question of pure law—on the construction of two documents the form given

* *Times Law Reports.*

in the schedule to the Bills of Sale Act, 1882, and the bill of sale given by the plaintiff. It had been urged that the Court could not decide the question for trial on an interlocutory injunction, but there were cases in which the Court must, to deal with an application for an interlocutory order, decide the question in the action. Here there could be no evidence, and the whole materials were before the Court. His Lordship referred to the cases *Hetherington v. Groome*, and *Sibley v. Higgs*, where it had been held in one case that an agreement to pay "on demand," in the other case that an agreement to pay "seven days after demand" was not an agreement to pay at a stipulated time. He said that an agreement to pay on or before a named day was equally an agreement to pay at an uncertain time, and therefore not in accordance with the form in the schedule to the Act. The present variation from the form might be in favour of the borrower. If the instrument did not accord with the statutory form it was void, whether the variation was in favour of the one party or the other. His Lordship therefore granted an injunction.

QUEEN'S BENCH DIVISION, ENGLAND

Great Western Railway v. London and County Banking Co.*

A rate collector in the employ of a district council falsely pretended to the plaintiffs that a rate had been made, and that they owed a certain sum in respect of it, and by this means obtained from them a cheque for the amount. The cheque was drawn to the order of the collector, was crossed generally, and marked "Not negotiable." The collector cashed the cheque at a branch of the defendants' bank, the account of the district council being, at his request, credited with a portion of the money, and the balance paid out to him and appropriated to his own use. The cheque was sent to the defendants' head office for collection, and was duly presented and paid. The collector had for many years been in the habit of cashing similar cheques through the same branch bank, but he kept no account with the defendants. In an action by the plaintiffs to recover the amount of the cheque as money received to their use, or for the conversion of the cheque,

Held, that the collector was, under the circumstances, a "customer" of the bank, and that they were therefore protected from liability by section 82 of the Bills of Exchange Act, 1882, as having "in good faith and without negligence received payment" of the cheque for him.

The action was brought by the plaintiffs to recover from the defendants 142 l. 10 s. as money received by the defendants to the plaintiffs' use, or in the alternative for damages for the conversion of a cheque drawn by the plaintiffs for the like amount.

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* *Law Journal Reports.*

The material facts are fully set out in the judgment of Bigham, J.

BIGHAM, J., read the following judgment: This was an action brought for 142 l. 10 s., money had and received by the defendants to the use of the plaintiffs, or, in the alternative, for damages to a like amount for the conversion of a cheque. The facts were as follows: One Huggins had been for many years a rate collector in the employment of the Wantage Rural District Council and of other similar bodies. In this capacity he had been in the habit of receiving from the plaintiffs and others cheques for the amounts payable by them for rates, and the cheques so received he used frequently to cash through the defendants' branch bank at Wantage. He had been in the habit of cashing cheques in this way for fifteen or twenty years, and a considerable number of such cheques (fifty or sixty) were cashed by him in the course of each year. Apparently Huggins, on receipt of the money for the cheques, distributed it among the local bodies to whom he had to account. He was well known to the manager and officials of the bank at Wantage, and the bank were the bankers of the Wantage Rural District Council. Huggins, however, kept no account with the defendants, nor had he any pass book; each of his transactions with the defendents was completely disposed of as and when he brought the cheques. In November, 1898, Huggins falsely pretended to the plaintiffs that a rate had been made, and that the plaintiffs owed in respect of the same 142 l. 10 s. By this means he induced the plaintiffs to give him their cheque for that amount. The cheque was drawn on the London Joint-Stock Bank in favour of Huggins or order; it was crossed generally, and marked "Not negotiable." On November 16 Huggins, in accordance with his usual course of dealing with the defendants, took this cheque to their bank at Wantage to get it cashed. He handed it across the counter to the bank clerk, and the latter filled up a paying-in slip, which Huggins signed. This paying-in slip contained no reference to the cheque itself, but purported to show a payment into the bank of 142 l. 10 s. in money, a payment out to Huggins of 117 l. 10 s., and a payment to the credit of the district council's account at Huggins' request of 25 l. The business effect of this was that the bank handed to Huggins the amount of the cheque. 142 l. 10 s., which he there and then disposed of to his own use. Having thus obtained the cheque, the defendants crossed it to themselves, and sent it up to their head office in London for collection. It was duly presented and paid. The question is whether the defendants are liable to account to the plaintiffs for the money so paid.

Now, if this cheque had neither been crossed nor marked "Not negotiable," there could be no doubt as to the right of the defendants to retain the proceeds. It would be true to say that Huggins' title to it was defective—see section 29, sub-section 2, of the Bills of Exchange Act, 1882; but inasmuch as the defendants took the cheque in good faith and for value, and without any notice of the defect, the plaintiffs would have no cause of action against them. What, then, is the effect of the crossing? The effect of crossing a cheque is stated in section 79, sub-section 2, of the Act. It is that if the banker on whom it is drawn pays it otherwise than to a banker he renders himself liable to the true owner for any loss he may sustain owing to the cheque having been so paid. Then section 80 provides that if the banker on whom the cheque is drawn pays it in good faith and without negligence to another banker he shall stand in the same position as if he had made the payment to the true owner of the cheque. These two sections deal with the liabilities and rights of the banker on whom the cheque is drawn. The next two sections define the position—first of any person who may take a crossed cheque marked "Not negotiable"; and secondly, of a banker who receives payment for a customer of a crossed cheque. Section 81 provides that a person who takes a crossed cheque marked "Not negotiable" shall have no better title than the person from whom he took it had. Section 82 provides that where a banker in good faith and without negligence receives payment for a customer of a crossed cheque, and the customer has no title or a defective title to it, the banker shall incur no liability to the true owner by reason only of having received such payment. Applying the law as contained in these sections to the facts of this case, it appears to me that Huggins, who, as I have said, had only a defective title to the cheque, could give no better title to the defendants, because the cheque was crossed and marked "Not negotiable"; but that though he could only give a defective title to the defendants, yet, if the defendants, being bankers, can show that they did no more than receive payment of the cheque in the manner described in Section 82, they are protected.

Now, I find as a fact that the defendants received the payment in good faith and without negligence. I find also that they received it for Huggins. It was argued that they did not receive it for Huggins, but for themselves. It was said that they bought the cheque; but if by this expression is meant that they took the cheque without recourse, I am clearly of opinion that the contention is wrong. What the bank did was this: They advanced 142 l. 10 s. to Huggins, and Huggins became their debtor to that amount; they then undertook with him to send forward the cheque for collection, and to apply the pro-

ceeds, when received, to the extinguishment of his indebtedness. This, in my opinion, amounted to receiving the money for Huggins. Suppose the bank had not paid anything to Huggins on November 16, could it then be argued that, in presenting the cheque, they were not presenting it for him? Clearly not; and I cannot see why the fact that they paid him the money on November 16, in anticipation of the payment of the cheque next day in the Clearing House, should make any difference.

Only one question then remains—the real question in the case. Was Huggins a customer within the meaning of section 82? Now, whether a person is or is not a customer of a bank must be a question of fact to be determined with reference to the circumstances of each case. It is undesirable to attempt to define what constitutes a man a customer of a bank. It is much better to leave the question at large, so that a jury or the court may deal with each case as it arises. The Act of Parliament has not attempted any definition—banker is defined, but not customer; and I think the Legislature wisely omitted to define the expression. Then was Huggins in fact a customer? I think he was. He had been in the habit for many years of using the defendant bank in connection with transactions which undoubtedly constitute part of a banker's business—namely, the collection of cheques—and he was well known to the bank. This is, I think, sufficient to constitute him a customer within the meaning of the section. I come, therefore to the conclusion that the defendants are entitled to the protection of the section, and are consequently not liable in this action. In these circumstances it becomes unnecessary for me to deal with the other questions raised in argument before me.

