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THE HISTORY OF CANADIAN CURRENCY, BANKING AND EXCHANGE*

I. EARLY METALLIC CURRENCY AND ITS REGULATION

HAVING undertaken to contribute a further series of articles on the history of Canadian Banking, I have found it necessary to an intelligent treatment of the subject, to take into consideration the closely allied and interdependent fields of the currency and exchange of the country. To accomplish this it is necessary to trace, up to our new point of departure in 1825, the various attempts to regulate the metallic currency of the colony, which were only incidentally referred to in the first

*Chief sources:

Ordinances made for the Province of Quebec by the Governor and Council of the said province, since the establishment of the Civil Government. Quebec, 1767.

The Laws of Lower Canada. Vols. I—IV.

Statutes of Upper Canada, as published in 1812, 1819, 1823.

Dominion Archives, State Papers, Lower and Upper Canada.

A History of Currency in the British Colonies by Robert Chalmers, B.A., of Her Majesty's Treasury. With Appendix of Documents. London, 1893.

Letter Books of the Hon. Richard Cartwright. 1787-1815. In manuscript.

series of studies dealing with the preparation for the earliest banks and their actual establishment. To supply this missing link is the object of the present article.

We have already followed the history of the introduction and valuation of the various coins current in Canada during the French period. Driven to cover, during the closing years of French rule, by an overwhelming invasion of paper money, these coins reappeared at the Conquest, and took their places as media of exchange along with the coins introduced by the purveyors for the British troops, or brought by the British and colonial merchants who established themselves at Quebec and Montreal. The Quebec merchants long continued to be closely in touch with Britain and the eastern colonies of Nova Scotia and Massachusetts. The Montreal merchants, being almost entirely from the colony of New York, continued to maintain a close connection and intercourse with that colony by way of the Lake Champlain and Richelieu River route. In accordance with these influences, the standards of exchange introduced into Canada were determined by the colonial affinities of the merchants carrying on the Canadian trade.

On account of the long and intimate connection of the North American colonies with the West Indian trade, the Spanish dollar and its associates of a similar grade had come to be the money standard of the colonies.

It has been the general experience of all new countries with unlimited resources and an eager and enterprising people, but with little capital, that a constant need for the necessaries of life and the means of development has led to a steady export of all that could procure the needed means for expansion. But nothing is easier to send abroad, and at the same time so certain of a ready market, as metallic money. Thus a chronic scarcity of money was the burden of complaint in all the American colonies.

Without understanding the significance of the facts, each colony adopted such measures as suggested themselves for attracting and retaining as much money as possible. The expedient which chiefly appealed to men of common sense but without special knowledge, was naturally that of putting a premium upon the coins most desired. If one colony rated the

dollar at 5s. while another rated it at 6s., it appeared as plain as a pike staff to the ordinary colonist, that a majority of the dollars would gravitate to the latter colony. Only a minority, relying on what seemed to the common-sense man over refined and unpractical argument, perversely declared that this plan was quite futile. Plain, unsophisticated argument prevailed, as it usually does in such cases, and the colonies engaged in a lively competition, partly with outsiders, but largely among themselves, for an increased share of the available currency. Before the close of the seventeenth century the "piece of eight," afterwards called the dollar, was variously rated in the American colonies from 4s. 6d. to 7s., and many and bitter became the complaints of the colonies to the mother country against one another and the intercolonial traders.

Massachusetts, being the older and more important of the English colonies, was usually the pioneer in new colonial movements. This was no less true in the field of currency than elsewhere, though her example was frequently improved upon in the following of it. On the 13th of October, 1697, the General Assembly of Massachusetts legalized the customary rating of the piece of eight or Spanish dollar of 17 dwt. at 6s. This Act was authorized by the Home Government, and afforded a basis for a general regulation of the colonial currency which shortly afterwards became necessary.

The Imperial Government found it impossible to ignore the growing clamour from America for its interference to abolish the existing confusion in the trade of the colonies with each other and the home country, owing to the varying and uncertain ratings of the coins in circulation. The Board of Trade, after considering the matter carefully, advised the Crown-in-Council, and a royal proclamation was issued by Queen Anne, on 18th June, 1704, which was to be sent to the governors of the various colonies and by them to be strictly enforced. Following the Massachusetts rating of 1697 this proclamation fixed the maximum colonial valuation of the piece of eight at 6s.: and prescribed that the other silver coins in circulation, the half, quarter and others, should be rated in proportion.

A careful assay at the British mint, of the various standard types of the Spanish dollar, had determined its average value in

sterling money to be 4s. 6d. The colonial rating, therefore, represented an increase of one-third on its sterling value, or the colonial rating stood to the sterling rating as 4 to 3. This, it may be remembered, was just the proportion in which the standard French coins had been overrated when sent to Canada and the other French American colonies.

The rating fixed by the proclamation of Queen Anne determined what was known as "proclamation money." However, the proclamation itself was very generally disregarded by the colonial merchants. Even had they the inclination, they certainly had not the power to suddenly alter the general exchange habits into which the people had fallen. Further, the impediments to natural and profitable trade, which were involved in the carrying out of the various statutes constituting the navigation laws and the colonial commercial system generally, had led to their systematic violation where needful, frequently high officials conveniently nodding, and had weakened the respect for British laws and proclamations regulating colonial trade.

To enable the Government to enforce more definitely the terms of the proclamation, it was shortly afterwards embodied in an act of the Imperial Parliament (6th Anne, cap. 57, 1707), which provided severe penalties for its infringement. Even then the colonies found ways and means for the evasion of the law. As nothing had been stated with reference to the gold coins, most of the West Indian colonies passed over to a gold standard, in which the Portuguese Johannes, commonly known as the "joe," and its half, chiefly figured. The northern colonies found refuge in paper currencies, and fluctuations in the media of exchange increased rather than diminished. In 1740 and 1741 efforts were made to remedy these evils, but nothing definite was the outcome. In 1750 an Imperial act prohibited the issue of paper currencies in several colonies, and in 1764 this prohibition was extended to all the American colonies. In 1773 the prohibition was somewhat relaxed, by permitting colonial paper currency, voluntarily accepted by the creditors of the colony, to be offered as legal tender at the colonial treasury in payment of taxes.

We observe, then, that the rating for silver coins established by the proclamation of Queen Anne of 1704, was

still in force at the time of the Conquest. The unit was the Spanish dollar, the sterling value of which was 4s. 6d., but allowed to be rated as high as 6s. in the colonies. Gold coins, however, had received no special rating. At the time of the Conquest the dollar was rated in Massachusetts and Nova Scotia, among other colonies, at 5s., whereas in New York it was rated at 7s. 6d. and not long afterwards at 8s. Both these standards were introduced by the merchants coming to Canada. There was also uncertainty as to the rating of the French and other coins already in the colony. Thus Governor Murray found it necessary to pass an ordinance, soon after the treaty of peace, establishing the legal tender rating of the chief coins circulating in the country.

This was the ordinance, passed 14th September and published 4th October, 1764, "for regulating and establishing the currency of the Province." It will be observed that it proceeds upon the legal ground of the proclamation and act of Queen Anne, having as its basis the rating of the dollar at 6s. The preamble states that "it is highly necessary to fix a certain value upon every species of coin now in this colony upon one certain and uniform plan." After considering the currencies of the various colonies upon the continent, the following ratings are established:

Coins	Weight		Rating		
Gold	dwt.	grs.	£	s.	d.
Johannes of Portugal	18	6	4	16	0
Moydore	6	18	1	16	0
Carolin of Germany	5	17	1	10	0
Guinea	5	4	1	8	0
Louis D'Or	5	3	1	8	0
Spanish or French Pistole	4	4	1	1	0
Silver					
Seville, Mexican and Pillar dollar	17	12		6	0
French Crown, or six Livre piece	19	4		6	8
French piece, passing at present for 4s. 6d. Halifax currency	15	16		5	6
British shilling				1	4
Pistereen				1	2
French nine-penny piece				1	0
Twenty British coppers				1	0

All higher or lower denominations of the said gold and silver coins were to be current in due proportions. After January 1st, 1765, these coins were to be legal tender according to these rates where there was no special agreement to the contrary.

Further, in all agreements prior to, or since the Conquest, which have been made in livres according to the method formerly in use, the livre shall be estimated equal to 1s. of the currency established by this ordinance, the dollar being the equivalent of 6 livres, and in the same proportion for every other coin.

This clause had the very practical advantage of bringing the customary French currency of the colony into easy relation with the currency of the English colonies, by making the livre equivalent to the shilling. Both of them, however, were now merely nominal standards, or money of account, there being no actual coins representing either the shilling or the livre as here determined. According to this arrangement a Spanish dollar would pay 6 livres of an outstanding Canadian debt, but a French crown, which was a 6-livre piece in French currency, would now pay $6\frac{3}{4}$ livres of debt. The remainder of the ordinance throws light upon some other phases of the currency situation at the time. The scarcity of small change was frequently met by the practice, referred to in the ordinance, of cutting up the dollar coins and passing the fragments as small change at an arbitrary value. As this facilitated fraud it was ordained that no such cut money should be allowed to pass current by way of change in any part of the Province, and penalties were appointed for infringement of this clause.

I have already referred to the different currency standards employed by the merchants of Quebec and Montreal, the former taking the Halifax, which was also the Boston standard, and the latter the New York standard. The existence of these different standards in the country explains the concluding portion of the ordinance. To prevent the introduction of copper in such quantity as to drain the country of gold and silver, it is ordained that all sols marquez, whether old or new, shall pass only as farthings. From the publication of the ordinance to the first of January next (1765) 48 sols were to be deemed equal to 1s. Halifax currency, and 36 sols equal to 1s. York currency. But from and after the 1st of January 48 sols should be equal to 1s. currency of this Province. No one, however, should be required to take sols for more than 1s. at one payment. In this ordinance the gold coins are somewhat under-rated

as compared with the silver coins, as was the case in most of the North American colonies, hence little gold remained in circulation.

It may be observed as a general principle in considering the fluctuating rates of the coins current in America, that though a uniform scaling up or down of the currency has little effect either in retaining it in the colony or driving it out, yet an unequal rating of the coins, as compared with their intrinsic value, will have the inevitable effect of driving the under-rated coins out of the country, while retaining the over-rated ones in it, this being only a special application of Gresham's law.

The merchants of Canada evidently paid no more attention to the requirements of this ordinance than suited their convenience. Though it was undoubtedly of value as affording a definite basis for legal settlement in cases of dispute, yet in the normal course of business the merchants continued to follow the usages to which they had been long accustomed.

Finding this to be the case, a further ordinance was passed on the 15th of May, 1765. By this the settlement of every form of commercial obligation entered into before the coming into force of the ordinance of 1764 was made legal if according to the scale of values stated in that ordinance. But the new ordinance went much further, containing the following very drastic clause: "That all original entries in books of accounts, and all accounts whatsoever for goods and merchandises, or other things sold and delivered, agreements, bills (bills of exchange only excepted), promissory notes, bonds, mortgages, and other securities for money, leases, and all interests and rents thereby reserved, kept, made and entered into, after the said first day of July next, in any other currency than the said currency by the said ordinance established, contrary to the true meaning thereof and of the said ordinance, shall not be admitted as evidence in any court of Law or Equity in this Province, but shall be deemed, adjudged and taken, and are hereby respectively declared to be null and void to all intents and purposes whatsoever."

Considering the conditions under which business had been carried on in the American colonies, this stringent regulation was not only a great injustice to the merchants, but simply

impossible of enforcement. The simple prescribing of such regulations proved the failure of Governor Murray to appreciate the economic conditions of the colony. This was one of the grounds of his great unpopularity with the merchants in both Britain and Canada, who, through their petitions, finally secured his recall.

In 1768 this objectionable clause in the ordinance of 1765 was repealed, with the following observations as to its effects. It has been found by experience that this clause "does not answer the purpose for which it was intended, but hath occasioned diverse difficulties and inconveniences in the recovery of just debts in the Courts of Justice in this Province, and is thereby likely to become the means of much fraud and injustice if it be suffered to continue in force." As a consequence of this experience we find that future governors were less rash in attempting to ride roughshod over the usages of trade and commerce as worked out in contact with the practical conditions of the time.

In the interval between the passing of the ordinance of 1765 and its repeal in 1768 we find that Murray, just as he was leaving Quebec on the 28th June, 1766, received instructions with reference to the currency, among other matters, upon which he was unable to take any action. Pending the arrival of Murray's successor, Sir Guy Carleton, President Irving of the Council took over the government. Apparently in accordance with the instructions sent to Murray, he immediately prepared in Council the draft of an ordinance for the regulating and establishing of the currency of the Province to take the place of the two ordinances then in force.

This draft specifically refers to the Act of Queen Anne, and reciting the clause limiting the piece of eight to 6s. currency, adopts that rating as the standard, and adjusts the other gold and silver coins as nearly as may be in proportion. In the list of rates given the only changes from the ordinance of 1764 are the raising of the weight of the standard Johannes to 18 dwt. 17 grs., increasing the value of the Spanish or French pistole from £1 1s. to £1 2s., and dropping from the list the French silver pieces other than the crown, and the British coppers. In place of the objectionable ordinance of 1765 a clause was intro-

duced simply making the coins as rated in the ordinance legal tender for all debts and contracts, past or future, made within the Province, except where there is a special written or witnessed agreement to the contrary. The value of the copper currency was rated at 18 British copper half pence, 36 farthings, or 48 sols marquez to be the equivalent of 1s. currency, the limit of legal tender in copper coins at one payment to be 5s. This proposed ordinance was dated 7th July, 1766, and in sending it to the British authorities, Irving explained in an accompanying letter that the louis d'or and the French crowns were somewhat over-rated with the object of keeping these coins in the country, which was very necessary owing to the scarcity of currency, and had hitherto proved effectual. In the same letter the President requests that a quantity of small currency be sent to the Province.

The Home Government, however, seems to have thought it better to leave the currency question, among others, where it was until the new governor should arrive. As we have seen, Carleton simply repealed the objectionable clause of the ordinance of 1765, but otherwise left the regulations as they were.

While there was considerable anxiety to have some of the ratings changed, yet there was no harmony of opinion as between the Quebec and Montreal merchants as to what the new standard should be. On August 31st, 1767, we find that several merchants of Quebec presented a petition to the Council praying that the currency of the Province might be changed to that of Nova Scotia. But the Council deferred action on the matter until they should learn the views of the Montreal merchants on the subject. The result was that the matter was dropped and the merchants were practically left to their own devices in carrying on business with a chronic scarcity of currency. In 1772 Acting Governor Cramahè, in a despatch to Hillsborough, describes the situation at that period. I give the despatch slightly condensed. In the spring of the present year there was brought into this Province from the neighbouring colonies, a considerable quantity of light Portugal gold in the expectation, it is thought, of making a considerable profit, every kind of gold coin passing current here up to that time by tale and not by weight. But, as many of them had been filed and sweated till

they lacked from 5s. to 10s. they could not escape notice, and this, added to private advices received by some of the merchants, caused alarm and put a stop to their circulation, much to the detriment of the public. As in the neighbouring colonies it was customary in commerce to pass the half Johannes, weighing 9 dwt. at 8 dollars, it would have driven the only coin of which there is any quantity out of the country, if the old ordinance of 1764 were enforced, and people were compelled to receive and pay them at the rate mentioned there of 9 dwt. 3 grs. Further, it would have been unjust, when silver brought so high a price, to oblige them to receive the half Joes, weighing 9 dwts, for 8 dollars, when it was really worth considerably more. He, therefore, could not act, but determined to allow matters to take their course and encouraged the traders of Quebec to meet and arrange the matter to suit themselves.

After considerable discussion the merchants of Quebec agreed to take and pay the half Joes weighing 8 dwt. 20 grs. at 8 dollars, in the hope of retaining so much more circulating cash in the country, and they published their resolution in the *Quebec Gazette*. To this he and the other officials agreed. But the traders at Montreal refused to adopt this agreement, and adhered to the system of the other colonies of receiving them at 9 dwt., which they also published. This caused the Quebec merchants, on account of their extensive trade with that region, to come to their terms. Thus the half Joes of 9 dwt. pass for 8 dollars, with allowances for any lack of weight; confidence is restored and circulation is revived.

He must, however, observe that from the high price of silver, and owing to the constant importation from the neighbouring colonies of large quantities of rum, for which little else but hard cash is taken, the colony is likely to be drained of the little it now has of silver.

In replying to this, Dartmouth, who had succeeded Hillsborough, admitted that Cramahè had taken the only reasonable course under the circumstances. He admits further that the currency regulations of Quebec are in much need of revision, but says nothing can be done till the colony has some more permanent constitution. Until then the legal rating of the foreign coins must follow the statute of Queen Anne.

Accordingly we find no further changes proposed with reference to the currency until the passing of the Quebec Act and the recovery of the Province from the disturbances and invasion which followed it. Then the ordinance of 1777 was passed, in which, the colony of New York being in rebellion and its Montreal sympathizers in disfavour, the Quebec influence carried the day, and Halifax currency became the new standard of the colony. The rating of the dollar was changed from 6s. to 5s., and the other coins were rated in what was considered a fair proportion.

This ordinance has for its object to ascertain the value of the different coins usually passing in the Province, and to prevent them from being falsified or impaired. To accomplish the first purpose the following rates are established:—

Coins	Weight	Rate
Gold	dwt. grs.	£ s. d.
The Johannes of Portugal.....	18 6	4 0 0
The Moidore	6 20	1 10 0
The Doubloon, or four Pistole piece..	17 0	3 12 0
The Guinea	5 8	1 3 4
The Louis d'Or.....	5 3	1 2 6
Paying two pence one farthing for every grain of gold under weight.		
Silver		
The Spanish Dollar		5 0
The British Crown		5 6
The French Crown, or piece of six livres tournois		5 6
The French piece of four livres ten sols turnois.....		4 2
The British shilling		1 1
The French piece of twenty-four sols tournois		1 1
The Pistereen		1 0
The French piece of thirty-six sols tournois		1 8

All higher or lower denominations of these coins were to pass in due proportion, and at these rates they were to be a legal tender for all debts whatever.