High Court of Justice, Ontario

The Canadian Bank of Commerce v. Perram

The defendant put his name on the back of a promissory note before it was endorsed by the plaintiffs, the payees, with the intention of becoming liable as an endorser to the plaintiffs; the payees subsequently endorsed it above defendant's endorsation "without recourse" and sued him on it: *Held*, that he was not liable either as endorser or as surety or otherwise.

The Home Journal Publishing Company, Limited, of which the defendant was manager, through one Carr, procured the plaintiffs to discount a note made by the "The Home Journal Publishing Company, Limited, G. A. Perram, manager," payable to the plaintiffs or order and bearing upon its back the defendant's signature. Perram had endorsed the note with the

intent of becoming liable, as an endorser, to the plaintiffs upon it; he had delivered the note so endorsed to Carr, who, he understood, purposed discounting it with the plaintiffs; and the note was so discounted by Carr with the plaintiffs. The plaintiffs' manager, in discounting the note, relied on defendant's supposed liability as endorser to the bank as part of the bank's security for payment.

After the discount of the note, but before action, the plaintiffs endorsed it above defendant's signature as follows:

"The Canadian Bank of Commerce, D. B. Dewar, manager, without recourse."

The action was tried before McDougall, J., Judge of the County Court of the County of York, on October 27th, 1898, the facts being admitted and the defence contending that Perram, being a party to the note subsequent to the plaintiffs, was not liable to the latter.

On February 4th, 1899, the learned trial Judge delivered judgment in favour of the defendant.

He found the cases on the subject by no means consistent with each other, and had difficulty in reconciling the decision in *Wilkinson v. Unwin* with that in *Steele v. McKinlay*. He thought the facts in the present case nearly identical with those in *Jenkins v. Coomber*, and, being unable to distinguish one case from the other, was of opinion that the plaintiffs could not recover against the defendant in this action.

From this judgment the plaintiffs appealed to the Divisional Court of the High Court of Justice, the first and final Court of Appeal in County Court cases.

The appeal was argued on April 13th, 1899, before Armour, C. J., and Street, J.

The contentions of the plaintiffs may be summarized as follows:

The intent of all parties was to procure from the plaintiffs an advance for repayment of which the defendant should be liable to the plaintiffs. The defendant did not endorse to facilitate further negotiation of the note by the plaintiffs, or with any idea that as a party subsequent to the plaintiffs, he would not be liable to the plaintiffs.

The case is the same as if Perram had gone to the bank,

drawn up and endorsed the note, stated he intended to be liable as endorser to the bank upon it, discounted it and received the proceeds for the makers.

The Privy Council in *Macdonald v. Whitfield* stated the governing principle as follows:

"The liabilities *inter se* of successive endorsers of a bill or "note must, in the absence of all evidence to the contrary, be "determined according to the ordinary principles of the law-"merchant, whereby a prior endorser must indemnify a subse-"quent one. But the whole circumstances attendant upon the "making, issue and transference of a bill or note may be legiti-"mately referred to for the purpose of ascertaining the true rela-"tion to each other of the parties who put their signatures upon "it either as makers or endorsers; and reasonable inferences "derived from these facts and circumstances are admitted to "the effect of qualifying, altering or even inverting the relative "liabilities which the law-merchant would otherwise assign to "them."

It is not sought to charge the defendant as guarantor and the Statute of Frauds does not apply. The defendant is an endorser in law, as well as in intent and in fact, and on his admissions and the authority of *Macdonald v. Whitfield*, is a party prior to the plaintiffs, and an endorser to the plaintiffs.

In *Jenkins v. Coomber* no agreement was shown with the defendant whereby he was to be liable to the plaintiffs. The defendant admitted that he endorsed "in order to carry his son a bit further," which was consistent with an intent to merely facilitate the negotiation of the note to a holder subsequent to the plaintiffs. Perram, on the other hand, cannot deny that he expressly intended to become liable to the bank.

For the defendant the contention was renewed that he could not, as a party subsequent to the plaintiffs, be liable on the note, which was incomplete when he put his name upon it.

The judgment of the Court was delivered September 13th, 1899, by

ARMOUR, C. J.—This action is brought by the plaintiffs against the defendant as endorser of a promissory note dated May 10th, 1897, payable three months after the date thereof to the Canadian Bank of Commerce, London, Ontario, or order,

at the Canadian Bank of Commerce, London, Ontario, for the sum of four hundred and fifty dollars, made by the Home Journal Publishing Company.

At the time the defendant put his name on the back of this promissory note the plaintiffs, the payees, had not endorsed it, and it seems clear that under these circumstances he cannot be held liable upon it. If the plaintiffs, the payees, of this promissory note had endorsed it before the defendant put his name on the back of it, in such case the plaintiffs, although priors endorsers to the defendant, would have been under the admissions in the case clearly entitled to recover the amount of it against the defendant (*Wilkinson v. Unwin*), but not having endorsed it until after he had put his name on the back of it, they are not entitled to recover the amount of it.

The note not having been endorsed by the plaintiffs, the payees, before the defendant put his name on the back of it, he incurred no liability in respect of it. He did not become liable as an endorser under the law-merchant, nor did he become liable as a surety because of the Statute of Frauds.

It is impossible to distinguish this case from that of *Jenkins & Sons v. Coomber*, where the law, as I have stated, is plainly laid down. See also *Steele v. McKinlay*, *Macdonald v. Whitfield*, *Lecaan v. Kirkman*, *Singer v. Elliott*.

The cases of *Peek v. Phippon* and *Duthie v. Essery*, are against the view I have expressed, but I do not think that they are of equal authority with the cases I have relied on, and as this is the ultimate Court of Appeal in this County Court case, we are bound to give our independent judgment.

It was alleged that the note in question was made payable to the plaintiffs through inadvertence, but this we cannot aid or relieve against.

And it was contended that the circumstances showed an implied authority to the plaintiffs to endorse the note, as it was *post pro prius* or *nunc pro tunc* in order to aid the irregularity, but we are unable to infer from the circumstances any such implied authority.

The appeal must therefore be dismissed with costs.

High Court of Justice, Ontario

Clapperton et al. v. Mutchmor*

The plaintiffs, being creditors of an incorporated company, accepted an offer made by the company's president, in a letter addressed to the plaintiffs to "personally guarantee payment" of the company's debt, upon an extension of time being given, and, in order to carry out the arrangement, promissory notes were made by the company payable to the order of the plaintiffs, and endorsed by the president, who made an assignment for the benefit of his creditors, under R. S. O. ch. 147, before the maturity of three of the notes, in respect of which the plaintiffs sought to rank upon his estate in the hands of the defendant as assignee:

Held, following *Jenkins v. Coomber*, that, upon the Statute of Frauds, no action could be maintained on the notes against the president, as to whom the instrument was incomplete.

And although the correspondence and the notes taken together establish an agreement of suretyship, notwithstanding the Statute of Frauds, yet proof could not be made upon such a contract when the notes guaranteed had not matured at the date of the assignment.

This action was brought by William Clapperton & Co. against A. P. Mutchmor, assignee under R. S. O. ch. 147, of the estate of P. Rochon, for a declaration of the plaintiff's right to rank upon the estate of Rochon in the hands of the defendant Mutchmor, in respect of the amounts due upon promissory notes, under the following circumstances:

In July, 1897, the Mercantile Syndicate Company Limited were indebted to the plaintiffs. Rochon, the president of the company, at this time represented to the plaintiffs that the company were in financial difficulties, and interested himself in arranging with the creditors of the company, and with the plaintiffs among others, for an extension of time for the company to meet their liabilities, and wrote a letter to the plaintiffs, dated 29th July, 1897, in which he said that the company found themselves unable to meet the plaintiff's account at maturity, "and having the signature of all the principal creditors to the following offer, they respectfully submit the same to yourselves, being an extension of time without interest in equal payments in 3, 6, 9, 12 months. In consideration of all creditors accepting this offer, I will personally guarantee payment." The plaintiffs answered on the 31st July, 1897: "We will accept notes at 3, 6, 9 and 12 months for our account, as you request, provided same are endorsed by yourself."

As a result of this correspondence, four promissory notes, all dated the 2nd August, 1897, were made by the company,

*Ontario Reports. Reported by E. B. Brown, Esq.

payable in 3, 6, 9, and 12 months after date, to the order of the plaintiffs, and there was endorsed on each the signature of P. Rochon, and in this form the notes were received by the plaintiffs, and pending their maturity the plaintiffs refrained from asking for payment of their original claim against the company.

The note which matured on the 5th November, 1897, was paid at maturity. The remaining three notes, of which the plaintiffs were the holders, were dishonoured at maturity, but were not protested, and they remained unpaid when this action was brought.

On the 26th January, 1898, Rochon assigned all his estate to the defendant for the benefit of his creditors, under the provisions of R. S. O. ch. 147, and on the 29th January, 1898, an order was made under R. S. C. ch. 129, directing the winding-up of the Mercantile Syndicate Company Limited.

In February, 1898, the plaintiffs filed with the defendant a claim for $406.95 "for promissory notes made by the Mercantile Syndicate Company Limited to the order of P. Rochon and Company, and by them endorsed for value and delivered to said claimants."

In August, 1898, the defendant gave the plaintiffs notice of contestation under R. S. O. ch. 147, sec. 22.

The action (and two others of the same character brought against the same defendants by creditors named Garneau and Lonsdale) were tried together at Ottawa before Boyd, C., without a jury, on the 15th April, 1899.

BOYD, C.: Upon the Statute of Frauds I think this claim is governed by *Jenkins v. Coomber*, so that no action can be maintained upon the note as against Rochon; as to him the instrument was incomplete, and, while it may be used as a piece of evidence going to show a contract of indemnity in respect of the makers of the note, it cannot be used against him as a negotiable instrument on which he is liable as endorser.

I think that the correspondence and the state of facts does sufficiently connect the writings so as to establish an agreement of suretyship, notwithstanding the Statute of Frauds. But then the question arises whether proof can be made on such a contract upon this estate when the notes guaranteed had not matured at the date of the assignment. The Act must now be read as limited to cases of debtor and creditor, and I take it that such relationship must subsist at the date of the assign-

ment. That seems to be implied from the language used in *Grant v. West.* The Chief Justice says as to the Act, now R.S.O. ch. 147: "The legislation is as to a debtor, *i.e.*, in such circumstances that he cannot pay his debts. Creditors are the persons to whom he is indebted:" And Mr. Justice Osler says: "A claim for damages, the liability for which has not been adjudicated at the time of the assignment, and depends upon the result of an action, seems to be quite outside any reasonable construction of this language:" The same is held in *Purefoy v. Purefoy.*

There was no debt in this case at the time of the assignment. There would be no debt till the notes matured and default arose in their payment by the company. Though this time has now elapsed, and all the notes are overdue and unpaid, still I do not think that the status of creditor obtained after the assignment can entitle the plaintiff to rank with those who were creditors at the date of the assignment. The estate transferred was for the benefit of those then creditors, and not of others who might become so by changed conditions in the future. Section 20, sub-sec. 5, would apply to the claim, if it were possible to base it upon the negotiable instrument, but, as I have said, this attitude is repugnant to the case first cited.

The plaintiff's claim is outstanding against Rochon, but cannot be proved, in my opinion, against his estate.

The costs of one test action should be paid to the assignee by the three plaintiffs.

HIGH COURT OF JUSTICE, ONTARIO

Smith v. Rogers et al *

The registered owner of shares in a company gave to her brokers, for the purpose of selling the shares, the certificate of ownership upon the face of which the shares were stated to be transferable on the books of the company in person or by attorney upon surrender of the certificate, and upon which was indorsed a transfer and power of attorney, signed by her, and having a blank left for the name of the transferee. The brokers improperly deposited the certificate as security for advances to them with a bank, who received it in the ordinary course of business without any notice of the owner's rights. There was evidence at the trial that, according to the usages of the stock exchanges of Ontario and Quebec, such a share certificate so endorsed passes from hand to hand and is recognized as entitling the holder to deal with the shares as owner and pass the property in them by delivery, or to fill in the blank with his own name and have the shares so registered on the books of the company:

Held, that the bank was entitled to hold the shares as against the owner. *France v. Clark* (JOURNAL, Vol. III, p. 314), distinguished.

This was an appeal from a judgment of Falconbridge, J., in an action brought by the owner of shares in certain incorpor-

* *Ontario Reports.* Reported by G. A. Boomer, Esq.

ated companies against a firm of brokers, to whom she had entrusted the custody of her share certificates, and a bank to which the brokers had transferred the certificates as security for an advance to themselves.

The action was tried at the Ottawa Assizes on January 19th and 20th, 1898, before Falconbridge, J., without a jury.

Judgment was given by consent against the defendants Rogers and Hubbell, the brokers, but was reserved as against the bank.

FALCONBRIDGE, J.—I find as a fact that the plaintiff is mistaken when she denies the signature to the indorsement of the Montreal Street Railway certificate.

But the result of the recent English authorities is to establish the plaintiff's right to recover against the bank, and there will be judgment against the bank accordingly with costs.

Judgment against Rogers and Hubbell in terms of consent filed.

From this judgment the defendants, the Molsons Bank, appealed, and the appeal was argued on the 9th of September, 1898, before a Divisional Court composed of Meredith, C.J., Rose and MacMahon, J.J.

MEREDITH, C.J.—The proper conclusion upon the evidence is, I think, that according to the usages of the stock exchanges in Ontario and Quebec and the course of dealing in or with shares such as those in question in this case, a share certificate indorsed with a transfer and power of attorney, signed by the person named in the certificate as the owner of the shares, having a blank left for the name of the transferee and attorney, passes from hand to hand and is recognized and treated as entitling the holder of the certificate, so indorsed, to deal with the shares as owner of them and to pass the property in them by the delivery of the certificate, so indorsed, or to fill in the blanks with his own name and to cause the shares to be so registered on the books of the company.

The evidence upon this point was not very strong, but being uncontradicted was sufficient to justify this conclusion.

The question of law which arises on this state of facts is as to the right of the appellants, who received the certificates in question from the defendants Rogers and Hubbell in the ordinary course of business for value and without notice of the plaintiff's rights, to retain them against her, although the dealing with the certificates by the defendants Rogers and Hubbell, was, as between them and the plaintiff, an unauthorized dealing with and fraudulent appropriation to their own use of the plaintiff's property.

My brother Falconbridge, by whom the action was tried, decided, apparently on the authority of *France v. Clark*, that the appellants were not entitled to hold the certificates as against the plaintiff, and that they had acquired no title to them or to the shares, and gave judgment for the plaintiff accordingly.

Since the decision in *France v. Clark*, the question of the rights, as against the true owner, of a transferee who obtains the documents of title under such circumstances as exist in this case, has been considered in several cases.