The second object aimed at in the ordinance was sought to be attained by appointing penalties for the diminishing or impairing of any of the foreign coins circulating in the Province, the Britlsh coins being protected by Imperial statute. After prohibiting the making or importing of false or counterfeit

copper money, it is enacted that no person shall be obliged to receive more than the value of 1s. in copper at any one payment.

With reference to the relative values assigned to the coins by this ordinance, several points may be noted. When, taken on the basis of intrinsic or bullion value, the Spanish dollar was rated at 5s. and the British crown at 5s. 6d. the latter was undervalued to the extent of 4d. currency, which was quite sufficient to drive it out of circulation. Again, the French crown being valued at 5s. 6d. was overrated as compared with the dollar. The French coin contained only 403 grains of fine silver, whereas 5s. 6d. was represented by $1\frac{1}{10}$ Spanish dollars containing 408-87 grs. fine. Hence French crowns were sure to gravitate towards, and remain in Canada to the exclusion of dollars. Further, according to the table, $5\frac{1}{2}$ pistereens were legal tender for 5s. 6d. the value of the French crown. But $5\frac{1}{2}$ pistereens contained only 380 grains of fine silver, while the French crown contained 403 grains, a difference of 23 grains, which would have been sufficient to drive out the French crowns had it not been for the conservative adherence of the French Canadians to their familiar coins. The French crowns, too, were many of them very much worn, and were thus in no special danger of being exported as bullion.

There was inequality in the gold coins also, which was further complicated by their being subject to sweating and clipping or filing where the margin between the full weight and the weight at which they were permitted to pass was at all considerable. The Quebec and Montreal merchants, being consulted on the subject of bringing the gold coin to a definite weight, were once more unable to agree. The Quebec merchants were in favor of plugging and stamping the current coins to establish their uniformity in weight. They also desired a lower weight standard for the guinea, 5 dwt. 6 grs., instead of 5 dwt. 8 grs. as then fixed, to encourage the King's coin to circulate in the country. But to these and other recommendations the Montreal merchants objected, preferring to leave matters as they were.

As a change in the constitution was again impending, the Government took no action in the meantime, hence the next

attempts at official regulations were made under the representative Governments established in the two provinces into which Canada had been divided by the Constitutional Act of 1791.

The ratings of the standard coins by the ordinance of 1777 being very unequal, led to the practical exclusion of several coins from general circulation. But it was the scarcity of currency, a chronic complaint in Canada in times of peace, which suggested to the law-makers the need for a revision of the currency ordinance. On April 17th, 1795, a bill was introduced into the Lower Canadian Legislature to regulate the currency. A considerable discussion was called forth, but nothing definite accomplished until the following session, when an Act was passed, 36 Geo. III, cap. 5, whose preamble gives expression to the prevailing view: "Whereas it will tend to prevent the diminution of the specie circulating in this Province, that the same be regulated according to a standard that shall not present an advantage by carrying it to the neighboring countries, and whereas, by the ordinance now in force for regulating the currency of this Province, an advantage does arise by carrying gold coin out of the same, be it therefore enacted, etc." The new ratings appointed are the following :—

Coins	Weight dwt.	grs.	Rate £	s.	d.
Gold					
British guinea	5	6	1	3	4
Johannes of Portugal	18	0	4	0	0
Moidore	6	18	1	10	0
Milled doubloon, or 4 pistole piece of Spain	17	0	3	14	0
French louis d'or, coined before 1793	5	4	1	2	6
French pistole, coined before 1793	4	4		18	0
American eagle	11	6	2	10	0
Silver					
British crown				5	6
British shilling				1	1
Spanish milled dollar, equal to 4s. 6d. sterling				5	0
Spanish pistareen				1	0
French crown, coined before 1793				5	6
French piece of 4 livres 10 sols tournois				4	2
French piece of 36 sols tournois				1	8
French piece of 24 sols tournois				1	1
American dollar				5	0

In the case of the gold coins, for every grain over or under the standard of weight as given, 2½d. were to be allowed or de-

ducted. After June 1st, 1797, in all payments exceeding £50 currency, at the option of either party to the payment, the gold should be weighed in bulk and a discount of two-thirds of a grain on each gold coin allowed to cover any loss that may accrue by paying away the same in detail. When so weighed, the gold coin of Britain, Portugal and America shall be computed at 89s. currency per oz., and that of Spain and France at 87s. currency per oz. The remainder of the act deals with counterfeiting, etc. A similar act, identical with that of Lower Canada in all essential respects, was passed by the Legislature of Upper Canada in the same year, 1796, thus maintaining a uniform rating in the two provinces.

In this act we observe that the Quebec merchants have secured their object in having the guinea accepted as full weight at 5 dwt. 6 grs. while retaining its value of £1 3s. 4d. The Johannes and moidores are also allowed at reduced weights, the former at 6 grs. and the latter at 2 grs. under the previous standard, while their values remain unchanged. The doubloon at the old standard of weight is raised 2s. in value. On the other hand, the French louis d'or is raised one grain in weight, while the French pistole and the American eagle are rated for the first time. Thus, on the whole, the act records a considerable effort to attract more gold coin to the country.

No attempt is made to remedy the inequalities in the ratings of the silver coins, which are continued at the same valuations as before. The new American dollar is added on the same footing as the Spanish dollar.

The French crown, being no longer coined, yet continuing to be considerably over-rated, out of deference to the prejudices of the French Canadians, continued to crowd out the other coins. Owing to the wear and mutilation it steadily diminished in value and continued to be for many years after this a constant source of difficulty in the trade of the country.

Meanwhile the practice of the Montreal merchants, still coloured by their New York connection, had extended to Upper Canada, whose loyalist settlers were mainly from the old colony of New York. Though the Halifax standard of 5s. to the dollar was the official and legal rating, yet the usages of the people in their dealings with one another tended to perpetuate the old

New York rating of 8s. to the dollar, the basis of which was the Mexican real, eight of which made up the dollar. This rating was known in North America as the York shilling, which in later times was identified in visible shape with the British sixpence.

In the United States the new national decimal standard, with a definite coinage, was gradually taking the place of all other standards and coins, and as the new system was well maintained by the business men, the foreign coins, especially the light and defaced ones, began to find refuge in Canada. This was an evil which in the absence of any definite colonial currency it was almost impossible to avoid, and for some considerable time the Canadians took no special pains to avoid it. Their chief anxiety still centred in the question as to the relative values of the gold coins. Hence in the Act of 1808 for the further regulating of the coinage, the only changes made were in the list of gold coins. The preamble stated that "by the Act now in force the relative values of the gold coins current in this Province is not accurately established." The ratings of the gold coins fixed by this act are as follows:—

Coins	Weight		Rate		
Gold	dwt.	grs.	£	s.	d.
Guinea	5	6	1	3	4
Johannes	18	0	4	0	0
Moidore	6	18	1	10	0
Milled doubloon, or 4 pistole piece of Spain	17	0	3	14	6
French louis d'or, coined before 1793	5	4	1	2	8
French pistole piece, coined before 1793	4	4		18	3
American eagle	11	6	2	10	0

Here, it will be observed, the doubloon is increased in value by 6d., the louis d'or by 2d., and the French pistole by 3d. Other changes made by the act were: (1) The reduction of the limit of payment by weight from £50 to £20; (2) while retaining the weight for American, Portuguese and British gold coins at 89s. per oz., the rate for Spanish and French gold coins was raised from 87s. to 87½s. per oz.; (3) in the allowance on individual coins for every grain above or below the standard weight, Spanish and French gold coins were to be allowed 2½d. per grain instead of 2¼d. as before, and which is still retained for the others.

The following year, March 9th, 1809, the Legislature of Upper Canada passed an act altering and amending the previous act of 1796 for the regulation of the current coins "in order to equalize them to the current value of the like coins in the Province of Lower Canada." In this act the upper province simply follows the changes introduced in Lower Canada, still maintaining, thereby, a uniform rating in the two provinces.

During this period we find that the Imperial Government in its colonial military establishments still continued to keep its books and make its payments to the troops in accordance with the sterling standard. Yet the money employed in the Government payments, even when imported from Britain, was not, as a rule, British money, but Spanish dollars rated, as we have seen, at 4s. 6d. However, in 1808 we find an official despatch stating that £100,000 in specie will soon be forwarded to Quebec and £102,664 to Nova Scotia, but "the Lords of the Treasury desire that general orders be published stating that the dollars will be issued to the army at 4s. 8d. sterling each." This meant a reduction of 2d. on the dollar from the soldier's pay. Doubtless it was intended to offset the virtual premium on specie in Britain, and the risks incurred in sending it abroad.

The employment of the army bills during the war of 1812-15, and their continued circulation for some time afterwards, relieved the usual anxiety as to the circulating medium. It was provided, however, in section 15 of the first Army Bill Act of 1st August, 1812, that "no person whatever shall export or otherwise carry out of this Province, any gold, silver, or copper coin of any description whatsoever, or any molten gold or silver in any shape or shapes whatever," on pain of having the whole seized and forfeited. This was not repealed until March 8th, 1817. As late as the end of September, 1816, an item in the *Montreal Herald* refers to the seizure of $10,000 at St. John's going out of the Province to New York. The establishment of the first banks shortly afterwards, provided another paper currency to take the place of the army bills, among the English section of the people at least. But the French-Canadian habitant, who had looked with suspicion upon the army bills, continued to distrust the bank notes. Always using the livre as his money of account, he clung to the French coin-

age as part of those French Canadian institutions which he was taught to zealously guard against all encroachments on the part of British substitutes.

But after 1792 the old French coins circulating in Canada were no longer minted, hence there was no means of renewing the supply. In consequence, the French Canadians found it necessary, as the lesser of two evils, to legalize the circulation of the French coins struck after 1792. In 1819 the act 59th Geo. III, cap. I, was passed, in which it is stated that "it is expedient and necessary to provide that the gold and silver coins of France, coined since the year 1792, shall be made current and be deemed a legal tender in this Province."

The following coins are then specified with their ratings:—

	dwt.	grs.	£	s.	d.
Gold					
Forty francs piece	8	6	1	16	2
Twenty francs piece	4	3		18	1
Silver					
Piece of six livres				5	6
Piece of five francs tournois				4	8

And all the higher and lower denominations of the said gold and silver coins shall also pass current and be deemed a legal tender in payment of all debts and demands whatsoever in the Province.

The provisions of this act were not adopted in Upper Canada, where, therefore, the new French coins were not legal tender.

In Upper Canada the practice of keeping accounts and doing business in York currency, already referred to, had caused considerable difficulty in the courts. York currency, though having no standing in the eyes of the law, had, nevertheless, to be dealt with as an existing commercial fact. To definitely terminate this confusion, an act to establish a uniform currency throughout the Province was passed in Upper Canada in 1821, 2nd Geo. IV, cap. 13. The preamble states that "the several gold and silver coins current in this Province have respectively a nominal legal value in pounds, shillings, and pence, bearing the relative proportion of ten to nine, to the sterling money of account in the United Kingdom of Great Britain and Ireland, nevertheless in some parts of this Province, accounts continue to be kept and contracts to be made in New York currency, estimating the Spanish milled dollar at eight shillings, bearing

to sterling money of account the proportion of sixteen to nine, which diversity must necessarily occasion great and manifest confusion." It is provided that after July 1st, 1822, no interest shall be demandable on any bond, note, or other instrument made after that date in this Province, in which the penalty or sum payable shall be expressed in New York currency. Nor will any costs be allowed in actions brought thereon. After the same date no rendering of accounts shall be deemed a demand, or acknowledgment thereof given in evidence, unless it shall have been rendered in Provincial currency. The same applies to shop books presented in evidence. To make these provisions known to the people at large, the act was to be read in Court on the first day of the four next Courts of General Quarter Sessions.

The next important event in the history of Canadian currency is the attempt made by the British Government in 1825 to introduce the British currency standard and the British silver coins into all the colonies. But this brings us into a new exchange era for both currency and banking.

ADAM SHORTT

QUEEN'S UNIVERSITY, Kingston.

THE NOVA SCOTIA ACT RESPECTING ASSIGNMENTS AND PREFERENCES

LAWS dealing with bankruptcy and insolvency have never been popular in Nova Scotia, or gained any firm foothold as part of the legal system of the province. Prior to Confederation there was upon the statute book no Act whatever respecting the subject, nor was there apparently any great necessity for one. Nova Scotia was in those days a very self-contained little community. Its business was largely centered in Halifax, and controlled by the merchants of that city. Between those merchants themselves competition was a very different thing from what it is to-day. Personal friendships were common among them, in many cases connections existed among them by family or marriage. Each had his own customers, and largely his own territory, and interference with either was looked upon rather as "bad form." Credits were long, but the customers as a rule were well known, and insolvencies infrequent. When they did occur, as often as not the liabilities were confined to a few firms who effected an amicable arrangement among themselves.

Into this Arcadian business community two violently disturbing elements were thrown by Confederation—the Intercolonial Railway and the Insolvent Act of 1869. The first, coupled with the removal of the former provincial tariff, brought the merchants of Montreal and Toronto into sharp competition with those of Halifax, The Canadian "drummer" was everywhere in evidence. The enterprise of the Halifax banks in pushing agencies into every town and village in the province, and thus increasing the facilities both for obtaining credit and for the collection of accounts, aided the intruders. The province shared in the general prosperity that prevailed in the first few years after Confederation, business boomed, credits were widely extended, there was much over-trading and injudicious speculation, and many persons were drawn into trade who were in no way fitted for it.

With the "nipping frost" of hard times that succeeded the fat years there inevitably came a tremendous crop of insolvencies—a thing wholly new and foreign to provincial experience. Unfamiliar with the Insolvent Act, and inexperienced in the working of the system, it is not surprising if a widespread prejudice grew up against all insolvent laws, as such. The facilities with which discharges were obtained (in which respect both the Acts of 1869 and of 1875 were probably much too lax) were especially unpopular. The honest trader struggling to carry his load and keep good his name was amazed and disheartened at the ease with which his less scrupulous neighbor went in at one door of the court and in a month's time emerged from the other freed from all liability. The Halifax merchant found that his proximity to the insolvent and his past friendly relations with him were of no advantage. Bankrupt stocks flooded the market. Inexperienced and often incompetent assignees made "ducks and drakes" of estates. From one cause and another the "Act" became thoroughly unpopular. In the popular belief, it is hardly too much to say, it was regarded as the cause of insolvency, and probably in no part of Canada was there less mourning over its summary execution in 1879.

The people who had been under a vague impression that if there was no "Insolvent Act" there would be no insolvencies were soon undeceived. The crop was indeed much reduced for a time, chiefly through the reduction in the volume of trading, and because most of the shaky ones had taken advantage of the Act to go through the court. But with the return of activity in business a fresh harvest was not long in ripening, and the people of the province were rapidly introduced to the old common law assignment with its preferences and other manifold iniquities. In form these assignments were all practically identical. Some relative or friend or friendly creditor of the insolvent was chosen by him as his assignee. In the selection of this assignee the creditors of the insolvent had no say whatever, nor the slightest control or supervision over his actions, except possibly in case of glaring misconduct by means of a tedious and expensive action in court. He could refuse, and sometimes did, to give the slightest information respecting the estate entrusted to him, with the inevitable result that the

estates were often grossly and even corruptly mismanaged. The deeds were generally one form—an assignment of everything the debtor possessed with directions to turn into cash, and to pay first a list of preferred creditors, and then such of the general body of creditors as should be willing by executing the deed to release their claims in full. The latter direction was as a rule little better than a mockery, as the preferences, with commissions and expenses, almost invariably ate up all the assets. So much was this the case of late years that a clause commonly inserted in the deeds provided that in case the estate proved insufficient to pay the preferences in full they should be paid ratably. If the general creditors refused to execute the deed the inconvenience to the debtor was not so great as would have seemed. It is true he remained undischarged, but some way was generally found of continuing business in the name of another. The provisions of the Married Women's Property Act, intended originally as a protection of her property against her husband and his creditors, have been found a particularly convenient mode of enabling him to perpetrate a fraud upon them.

With all its iniquities, however, it can not be said that there was any very considerable demand for an abolition of the system. Popular recollection of and prejudice against the old insolvent Acts were strong enough to prevent any general demand for their removal. The banks, who might have been expected to lead the way to a better system, were not such sufferers by the one in use as to make them vigorously insistent upon a better one. It was not through any special love for them that such was the case, but because in most cases the paper held by them was endorsed by persons whom the debtor felt constrained to protect, and it was to these, and not to the banks that the preference was vicariously given. The Halifax merchants, as a whole, were opposed to a change. Rightly or wrongly many of them believed the existing system operated to their advantage as against their Canadian competitors. They were on the ground, had generally earlier information as to who was in a shaky condition, and were more frequently people whose business friendship the debtor thought worth propitiating by a thoughtful preservation of their interests. Creditors out-

side the province were generally the ones hardest hit, and though individually and through boards of trade they might, and for years did, rage furiously, they were powerless to affect provincial legislation, and their misfortunes evoked small sympathy or little feeling other than a certain amount of chuckling in various quarters, and a hope that it would be a lesson to keep themselves out of territory in which they had no business to be.