In *Colonial Bank v. Hepworth*, Mr. Justice Chitty, referring to a practice similar to that which I have said is in this case proved to exist, says: "The plain legal effect of this recognized practice is, that the transferor who executes the transfer in blank confers on the holder of the documents for the time being an authority to fill in the name of the transferee; and each successive holder for the time being, when the documents pass through several hands, passes on this authority."

In *The Colonial Bank v. Cady* the same question was under consideration by the House of Lords. The question to be decided was as to the right of two banks to hold as against the plaintiffs, the executors of one J. M. Williams, certain shares in the New York Central and Hudson River Railroad Compa ny.

Williams, who was the registered owner of the shares, had died, and the plaintiffs, who were his executors, desiring to have the shares transferred to their own names, sent the certific ates to their London brokers for that purpose, having previously signed as executors blank transfers and powers of attorney which were indorsed upon them. The brokers in fraud of the executors delivered certain of the certificates to the Colonial Bank as security for advances, and certain others of them they pledged to the London Chartered Bank of Australia as security for a loan. The executors having discovered the frauds brought actions against the two banks to establish their title to the shares and to restrain the banks from dealing with the shares held by them respectively. A practice similar to that referred to by Mr. Justice Chitty prevailed with regard to the mode of dealing with the shares, and it was contended by the banks that having obtained the certificates in good faith and for value they were entitled to hold them as against the executors.

The House of Lords held, affirming the decision of the Court of Appeal, that the title of the executors could be defeated only upon the principle of estoppel, and that there was no estoppel on the facts of that case, because the possession of the certificates, indorsed as they were, was consistent either with their having been entrusted to the brokers to sell, or with their having passed into their hands in order to have the names of the executors entered in the register of the shareholders as owners

of the shares mentioned in the certificates: and that being so the banks were put upon inquiry as to which of these two purposes was that for which the brokers were entrusted with the certificates.

Lord Herschell and Lord Watson in their speeches expressed in clear and unambiguous language the opinion, that had the transfers been executed by Williams himself and the certificates sent by him to the brokers for safe custody, the brokers though acting fraudulently would have, neverthe ess, been placed in a position to give a title to an honest purchaser which Williams could not dispute. As put by Lord Watson, delivery of the certificate with the transfer executed in blank by the registered owner passes, not the property of the shares, but a title, legal and equitable, which enables the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner; and again, Lord Watson said, "When the registered shareholder executes the transfer indorsed on his certificate, he can have only one intelligible purpose in view, that of passing on his right to a transferee."

In *Home v. Boyle, Low, Murray & Co.*, the view expressed by Lord Herschell and Lord Watson, to which I have referred, was adopted and given effect to by the Court of Appeal in Ireland, and it was recognized in *Waterhouse v. Bank of Ireland* as a correct statement of the law.

Mr. Justice Kekewich, however, in *Fox v. Martin*, declined to adopt this view of the law, which he thought was inconsistent with *France v. Clark*.

It is, I think, not impossible to reconcile *France v. Clark*, with the opinions of Lord Herschell and Lord Watson in *Colonial Bank v. Cady*. In *France v. Clark*, there was no evidence of a mercantile usage to the effect that holders of certificates of the shares which were in question in that case, indorsed with blank transfers signed by the registered owners, were treated as having the right to transfer the shares mentioned in the documents, as if they were the owners of the shares, and not only was there no evidence of such an usage, but, as the Lord Chancellor pointed out, the inference was for the reasons which he mentions, rather, that no such usage could be shown to exist. On the other hand, the basis on which the opinions of Lord Herschell aud Lord Watson rested was, that in the case with which they were dealing such a mercantile usage or recognized practice, as Mr. Justice Chitty calls it (which I take to mean the same thing), was proved to exist.

However this may be, the weight of judicial opinion and the reason of the thing appear to me to justify us in holding that the law is, as it is stated by Lord Herschell and Lord Wat-

son to be, and I am the more ready to so hold because the adoption of the opposite view would, in my judgment, seriously impede the rapid carrying on of a large branch of commercial business, to the successful carrying on of which in these modern days celerity of despatch in its transaction is essential.

The appeal should in my opinion be allowed with costs, and the action as against the defendants the Molsons Bank, be dismissed with costs.

MACMAHON, J.—Daniels, in his work on Negotiable Instruments, 4th ed., designates such stock certificates as those in question here as *quasi* negotiable instruments, and says, section 1708 *g*: "Commercial corporations generally encourage the assignment of their shares, as their value is increased by the facility of transfer; and it is generally provided on the face of their certificates of stock by virtue of their charters, by-laws or regulations, that the shares 'are transferable on the books of the company, in person or by attorney, on the surrender of this certificate.' And on the back of the certificates there is generally a printed form of sale and assignment, with an irrevocable power of attorney in blank, authorizing the unnamed person to do all things requisite to perfect the transfer on the books of the corporation. When such formal assignment, and power of attorney in blank, is signed by the shareholder, and the certificate is delivered therewith, an apparent ownership in the shares represented is created in the holder. And the general principle sustained by the great weight of authority, as well as of reason, is that when the owner of a certificate of stock with such a power of attorney in blank thereon written, or thereunto attached, entrusts it to an agent with power to deal therewith, a *bona fide* purchaser for value without notice will be protected in his acquisition of the certificate, although the agent to whom it has been entrusted has diverted it from the purposes for which it was put in his charge, or has been guilty of a fraud or breach of trust in reference thereto. This doctrine does not rest upon the idea that the certificate of stock is a negotiable instrument; but upon the equitable principle that where a person confers upon another all the *indicia* of ownership of property, with comprehensive and apparently unlimited powers in reference thereto, he is estopped to assert title as against a third person, who, acting in good faith, acquires it for value from the apparent owner."

The statement as to the law in the United States enunciated in the text, is fully borne out by the case in the Supreme Court of the State of New York, of *The Commercial Bank of Buffalo v. Kortright*, and by the Supreme Court of Pennsylvania in *Wood's*

Appeal, *Wood v. Smith*, and in *Burton's Appeal*, and in a number of other cases decided by Courts in other States of the Union, referred to in Mr. Daniel's work.

The mode of transfer of these stock certificates, with blank endorsements, is the same both in England and the United States. The usual method of transfer in England is thus stated by Chitty, J., in *Colonial Bank v. Hepworth:* "According to a practice which has extensively prevailed, and has been recognized and acted upon by the company, the transferor signs the transfer and power of attorney without filling in the names of the transferee and attorney; and these blank transfers readily pass on the market from hand to hand by delivery only until the documents reach the hands of some holder who desires to be registered. His name is then filled in by himself or on his behalf. The documents are then left with the company, the certificates are cancelled, the transferee is registered, and new certificates in his name are issued in the manner already described.

"The plain legal effect of this recognized practice is, that the transferor who executes the transfer in blank confers on the holder of the documents for the time being an authority to fill in the name of the transferee; and each successive holder for the time being, when the documents pass through several hands, passes on this authority. The holders must of course be *bona fide* holders for value without notice." See also the judgment of Lord Watson in *The Colonial Bank v. Cady.*

Therefore, once the owner of a share certificate signs a transfer and power of attorney in blank, the stock certificate may pass from hand to hand through any number of transferees, so that having regard to such practice the designation given to them by Daniels of *quasi* negotiable instruments is not inappropriate. And accordingly in the United States such certificates with a transfer in blank, signed by the holder and given to his broker to be dealt with by him, although the latter be guilty of fraud in dealing with it, the doctrine of estoppel being invoked, protects a *bona fide* purchaser or pledgee for value without notice of the fraud.