Nevertheless the insistent attack upon the prevailing system, and the charge continuously made that to permit its continuance was a disgrace to the province produced considerable effect. The Ontario Act abolishing preferences was highly commended, and in 1896 an incomplete copy of it was introduced in the Legislature as a private measure. It cannot be said that the bill had many friends or that either it or the Act from which it was copied were particularly well understood. But control and supervision of any legislation of a general character is shockingly lax in the Nova Scotia Legislature. It is the old story of what is everybody's business in general being nobody's in particular, and unless it happens to antagonize some particular interest, once a bill is introduced into the legislative "hopper" it grinds its way through by simple routine, not so much because anybody wishes it as because no one takes the trouble to oppose it. The bill passed the Lower House. In the upper branch, however, sufficient opposition was developed, largely on account of the feeling among the merchants, already alluded to, that the prevailing system was, as against their outside competitors, rather an advantage than otherwise, and the bill was thrown out. Within a short time, however, Halifax made the unpleasant discovery that in its turn it was beginning to be regarded by the smaller towns of the province in much the same way as it had been accustomed to regard Montreal and Toronto. A couple of particularly bad cases in which Halifax creditors were "hard hit" and local ones preferred brought a change of feeling and a withdrawal of opposition, and when the bill was again introduced in 1898 it was allowed to become law.

The Ontario Act, of which the Nova Scotian is merely an incomplete copy, may roughly be described as an Insolvent Act

omitting the provisions for the insolvent's discharge, and for compulsorily placing him in bankruptcy. It abolishes preferences by making any assignment which contains them, or any confession of judgment, transfer or similar device for giving a preference void as against any creditor who is thereby injured or delayed. The debtor may make an assignment for the general benefit of his creditors, that is one containing no preference, to an assignee of his own selection. But even this is void as against a similar assignment to the sheriff, for whom may be substituted any other person selected by the creditors. An assignment of this latter description, and a winding up under it of the estate of the debtor is what is arrived at by the Act, and for this purpose a fair amount of machinery is provided. But what if the debtor declines to make such an assignment? Obviously it is the last thing in the world he would wish to do. There is no provision for his discharge, for that he must trust wholly to the sheer generosity of each individual creditor. He can no longer tempt them with the prospect of a dividend however insignificant as a consideration for releasing him. The creditors take the dividend whatever it is, and the release of the debtor is a matter for each creditor to do as he pleases. These are all the terrors of the Bankruptcy Court with none of its charms. If the unfortunate trader is to be stripped of all he has and turned out naked, but with his burden of debts still hanging round his neck, he might as well have nothing to do with the Act at all, but either let the law take its course, or set his wits to work to evade it.

Against a debtor who is determined not to have anything to do with the Act if he can help it the Act is not a particularly effective weapon. It is true it makes void all transactions in the nature of a preference, but its means of preventing them are not very efficient. There is nothing like the instantaneous arrest of the debtor's business effected by an attachment under the Insolvent Act. The only means of attacking a transaction presumably forbidden by the Act is through the ordinary operations of the Court. Unless a combination can be effected among the creditors (a thing by no means always practicable) some one creditor must take the risk of initiating proceedings to set aside the transaction. If he is able to make a seizure of any of the

debtor's property by an execution he will in the event of success be entitled to enjoy the fruits of his victory. But circumstances do not always admit of such being done. To obtain a judgment requires time, and an astute debtor can generally manage in the interval to so order his affairs that an ordinary execution is of little avail. In that case the only mode of impeaching the transaction is by an action to set it aside as a fraud on the general body of the creditors. If the plaintiff in such an action succeeds, his success will enure to the benefit of all the creditors. If he fails, the costs—both his own and his opponent's —will have to be borne by himself alone. In any event success may come only after a protracted and costly struggle, lasting more than a year, by the end of which time the bone of contention, the assigned property, will have entirely disappeared, or lost most of its value, and if the assignee is a man of no substance the victory is a barren one. It is hardly to be wondered at, therefore, that in many cases transactions seemingly within the Act are allowed to pass unchallenged.

Again, the Act itself provides a number of ways in which evasion is possible. It expressly exempts from its operation (sec. 3) "any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; any payment of money to a creditor; any *bona fide* conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind which is made in consideration of any present actual *bona fide* payment of money or by way of security for any present actual *bona fide* advance of money or which is made in consideration of any present actual *bona fide* sale or delivery of goods or other property, provided that the money paid on the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor." It is obvious that in this enumeration of ways in which a debtor may legitimately dispose of his property, even though he is, in the language of the opening section of the Act, "in insolvent circumstances or unable to pay his debts in full, or knows himself to be on the eve of insolvency" the door is opened wide for attempts at evasion by transactions which though preferences to all intents and purposes can yet be seemingly brought within one or other of the things which a debtor is permitted to do,

and the Ontario Law Reports are full of cases in which the ingenuity of debtors and the difficulty of deciding on which side of the line a particular transaction fell are amply illustrated. To refer to them at any length would be beyond the scope of this article.

So far the Nova Scotian Act is merely a duplicate of the Ontario one, and all the difficulties which have been found in the operation of the latter are certain to occur in the cases arising under the former. But we now come to a point in which the Nova Scotian Legislature has seen fit to make a wide departure from its copy in a way which will probably render their Act almost if not altogether worthless.

As has already been pointed out, one of the questions which will inevitably present themselves to the embarrassed debtor will be, "if an assignment under this Act is going to be of no use to me why should I make one, why not let the law take its course? What that course will be is plain enough. His creditors will take judgments against him, levy on his property, sell it by the sheriff, and apply the proceeds in satisfaction of their claims. Obviously here is another door wide open for the evasion of the Act. All that is necessary is a hint to the creditor whom it is wished to prefer, to issue his writ promptly, or if some other creditor is equally prompt a sham defence will serve the purpose equally well. In one way or other there is no difficulty in permitting the claim of the favored creditor to ripen to a judgment and execution more rapidly than the claims not so preferred. True, there is collusion. But it is not clear that this is one of the things in respect to which collusion is forbidden by the Act. And if it were, collusion is always a difficult thing to prove, and particularly so in a case like the one under discussion. It takes two to collude as well as to quarrel, and there is little difficulty in conveying the hint to the favored creditor in such a fashion or through such a channel that he can with a tolerably clear conscience affirm that his conduct was governed by no other considerations other than ordinary business sagacity. True also that a sheriff's sale is not a very convenient mode of working out a preference. But with a friendly execution creditor this too can be managed—buying the goods in himself or by a friend under an arrangement with the debtor would be one mode

of doing the trick. Here is an obvious means of evasion; how have the two Acts respectively tried to deal with the difficulty?

Section II of the Ontario Act provides that:

"An assignment for the general benefit of creditors under this Act shall take precedence of all attachments, of all judgments and of all executions not completely executed by payment, subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands, or to the lien, if any, of the creditor for his costs who has the first execution in the sheriff's hands."

This section the Nova Scotian Legislature, for some reason, did not see fit to re-enact. Perhaps it considered that the thing to be aimed at was to strike down preferential assignments, leaving the rights of creditors to obtain satisfaction by judgment, or attachment, untouched, possibly without adequate consideration of the fact that the closing of the door to preference, by means of an assignment, was certain to bring about a search for some other means of coming at the same end. The New Brunswick Act, it might be added, has the Ontario section. But the additional section by itself accomplishes very little. It is only against "An assignment for the general benefit of creditors under the Act," that the lien obtained by an execution or attachment is vacated. It enables a debtor, against whom judgments have been obtained adversely by creditors whom he does not wish to prefer, to defeat such judgments, and effect uniform distribution of his assets, by making an assignment under the Act. That is something no doubt, but it is a case which does not often happen. As a rule traders in insolvent circumstances do not permit their affairs to run on until judgments are actually obtained against them. By one financial expedient or another they can generally stave off the actual issue of a writ until it is evident, even to themselves, that their affairs are in a hopeless condition, and that an arrangement of some sort must be made. This is the time when the scheme of a preferential arrangement is hatched, and if there is no other way of effecting it open, it will be done by means of judgments in favor of the preferred creditors, either by giving them a friendly hint, or by putting in sham defences to actions instituted by other creditors. As against judgments obtained in this way the section quoted is

helpless because the debtor obviously will not vacate them by making an assignment under the Act, and so destroying his own scheme for a preferential arrangement.

In Ontario, however, the way of the debtor in this direction is not nearly so smooth. It seems, in fact, to be pretty effectively stopped by another very important Act of that province, which appears to have been wholly overlooked by the Legislatures of Nova Scotia and New Brunswick. This is the statute known as the "Creditors' Relief Act," Chapter 78 of the last Revision of the Ontario Statutes. The effect of this statute is to completely do away with the common law right of the creditor having the first execution levied upon the property of his judgment debtor, to have the execution satisfied, in full, out of the proceeds of his levy, in priority to any creditor levying under a subsequent execution. By the provisions of this statute a sheriff in whose hands an execution has been placed is required to enter it in a book open to public inspection, and to distribute the proceeds of any property levied upon under it ratably among all the creditors who lodge with him executions against the debtor, within one month after the lodging of the first execution. An attachment against an absent or absconding debtor is put upon the same footing as an execution. Any attempt at collusion between the holder of the first execution and the debtor is guarded against by provisions enabling the holders of subsequent executions to put the machinery of the Act in motion in case of undue delay on the part of the holder of the first execution. Provision is made by which creditors of the debtor who have not secured judgment are enabled to do so in a summary manner before a County Court Judge. Machinery is provided for the distribution of the debtor's assets by the sheriff. In short, the Act, so far as it goes, is a rough and imperfect insolvent Act, in which the placing of an execution against the property of the debtor in the hands of the sheriff takes the place of the attachment, assignment, or receiving order, of a regular insolvent Act or bankruptcy law. How far the law goes in supplying the place of an insolvent law can only be told by an Ontario practitioner familiar with its practical application. It is apparently clear that it can do so only in a very imperfect fashion, and in anything of a large and complicated estate

would be almost worthless. But it at least is clear that it must operate as a very effective check upon the debtor who wishes to defeat the Assignments Act, either by the simple method of doing nothing and letting the law take its course, or by collusive proceedings to enable a favored creditor to obtain judgment in priority to others. The Ontario debtor apparently has to choose between the Scylla of the Assignment Act and the Charybdis of the Creditors' Relief Act, and under the one or the other his property, or such portions of it at any rate as are capable of seizure under an execution, can be reached and made available for general distribution among his creditors. In this dilemma the probabilities apparently are that he would prefer to make an assignment as affording facilities for dealing with his estate to better advantage and obtaining a better dividend, and so giving a better prospect of obtaining a discharge from the creditors, or at least leaving a smaller balance due them. But this is mere speculation. The obvious thing is that the Nova Scotian or New Brunswick debtor is under no such compulsion. There is no apparent reason why he should make an assignment under the Act at all, when it is so much more to his advantage not to do so. In this respect the New Brunswick statute is no better than the Nova Scotian. The provision making an execution void as against an assignment under the statute is worthless so long as there is nothing to put a pressure upon the debtor to make the assignment, such as is put by the Ontario Creditors' Relief Act, and the Nova Scotia statute seems therefore the more logical of the two in omitting all reference to execution creditors.

It is not surprising, therefore, to find that in Nova Scotia at any rate the Act has thus far been of so little service as to be almost a dead letter, and has had no effect whatever in preventing collusive judgments, and almost none in preventing preferential assignments. For some time past business throughout the province has been fairly good, and the crop of insolvencies consequently rather light, and public attention has not been strongly drawn to the complete inadequacy of the Act, but it can hardly fail to receive attention when the next recurring period of depression brings the inevitable increase of insolvencies.

When the statute is confessedly a failure, and almost a dead letter by reason of so great an imperfection as the one just pointed out, it seems somewhat idle to deal with minor points, but a few of them may be mentioned. The fact that amendments are being made to a statute is proof that it is alive, and that the strain of actual proceedings under it is revealing weaknesses and defects requiring to be strengthened and made good. Several such amendments to the Ontario statute between the revisions of 1887 and 1897 have much improved that Act as a piece of working machinery. These have not been embodied in the Nova Scotian statute, the reason being apparently that when the Act was first introduced into the Legislature the last Ontario revision had not been published, and on the second occasion the bill was simply a copy of that previously introduced.

One such change obviously necessary to the working of the Act is that affecting the valuing of any security held by a creditor claiming to rank upon the estate. The Nova Scotian Act following the Ontario of 1887 simply requires every creditor claiming upon the estate to state in his proof whether he holds any security for his claim or any part thereof. If the security is on the estate of the debtor or on the estate of any third party for whom the debtor is only secondarily liable he is required to value his security, and the assignee has then the right either to permit him to rank for the balance of his claim after deducting the value of the security or to take over the security at an advance of ten per cent. upon the value put on it by the creditor, to be paid out of the estate "as soon as the assignee has realized such security." In this latter case the difference between the value at which the security is retained and the amount of the gross claim of the creditor is to be the amount in respect to which the creditor is to vote and rank. As might have been anticipated creditors hesitated about putting a value upon their securities, and by an Ontario amendment which is not reproduced in the Nova Scotian Act proceedings may be taken in the County Court to compel him to do so or in default to be entirely barred from any right to share in the proceeds of the estate.

Another amendment in respect to which the Ontario Act differs from the Nova Scotian is that which enables the debtor

who wishes to dispute a claim, with the proof of which the assignee is satisfied, to do so upon obtaining permission from a County Court Judge.

Another more important respect in which the Acts differ is in respect to the powers of the assignee and the creditors to insist upon an examination into the affairs of the debtor. The Ontario Act of 1887 was wholly wanting in any provisions of this sort, and the Nova Scotian Act has the same defect, although the Ontario amendments have been added to the New Brunswick Act. It would not seem to require very much either of knowledge of the practical working of bankruptcy laws or of human nature to have anticipated that a debtor who has been forced into an assignment is very apt to make over as little of his property as he possibly can, and to conceal as much as possible from his assignee and creditors. The Nova Scotian Act makes no attempt to meet this difficulty. The assignee will take apparently only what the debtor chooses to make over to him, or what can be readily discovered and made available. By the amendments to the original Ontario Act the assignee is empowered without obtaining any order to that effect to examine on oath before any one of a variety of different functionaries named, either the debtor or any clerk or servant in his employ, "touching the estate and effects of the assignor and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities and as to the disposal he has made of any property since contracting such debt or incurring such liability and as to any and what debts are owing to him." If the debtor does not attend for examination when required, or "refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from the examination that he had concealed or made away with his property in order to defeat or defraud his creditors or any of them" the Act provides for his imprisonment for any term not exceeding twelve months. Further provision is also made to compel the production of books and documents, and for the punishment of the debtor or any other person in whose possession they are, for failure to produce them. These provisions have been added to the New

Brunswick Act by an amendment of 1897, and if the Nova Scotia Act is to be continued and made of practical value something of the same sort will require to be incorporated in it.

Another difference apparently of no great consequence is that while in Ontario an assignment under the Act may be made to the sheriff of the county or to any other person, with the consent of the majority in value of the creditors, in Nova Scotia by the combined effect of this Act and of an amendment of the present year the assignment must be to an official assignee for the county to be appointed by the Governor-in-Council.

Another and more important difference between the Acts and one of particular interest to readers of this magazine is that respecting the treatment of creditors whose claims are based upon negotiable instruments. The section which the two Acts have in common requiring a creditor holding security of any sort to put a value upon the security after which the assignee can either compel the creditor to rank for the amount of the claim, less the value put upon the security, or may take over the security, has already been referred to. The succeeding Ontario section is as follows:

"If the creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this (*i.e.* the one just referred to) section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment he shall be entitled to amend and revalue his claim."

As being by far the largest holders of negotiable instruments this section is one peculiarly concerning the banks, and it is a most unjust one. The right to receive payment from all the parties to a negotiable instrument is not a "security" either by the etymology of the word or by the ordinary understanding and acceptation of that phrase. The right to receive such payment from all parties was the consideration which induced the holder of the instrument to discount it. He has the right so long as any one of the parties to the instrument is solvent to pursue his legal remedy to recover payment from him by an action for the full amount, and he can pursue that remedy concurrently against all the parties to the instrument until from

some or all of them he has obtained payment in full. The right to rank upon the estate of an insolvent is only the substitute which the law provides for the right to sue him if he had not made an assignment, and it would seem singular if the one should not be as extensive as the other. So long as any other party to a negotiable instrument is solvent there is not much likelihood of the holder troubling himself to rank upon the estate of an insolvent indorser. When all the parties have become insolvent his right to rank upon their estates and receive dividend ought to be as extensive as his right to maintain actions against them if they had not become insolvent. To compel him to treat as "security" what is essentially anything but "secure," namely, the possibilities of receiving anything from the estate of some other insolvent party, is an injustice, and in effect depriving the holder of the rights which he received when he discounted the instrument. The term "security" is properly only applicable to something by which its holders are entitled to a lien upon some specific property which can be enforced in discharge of the claim.

A legislature sitting in a city of such banking activity as Halifax could hardly be otherwise than alive to such considerations as these, and the section of the Ontario Act was dropped and for it substituted the following:

"If a creditor holds a claim based upon a negotiable instrument upon which the insolvent is only secondarily liable, and which has not matured at the time of proving the claim, such creditor in his proof of claim shall set a value upon the liability of the person primarily liable thereon, and the difference between such value and the amount of the claim shall, until the instrument matures, be the amount at which the claim shall be calculated for the purpose of voting at meetings and other purposes, *except the payment of dividends thereon or collocation in the dividend sheets*, but after the maturity of such instrument the claim shall be calculated for all purposes at the full amount, less any sum paid on account thereof by the person primarily liable on such negotiable instruments."

This section was taken from the Insolvent Act introduced as a Government measure into the Dominion Parliament in 1894, and substantially represents the English bankruptcy law, though it is doubtful if under the rules regulating the proof of claims contained in this schedule to the English Act of 1883 even the

limitation as to the right of voting would be enforced upon the holder of a negotiable instrument.