In England the estoppel created by the execution of such a blank transfer by the owner of stock has, in one instance, been described as a limited one. In the case already referred to, of *Colonial Bank v. Hepworth*, Chitty, J., said: "Estoppels cannot be manufactured arbitrarily; no estoppel can be raised on a document inconsistent with the terms of the document itself. What, then, is the estoppel here? Having regard to the practice proved and the condition in which these documents are when they pass from hand to hand, the right principle to adopt with reference to them is to hold that where (as is the case be-

fore me) the transfers are duly signed by the registered holders of the shares, each prior holder confers upon the *bona fide* holder for value of the certificates for the time being an authority to fill in the name of the transferee, and is estopped from denying such authority; and to this extent, and in this manner, but not further, is estopped from denying the title of such holder for the time being. By the delivery an inchoate legal title passes, but a title by unregistered transfer is not equivalent to what has been termed 'the legal estate' in the shares or to the complete dominion over them. Had the plaintiffs filled in their own names or the name of some nominee of their own in the blank transfers while in their possession, the case would have stood differently."

But Lord Watson in *The Colonial Bank v. Cady*, holds that the legal title passes under the circumstances stated by Chitty, J. He says: "The appellants' witnesses say that delivery of the certificates with the transfer executed in blank, 'passes the property' of the shares; but that statement must be accepted subject to the explanations by which it is qualified. * * "It would, therefore, be more accurate to say that such delivery passes, not the property of the shares, *but* a *title legal* and *equitable*, which will enable the holder to vest himself with the shares without risk of his right being defeated by any other person deriving title from the registered owner." And that was what was held by Sir George Jessel, M.R., in *In re Tahiti Cotton Co., Ex p. Sargent.*

In *Colonial Bank v. Hepworth* the circumstances were peculiar. The stock had been bought in August and October, 1883, for the defendant, by Thomas & Co., who received the certificates from the persons from whom the shares were bought. The defendant allowed Thomas & Co. to retain the shares for the purpose of registration. In November, Thomas & Co., in fraud of the defendant, deposited the share certificates with the plaintiffs to secure the balance then due to them. The certificates had been executed by the person or firm in whose names the shares were registered as transferors; the name of the transferee and proposed attorney being in each case left in blank. On the 11th of December, Thomas & Co. obtained from the plaintiffs the certificates on the representation that they desired to send them for registration. When received, Thomas & Co. filled in the name of the defendant in the blank transfer forms, and the stock was registered in the books of the company in his name. Thomas & Co., when they handed the certificates to the company to be registered, obtained a receipt for the same, which they sent to the plaintiffs, which they retained until February, 1884, when, learning that a partner of Thomas & Co.

had absconded, they sent to the agents of the company the receipt and obtained the new certificates which had been issued in defendant's name.

The plaintiffs claimed a declaration that the shares were theirs. But it was held that the defendant was the legal owner, the share certificates being in his name, and being delivered to the Colonial Bank in error, and that the defendant was entitled to have such new certificates delivered to him.

Mr. Justice Chitty puts the position of the plaintiffs and the defendants respectively in regard to the certificates in this way:

"Had the plaintiffs filled in their own names or the name of some nominee of their own in the blank transfers while in their possession, the case would have stood differently; the defendant would not have been registered as the holder of the shares. As it is, the plaintiffs never had a present absolute unconditional right to register. Their inchoate title was liable to be defeated, and has been defeated by the defendant acquiring in good faith for value a complete legal title by transfer filled in with his name as transferee and by registration."

It is hardly necessary to refer to *Goodwin v. Robarts* and *Rumball v. The Metropolitan Bank*, which were cited during the argument, because in both of these cases the scrip certificates were held to be negotiable instruments.

In the *Goodwin* case the scrip was that of a foreign Government, and it was admitted by the special case submitted for the opinion of the Court that, by the custom of all stock exchanges in Europe, they were negotiable instruments and passed by mere delivery to a *bona fide* holder for value, and as English law follows the custom, any person taking it in good faith obtained a title to it independent of the title of the person from whom he took it.

The decision in *Rumball v. The Metropolitan Bank* followed the judgment in *Goodwin v. Robarts*.

The decision in the case in hand must, therefore, turn on whether *France v. Clark* is still a binding authority, or whether it has not virtually been reversed by *The Colonial Bank v. Cady*.

The head note to *In re Tahiti Cotton Co., Ex p. Sargent*, which sets out the facts sufficiently for our present purpose, states:

"Where the owner of shares borrows money and deposits with the lender certificates of his shares, and also transfers thereof signed by him, but with the date and name of the transferee left blank, the lender has implied power to fill up the blanks, and the transfers will pass the legal interest if the articles of the association do not require a deed; otherwise only an equitable interest."

That case was dissented from by the Court of Appeal in *France v. Clark*, in which a summary of the facts and an epitome of the judgment of the Court delivered by Lord Chancellor Selborne is contained in the following paragraph of the head note: "France, the registered holder of shares in a company, deposited the certificates with Clark as security for £150 and gave him a transfer signed by France, with the consideration, the date, and the name of the transferee left in blank. Clark deposited the certificates and the blank transfer with Quihampton as security for £250. Clark died insolvent, after which Quihampton filled in his own name as transferee, and sent in the transfer for registration. The shares were accordingly registered in Quihampton's name, but whether this was done before notice given by France to the company and to Quihampton that France denied the validity of the transfer, was doubtful on the evidence:

"*Held*, affirming the decision of Fry, J., that Quihampton had no title against France except to the extent of what was due from France to Clark."

Lord Selborne, in effect, said: "A person who, without inquiry, takes from another an instrument signed in blank by a third party, and fills up the blanks, cannot, even in the case of a negotiable instrument, claim the benefit of being a purchaser for value without notice, so as to acquire a greater right than the person from whom he himself received the instrument.

"If a debtor delivers to his creditor a blank transfer by way of security, that does not enable the creditor to delegate to another person authority to fill it up for purposes foreign to the original contract."

And the Lord Chancellor, referring to *In re Tahiti Cotton Co., Ex p. Sargent*, said:

"The case of *Ex p. Sargent* was upon an application to rectify the register of a company by substituting the name of Sargent for that of Fry, who, being the registered owner of certain shares, had signed a transfer in blank to Cannon, by way of security; and Cannon had transferred it in the same state to Sargent, who afterwards filled in his own name. Sargent does not appear to have claimed to stand as more than a transferee, with a right to get in the legal title, of such interest as Cannon had when he handed over the documents, and the Master of the Rolls relied upon the power of every mortgagee 'to reborrow and to transfer his security.' There were several communications between Fry and Sargent after the transfer, which may, perhaps, have been thought to amount to ratification; and the Master of the Rolls said that Mr. Fry's own counsel had admitted Sargent's equitable right to have the shares transferred to him, which admission, in his Lordship's judgment, covered the

legal right also. If the case is to be thus explained, it is not an authority in point on the present occasion; if not, we should not be prepared to follow it."

In that case Cannon had filled up the blank transfer with his own name and sent it to the company for registration, but Fry, being the chairman of the board of directors, induced the company not to register the transfer. Sir George Jessel said: "As I have already said, I hold there was authority to fill up the blanks over the signature of Mr. Fry, and therefore they were validly signed, and I think ought to have been registered." He, in effect, was holding that the legal title to the shares was in Cannon.