No attempt has been made in this article in the way of a detailed criticism upon the wording of the Nova Scotian Act. Anything of the sort would have been merely a legal treatise on the Ontario statute, and the reported cases upon it. The Ontario Act itself is by no means a good piece of legal draughting, and it is evident even from a cursory glance through the Ontario cases that there are abundant loopholes in it by which the debtor can baffle and thwart his creditors seeking the compulsory liquidation of his assets. None of these difficulties have been experienced in Nova Scotia, for the simple reason that practically no attempt has been made to work under the Act. It is virtually a dead letter and from present appearances likely to remain so. If it is ever to become a thing of life it will be necessary not only to add the amendments which have been found requisite to make it workable in Ontario, but to provide some mode of compulsion to force debtors to make assignments under it, similar to that provided by the Ontario Creditors' Relief Act. From present appearances it is highly doubtful if anything of the sort will be attempted by the Nova Scotian Legislature. Two concurrent systems of insolvency law, each extremely crude and imperfect and with great possibilities of oppression for the honest, but unfortunate debtor, is not an inviting prospect. Insolvency laws of any description, as has been pointed out, are not specially popular in the province, but the feeling respecting them is that if we are to have an Insolvent Act at all it should be a complete and workable one, with provisions not merely to distribute the assets of the debtor proportionately among his creditors, but also to enable him, if merely unfortunate and not dishonest, or grossly incompetent, to obtain a discharge upon reasonable terms. Failing such an Act, the feeling in a good many influential quarters is that it is better not to attempt any further half measures, resulting almost inevitably in disappointment on one side and oppression on the other, but to let debtor and creditor work out their own salvation with such means as the common law and their own wits have put into their hands.

HALIFAX, January, 1900 F. H. BELL

GILBART LECTURES, 1899*

No. III

BY J. R. PAGET, ESQ., LL.D., BARRISTER-AT-LAW

EVIDENCE OF ABSENCE OF CONSIDERATION

IT might be suggested that the unquestionable rule by which the consideration for a bill may be impeached, allows a contradiction or variation of the written document by verbal evidence. Of course, however much a bill professes to be for value received, you are perfectly at liberty to show that no value passed at all.

I take it, the explanation is, that the consideration is something really outside the contract, it is the foundation on which every contract not under seal, must rest, and in showing there is no consideration for a bill, for instance, you do away with the contract altogether, subject to any rights vested in third parties, just as you would if you showed it was induced by fraud or compulsion. And if you are doing away with the contract altogether, you do away with the part which relates to consideration. Or you may say that the expression, value received, or any other statement of a past or cotemporaneous consideration is merely equivalent to a receipt, which can always be contradicted. The statement of the receipt of consideration is not really a term of the contract. It is a very different thing where the consideration really forms one of the terms of the contract, as, for instance, where it is to be paid at a future date. Then no oral evidence is admissible to contradict or vary it. If one man agrees in writing with another to sell him a horse for £50 on a fixed future date, the purchaser would never be allowed to set up a prior or cotemporary oral agreement that the price was to be only £25.

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So that there is no real contradiction of the rule in this principle, which permits oral proof of absence of consideration, even though the bill be expressed to be for value received.

EVIDENCE OF COLLATERAL ORAL AGREEMENTS—EVIDENCE OF CONTRADICTORY ORAL AGREEMENTS

Now, with reference to this subject, there is a passage in "Chalmers on Bills of Exchange," which, in my opinion, is inaccurate and misleading. At p. 59 of the 5th edition, Mr. Chalmers says: "Though the terms of a bill or note may not "be contradicted by oral evidence, yet effect may be given to a "collateral *or* prior oral agreement by cross-action or counter-"claim."

So far as this statement applies to oral agreements which are purely and strictly collateral, no doubt it is correct. By a collateral agreement I understand one which, though in a way it may arise out of the same transaction as the bill or note, bears the same relation to it that one parallel straight lines does to another, viz., that they never meet. Suppose two men are settling a variety of disputes or matters of business between them, one of such disputes is arranged by A giving B a promissory note, and another by B undertaking to return a horse to A. Those are independent collateral contracts. If B does not return the horse to A, that would not be a defence to B's action against A on the promissory note, because it was not the return of the horse, but the settlement of the other question which was the consideration for the promissory note, but A could sue B or counterclaim against him in the action on the promissory note, or could set up the oral agreement to return the horse, inasmuch as it is strictly collateral, it does not seek to vary or contradict the written contract contained in the promissory note.

But as I told you, Mr. Chalmers goes on to say that effect may be given to a prior oral agreement by cross-action or counterclaim. He uses the words "collateral *or* prior oral agreement," and the context, of course, implies that such prior oral agreement may be one contradicting or varying the terms of the bill or note.

Of course, if Mr. Chalmers uses the word "collateral" in the sense of "cotemporaneous," as opposed to "prior," and

leaves it to be implied that the agreement he refers to, whether made before or at the time the bill or note is given, deals with an independent matter, and does not contradict or vary the terms of the bill or note itself; the statement, though very misleading in form and expression, would not be incorrect in law. But that is not the natural interpretation of the phrase, nor is it the sense in which it has been taken. I once had a case where an oral agreement to renew was set up as a defence to a bill. I got it struck out on the ground that it was an obviously bad defence. The defendant then set up the same thing as a counterclaim. I applied to strike this out, but the master refused to do it, his attention being drawn to this very passage in "Chalmers." As far as I can recollect, the case came to a short end somehow. I fancy the defendant paid; anyhow, the question was never fought out.

But I am fully prepared to support my own opinion, and to say that you cannot, either by cross-action or counterclaim, set up a prior or cotemporaneous oral agreement which contradicts or varies the terms of a bill or note, any more than you can set it up as a defence. It is not a question of form of action, but of a rule of evidence, as I showed you before. If the oral agreement can be given in evidence by a plaintiff, or a person in the position of a plaintiff under a counterclaim, it could be given in evidence by a defendant, and it is admitted a defendant cannot do it.

I do not believe for a moment any Court would stultify itself by allowing a man to recover damages for breach of an oral agreement to renew a bill, and at the same time giving judgment against him on the bill, on the ground that such oral agreement was not admissible in evidence as a defence.

Mr. Chalmers seeks to support his proposition by a quotation from Mr. Justice Byles. In the case of *Lindley v. Lacy*, in 1864, that Judge said as follows: "Evidence may be given of "an oral agreement which constitutes a condition on which the "performance of the written agreement is to depend, and if "evidence may be given of an oral agreement which affects the "performance of the written one, surely evidence may be given "of a distinct oral agreement upon a matter on which the "written contract is silent." Now this is a remarkable quota-

tion. The first part of it is bad law. You cannot give evidence of an oral agreement which constitutes a condition on which the performance of the written contract is to depend. You can give oral evidence of a condition until the fulfilment of which the written contract is not to come into existence, is to remain in embryo; but to say that after that stage you can fetter the fulfilment or performance by alleged verbal agreement is dead against the other judgments in the same case, dead against what Mr. Justice Byles says time after time in his book on bills, and dead against what the Court of Appeal said in the recent case to which I have alluded. The second part of the quotation is correct in law, but does not support Mr. Chalmers' view. Mr. Justice Byles says: "Surely evidence may be given of a distinct "oral agreement upon a matter on which the written contract is "silent."

Certainly it may, but the two conditions laid down here make the quotation no authority that an oral agreement may be put forward to contradict or vary a written one. First, it must be distinct; distinct, that is, not as the word is sometimes used as equivalent to clear, but distinct as meaning separated from, independent of, collateral to; and, secondly, it must relate to a matter on which the written contract is silent. That it cannot do if it varies or contradicts the written terms. That was really what Mr. Justice Byles meant, as is shown by Chief Justice Bovill, who, referring to this very case, said, in "*Young v. Austen*," in 1869: "The action there was brought for a breach "of the oral agreement, which was quite beside and collateral "to the written agreement between the parties."

It is noticeable that both the case in which Mr. Justice Byles made the remark quoted by Chalmers, and also this case of "*Young v. Austen*," were cases where the oral agreement was relied on as a ground of independent action, not as a defence to an action on the bill. And from both these judgments it is abundantly clear that, as I say, no oral agreement contradicting or varying a written one can be set up by a plaintiff, or person in the position of a plaintiff, any more than by a defendant in an action on the bill.

NOTICE OF DISHONOUR

The next subject with which I propose to deal, viz., notice of dishonour, is one which I suppose will always be a highly technical one. I think it was meant to be so. The rules relating to it are most precise and detailed; where they contemplate any latitude, they express it by the use of the word "reasonable," and in many instances they seem to have so little to do with the real merits or main features of the transaction, that Courts have not unreasonably looked upon these particular rules as things to be interpreted strictly. As Lord Justice Collins says, in the case to which I am about to draw your attention, "The require-" ments as to notice of dishonour are arbitrary and highly " technical, but they have long been settled by authority, and " are now crystallized into statutory rules." They used to be even more technical than they are now, inasmuch as it was held by the House of Lords, in 1834, that the notice must distinctly convey the intimation that the bill had been presented and dishonoured. That decision was tacitly ignored. It is stated that, since 1841, no notice has been held insufficient in point of form or language, and the Bills of Exchange Act in this respect at least permits considerable laxity.

NOTICE TO DRAWER OF CHEQUE

But there is plenty of technicality left. I have always, for instance, considered it an anomaly that the drawer of a cheque should be discharged if he does not receive due notice of dishonour. He is the person ultimately liable, he has no remedy over against anybody, he is practically in the same position as the acceptor of a bill or the maker of a promissory note, and yet because a cheque is defined to be a bill of exchange drawn on a banker, and he is spoken of in the Act as a drawer, he is entitled to notice of dishonour just as if he was the drawer of a bill, and if he does not get it, and there is no valid reason for not giving it, he is released from all liability, both on the cheque and on the consideration given for it. Of course, in the majority of cases, notice would be dispensed with in the case of a cheque. A cheque is usually dishonoured, either because the drawer has stopped it, or because he has not got sufficient avail-

able funds in the banker's hands. Both these cases are provided for by sec. 50 of the Bills of Exchange Act. Notice is dispensed with (5) when the drawer has countermanded payment, that is the first case; (4) when the drawer or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, that is the second case.

But the holder would never be safe in not giving notice, since the burden of showing circumstances dispensing with it is always upon him, and he would know nothing about the grounds of dishonour except what he gathered from the banker's note on the cheque.

TIME—BREAK IN CHAIN OF NOTICES—BRANCHES OF BANK—NOTICE WRONGLY ADDRESSED—RECTIFICATION BY TELEGRAM

A technicality with reference to notice of dishonour recently divided the Court of Appeal, and raised some points worthy your consideration, especially as I cannot help thinking the learned Lord Justice Collins, who was in the minority, was nevertheless in the right.

It occurred in the case of *Fielding v. Corry and others*, decided on November 13th, 1897. The plaintiffs were holders of a bill. There were several defendants, and among them a Mrs. Edwards, who was an endorser. The bill was put into the hands of the *Cardiff* branch of the County of Gloucester Bank for collection, and forwarded by that branch to the London and Westminster Bank in London, who presented it on Saturday, November 10th, 1894.

The bill was dishonoured, and on Monday, November 12th, 1894, the London and Westminster sent by post a notice of dishonour, which by mistake they directed to the *Cirencester* branch of the County of Gloucester Bank.

On the following day, Tuesday, November 13th, they discovered their mistake, and telegraphed notice of dishonour to the Cardiff branch. There was no evidence as to the written notice of dishonour having reached the Cardiff branch, but on Wednesday, the 14th November, which was the day on which notice of dishonour should, in due course, have been given by the Cardiff branch, such notice was in fact given. The subsequent notices were given in time, and ultimately Mrs. Edwards

received notice at the time she would have received it had all the notices been given strictly in order and in due time. Judgment at the trial was given for the plaintiffs, and Mrs. Edwards appealed, on the ground that she was discharged, *notice not having been sent to the Cardiff branch in time.*

Now, it does not seem to have been even suggested that Mrs. Edwards was actually prejudiced in any way by the alleged irregularity. It was not contended that she had lost any remedy over against anybody, or anything of that sort. The whole argument on her behalf turned on the irregularity or default of notice at the early stage when the London and Westminster had to give it.

It was practically admitted, and, of course, could not be disputed, that if there was a slip, a blot, a break in the chain of notices anywhere, the defendant, as being a prior endorser, would be discharged, although she had, in fact, received notice of dishonour as early as she was entitled to it.

That was settled as long ago as 1821, in *Turner v. Leach.* And it is recognized by sec. 49 of the Bills of Exchange Act. Notice must be given by, or on behalf of, the holder, or by, or on behalf of, an endorser who, at the time of giving it, is himself liable on the bill. So, if there is a slip on the part of the holder, his notice is bad; it discharges the endorser or other party to whom he gives it, and such party being discharged, is a mere stranger, and can give no effective notice to anyone else.

And in the result Lords Justices A. L. Smith and Rigby decided in favour of the plaintiffs, the holders, while Lord Justice Collins differed, and held that the defendant was right, and ought to have judgment for her.

Let us just see how the matter really stands, and the views adopted on the different points by the Lords Justices.

It is clear that the bill, when dishonoured, was in the hands of the London and Westminster, as agents for collection. That brings in sec. 49, sub-sec. 13 of the Bills of Exchange Act: "Where a bill when dishonoured is in the hands of an agent, "he may either himself give notice to the parties liable on the "bill, or he may give notice to his principal. If he give notice "to his principal, he must do so within the same time as if he

" were the holder, and the principal, upon receipt of such notice, " has himself the same time for giving notice as if the agent " had been an independent holder."

Now, here the London and Westminster did not give notice to the parties liable on the bill, but they essayed to do so to their principal. Who was their principal? They received the bill for collection from the Cardiff branch of the County of Gloucester Bank. To whom did they send the notice by letter? To the Cirencester branch of the same company. But they telegraphed the next day to the Cardiff branch. Was this good enough? Lords Justices A. L. Smith and Rigby said it was. They treated the case as though the notice of dishonour had been addressed to the right person at a wrong address, and the mistake in the address had been rectified in time. Lord Justice Smith said: " It appears that the London and Westminster " Bank gave what would be a proper notice of dishonour to the " County of Gloucester Bank, though by mistake the notice was " addressed to the wrong branch of that bank. It seems to me " that we should be frittering away the provisions of the Statute " if we were to hold that a mistake in an address could not be " rectified, if the effect of the rectification is that the person to " whom notice is sent in point of fact gets notice in due course " and in due time." Lord Justice Rigby took the same line, urging that there was nothing in the Act which makes the address of the person to whom notice of dishonour is given an essential part of the notice. He said: " To hold that notice " directed to the right person, but sent to a wrong address " must necessarily be invalid, would be to go to an extreme " length, and make it appear that a right address is an essential " part of the notice. There may be no address, or the address " would not be material if a person carrying the notice with a " wrong address met the person to whom it was directed and " delivered it to him."

Now, unquestionably there is much sound common sense in this view. But the judgment of Lord Justice Collins is, albeit he takes a more technical view, so convincingly argued that I feel bound to say I feel sure it is the right one. Every point he makes is a good one. First, it is really not a case of notice being sent to the right person, but at a wrong address. It was

settled forty years ago, and recognized twenty years ago, that for purposes of notice of dishonour branches of a bank were to be treated as distinct persons. Therefore the Cardiff branch and the Cirencester branch, though both branches of the same banking company, could neither be treated as identical, nor as indifferently representing the parent bank. It was a fallacy altogether to treat the matter as if notice had merely to be given to the parent banking company, and such notice was merely wrongly addressed to the Cirencester branch. It was a confusion of ideas, and an ignoring of prior authority to treat the parent bank and its branches as if the parent bank was an individual, and the branches simply equivalent, say, to his town and country houses. As a matter of fact, notice to the parent bank at the head office would have been altogether irregular and insufficient. Next, the same confusion of ideas seems to have prevailed in the minds of the two Lords Justices as to the combined effect of the letter sent to the wrong branch, and the telegram sent to the right one. They treated it as if the telegram had in some way caught up the letter, and diverted it into the right channel. But, of course, nothing of the sort really happened. The letter went to one place, the telegram to another. And keeping in mind these facts, that the branches must be treated as independent persons, and that the telegram was not the letter, it is impossible to bring the case within the provisions of the Bills of Exchange Act. Bear in mind the dates. Bill dishonoured Saturday, *November 10th*. Sec. 49 says: "Notice "may be given as soon as the bill is dishonoured, and must be "given within a reasonable time thereafter. In the absence of "special circumstances, notice is not deemed to have been given "within a reasonable time unless, where the person giving, and "the person to receive, notice reside in different places, the "notice is sent off on the day after the dishonour of the bill, if "there be a post at a convenient hour on that day, and if there "be no such post on that day, then by the next post thereafter."

London and Cardiff are different places. Sunday, the 11th, under sec. 92, counts for nothing. Monday, the 12th, therefore, was the last day for giving notice. There is certainly a post at a convenient hour on Mondays from London to Cardiff. No notice was posted to Cardiff branch at all that day.

Now, the whole run of these rules as to notice of dishonour is one of extreme limits. Notice may be given as soon as the bill is dishonoured, and it must be given within reasonable time. There is no definition or even clear indication what is the proper time, but the greater must include the less. Notice given in writing or verbal, and received the day after dishonour must be good in any case.

But when you get outside this, you must bring the case strictly within the two sub-sections which specify the extreme limits. And the wording is noticeable. When both parties reside in the same place, notice must be given or sent off at latest in time *to reach* the proper person on the day after dishonour.

Where they reside in different places, the sub-section I have previously quoted marks the time limit. And the thing to be noticed is that this time limit is fixed by the *sending off* of the written notice. There is no extension of time for the giving of verbal notice between parties living in different places. The words "the notice is sent off" seem to me altogether inapplicable to verbal notice, especially when we consider the omission in this sub-section of the word "given" employed in the other.