Williams v. Colonial Bank was before the House of Lords *sub nominee The Colonial Bank v. Cady*, the facts of which are set out with sufficient fullness in the head-note: "The registered owner of shares in a New York company held certificates which stated that the shares were held by him and were transferable in person or by attorney on the books of the company only on the surrender and cancellation of the certificate by an indorsement thereof. The indorsement was in the form of a transfer for value received, blank in the names of the transferor and transferee, with a power of attorney in blank to carry out the transfer. On the death of the owner his executors obtained probate of his will, and in order that the shares might be registered in their own names, signed as executors the transfers on the back of each certificate, without filling up the blanks, and sent the certificates to their broker, who fraudulently deposited the certificates with a bank, which took them *bona fide* and without notice as security for advances. The bank retained the certificates and took no steps to obtain registration. By the law of New York such a delivery of signed transfers by the registered owner of shares would estop him from setting up his title against a purchaser for value without notice. But neither on the New York nor on the London Stock Exchange are transfers so signed by executors treated as being in order, or received as sufficient security for advances, unless duly authenticated."

The House of Lords was unanimous in affirming the judgment of the Court of Appeal on the points decided by the Lords Justices, namely, that the particular documents in question were not negotiable instruments; and that the executors were not estopped by what they had done in signing the transfers in blank, nor by having left the documents with the brokers for a considerable time, from denying the title of the Colonial Bank.

In that case the share certificates were in the name of the original owner of the stock, J. M. Williams, while the transfers endorsed on the certificates were signed by the executors and

without being duly authenticated by a consul, were "not in order" for registration in the books of the company, and, therefore, business men would not take them without enquiry. The defect existing in the documents was one which should have put the Colonial Bank on enquiry before accepting the certificates.

Lord Chancellor Halsbury, in his judgment, said: "It is admitted that the shares (or to speak more accurately the share certificates) are not negotiable instruments, and the executors being informed that in order to get themselves registered in the books of the company they must sign their names at the end of the document, acted upon that assurance, and, as I have said, entrusted the possession of the share certificates (never intending to part with the property in them) to Blakeway. Blakeway was a stock broker in London, and the transaction of loan took place in London; but the shares in question are shares in a corporation established in New York and subject to the laws of that State."

Lord Watson's observations, coupled with those of Lord Herschell, from whose judgment I shall presently quote, are of the utmost import in dealing with the case in hand. Lord Watson says: "In so far as the law of America is concerned, your Lordships have the aid of three experts, two of whom were examined by the appellants and one by the respondents. As I understand their evidence, the principles of American law do not differ in any way, or at least in any material respect, from those by which an English Court would be guided in similar circumstances. When the endorsed transfer has been duly executed by the registered owner of the shares, the name of the transferee being left blank, delivery of the certificate in that condition by him, or by his authority, transmits his title to the shares both legal and equitable. The person to whom it is delivered can effectually transfer his interest by handing his certificate to another, and the document may thus pass from hand to hand until it comes into the possession of a holder who thinks fit to insert his own name as transferee, and to present the document to the company for the purpose of having his name entered in the register of shareholders and obtaining a new certificate in his own favour."

And again he says: "Whether the respondents are estopped from saying that Blakeway had not their authority to dispose of the certificates in question is, in my opinion, the sole question presented for decision in these appeals. Had the transfers been executed by John Michael Williams, and the certificates thereafter sent by him to Thomas, Sons & Co. for safe custody, I should not have hesitated to hold that Blakeway, though acting fraudulently, was nevertheless placed by his act in a position to give a title to an honest purchaser which his

employer could not dispute. But that is not the case with which we have to deal. The transfer was signed by the respondents, who were not the registered owners of the shares and were not named in the certificate. Whatever may be the effect of an instrument so executed, one thing is clear, that it cannot be regarded as, either in law or by custom, equivalent to a certificate and transfer executed by the registered owner himself."

And, "When the registered shareholder executes the transfer indorsed on his certificate, he can have only one intelligible purpose in view, that of passing on his right to a transferee. It is not so in the case of an executor, whose only title to the shares is by legal assignment to the interest of the defunct."

Lord Herschell says: "The evidence of the American lawyers, however, makes it equally clear that such certificates of shares are not in the United States, any more than in England, negotiable instruments. The mere delivery of them with the indorsed blank transfer and power of attorney signed, irrespective of any act or intent on the part of the owner of the shares, is not of itself sufficient to pass the title to them. If delivered by or with the authority of the owner with intent to transfer them, such delivery will suffice for the purpose. But if there has been no intent on the part of the owner to transfer them, a good title can only be obtained as against him if he has so acted as to preclude himself from setting up a claim to them. If the owner of a chose in action clothes a third party with the apparent ownership and right of disposition of it, he is estopped from asserting his title as against a person to whom such third party has disposed of it, and who received it in good faith and for value. And this doctrine has been held by the Court of Appeals of the State of New York to be applicable to the case of certificates of shares, with the blank transfer and power of attorney signed by the registered owner, handed by him to a broker who fraudulently or in excess of his authority sells or pledges them. The banks or other persons taking them for value, without notice, have been declared entitled to hold them as against the owner.

"As at present advised, I do not see any difference between the law of the State of New York and the law of England in this respect. If in the present case the transfer had been signed by the registered owner and delivered by him to the brokers, I should have come to the conclusion that the banks had obtained a good title as against him, and that he was estopped by his act from asserting any right to them. But this is not the case with which your Lordships have to deal. The transfers in this case were not signed by the registered owner, John Michael Williams, but by his executors. If they had been so signed and delivered by the executors for the purpose of effecting a

transfer, I see no reason to doubt that such a delivery would have been effectual for that purpose. But they were not. * * *

"The case seems to me to differ essentially from that of a transfer signed by the registered owner. He must, presumably, have signed it with the intention at some time or other of effecting a transfer. No other reasonable construction can be put on his act. And if he entrusts it in that condition to a third party, I think those dealing with such third party have a right to assume that he has authority to complete a transfer. But when the indorsement is signed by executors who are not the registered owners, there can be no such presumption. They may well have signed it merely to complete their title without the intention of ever parting with the shares."

In *Fox v. Martin*, the plaintiff, the registered owner of shares in a limited company, instructed a broker to sell the same, and for that purpose delivered to him the share certificate and a blank transfer signed by the plaintiff. The broker improperly deposited the blank transfer and certificate with the defendant as security for his own debt. The defendant afterwards filled up the blank transfer with the date, consideration, and name of transferee, and sent it for registration to the office of the company, where it lay for more than a fortnight without being registered. The plaintiff brought his action to restrain registration and establish his right to the shares.

Kekewich, J., held, following *France v. Clark*, that the defendant had acquired no title to the shares as against the plaintiff; and assigned as a reason for not following *The Colonial Bank v. Cady*, that although there were expressions of opinion by the Lords inconsistent with *France v. Clark*, he considered that case as not being expressly overruled by it.

According to *France v. Clark*, and *Fox v. Martin*, where any owner of a share certificate executes a transfer in blank and hands it to his broker, the fact that such transfer is in blank affects an intending purchaser or pledgee with notice and puts him on enquiry as to the extent of the broker's authority.

France v. Clark was referred to by the appellants in *The Colonial Bank v. Cady*, and although it is not expressly mentioned in any of the judgments of the Lords, it is impossible that it should not have been considered. For it must not be lost sight of that these opinions of Lords Watson and Herschell were expressed, although when the case then being considered was before the Court of Appeal, Lords Justices Cotton and Lindley had delivered opinions in consonance with that of Lord Chancellor Selborne in *France v. Clark*, and the judgments of Lords Watson and Herschell deal with the very point upon which the decision in *France v. Clark* hinged; and what they enunciate as being the law is the very converse of that laid

down in *France v. Clark* and *Fox v. Martin*. For as already pointed out, Lord Watson says: "Had the transfers been executed by John Michael Williams, and the certificates thereafter sent by him to Thomas, Sons & Co. for safe custody, I should not have hesitated to hold that Blakeway, though acting fraudulently, was nevertheless placed by his act in a position to give a title to an honest purchaser which his employer could not dispute." And Lord Herschell said: "If in the present case the transfer had been signed by the registered owner and delivered by him to the brokers, I should have come to the conclusion that the banks had obtained a good title as against him, and that he was estopped by his act from asserting any right to them."