When the parties reside in different places the date of receipt has nothing to do with the question under this sub-section, the whole thing turns on the sending off, "the notice is "sent off on the day after the dishonour of the bill, if there be a "post at a convenient hour on that day, and if there be no such "post on that day, then by the next post thereafter." As a matter of fact, it would be impossible to lay down any limit with reference to the arrival of the notice. It must depend on the distance between the two places, practically on the course of post. There are places in Scotland, say the remote islands, to which if a notice of dishonour were despatched by to-night's mail, it would hardly arrive by the end of the week, let alone places abroad.

I verily believe the Act intended to leave the question of time of receipt under this sub-section entirely to the post-office. See the wording of the sub-sections, and sub-section 14, where notice properly addressed and posted is to be deemed good, notwithstanding any miscarriage by the post-office. In fact, I think there are strong indications that the Act intended the post-office

to be the only authorized medium of transmitting written notice of dishonour between parties residing in different places. You know how jealous the post-office are of their monopoly of carriage of anything in the nature of a letter. It might well be argued that the Act only contemplated that method of transmission which is authorized, and involves no infringement of that monopoly. And another ground on which this view might be supported is that if any other method of transmission of written notice is permissible, there is absolutely no limitation as to the time which might be occupied in such transmission, or within which the notice is to reach its destination. If the London and Westminster had found out the mistake on the Monday, but too late for any post to Cardiff, and a devoted gentleman in that bank had volunteered to carry the written notice to Cardiff on foot, or on his bicycle, and had started with it in his pocket any time before twelve o'clock that night, I take it it would have been sent off in time, but the time of its arrival would have been somewhat problematical. Again, the post-office, so far at least, as the transmission of letters is concerned, has always been regarded as the agent of both parties. Once a letter is put in the post, it is out of the power of the sender, he cannot get it back, and though for some purposes it is treated during transit as the property of the Postmaster-General, for others it is treated as though it had already reached the hands of the receiver. And so these limits may have been fixed on the theory that on posting the notice you constructively give it into the hands of the receiver.

As Mr. Justice Wills said, in 1870: "The General Post "Office has been held to be the common agent of the parties "employing it. For that reason it is that a notice of dishonour "of a bill of exchange may be transmitted through the post."

Again the utilization of other means would lead on a strict construction of this sub-section to this curious anomaly. If there were a convenient post on the day after dishonour, the notice might be sent off by other means; if there were no convenient post that day, notice would be too late if despatched by other means, though it might be sent by the next post on the following day. The existence of the convenient post on the day

after dishonour is a condition foremost to the notice being good if sent off on that day. You cannot get out of this on the wording of the sub-section.

Still, as I say, there is no direct prescription of the post as the one and only means of transmission, and no direct prohibition of any other not infringing the post-office monopoly.

GILBART LECTURES, 1899*

No. IV

BY J. R. PAGET, ESQ., LL.D., BARRISTER-AT-LAW

NOTICE OF DISHONOUR BY TELEGRAM

WE will now deal with notice of dishonour by telegram.

Lord Justice A. L. Smith says: "Speaking for myself, I think that the notice would be good if, on the day after "the dishonour of the bill, the person giving the notice were to "telegraph to the person to receive the notice in terms which "sufficiently identified the bill, and intimated that it was dishonoured." Lord Justice Collins said: "Within the terms of "the section that telegram was clearly not in itself a good "notice, and to this my learned brothers agree." So that I understand him as referring rather to the date at which the telegram was despatched than to any question as to validity of telegraphic notice as a whole. Mr. Justice Wills, in the other case I referred to, after saying that notice of dishonour could be transmitted by post, because the post-office was the common agent of both parties, continued, "That reasoning does not "apply to the Electric Telegraph Company," but I do not think he intended to lay down any rule. I think he was merely thinking of the difference between the Government department and what were then private enterprises.

WHETHER SUFFICIENT

Now is Lord Justice Smith right? Is a telegraphic notice of dishonour sufficient?

I put aside any question of time when sent off, at any rate for the present. Nor do I think it matters whether the parties reside in the same or different places.

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A telegram does not infringe any monopoly of the post-office; they own the telegraphs, and they make 6d. out of a telegram, and only 1d. out of a letter.

But does a telegram conform to the requirements of the Act?

Section 49 (1).—Notice must be given by or on behalf of the holder or endorser.

3 (*b*).—The notice may be given in writing, or by personal communication.

49 (7).—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication.

49 (8).—When notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

By the Interpretation Section, written includes printed.

A telegram is not given by personal communication. Is it good as a written notice? Is it given in writing?

It is not a very easy question. The Act does not seem to contemplate a telegram by the way; it goes on talking of posts, addressing, posting, miscarriage of the post-office, and so forth. But if it comes within the terms of the Act it would be good.

The writing which leaves the sender's hands is not the writing which reaches the receiver's hands. It is not even on the same coloured paper. But I do not think that is essential. It is obvious it need not be in his handwriting, as it may be in print. The Act uses the word *given*, which seems to point to the sufficiency of its being in writing when it reaches the receiver. It may be given by or on behalf of the holder or endorser. So you may clearly employ an agent or a series of agents. It must be everyday practice to telegraph to your agent in another place to give notice of dishonour, and he might do so in writing. Finally, Chief Justice Bovill once held that a mere telegram, written out and signed by the telegraph clerk at the far end, in the name of the sender, would be a sufficient memorandum signed by the sender or his agent duly authorized in that behalf to satisfy the Statute of Frauds. And if it satisfies the Statute of Frauds, it must certainly satisfy the Bills of Exchange Act and us.

So I think telegraphic notice of dishonour is unquestionably good. I take it the whole chain of the young lady at the counter, who takes it in if she has nothing better to do, the transmitting clerks at each end, and the telegraph boy who takes it out at the far end, are all acting as agents for the sender, or on his behalf.

I do not feel at all sure that the post-office, in its telegraphic capacity, can be treated as the agent of both parties, as it is in its purely letter-carrying capacity. I do not think it is so. I do not think you could say that when you hand in your written form that writing was constructively and immediately in the possession of the receiver. I think a question might still be raised if you telegraphed at such an hour on the day after dishonour that the telegram was not received during office hours that day, and there was a convenient post between the two places that day. But where notice is sent and received on the day after dishonour, I have no doubt it is good, and that Lord Justice Smith is right in this respect.

I take it telegrams are usually confirmed by letter. That, no doubt, is desirable, but it must always be borne in mind that a confirming letter after the date limited cannot date back to the telegram. If itself out of time, you would have solely to rely on the previous communication. It is analogous to the other provision that an insufficient written notice may be supplemented and validated by verbal communication. That cannot extend the time for giving notice. If you gave an insufficient written notice on the day after dishonour, you could not, on the day after that, being the second day after dishonour, make it good notice by verbally adding to or correcting it.

I have told you knowledge of dishonour on the part of the person entitled to notice does not dispense with the necessity of giving formal notice. It is not included in the grounds on which the notice is excused, and has never been held to excuse it. But, of course, notice of dishonour may be waived in writing or verbally, expressly or impliedly, before the date of dishonour, or after failing to give it. The Act says so, and it had frequently been so held before the Act.

But, of course, the waiver by one endorser or the drawer,

only revives the right as against the person waiving. It cannot affect the discharge to which other parties are entitled by lack of notice.

RETURN OF BILL AS NOTICE OF DISHONOUR

There are one or two other very catchy little points about notice of dishonour. Section 49, sub.-sec. 6, says: "The return "of a dishonoured bill to the drawer or endorser is, in point of "form, deemed a sufficient notice of dishonour." This section was, I believe, enacted in order to validate a custom of collecting bankers, previously of doubtful validity; namely, the custom when cheques or bills paid in for collection are dishonoured, of merely returning them to the customer without comment. As collecting bankers you stand in the position of agent, and your customer in that of principal. Therefore, by the section to which I have previously referred, you can either give notice to the parties liable on the bill, or to your principal, that is, the customer.

You may be cognizant of the addresses of the parties liable on the bill or cheque, and may elect to take the course of giving notice direct to them.

It is clearly the duty of an agent, when more than one person is liable on the instrument, either to give notice to his principal, or else to all the parties liable on the bill, so as to safeguard the principal's rights to the uttermost, and the agent would unquestionably be liable for negligence if he failed to do so.

I do not believe the sub-section as to returning the bill was intended to apply to anything except the collecting banker returning it to his own customer. I think that is what was aimed at and intended by this section for several reasons. First, because it was the custom of collecting bankers to return the bill or cheque to their customer, which this section was intended to validate. Second, because the word "return" is most, if not only, appropriate to the operation of the agent's handing it back to the principal from whom he received it. Third, because of the impossibility of sending the document to more than one person, and the immense risk that would be run if the bill was sent to the last endorser (say), and the chance taken of his

passing on notice. Fourth, because if proceedings have to be taken by the customer on the bill or cheque, it is necessary he should be in possession of it, and it belongs to him, and you have not the right to part with it. Now these seem to me conclusive reasons, and if in any case you elect to give notice to the parties or party liable on the bill or cheque, it should be formal notice, and sent to all parties liable on the bill or to the drawer, if, as in the case of an ordinary cheque, he is the only person liable. Of course, your customer is not a party liable on the bill or cheque, though he has endorsed it, if it has been put in your hands merely for collection. If he has endorsed it to you to reduce an overdraft, or as a pledge, and you want to sue him on it, you must, of course, give him notice of dishonour, just as if he were a stranger.

But it is not in every case where you hold a bill or cheque as agent for collection that the return thereof to the customer is efficacious as notice of dishonour.

You see what the section says: "The return of a dishonoured bill to the *drawer or an endorser* is in point of form "deemed a sufficient notice of dishonour." As between the collecting banker and his customer notice of dishonour is an anomaly altogether. The banker never has, and never contemplates, any right of action against the customer; the only *rationale* of his giving notice is under sec. 49, sub-sec. 13, to which I have referred.

A very large proportion of bills, and nearly all cheques, are collected through bankers, and it is obviously impossible that bankers should know the addresses of all the parties on the bills and cheques paid in to them by their customers for collection, and if they did it would be unreasonable to impose on them the necessity of giving such a multitude of notices of dishonour. And so for their benefit, more than that of any other agents, this sub-section was enacted, which gives them the alternative of giving notice to their principal. But the doing so involves a delay in the notice reaching the persons really liable on the bill or cheque. That is recognized and provided for by this same sub-section. "If the agent," it says, "gives notice to his "principal, he must do so within the same time as if he were

"the holder, and the principal, upon receipt of such notice, "has himself the same time for giving notice as if the agent had "been an independent holder."

And I take it the result is this. The principal and the agent, the customer and the banker, being put for their own convenience in the position of independent holders, must accept the responsibilities of that position. They cannot say they are independent holders for one purpose and not for others. And so if notice of dishonour is not given within the specified time by the agent to the principal, by the collecting banker to the customer, a drawer or prior endorser would be discharged. As we saw, that was recognized in that case of *Fielding v. Corry*, where the London and Westminster gave notice to the Cirencester instead of the Cardiff branch.

And besides being given within the specified time, the notice of dishonour given by the agent to the principal, by the banker to his customer, must be a proper and sufficient notice of dishonour. The sub-section about the return of the bill being sufficient, was, as I told you, introduced to confirm a custom of bankers, and to facilitate their work. But, of course, you must take the concession with the limitations imposed upon it. And whether intentionally or not, it certainly does not cover all cases. It does not say the return of a dishonoured bill by an agent to a principal, or by a banker to his customer, is in point of form deemed a sufficient notice of dishonour. It says the return of a dishonoured bill to "the drawer or an endorser." So that if you have for collection a bill or cheque which either originally was, or by general or blank endorsement has become, payable to bearer, and on which your customer is neither drawer or an endorser, the return of such bill or cheque to him is not a good notice of dishonour, and if such were the only notice of dishonour you gave him, the parties really liable on the bill or cheque would be discharged, and you would be liable for negligence. It is only when your customer figures on the bill or cheque as a drawer or endorser that the return of the dishonoured instrument is of itself deemed sufficient notice of dishonour. I cannot say I see the exact reason or ground of this, because the character of the customer as drawer or endorsor has no reference to the

banker where he is merely collecting, the bill being merely endorsed for collection, but there it is, and the wording is beyond dispute.

GUARANTEES

I now come to my last subject, that of guarantees.

Guarantees have always been rather a favourite subject of mine.

My very first connection with the Institute of Bankers was when, many years ago, I wrote an article on guarantees for the *Journal*, and I believe I dealt with the same topic, though briefly, in my first course of lectures here. And they are rather fascinating things. They are so tricky, so technical; a very slight and apparently immaterial divergence in wording will so entirely defeat their intended object.

CONTINUING GUARANTEES—STATUTE OF LIMITATIONS

Now, of course, one of the main divisions of guarantees is into continuing and non-continuing guarantees, and some subtleties have crept in with regard to the language which determines this classification, though it is not difficult to choose words putting a guarantee intended to be continuing well on the right side.

There has recently, however, been a decision which has disturbed preconceived views on the subject of continuing guarantees, and which, if correct, introduces another element of danger. It runs counter to the view I took in the article I referred to, and which I repeated to you here, and therefore I feel bound to go into it and consider whether I shall retract what I have previously said, or whether I shall adhere to it.

Now, the point arises on the question of the action of the Statute of Limitations on a continuing guarantee, a continuing guarantee in the fullest sense of the term. The case was that of *Parr's Banking Co. v. Yates*, and was decided by the Court of Appeal on July 4th, 1898.

A continuing guarantee was given to the bank by the defendant Yates, to secure the overdraft of a customer of the bank, named McLaren. It was in the regular and proper form of a continuing guarantee, guaranteeing due payment and satis-

faction of all moneys and liabilities that might have been, or might from time to time be owing to, or incurred by, the bank in account with McLaren, with interest and charges, and expressly stated that it should be a continuing guarantee, but that the amount ultimately recoverable against the defendant should not exceed £1,000, with interest from the day on which it should be demanded until paid. It was given in February, 1887, and from that date down to 1890 the bank made advances to McLaren by letting him overdraw, and he paid monies in from time to time, though the balance was always against him. On December 31st, 1890, the balance against him was £3,247 odd. No further advances were made to him, but he continued to pay money in down to March, 1897, and the bank each half-year went on as they had been doing, debiting the account with interest and charges.

On June 30th, 1897, the amount owing by him to the bank was £1,979 1s. 6d.

On September 3rd, 1897, the bank brought this action against Yates, the guarantor, for the £1,000. And the Court of Appeal, reversing the judgment of the Judge who tried the case, held that the bank were not entitled to recover anything from the guarantor in respect of the sums advanced by them to the customer by way of overdraft, their right of action in respect thereof being barred by the Statute of Limitations. They held the bank only entitled to recover the interest which had accrued within six years of the commencement of the action, which was poor consolation for the bank. It was never suggested on behalf of the defendant that any demand for payment had been made by the bank, either on him as guarantor, or upon the principal debtor, the customer, outside the period of six years, or indeed, at all.

Now, that is somewhat startling. More startling still is the line adopted by Lord Justice Vaughan Williams, who said: "My view is that the cause of action on the guarantee arose as "to each item of the account, whether principal, interest, com-"mission, or other banking charge, as soon as each item became "due and was not paid, and consequently the Statute of Limi-"tations began to run in favour of the defendant in respect of "each item from that date."

And Lord Justice Rigby says what I think is meant to be the same thing. He says: "As to all the items of charge down "to a period of six years before the date of the writ, it is clear "that a right of action had at that period accrued to the plain- "tiffs upon the guarantee. That they did not choose to exercise "it is immaterial. The right of action had then accrued, and "the action in respect to those items is barred by the statute, 'because the cause of action did not accrue within six years "before action brought."

From the way both Judges speak of items, not of any balance, it is evident they mean that in respect of every separate overdraft an immediate cause of action accrued to the bank, both against customer and guarantor, and that the six years' statutory period began to run against the bank in favour of both customer and guarantor in respect of each such overdraft or item from the moment the cheque for such overdraft was honoured.

Now, is that the correct view to take of the matter? No doubt it was an unusual course for the bank to let the whole matter stand over for six years from the last advance, but they were being paid off occasional sums, they were charging interest, and doubtless relying on their guarantee, and very likely had other good reasons for the course they adopted.

In the article I wrote, and, I think, when I spoke to you, I said, in dealing with this question of the Statute of Limitations and continuing guarantees, that I did not believe the statute began to run until there had been a balance struck, the account closed, and a demand made on the principal debtor and guarantor, or at least one of them, for payment.

And there is authority for that position, authority on which I relied, and which I quoted, but which does not seem to have been referred to in the recent case.

Hartland v. Jukes was a case decided in 1863 by a strong court of three Judges.

There, a promissory note, payable on demand, was given jointly by one Steward, whose executor the defendant Jukes was, together with one Courtney, to the Gloucestershire Banking Co., who by their public officer were the plaintiffs in the action. Steward and Courtney at the same time signed and

gave to the bank a memorandum to the effect that the promissory note was given as collateral security for a banking account to be opened by Courtney with the bank, and such memorandum contained terms making the security a continuing one. That was in 1855. On December 31st, 1855, Courtney was indebted to the bank £179 odd. No claim for payment was made, and no balance struck till June, 1856, when £194 5s. was the balance due to the bank. Balances were afterwards struck every half-year, further advances made, and monies paid in, amounting to more than the amount secured by the note, till in February, 1861, the account was closed with a balance due to the bank of £172.

Defendants, as representing the guarantor, were called on to pay, and not doing so, the action was brought in March, 1862, more than six years after the date of the note.

The Court said the note and the memorandum must be read together, so that the two together had the effect of a continuing guarantee for £200, the amount of the note.

The Court decided in favour of the bank, and in their judgment they say as follows: "The question is, when did the "cause of action accrue? And unless it accrued before the 2nd "of March, 1856, the statute is no bar. It was contended "before us that the statute began to run from the 31st of "December, 1855, by reason of the debt of £179 1s. 11d. then "due from Courtney, the customer, to the bank, but no balance "was then struck, and certainly no claim was made by the bank "upon the defendant's testator (that is, the guarantor) in respect "of that debt, and we think the mere existence of the debt, "unaccompanied by any claim by the bank, would not have the "effect of making the statute run from that date."