In *France v. Clark* and *Fox v. Martin*, according to Lords Watson and Herschell, the transferees of the share certificates in each of those cases would have a title by estoppel, and that is what was held by Sir George Jessel, M.R., in *In re Tahiti Cotton Co., Ex p. Sargent*, the judgment in which was dissented from in *France v. Clark*.

The above short excerpts from the judgments of Lords Watson and Herschell, in *The Colonial Bank v. Cady*, are referred to in the judgment of North, J., in *Bentinck v. London Joint Stock Bank*, as illustrating what he regards as the settled law for his guidance in dealing with the case then before him for decision. And these extracts also appear in the judgment of FitzGibbon, L.J., in the Court of Appeal, Ireland, in *Hone v. Boyle*, who follows the opinions expressed therein, saying at p. 169 of his judgment, "The so-called 'estoppel' is the equitable effect of leaving a person in the possession of the symbols of property, or of the *indicia* of rights affecting property; and these certificates, as between mesne holders, are the absolute *indicia* of an uncontrolled right and power of obtaining a transfer of the shares which they represent." And Barry, L.J., in the same case put the question for consideration concisely: "The question here is not whether these certificates are 'negotiable,' but whether their delivery to a *bona fide* taker for value (like the defendant here), does not confer upon such taker a right to retain them against the registered proprietor, or any person claiming through him. Now, for a long time there has prevailed on the Stock Exchange, not alone of America, but of England, and, I believe, of other European countries, a usage of passing such certificates by delivery from hand to hand in sale or pledge; and it is laid down by the highest authority that where a certificate of such shares as we are dealing with is duly delivered in the form and manner prescribed by the usage, the endorsed transfer having been executed by the registered owner in blank, such delivery will confer on the deliveree for value and without notice, not the

property in the shares, but a right to have his name entered by the company on the register of shareholders, and thus constitute himself the legal owner of the shares; and as a necessary consequence such holder of the certificate is entitled to retain it against any person claiming title from the registered owner."

So also in *Waterhouse v. Bank of Ireland*, Chatterton, V.C., refers to these opinions of Lords Watson and Herschell, and recognizes them as authorities by which he is bound.

I do not think we are concerned with *Earl of Sheffield v. The London Joint Stock Bank*, because the facts disclosed in that case showed that the banks in dealing with one Mozley, a money-lender, either actually knew, or had reason to believe, that the securities deposited with the banks as security for large running accounts might not belong to Mozley, but to his customers.

There was great misapprehension as to the effect of the decision in that case, and Lord Chancellor Halsbury, who took part in the judgment of the House, explained its effect in *London Joint Stock Bank v. Simmons*, where he says: "The inferences derived from the business carried on by the money-lender in *Lord Sheffield's* case, were peculiar to that case, and have no relation to the course of business which brokers habitually pursue towards their own clients, and for their own clients, when dealing with bankers with whom they deposit securities. The deposit of securities as 'cover' in a broker's business is as well-known a course of dealing as anything can possibly be, and the phrase that they are deposited *en bloc* seems to me to be somewhat fallacious. That they are, in fact, deposited by the broker at one time, and to raise one sum, may be true. It does not follow, and I do not know, that the banker could reasonably be expected to presume that they belonged to different customers, and that the limit of the broker's authority was applied to each individual security by his own client. It would, therefore, to my mind, be as totally different from the facts proved or inferred in *Lord Sheffield's* case as anything could well be.

"I do not think that in that case any countenance was given to the notion that because Mozley, the money-lender, was assumed to be the agent for the owners of the property, that circumstances alone put the bank upon inquiry as to his title to the property with which he dealt. To lay down as a broad proposition that in every case you must inquire whether a known agent has the authority of his principal, would undoubtedly be a startling proposition, and certainly nothing said in *Lord Sheffield's* case could justify so novel an idea."

Rogers and Hubbell were reputable stock brokers. Hubbell possessed the confidence of the plaintiff, otherwise it is not

reasonable to suppose she would have executed transfers of these stock certificates in blank and entrusted him with them.

According to the plaintiff's statement she signed the transfer on the Commercial Cable certificate, and delivered it to Hubbell with the intention of parting with her property in it. And Falconbridge, J., has found that she signed the transfer of the Montreal Street Railway shares, and, as said by Lord Watson, "When a registered shareholder does that he can have only one intelligible purpose in view, that of passing on his right to a transferee." And that is the effect of what is said by Lord Herschell in the above short extract from his judgment.

Some observations of FitzGibbon, L.J., in *Hone v. Boyle*, are so apposite as to the dealings between Rogers and Hubbell and the Molsons Bank in this case, and by which the latter acquired the stock certificates, that I extract them. He said: "There is no illegality nor startling improbability in a stock-broker's being possessed of securities of his own. But further, not only is there no improbability in a stock-broker's being authorized to pledge securities for his customers, but there is a body of proof that such transactions are of every-day occurrence, and the House of Lords in *Lord Sheffield's* case has treated it as 'part of the ordinary course of a banker's business' to make advances to money-lenders on pledge of the securities of individuals to whom the pledgers are to lend in turn. A large department of banking business must cease if the mere fact that the holder of securities is a broker puts the banker upon inquiry or subjects him to the burden of proving the broker's authority to pledge. At best this 'putting on inquiry' is only a half-hearted conclusion. If the question, 'Are these shares yours?' or, 'Have you authority to pledge them?' were held to suffice, the answer 'Yes' would add little or nothing to the representation *ipso facto* made by the request for the advance, and the offer to deposit the securities." See also the judgment of Lord Chancellor Halsbury in *The London Joint Stock Bank v. Simmons*.

Hubbell, without any enquiry being made as to the ownership of the Commercial Cable stock, represented to Mr. Brodrick that he had purchased it. In a bank's dealings with a broker who is obtaining an advance on a deposit of securities, where the registered owner of stock signs a transfer and power of attorney in blank and hands it to a reputable stock-broker, what is there in such a transaction to put a banker on enquiry? From whom would he enquire, and what would be the form of the enquiry? The enquiry would be made from the person pledging the securities, and as to one of the securities the bank had Hubbell's statement that he was the owner. If enquiry

was necessary and had been made as to the other, we may well infer that the representation as to that would have been the same.

The only evidence as to custom was that given by Mr. Brodrick, furnished by his experience as a banker. And where we have the universal custom detailed as to the mode of transfer of such securities both in England and the United States, in *Colonial Bank v. Hepworth*, and *Colonial Bank v. Cady*, which accords with Mr. Brodrick's evidence, we may conclude that the custom in Canada does not differ with that of bankers in Great Britain and the States. In *The Colonial Bank v. Cady*, five officials of London banks were examined by the appellants as to the custom by banks in dealing with transfers of such certificates.

I have not considered the question as to the effect of the bank having taken a separate assignment from Hubbell by hypothecating the certificates when the advances were made, as I consider on the authorities the bank is entitled to retain the shares as against the plaintiff. But one observation may be made as to the hypothecation sheet pledging the Commercial Cable stock. It pledged two shares of the same stock standing in the name of V. C. Nicholson, which had been purchased by Rogers and Hubbell, and which the bank sold on the 3rd of August, three months after it had been pledged.

The appeal will, therefore, be allowed with costs, and judgment directed to be entered for the defendants the Molsons Bank, dismissing the action as against it with costs.

ROSE, J.—The opinions of the other members of the Court are so full that I content myself with expressing my concurrence in the result reached by them, that the appeal must be allowed.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Quarter ending 30th September.	1898		1899	
Free	$16,531		$17,223	
Dutiable	24,549		26,476	
	$ 41,080		$ 43,699	
Bullion and Coin	3,110	$ 44,190	4,019	$ 47,718
Month of October—				
Free	$ 4,805		$ 5,646	
Dutiable	6,426		8,778	
	$11,231		$14,424	
Bullion and Coin	498	$11,729	134	$14,558
Total for four months		$55,919		$62,275

EXPORTS

Quarter ending 30th September--				
Products of the mine	$ 2,980		$ 3,645	
" Fisheries	2,384		2,512	
" Forest	12,767		12,948	
Animals and their produce	12,068		17,503	
Agricultural produce	4,076		4,298	
Manufactures	2,600		3,016	
Miscellaneous	49		72	
	$ 36,925		$ 43,995	
Bullion and Coin	373	$ 37,298	601	$ 44,596
Month of October				
Products of the mine	$ 1,413		$ 750	
" Fisheries	1,917		1,880	
" Forest	3 399		3,410	
Animals and their produce	5,959		6,062	
Agricultural produce	2,372		3,442	
Manufactures	820		1,100	
Miscellaneous	18		42	
	$15,899		$16,686	
Bullion and Coin	1,454	$17,353	148	$16,834
Total for four months		$54,651		$61.430

SUMMARY (in dollars)

For four months—	1898	1899
Total exports other than bullion and coin	$ 52,311,000	$60,681,000
Total imports other than bullion and coin	52,824,000	58,143,000
Excess *Imp.*	$ 513,000	*Exp.* $2,538,000
Net imports of bullion and coin	1,781,000	3,404,000

STATEMENT OF BANKS acting under Dominion Government charter for the months of September, October and November 1899, and comparison with November, 1898:

LIABILITIES

	30th Sept., 1899	31st Oct., 1899	30th Nov., 1899	30th Nov., 1898
Capital authorized	$76,808,664	$ 76,808,664	$ 76,108,664	$ 76,508,684
Capital paid up	64,183,377	64,327,636	63,365 431	63,170,293
Reserve Fund	29,591,769	29,630,785	29,531,762	27,694.310
Notes in circulation	$ 46,682,028	$ 49,588,236	47,839,506	$ 42,350,948
Dominion and Provincial Government deposits	6,221 662	6,277,471	5,225,266	4,967,694
Public deposits on demand	97,068,793	100,799,465	101,437,399	89,468,722
Public deposits after notice	170,293,952	172,037,773	174,437,445	156,534,264
Bank loans or deposits from other banks secured	429,017	706,090	566,935	.....
Bank loans or deposits from other banks unsecured	4,512,940	3,950,800	4,255,551	3,605,693
Due other banks in Canada in daily exchanges	201,817	190,534	179,794	98,209
Due other banks in foreign countries	892,526	1,390,716	1,126,823	1,450,174
Due other banks in Great Britain	5,194.829	5,927,798	4,749,895	2,248,728
Other liabilities	411,242	417,056	1,023,132	985,376
Total liabilities	331,908,896	341,286,017	340,841,820	$301,709,875

ASSETS

Specie	$9,263 464	$ 9,194,944	$ 9,153,391	$ 9,086,993
Dominion notes	18,335,535	18 666,887	18,593,777	17,326,092
Deposits to secure note circulation	2,092,763	2,071,443	2,056,344	1,989,523
Notes and cheques of other banks	10,240,936	12,400,827	11,712,172	10,865,445
Loans to other banks secured	461,610	616,645	429,886	.....
Deposits made with other banks	5,232,044	4,720,341	5,259,584	4,432.289
Due from other banks in Canada in daily exchanges	312,115	296,724	297,193	198,814
Due from other banks in foreign countries	29,408,462	28,067,780	27,118,605	23,929,718
Due from other banks in Great Britain	12,488,825	13,521,740	13,533,511	14,287,430
Dominion Government debentures or stock	4 901,401	4,893,727	4,782,800	5,070,283
Public, municipal and railway securities	30,435,285	31,631,862	31,457,133	34,382,101
Call loans on bonds and stocks	33,157,178	34 654,363	34,317,790	24,963,993
Current loans and discounts	254,433,667	259,848,951	263,597,683	229,261,061
Loans to Dominion and Provincial Governments	1,827,436	2,297,142	1,852,167	2,291,163
Overdue debts	2,342,824	2,450,463	1,943,325	2,438,170
Real estate	1,687,658	1,728,443	1,190,417	1,951,674
Mortgages on real estate sold	625,126	628,753	666,009	594,895
Bank premises	6,225,058	6,244,311	5,950,326	5,895,464
Other assets	4,417,400	3,851,503	3,694,399	2,818,046
Total assets	427,888,875	437,787,044	437,606,702	$391,783,455
Loans to directors or their firms	7,344,033	7,355,011	7,020,135	$7,663,040
Average amount of specie held during the month	9,350,912	9,344,411	9,014,089	9,152,211
Average Dominion notes held during the month	18,428,904	18,295.885	18,520,221	16,795,045
Greatest amount of notes in circulation during month	47,131,046	50,454,221	50,845,199	44,024,625

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

	MONTREAL		TORONTO		HALIFAX		HAMILTON	
	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9	1897-8	1898-9
	$	$	$	$	$	$	$	$
December	56,509	69,143	35,986	43,508	5,386	5,838	3,094	3,334
January ..	60,334	64,850	37,836	42,388	5,009	5,913	3,028	3,274
February .	62,332	62,432	33,414	40,818	4,446	4,583	2,663	2,807
March ...	62,043	69,610	39,012	40,646	5,285	4,838	3,021	3,122
April	50,003	61,249	33,035	39,182	4,472	5,209	2,858	3,304
May	56,475	71,777	34,374	44,349	4,798	5,602	2,932	3,513
June	59,471	63,756	36,960	41,189	4,997	5,461	3,001	3,224
July.....	60,423	63,209	35,727	40,569	5.851	4,742	3,117	3,304
August ..	55,578	63,115	32,390	37,207	5,551	7,823	2,655	3,138
September	61,856	64,163	33,932	39,842	4,919	5,937	2,773	3,590
October ..	66,354	69,792	38,349	46,979	5,408	6,795	3,103	3,608
November	67,246	71,101	39,125	44,637	5,154	6,645	3 147	3,680
	718,624	794,197	430,140	501,314	61,276	68,386	35,392	39,898

	WINNIPEG		ST. JOHN		VANCOUVER	VICTORIA
	1897-8	1898-9	1897-8	1898-9	1898-9	1898-9
	$	$	$	$	$	$
December	9,784	10,708	2,738	2,746	3,058	2,433
January ..	6,347	7,683	2,417	2,470	2,441	2,544
February .	5,517	6,209	2,022	2,212	2,099	2,849
March ...	5,968	6,756	2,148	2,391	2,818	2,689
April	6,240	6,916	2,254	2,494	3,024	2,848
May	8,683	7,472	2,513	2,910	2,784	2,700
June	7,397	8,211	2,592	2,606	3,768	2,509
July.....	6,316	8,169	2,927	2,753	3,355	3,087
August ..	6,180	7,995	2,059	3,103	4,929	3,039
September	6,414	8,281	2,508	3,004	4,513	3,024
October ..	9,347	12,689	2,498	2,814	4,751	3,059
November	11,553	14,435	2,660	2,903	3,785	2,588
	90,746	105,524	29,336	32,406	41,325	33,369