No doubt the two cases differ somewhat in their circumstances. In *Hartland v. Jukes* no balance was struck till within six years of the action. In *Parr's Banking Co. v. Yates* a balance was struck every half-year. In Parr's Banking Co. no further advances at all were made to the customer within the six years preceding the action, and though he continued to pay in money, the balance was throughout the whole account, from start to finish, against him. In *Hartland v. Jukes* advances were made within six years before the action, and amounts paid

in during the same period by the customer, which more than covered the amount of the guarantee. But it is with the principle that we are now concerned, and I must say that the two judgments do not seem to me reconcilable.

I do not want to force the judgment in either case beyond its proper limits. I do not think, for instance, that it would be fair to interpret the recent judgment of the Court of Appeal as implying that no continuing guarantee can ever be effective for more than six years, by reason of its dating from the very first overdraft or advance, nowithstanding that overdraft or advance may have been covered many times over by payments in. It might be contended that was the result of Lord Justice Vaughan Williams' judgment, but it would be too unreasonable.

But the judgments do involve this, that the mere existence of a debt, an overdraft by, or advance to, the customer, constitutes an immediate right of action against the guarantor, independent of any balance being struck or the account closed, or any demand made on anybody; and that, subject to the question of subsequent payments in, this is the date you must look to in calculating the effect of the Statute of Limitations. That is directly opposed to the judgment in *Hartland v. Jukes*, which expressly laid down that the mere existence of a debt, unaccompanied by any claim by the bank, would not have the effect of making the statute run from that date, involving the further proposition that the mere existence of such debt does not, in such circumstances, give rise to a cause of action against either customer or guarantor, because if such cause of action did exist, the statute would infallibly begin to run.

Now the general law seems in favour of the later decision.

RIGHT TO DEMAND OF PAYMENT

The relation of the guarantor and the customer is that of surety and principal. And I find it laid down in law books as follows:—"A surety is not entitled to a demand for payment "upon the default of the debtor, or to notice of the default, "unless he *has expressly stipulated* for it; and in order to charge "a surety upon a contract of guarantee, it is not necessary to "make a demand upon the principal debtor, unless such

"demand is necessary to charge the debtor, or unless the "surety has expressly stipulated that such demand shall be "made."

I will assume all this to be true as a general proposition. If you guarantee the payment of a specific debt at a definite date, it may very possibly be your duty to see that it is duly paid at that time. And if that is your duty, no demand either on you or the principal debtor may be necessary to found an action. And if action can be brought without any such demand, I suppose the Statute of Limitations would begin to run from the date when payment should have been made. But I cannot help thinking a continuing guarantee stands on a different footing. If it does not, the decision in *Hartland v. Jukes* seems inexplicable. In another case of a continuing guarantee, *White v. Woodward*, in 1848, it was contended that the guarantor had no notice of the supply of goods to the person whose debt was guaranteed, and no notice of non-payment by him, until the demand for payment was made upon him, the guarantor. It is true that Chief Justice Wilde said: "The defendant was *ipso* "*facto* liable upon the other's failure to pay," but in his judgment he said that if there was any matter of discharge arising from want of notice or otherwise, it ought to have been properly set up, showing he was not very confident of his earlier opinion. And in that case there apparently was a demand from the guarantor before action.

I must also admit that in late cases where a guarantor has covenanted by deed to pay on request, the necessity for a request has been based on the presence of those two words "on request."

But now fortified by *Hartland v. Jukes*, let us look at the matter of a continuing guarantee given to a bank for advances or overdrafts from a business point of view. What is the object and intention of the parties? Surely this, that the customer shall obtain an effective working credit, that the banker shall get a profit out of the money lent by charging interest upon it, and that the guarantor shall ensure, within specified limits, that the banker shall not be a loser by the transaction. The guarantee itself recognizes this by provisions as to interest and charges.

Now we are told in this late case of *Parr's Banking Co. v. Yates* that under a guarantee like this, the moment an overdraft is allowed or an advance made, a right of action accrues to the bank against both customer and guarantor; that is to say, that the bank could within an hour issue a writ against both parties for the amount of such advance or overdraft, and that neither of these parties would have any defence to such action. I must say that is startling. It absolutely ignores the idea of an effective credit. The customer might want the money for some pressing temporary purpose, either to tide over some difficulty or to take advantage of some exceptional opportunity; and the whole object of the transaction would be defeated, if the money could be thus at once called in, the whole business efficacy of the arrangement nullified. No doubt it would be said that the customer and the guarantor might and ought to have stipulated for a definite period within which the credit should not be called in; no doubt reliance would be placed on the undoubted fact that in ordinary cases a debt is recoverable at any time, that if, for instance, a tailor sends you home clothes, he can follow it up with a writ for the price the next morning.

But is not the case of a purely business transaction like this somewhat different? May we not invoke that doctrine of implied contract in this instance? Considering the terms of the contract in a reasonable and business manner, does not an implication necessarily arise that some substantial credit was to be given? Must not the parties have intended some such stipulation? Is not such implication necessary to give such business efficacy to the transaction as must have been intended at all events by both parties, who are business men? These are the various tests which have been laid down, and does this case not fall within them?

Of course, I see the objections that can be raised. The first would probably be that the term of credit would be uncertain; is it to be for a month, six months, or what? No doubt that is a difficulty. I can only suggest that the credit should be a reasonable one, a real effective business credit, or that it should involve its not being called in except on reasonable notice, so as to give the parties time to look round for another loan. Then it might be said that such implied contract contradicts the

written one. But there is no written contract between the customer and the banker, and the term might therefore be implied as between them; while the guarantor is only bound to answer for the debt or default of the principal debtor, and if the implied term imported a period of credit between the banker and customer, there would be no debt or default on the part of the latter until it had expired, the money would not be due from him, and there would not be anything for which the guarantor could be called upon. Then the words of the ordinary guarantee seem so to point to the idea of some efficacious extension of credit, that the contradiction is not in any event a violent one. "In consideration of your giving credit," "coming under "advances," or words to that effect, and the provisions as to interest would almost suggest that the contradiction lay rather in saying that every advance or overdraft constituted an immediately recoverable debt against customer and guarantor, than in adopting the view which I am laying before you. And if contradiction or discrepancy there be, may we not adopt the view of Lord Halsbury, when he said: "One must reject words, "indeed whole provisions, if they are inconsistent with what one "assumes to be the main purpose of the contract." I know the case in which that expression was used was an exceptional one, practically of contradictions in the same document, but the words themselves are not limited.

Lastly, in *Hartland v. Jukes*, the words as to repayment at any time were a good deal stronger and more specific than they were in *Parr's Banking Co. v. Yates*. They were contained, as I told you, in a memorandum, and there was also the promissory note payable on demand, signed by the guarantor as well as the customer, a document whose existence might be said to emphasize the fact that any advance which afforded consideration for the note was immediately recoverable. And yet in that case the Court held, as I have told you, that the mere existence of the debt, without the striking of a balance, the closing of the account, and demand made on customer and guarantor, or at least on guarantor, did not constitute a cause of action or set the Statute of Limitations running.

So there the matter stands. I am afraid that if the two cases ever came to be quoted one against the other, *Hartland*

v. Jukes would have to give way to *Parr's Banking Co. v. Yates*, the latter being a decision of the Court of Appeal, and so I suppose for the present we must treat it as the ruling authority, and say that no demand is necessary, and that the statute begins to run against the banker in favour of the guarantor from the date of the overdraft or advance, with the corollary that the banker on an ordinary continuing guarantee is at liberty to sue for such overdraft or advance, either the customer or the guarantor, within twenty-four hours or less after he has granted it, which neither seems common sense nor business, or a privilege of which bankers are likely to avail themselves.

I cannot say, however, I am quite convinced, and if I am, it is against my will, with the well-known consequences of such conviction.

But as the Statute of Limitations has thus become a more important factor with regard to continuing guarantees, just bear this in mind, that no payment on account of principal or interest by the customer, the principal debtor, bars the statute or keeps the debt alive against the guarantor, the surety. In *Parr's Banking Co. v. Yates* there were payments in by the customer down to within six months before the commencement of the action against the guarantor, and yet the latter obtained the benefit of the statute. And, of course, that is so. The efficacy of any payment or any acknowledgment is that by recognizing the debt it raises an implied promise to pay it or what is left of it, and so you get a fresh start on that promise for another six years. And so any acknowledgment or payment must either be made by the debtor himself or some duly authorized agent on his behalf.

Part payment or acknowledgment by a stranger cannot found a promise on the part of the debtor. It used to be held that payment by one co-contractor barred the statute as against his co-contractor, such co-contractors being regarded as mutual agents, but that was done away with by the Mercantile Law Amendment Act, 1856. Partners can bind one another in this way, because they are ostensibly mutual agents. But principal and surety are not agents for one another, therefore part payment or payment of interest or acknowledgment by one of them has no effect in keeping the debt out of the statute as against the

other. Even if they are looked on in the light of co-contractors, as where they may have given a joint or joint and several promissory note as security, the Mercantile Law Amendment Act of 1856 hits the case, and prevents one binding the other so as to bar the statute.

And so it comes about that no payment in by the customer is of any avail to prevent the statute running in favour of the guarantor.

OPENING A BRANCH BANK*

THERE is an announcement to be met with from time to time in the advertising columns of the daily prints which has more significance to some persons than to others. It is of interest to bankers, because it speaks of extension and expansion of business, of keen competition, and, it may be, of opposition, in a field which one bank deems to be all its own. The public are also interested within a given area, because the range of banking possibilities might thereby be widened, and loans which before never got beyond the application stage might find full fruition under the newer conditions. The announcement round which all these expectations revolve runs in these terms: "A branch of this bank will be opened at . . . on . . . under the charge of . . . " Whenever a notice of this character appears, it naturally calls up curious feelings in the breast of those who have had in the past a branch opening experience. A nigger was once tied to a tree which was set on fire so that he might be consumed along with it. He managed to escape, however, by freeing himself of his fetters. On his way home, someone asked him if he had seen the fire. "Oh, yes! I was dar!" was his reply. Similarly, one who has done duty as a banking pioneer can say that he has been in it, and of it, when he hears of new pathways being opened up. He has a fellow-feeling for all such explorers, no matter whether the field lends itself to exploration or not. That is not his concern—the mere fact that a new field of operations is to be undertaken, rouses and calls anew into being the old line of sensations which were experienced when first he essayed the same task of breaking up fallow ground for his own bank.

It may be asked how banks come to fix upon particular spots for planting new branches. More commonly than not the

*"Banker" in the *Bankers' Magazine* (London) Vol. 68, p. 376.

applications for such agencies have come, in the case of Scotch banks, from outside sources, from lawyers, as a rule, who have represented that they would be able to do so much deposit business if only they had the chance; that there was a field for operations; that they had wide connections, and would be well supported. Such representations are all carefully enquired into, also the population of the place, its trades and industries, and the prospects of business being obtained in sufficient quantity to justify the establishment of a branch there. Undoubtedly the influence of persons connected with the bank would go for something if that influence were exerted in the belief that such a piece of business would pay. But it may be mentioned that the banks prefer to keep their branch agencies for their own employees when they can fairly do so. An agency is the reward to which a junior in time aspires, and if he is passed by for an outsider he naturally feels it bitterly. It is safe to say that the outsider is the exception, and for many reasons. He does not know the routine of banking business, and his own affairs naturally get primary attention. He may not be a man with a lot of irons in the fire, as the phrase goes, and thus be able to devote more time to learn his task; but he is often chosen because he has so large a business and can influence so many persons. His clients are thus numerous, and much money passes through his hands; he holds so many offices, moreover, that the bank gladly accepts him, because of the power which he wields. He has not to wait for years to form a connection; he has one ready made; and herein lies his superiority over a banker who is a stranger to the locality and people when it comes to be a matter of opening a new branch.

Some time ago one of the banks resolved to establish an agency under my care in the heart of a certain large city. Though the years have fled since then the memory of it is as fresh as ever. I may say that I possessed no knowledge of the locality when the new agency was entrusted to me—and it may parenthetically be stated that the business of a bank depends on the kind of spot where its lot is cast. You may have an aristocratic neighbourhood, where ladies drive up in their carriages to the bank, and in graceful toilettes, and aromatic of delicate perfumes, receive the tactful attention which their station demands.

You are careful to give them the newest gold or the cleanest notes in an envelope, because you instinctively know that they like it. They thank you with a gracious smile, and bow as they sail out of the telling room. Readers of the *Bankers' Magazine* may remember an article by Mr. May on the Bank of England, in which he mentions the case of a lady who was once so charmed with the polite attentions of one of the bank's tellers, that she some days afterwards quietly passed over to him at his desk a diamond pin, carefully wrapped up in paper, and then glided out of the room before he could examine the gift or even open the parcel. The chances are that this kind of branch has professional men doing business with it, the trading element not being strongly represented. It is thus a matter of clean transactions as they are termed, in which money is paid in from cheques on other banks—the one balancing the other. This class of branch is typical of the West End, where there are large sums at credit on accounts giving little trouble in the keeping of them.

If the opposite type be taken in a democratic locality, then the bank's counter will tell its own tale. Small notes, silver and copper, will litter the telling table, and on the floor will be seen any amount of paper, string, and burst bags as the *detritus* of democratic transactions. The locality can be taken in at a glance, with its numerous small shops, its manufactories, and its working-class population. Then there is the villa, or suburban class of branch, with its well-to-do population, whose banking needs are not of daily occurrence, like those of the trading class. They draw their incomes at stated times and pay their accounts at fixed terms. They work with the regularity of a clock, and thus they do not severely tax the powers of banking. Of course, along with this suburban or residential locality, there is the inevitable trader to supply the population's wants as they arise. But for all that, the branch's main customer is villadom, which elects to live elsewhere than in the locality in which its business is conducted. There are also the manufacturing and the shipping, the agricultural and the farming branches. These have their own peculiar ways—some having a staple trade, which, if it goes wrong, upsets the whole place. There are also the ups and downs of agriculture, the uncertainties of the potato crop,

for example, the fluctuations in the price of grain, all which spell failure or success, as the case may be.

But putting aside this parenthesis, let me hark back to the fact that an appointment to a new agency was conferred on me. It was the first promotion of the kind which I had received. You have heard of a school being let loose for their summer holidays, a business man starting for a month's holiday abroad, or a scholar receiving a much-coveted prize. All these emotions boiled down to a quintessence give some idea of the feeling which I had on the occasion referred to. I do not go so far as to say that it exceeded the rapture of "the first kiss of love," about which Tom Moore poetized so ecstatically. But even the ardour of the warmest feelings abates in time when idealizing comes to an end. I remember a country parson telling me how brightly he had clothed his ideals of clerical life and his dealings with his flock. He would go in and out among them rightly dividing the word of life, and spending and being spent in their service. Yet how little sufficed to shatter many of his preconceptions of things: the perspective had to be changed from the ideal to the real, for men cannot always be regarded as trees walking, and things are not what they seem.

Beginning to reckon up how other agents had acted, I mentally recalled one who could not stand the strain of the loan department. He did not seem to be so constructed as to regard unsecured overdrafts with equanimity. Under the process of keeping daily and even nightly watch over them—for he came back in the evenings to pore over the accounts—his nervous system got terribly enfeebled; he could not sleep; and he was obliged to throw up the post after a comparatively short trial of it. Yet he did his best to keep it, being one of the most conscientious of men—a perfect model in that respect. It is strange that one should look at the least representative members of the profession at such a time, yet so it was. Then I reflected on another type of agent under whom I had served at a very early stage of my career. He, too, had not been fortunate, but in a different manner altogether. He had not fallen off at the outset—He had continued to run till his retirement. His experience of bad bills was such that he told me his hair had

turned grey in a single night, reminding me of Byron's opening lines in " The Prisoner of Chillon "—

> My hair is grey, but not with years,
> Nor grew it white
> In a single night,
> As men's have grown from sudden fears.

These losses had sorely tried my old master. I remember well the numerous payments to account, which were entered in the neatest way by a clerk who has now been dead for years. The dividends seemed to come in driblets from the different estates, for it was a mixed-up business altogether. I rather think there was some forgery in the affair, but I was too young to be told much about it.

Some other agents came into view more nearly approximating to my present position, men who had opened branches *ab ovo*, if one might so speak. These were the persons, men of great activity, with whom I was to compare myself, and to run a race with, only *longo intervallo*. They had had their innings and had done well. I was only handling a bat for the first time, and might be stumped before I had made many runs. Then, as I fancied, they had begun on virgin soil, whereas the field on which I was to operate had been already tilled for some years by a rival establishment. One is always apt to load a comparison against oneself and to put all the advantages on the side of another. General Grant used to be constantly twitted with having against him so strong an antagonist as General Lee, but he consoled himself by the reflection that if he made mistakes, so did General Lee. I believed that I had a heavier handful than my forbears, because the natural growth of population and trade was in their favour, whereas I could only get a share of it. But whatever thoughts may have passed through my busy brain of this kind, they only served to sober me to the work I had got to do—to take a more serious view of what was expected of me. As an agent remarked when he came to visit me, and who had the same task on hand as myself:—" It won't do to sit down on a chair in an agent's room and expect that everyone will fly with business to you—it's a case for exertion, and a man should do something for his salary." Activity must be used, but in what direction ?

When a new agent is appointed, insurance companies swoop down upon him and invite him to represent them. The primary object of the former, however, being to get business for his bank, he does not solicit insurance orders, unless from friends. These come in, all the same, with the advent of customers, the one leading to the other. New agents are sometimes puzzled in this way—they get deposits placed in their way if they can influence life assurance business, but on the other hand they have agencies already; so the question is what to do with the limited insurance business at their disposal. The likelihood is that the deposit-bribe carries the day with most new agents. It is wonderful how much insurance business is done by agents even without solicitation. Their customers approach them on the subject, no doubt from seeing the show-boards and other signs of an agency in the bank office. If a brass plate is on the bank door outside then persons are attracted inside who are wishful to do business, more frequently, perhaps, fire insurance; but so long as they are brought within, that is always a chance to a new agent.

It looks a tiresome and trying matter hanging on for the customers who never come. Micawber-like, the new agent waits for something to turn up in the deposit line. There is a monument erected to the soldiers of a Highland regiment who fell at the battle of New Orleans. What makes the event memorable is the fact that they were never called into action—they were a reserve waiting to be led against the enemy, but in this passive condition they fell; and how trying and cruel a condition that is, only a soldier can tell! It is not pleasant to play the waiting game even in banking—one longs to try issues and to effect business by making influence converge on it. However, banking is not yet like trading, or at least was not, when I assumed charge of a branch. I was strictly enjoined not to canvass, for to the credit of the Scotch banks be it said that they do not encourage but rather set their face against the direct solicitation of accounts. Any cases of such were, at the time I speak of, brought up against the agent so canvassing before his head office superiors. There is a great temptation to a new agent to do business at any cost, and in any way, and self-restraint is very needful at this early stage. Dignity and

duty to the bank demand that he shall not act as a solicitor-general or commercial traveller.

There was once an agent who opened a branch for a certain bank in a shipping centre. It was marvellous how he succeeded. In a short time he had collected £40,000 of deposit-money, and everyone wondered at his industry and ability, but alas! in addition to getting this goodly sum he had contrived to lose £20,000 of the bank's money, and he had to make a hasty exit from the scene of his brilliant labours. In agricultural districts opened up for the first time, a new agent has been known to drive about from farm to farm, and by his easy abandon and frank manners so ingratiate himself in the bucolic breast as to bring the dollars out of the latter's pocket. Of course all this involved the exercise of a certain amount of conviviality, and perhaps laid the foundation, in some cases, of habits which the agent would have been better without. Then in towns business has been sought through the medium of the bottle. Some agencies have been built up in this way, but at the expense of the agents themselves. Not infrequently the latter have had to leave the service, and though they may be said to have succeeded so far in business, they cannot be said to have succeeded in life. Thus the process and the methods of getting business must be taken into account, for the representative of a bank, in pursuing reprehensible methods, demeans himself and lowers the standing of his bank.

I recall what I was told once as to how a financial worthy used to exploit his agency. He would give pies and porter to coalmen and carters to get their money from them. In particular, he once boasted of going through a village of piggeries and cow-feeders, and doing a good day's work in the way of getting deposits and insurance business as well. Some persons had to be treated in a neighbouring public-house. This same agent would, it is said, even try to get business from the lessees of licensed houses by partaking of their vintage more or less freely. From other persons he would solicit business, even though he knew that they dealt with banks in the same locality as his own establishment. No doubt he felt anxious to do a stroke of business for his bank, but his zeal outran his discretion. The chances are, too, that when one goes a begging for business he is apt to

be caught. If an account is solicited, the holder of it will feel himself entitled to ask favours at the hands of the person who sought it, and it is usually the risky accounts which are transferred in this way.

Impecunious persons think a new branch a place specially opened for their behoof, and they fly to it in the same way that the non-paying class of clients resort to a new doctor. These folks have no bad record with a new man—they have a clean bill of health in so far that they are unknown, and have created no prejudice against themselves. One of this fraternity of good borrowers and bad payers came once to a bank and paid into an account which he wished opened in his name a paltry sum, thrusting across the counter along with it a bill for a trifling amount. He asked at the same time for a book of cheques, which was not handed to him. The bill remained with the bank till the following day, when the new account holder asked that it be discounted. This the agent did not see his way to do, and handed him back his document, accompanying it with the expression that he would doubtless want his money as well. With that a cheque was made out, which he signed, and the amount was paid over to him of his deposit of the day before. In this way he was got rid of, though, strange to say, he returned asking pecuniary assistance again, but in vain. Then some pseudo-employer has been known to come asking a loan to pay wages to his men. The loan was refused, and the discovery made that he had no men, and was, moreover, steeped in debt.

Ladies will occasionally pay a visit on borrowing bound. The struggle to live is great when persons are forced by circumstances beyond their control to approach utter strangers and solicit loans without security. It is impossible not to sympathise with such folks, even when one is compelled not to entertain their requests. A lady once came with a tale of furniture about to be sold off; she valued it highly as it had been left to her; the house where it was had been let by her in a furnished condition to a stranger, who could or would not pay the rent, and the landlord was bent on selling it, as he had a hypothec over it for the rent, which was not forthcoming. She urged that if the money were advanced it would be refunded, that there was no danger, and that it was only a paltry sum. Of course such an advance could not be granted.

A more interesting request was that of a young lady who had to support herself by such work as gentlewomen undertake of an intellectual character. She had tried the role of an author, and in connection with her first literary attempt had asked an advance. Taking out rolls of proof of her first novel, she also produced a letter from certain publishers accepting the MSS. for publication. A letter from the firm's "taster" was also shown, in which he objected to certain phrases of an *outré* character. This novel, or rather her rights in it, were offered in security for an advance. The crux of the matter was the terms made by the publishers. These turned out to be that the author was to receive nothing till the first edition was sold out, and as this edition numbered 2,000 copies, the chances of a new novel running off soon were rather remote. The security was thus too flimsy to be thought of; so when she was told that to advance money on such conditions would be benevolence but not business, she replied that she did not want benevolence. This attempt to raise money on fiction reminds one of the Constables' (publishers) vain efforts to pledge Sir Walter Scott's future productions with the Bank of England against an advance in cash.

If it were asked what a new agent ought to do to obtain business, the reply likely to find most acceptance would be that he should sit remorselessly at the receipt of custom. There is a great advantage in being on the ground when anything is wanted, and the bank office is the natural place for an agent. He has scope there to ingratiate himself with the strangers who enter his bank, and to make friends generally. On the other hand, the more he is known the better for himself, as the unknown is not always taken for the magnificent. If, therefore, his business lies in a locality where he does not personally reside he may be able to get introductions during the day which he could not well get at another time. A large acquaintance is, therefore, desirable in the interests of the bank, as it is a channel for the flow of business.

It is said that business discards localities, and that in short persons choose places where they can do business with most advantage to themselves. Distance does not deter in such cases. Many bank accounts are opened in parts remote from

the business or private residence of the holders of them. The personal charm of the agent has perhaps attracted customers from afar, or the facilities he has been able to offer have acted as an inducement to them to put business in his way. A curious valuation is frequently put on life policies by clients soliciting an advance. They seem to think that a policy is worth its face value, and that they should at once get a loan on it to that extent. It is difficult to convince even some professional men, who ought to know better, that such is not the case. They say they are certain to pay the premiums so long as they live, and therefore the policy amount would be duly paid at maturity. You tell them in vain that the policy is only worth its surrender value, roughly estimated at one-third of the premiums which have been paid upon it. Of course if they furnished guarantees for the payment of the premiums and interest on the advance, the case would be different. But that is not their proposal, which is to get the full face value of the policy on assigning it to the bank.

When a person comes about a new branch repeatedly in the way of business, it is not unusual to ask him to open an account, if it is conjectured that he has none. It is related that a man was thus solicited in a quiet way, and the answer he gave was rather a curious one, reflecting as it did on the banking profession. He said that he had once kept an account with a bank branch, which he named, but that he had ceased to keep it for the following reason:—Being one day in the bank, he met a friend of his, and had a chat with him. A few days after, this friend asked him to be surety for him in the same bank to the extent of £100, or some such sum. He did so, the result being that in the end he had to pay the amount in his quality of surety. It seems that the banker had been casting about in his mind for someone to act in the latter capacity, and when he saw the two talking together, he remembered that the one man's account was as much creditor as the other's was debtor. He, therefore, dropped the suggestion to the latter to ask his friend to "stand in" for him. This he did; but when he discovered, as he ultimately did, whose suggestion it was, he discontinued doing any banking business ever after, and says he won't trust a banker again. Such was the man's story, and it may be taken for what it is worth.

A common way whereby business is brought to a new bank is by persons speaking a word on behalf of the agent. They can do this disinterestedly, and it has more weight accordingly. It is said of doctors especially that their business, when they are unknown, arises from one person recommending them to another, and so on till a wide circle is reached, and a good practice established. A banker may not have the same field for the exercise of his skill, but he has a certain power of giving accommodation, and a good manner is as much valued in a banker as in other professional men. Often, it may be, by a very circuitous route one must travel to reach one's goal. In the case of a banker struggling to get business, he has to play something like a game of billiards; he has to reach his purpose by a lot of cannons, which are taken all over the billiard table—he cannot always put his ball in the pocket with the first stroke.

Attention to even the pettiest wants of customers or strangers, and an obliging disposition at all times, are the most reliable instruments for the inbringing of business. The power of littles is never so effectively displayed as here. One has to sow seed for years, it may be, before one can reap. Some bankers decline to give change unless the persons asking it deal with them. This is a mistake, because in time persons, whose servants come for convenience to the nearest bank, may take the fancy to change their bank. Small attentions are always valued, and the cumulative effect of them is considerable. "Despise not the day of small things" is a wise saying, especially for a banker beginning business. If he casts his bread on the waters, he may find it after many days.

There are some strong advocates for Freemasonry, who say that it will help business to join it. It is difficult to say how it will do so, save so far as giving a kind of ready-made introduction by means of unknown signs and symbols to persons one could not otherwise—at least so readily—get acquainted with. Undoubtedly, the wider the acquaintance and the larger the connection, the better it is as a lever for getting business. The more numerous the persons who speak well of one, the greater is the chance of business being brought in his way. And as health makes health, and money makes money, so does business make business. Taking the department of loans, a customer

who has been satisfied brings back a friend, whom he introduces forthwith to the agent as a person desirous to do similar business. This is the method in which loan business is usually begun—it is opened from a personal presentation when the borrower has no account. Of course, cases have been known of big firms going direct to the manager of a bank if they are new to a district, or if they feel aggrieved by ill-treatment which they have received at the hands of another bank.

New branches are believed to be gaping for business, and thus they sometimes fall a prey to persons who open accounts with bogus cheques. These cheques being payable in another city have to be sent to their destination, but having no cash constituent at their back are returned unpaid. Before this event takes place, however, some money has been uplifted from the newly opened account—the account which was originally credited with the amount of the bogus cheque—and herein consists the fraud. The worthies who have opened the account have vanished like the baseless fabric of a vision, leaving not a wrack behind. The keenness of bankers to do business lays a snare for their feet.

It is natural for banks to identify themselves with their customers so far as they reasonably can, and to put business in their way when opportunity offers. Of course, in the case of big bits of work, estimates must be taken, and an outsider may carry the day, as he frequently does. The interest of the whole bank may be at stake, as compared with that of a single branch. Any jobbing work should, however, be given to the bank's supporters. Agents have been known to get accounts through placing their private orders in the hands of merchants. The latter being full of gratitude, and not fearing the Greeks, even when bringing the gifts of orders for goods, transfer not infrequently their accounts to their banking customers. It is a question if this indirect canvassing indicates a healthy state of matters. Bankers of the old school like to stand on their dignity and to await the arrival of customers. Now, new accounts are solicited beforehand, and accounts which have lain for many years with one bank have been known to be removed therefrom. It looks as if the old order were giving place to the new, and

that the era of the commercial traveller had arrived in banking. At present, it is rather in connection with new branches that competition shows itself in so unpleasant a form.

The future of the profession lies in the hands of its followers, many of whom are too high-souled to stoop to petty arts to get an account, and who would rather trust to their unvaried rectitude of conduct and strict devotion to business to help them along in maintaining at its usual altitude the position of their bank. A pushing agent has been known to be thanked by a deputation of directors for his zeal and success in getting new business. In regard to the taking away of accounts from other banks, happily the public is very conservative, and not prone to change. Were it otherwise, one could never depend on retaining an account once it was placed, and that would hardly be a satisfactory state of things. A country tradesman, who was at one time importuned to remove his account to a new branch opened in his neighbourhood, said: "I have dealt with the same bank for forty years, and they know me and trust me; do you think I am going to change now, and begin with people who will take years to know me? Certainly not." There is Scottish philosophy in this, well worthy of the land of John Reid and Dugald Stewart.

PRIZE ESSAY COMPETITION, 1900

The following subjects have been selected by the Essay Committee, for the next Prize Essay Competitions :

SENIOR COMPETITION

Give a brief account of the development of Metallic and Paper Currency. Discuss the advantages and disadvantages of each, and show how they can best be combined for economic purposes.

A First Prize of - - -	$100
A Second Prize of - - -	60

JUNIOR COMPETITION

Give an outline of the banking systems of England and Scotland, Germany, and France, and discuss their relative merits.

A First Prize of - - -	$60
A Second Prize of - - -	40

Any Associate is eligible for the Senior Competition.

Competitors eligible for the Junior Competition will comprise all Associates under twenty-five years of age.

The essays in either subject are not to exceed 7,500 words. All essays must be typewritten, having the writer's *nom de plume* or motto, also typewritten, subscribed thereto, and be mailed not later than the first day of July, under cover addressed to the President Canadian Bankers' Association, Montreal.

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

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

The Prize Essays will remain the property of the Association.

The envelopes of successful competitors only will be opened except on request.

E. S. CLOUSTON,
President

Montreal, 24th March, 1900

MISCELLANEA

THE MONEY DEVIL.—The study of devilology has always been one of exceeding interest. Some of the most tremendous characters of fiction are those which portray the Evil Genius. Milton's Satan, walking in the courts of heaven, burning with ambition, planning the overthrow of the universe, with a courage that knew no pain and a daring that dreamed of no disaster, daring to defy the Omnipotent to arms, is a character alike fascinating and powerful; Mephistopheles, the jeering, sarcastic doubter, in whom is "condensed every form of doubt from that of the deist to that of the libertine;" Iago, the incarnation of wickedness and intellect, "the polished, affable attendant, the boon companion, the supple sophist, the nimble logician, the philosopher, the moralist, the scoffing demon, the goblin, whose smile is a stab and whose laugh is an infernal sneer"—each personify the dominant note of the age in which the character was wrought.

Milton wrote when men were reaching out for dominion and power, when personal ambition was drenching the world with blood. Goethe's Mephistopheles was thought out in the German atmosphere of doubt and criticism. Iago, the combination of intellect and will, is the product of the Elizabethan age of great intellectual and material development. Each devil is, in a measure, the product of the age. This is a money-making age, and he who would portray the Evil Genius must approach the subject from that point of view. It is highly proper that the latest creation should be the Money Devil, and since the days of the great masters no one has portrayed the character of His Satanic Majesty with more success than has that philosopher, teacher, statesman and romancer, Mr. Coin Harvey, of the United States; and of all the devils of fiction this Money Devil is the most unique.

The latest devil is not of grim-visaged mien, gaunt and ghastly and terrible; he has no horns and hoofs; he does not go up and down the land like a roaring lion, or Mr. Bryan. He works quietly and unobtrusively, but with the swiftness and precision of a trained and comprehensive mind. His main offices are New York, though he has an octopus farm in New Jersey. Appearances indicate that the main office is soon to be moved West. The Money Devil loans you money, through his agents, the bankers, when you ask for it and can give proper security; then he goes to work and sets the seasons back a month so you cannot get your crops in on time; he lets loose a lot of bugs to ruin your potatoes; when you are asleep, in the stillness of the night, he scatters tares among your wheat, and brings in a lot of chinch bugs and weevil to get what the tares do not kill; he manufactures hot winds to shrivel up what corn the crows and squirrels do not get; he scatters cholera germs among your hogs; he gives your children measles and mumps and runs up a big doctor bill; he sends around lightning-rod agents and gets you to sign notes for work that never is done; he sends lightning to kill your horses and cattle that are not rodded; he chases your stock into wire fences, which cut them until they are worthless; he persuades you to buy machinery you do not need, land you have no time to work and patent rights you cannot dispose of; fixes it so you are unlucky at horse races and shell games, and otherwise makes it impossible for you to raise the money you have borrowed; and, having thus succeeded in thwarting all your efforts, forecloses on the security and drives you out of house and home. And the worst of it is that no one is able to determine just how this is done; it is the subtlety of the thing that perplexes and baffles and makes the Money Devil so monstrous. Satan beguiled the first parents into sinning; Mephistopheles ensnared Faust and Marguerite; Iago wrought upon the jealous passions of the Moor until Desdemona was destroyed; but the Money Devil corrupted a whole Congress, committed the crime of '73 and then debauched the universe. As a powerful creation of the mind, the devil of populistic fiction overtops them all.—*Northwestern Banker (Des Moines, Ia.).*

CONVERTING STERLING INTO CURRENCY—Mr. John Brookes, of San Francisco, writes to the Editing Committee:

"In replying to Mr. W. F. Cooper's letter of the 29th Nov., published in your issue of January, 1900, it will be necessary first to mention that the old par rate of exchange in Canada was 4.44^{44} and the present quotation rates are so much premium on the old par of exchange, as for instance, £100 at $9\frac{1}{2}$ would be £100 at $4.44.^{44} = \$444^{44}$ plus $9\frac{1}{2}\%$ of $\$444^{44}$ or $\$42^{22} = \$486.^{66}$.

"If Mr. Cooper will examine his formula he will find that 400 divided by 90 gives 4.44^{44}, the old par of exchange. So that he is merely reversing the order of things and multiplying the premium by the old par of exchange, instead of the par by the premium, that is, $109\frac{1}{2} \times 444.^{44}$ instead of $444.^{44} \times 109\frac{1}{2}$.

"I should think a simpler method than Mr. Cooper's would be to add or subtract the difference in exchange to or from the par rate ($486.^{66}$) for example 10· is $\frac{1}{2}$ of one per cent. of $444.^{44}$ added to 486^{66}, or 488^{88}."

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:

Sterling bill payable "at the current rate of exchange"

QUESTION 307.—A sterling bill on a Canadian house drawn at three days' sight is expressed to be payable "at the current rate of exchange when due." Is this payable at the 60 day or demand rate?

ANSWER.—For the reason set out in our reply to question 93 (1), we think this bill is payable at the 60 day rate. The usance between Canada and Great Britain is 60 days sight, and in our opinion "the current rate of exchange" refers to the rate for that usance.*

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*Continuing the subject our correspondent wrote:

"The question arose in connection with a bill on one of our customers, presented for payment by one of the other banks in town, and received by it from a bank in X. We claimed the correct rate to be the 60 days rate—the bank in X claimed the demand one. As the amount was small we paid the demand rate, and referred the question to our Montreal branch office. The reply from them was that the "custom" in Montreal and "in Canada generally they believed," was to pay such bills at the demand rate.

"Knowing of the reference to the question in the JOURNAL, I thought it possible I might have missed some later opinion than the '98 one, and therefore troubled you again.

"If Montreal (the bank in X claimed the same custom prevailed there) is correct as to the custom in Canada, there must be a conflict of opinion. Could we in any way obtain an official deliverance on the point?

"Does it not seem somewhat anomalous that, by our law, a customer in Canada of a British firm should, *after maturity of his bill*, practically have

Cheque to bearer drawn on an outside point—Banks' right to refuse negotiation without the customer's endorsement

QUESTION 308.—May a bank refuse to negotiate a cheque drawn on some other point and payable to bearer, unless endorsed by the customer?

ANSWER.—A bank may refuse to cash such a cheque under any conditions whatever.

If, however, the question intended is whether a bank

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75 days discount on it? In the case of a bill for a large amount and with money at the late high rates it might preclude any possibility of profit to the British merchant."

To which the Editing Committee replied:

"We have been making enquiries and find that the practice with regard to the rate of exchange varies. At Montreal the Banks have agreed among themselves to pay such documents at the demand rate, and the same practice prevails in Toronto. No doubt the considerations that moved them are those which you have set out in the last part of your letter, and it may be that we shall have to give way generally on the question of rates, not as a matter of legal right, but as a matter of expediency as a general understanding among the banks.

"We do not see any way in which the question can be authoritatively settled. We think there is no doubt that for the last sixty or eighty years 60 day exchange has been the usance between Canada and England, and that the current rate means the rate for the current usance, although we do not know that the Courts have ever pronounced on the point. There are, however, reasons for believing that the evidence as to the meaning of "current rate of exchange" would substantiate the views we have hitherto expressed in the JOURNAL.

"It does not necessarily follow that the British merchant suffers. If he sells his goods to be drawn for in sterling on a Country where another currency prevails, the element of exchange has to be considered in his price, just as it has when (*e.g.*) cotton is sold in New Orleans to be drawn for in sterling. In the latter case, if the drawer is only going to get $4.80 for his bill, he adds the difference to his price. If he is going to get $4.90 he allows the difference in his price, and precisely the same thing takes place with regard to the seller of goods in Great Britain. Of course if he is uncertain whether he is going to get payment at the sight rate or 60 day rate, he may be at some disadvantage, but that is only because of the uncertainty, and he can prevent it by making the draft payable "at the current rate for bankers' demand bills.

"As a case in point, we might mention the Australian practice, which appears universally to be to remit for collected bills by a 60 day bill on London, less their collection charges.

"The practical working out of the matter, like many other things, will probably be quite illogical and end in a compromise. However, it seems to us impossible for banks on which sterling drafts or letters of credit are drawn payable at the current rate of exchange, to say that these are payable at the 60 day rate, that being the current rate in Canada, and at the same time to say that an acceptance of a Canadian merchant payable at the current rate of exchange must be paid at the demand rate. The difficulty would of course entirely disappear if the British merchants would make their bills payable, not at the current rate of exchange, but at the current rate for bankers' demand bills."

acts reasonably in refusing to cash such a cheque for a customer without his endorsement, we should say that such a refusal is most reasonable.

The only cheques about the payment of which the bank is under any obligation are those drawn on itself. If a cheque on itself payable to bearer is presented, it cannot call on the bearer to endorse it as a condition of payment.

Note embodying a contract respecting shares lodged as security for payment

QUESTION 309.—Is the following a legal form of promissory note?

MONTREAL, 31st October, 1899

$3,000.

On demand for value received I promise to pay to J. Richardson or order at the Merchants Bank of Canada here, three thousand dollars and interest at the rate of 6 per cent. per annum, having deposited with this obligation as collateral security 5,000 shares Payne Consolidated Mining Co., with authority to sell the same without notice, either at public or private sale, or otherwise, at the option of the holder or holders hereof on the non-performance of this promise, [he or they giving me credit for any balance of the net proceeds of such sale remaining, after paying all sums due from me to the said holders or holder, or to his or their order], [and it is further agreed that the holder or holders hereof, may purchase at said sale.]

(Sgd.) A. MCKAY

ANSWER.—It is of course quite lawful for the parties to make such a contract, but we understand the question is as to whether it is a note to which the Bills of Exchange Act would apply, and on this point we are of opinion that it is not, for the reason that in addition to the inclusion of "a pledge of collateral security with authority to sell or dispose thereof," which are permitted by the Act (section 82, sub-sec. 3), it contains other provisions, notably an assignment of the proceeds as security for other sums due to the holders of the note. There are other conditions in the form which might have the same effect, but the one specially mentioned clearly has. A case in point is reported in Vol. 4 of the JOURNAL, page 218.

Protest—Error in the notice as to place of presentment

QUESTION 310.—A note payable at Bank B was handed to the notary by Bank A for protest. It was duly presented, and notice of dishonour given in the ordinary form. In the Act of Protest attached to the note the notary, through error, declared that he had presented the note "at Bank A, where the same is payable." Does this invalidate the protest?

ANSWER.—The Act of Protest is merely a certificate as to what the notary has done, and could be corrected at any time.

The notice of dishonour having been duly given, the parties would be liable without any further action on the part of the notary. He attaches his Notarial Act merely as a convenient mode of proving that the notice has been duly sent, but proof of the notice might be made in any other way.

In answer to a further enquiry on the same subject:

If in the notice of dishonour it was stated that the note had been presented at Bank A while really payable at Bank B, that would not necessarily invalidate the notice. Such an error might be regarded as a mis-description of the bill, but the notice would not be vitiated thereby unless the party to whom the notice was given was in fact misled by it. (Sec. 49, (g)).

It is to be observed that the Act does not require a statement in the notice of dishonour that the bill was presented at the place where payable. See forms "G" and "H" in the first Schedule to the Act.

Sterling bills—Rate of exchange

QUESTION 311.—What is the correct rate (demand or 60 day) to charge on a sterling acceptance when due? Why, custom or law?

ANSWER.—Under section 71, sub-section 6, of the Bills of Exchange Act, the rate fixed for such bills is the sight rate, unless otherwise expressly stipulated.

If a bill is drawn for so many pounds sterling simply, it would be payable at the sight rate.

If for so many pounds "at the current rate of exchange," that is a stipulation which fixes the rate. The "current rate of exchange" between Canada and Great Britain is the 60 day rate, that being the established usance. The question has been discussed in the JOURNAL; see answer to question 99, also the discussion appended to Question 307.

Life insurance policy held as security

QUESTION 312.—As security for a debt of $300 a creditor holds a policy for $1,000 on the life of a debtor. Is the creditor entitled to receive from the insurance company the cash surrender value of the policy—amounting to less than his claim—and surrender the policy without the consent of, or reference to, others interested in it?

ANSWER.—The fact that he has surrendered the policy to the Company, receiving all they would allow for it, is not conclusive evidence that he has realized on his security prudently. If as a matter of fact it could be established that it was worth more than the cash surrender value, the creditor would be liable, if not protected by the agreement on which he held the security.

Stamped endorsements

QUESTION 313.—John Smith carries on business under the name of the X Manufacturing Company. Is a stamped endorsement "X Manufacturing Company," without the proprietor's name, sufficient?

ANSWER.—Such an endorsement, if impressed by or with the authority of the proprietor of the business, would be quite legal, but it would not be within the rules adopted by the Association. See 3rd Clause of Rule 2, which requires the name of the person to be added.

Cheque dated January 1899 offered for deposit in January 1900

QUESTION 314.—A customer wishes to deposit with his bank, on 5th January, 1900, a cheque drawn on another bank dated 5th January, 1899. Is the bank justified in refusing to take it on deposit only because it is dated a year back?

ANSWER.—We think the bank should not refuse the cheque only for the reason stated. We cannot see what risk the bank would run in taking such a cheque on deposit, although of course the bank may take or refuse to take on deposit whatever items it chooses. The most that could be said is that the cheque might be held to be overdue under section 36, sub-section 3. That would not, however, lessen the responsibility of the customer to the bank if it should be dishonoured.

Joint deposits

QUESTION 315.—One partner in a firm having a current account with a bank dies. Is the surviving partner entitled to draw the balance? If he should continue to make deposits in the name of the firm, can he withdraw the funds? Would his rights be affected by the appointment of an executor or administrator of the deceased partner?

ANSWER.—The surviving partner has a right to withdraw the money on deposit at the time of the other partner's death. In this respect the account must be regarded as a joint deposit, the control of which passes to the survivor. See answers to questions 28 and 97.

If the surviving partner deposits money in the name of the firm we think he is entitled to withdraw the same and to sign the firm's name for the purpose. His rights would not be affected by grant of Letters of Probate or Administration in connection with the estate of the deceased partner.

Note form with engraved figures "189—"—Alteration to 1900

QUESTION 316.—We have a number of note forms with the figures 189— printed on them. Would you consider the initials of the parties necessary if these figures were struck out and 1900 substituted?

ANSWER.—We think that initials are unnecessary, as the circumstances show that 1900 is the true date.

Cheque crossed "Duplicate."

QUESTION 317.—A cheque is issued, having written across it the word "duplicate." If the bank should pay this what would be its duty as regards the original? Is the drawer liable on the original?

ANSWER.—While the mere issue of a duplicate cheque may or may not, according to the circumstances, be regarded as an order to the Bank to stop payment of the original, it would certainly protect the Bank from any liability to its customer if it should refuse payment of the original. A duplicate is, however, seldom issued without notice being given stopping payment of the original. The drawer would undoubtedly be liable on the original to a holder in due course, hence a duplicate should not be issued without proper indemnity.

Press copies vs. carbon copies

QUESTION 318.—The practice of filing carbon copies of typewritten letters instead of copying them in letter books seems to be growing. I would like the opinion of other bankers as to the convenience and safety of the practice. The use of the copy in evidence is a matter to be considered. The letter press copy, owing to the order in which it comes in the letter book, presents in itself evidence of its genuineness, while a carbon copy might easily be fabricated.

ANSWER.—There are no degrees of secondary evidence—a letter press copy and a carbon copy stand in precisely the same position in regard to *admissibility* as evidence, and if the loss of the original be proved or its non-production otherwise properly accounted for so as to lay the foundation for the admission of secondary evidence, the question would be simply one of fact, viz:—"is the carbon letter a copy of the original?"—the same question would be involved if the letter press copy were offered. If the contest were upon the *existence* of the original or as to its date or when sent, &c., one can readily see that the letter press copy, appearing in its proper place, would in ordinary circumstances be a stronger piece of evidence than a carbon copy, but

if the contest were as to the *contents* of the original neither the letter press copy nor the carbon copy would prove itself. Evidence would have to be given on this point, and if the contest were keen it might be easier to throw doubts upon the accuracy of the carbon copy than upon that of the other. Still the question would be one of fact and in the majority of cases it would be as easy to prove the one as the other.

Cheque marked before hours

QUESTION 319.—A cheque was presented between 9 and 9.30 a.m., and paid by the bank to the payee, who wished to get his business transacted early. At 9.30 a.m. the drawer of the cheque gives the bank written notice to stop payment of the same. Would the bank be in any way responsible, having paid the cheque before hours?

ANSWER.—We think it is too late for the drawer to stop payment, and that the bank is protected.

Cheque with the amount expressed in figures only

QUESTION 320.—The amount of a cheque is expressed in figures only, both in the body of the cheque and in the margin. Has the bank a right to refuse payment of a cheque so drawn, for which there are funds?

ANSWER.—We cannot find that the Courts have ever considered the case of a cheque drawn as above described, but the bank's rights on the point mentioned do not depend on the law, so much as on the agreement between it and its customer, which agreement is chiefly to be implied from the course of business and the custom of banks.

The courts would probably hold that such a cheque was a valid instrument, and they might further hold that the bank was bound to honour it. We think, however, that by virtue of the custom requiring customers to express the amount of cheques in words the contract of the bank to pay is conditional on the cheque being drawn in the usual way, and that it would be under no responsibility if it should decline to pay until the cheque was amended, especially if the reason for the refusal, and the fact that funds were held to meet the cheque when properly filled up, were explained to the party presenting the cheque. It could scarcely be said that a refusal for such a reason would work any injury to the customer's credit.

Cheque or acceptance signed for a firm by an attorney presented after the attorney's death

QUESTION 321.—Would a bank be justified in refusing payment of a cheque signed by, or a bill accepted by, a person

holding a power of attorney for a firm and signing as such, after having received advice of the attorney's death.

ANSWER.—Assuming that the cheque or bill had been delivered before the attorney's death, the bank should not refuse payment because of his death.

Non-trading partnership—Liability of partners

QUESTION 322.—To what extent are partners in a non-trading partnership liable to a bank:

1. In respect to an endorsement made by one member of the firm on a note given to them in settlement of an account for services, as for instance to solicitors.

2. Where an endorsement is given for the accommodation of the maker of a note.

ANSWER.—As a non-trading partnership does not *prima facie* require to give promissory notes or accept bills, the making or acceptance by one partner in the name of the firm would not *prima facie* bind the partnership. Evidence of the actual transaction would be admissible, and if it were *de facto* a partnership transaction the firm would be bound. The endorsement of a bill or note payable to the order of a non-trading firm stands in a little different position. There is no *prima facie* presumption that a non-trading firm does not require to take a note or bill in payment or settlement of a debt due the firm, and if the firm's name were endorsed by one partner upon such a bill or note the endorsement would bind the firm if it were given in connection with a partnership transaction, but the firm would not be liable if the transaction were that of the individual partner only, unless *de facto* his authority as a partner extended to such a case. There are so many kinds of non-trading partnerships, that no general rule can be laid down as to what would and what would not be *prima facie* a partnership transaction. Much would depend upon the nature of the business and upon the course of dealing in the past, *e.g.*, if a non-trading firm kept a bank account and were in the habit of discounting bills and notes payable to the order of the firm, there could be no question that for the purposes of the bank the scope of that partnership would authorize one partner to endorse the firm's name on the paper discounted, but if one partner in a non-trading firm which *prima facie* did not require capital to carry on its business and which did not keep a bank account should open such an account and discount paper in the firm's name, and if it should turn out that the whole thing was a fraud on the partnership and that the firm did not authorize the transaction or get the benefit of it, we think the bank would have great difficulty in collecting from the firm upon its endorsement.

2. In the second case the firm would not be liable unless it could be shown that the partner making the endorsement had *de facto* authority to make it.

Liability of vessel owner for cost of cargo purchased by the master of the vessel

QUESTION 323.—Can a master of a schooner, not being owner or part owner, make the vessel liable for the cost of a cargo of grain? If he buys a cargo, giving in payment a draft on a third party not interested in the vessel, can the holder in the event of dishonour look to the vessel or her owners?

ANSWER.—We think the master has no power to make the vessel liable for the cost of purchasing a cargo.

Bill accepted by two drawees—Right of the bank at which the bill is domiciled to charge it to the account of one of the acceptors

QUESTION 324.—A bill drawn on and accepted by two drawees is made payable at a bank. Is the bank authorized at the maturity of the bill to pay it and charge it to one of the two acceptors?

ANSWER.—The bank has clearly no authority (in the absence of some special agreement) to pay such an acceptance and charge it to one of the acceptors. We also think that if the bank had become the owner of the bill before maturity, and held it when it fell due, it would not (in the absence of agreement) have the right to set off the amount against one of the acceptors. "Set off" must not be confounded with "counter-claim." If the acceptor, having a balance to his credit, should sue the Bank therefor, the Bank might counter-claim in the action against him and the other acceptor for the amount of the bill, and thus practically obtain payment in this way—but this depends not upon the law of set off, but upon the practice of the court, and in some countries "counter-claim" is not allowed—the defendant must bring a cross action.

Account of a company operated in the name of the company's agent—Liability of the company

QUESTION 325.—An account is opened in the name of John Adams, the cheques on which bear above his signature the name of a mining company. He is known to be an employee of the company, acting in the absence of the formally authorized agent. Would the company be liable for an overdraft in such an account caused by the payment of wages, and if not would Adams be personally liable?

ANSWER.—The question involved is one of agency, depending on the facts of the case, and could not be answered without a full statement of the facts. We should suppose that the company would not be directly responsible, that the agent alone would be personally liable, but he might have a claim on the company for money expended on their behalf, and in that indirect way the company might be responsible to the bank.

Liability of an agent for transactions on the company's behalf

QUESTION 326.—Is the properly authorized agent or official of any company personally liable for transactions on the company's behalf which are within his powers ?

ANSWER.—We do not think an agent is liable under the circumstances mentioned.

Undated and post-dated cheques

QUESTION 327.—Are undated and post-dated cheques negotiable ?

ANSWER.—They are not invalidated by the absence of a date or by being post-dated, and are therefore on the same footing as to negotiability as other cheques. [Secs. 4 (a) and 13 (2) Bills of Exchange Act.]

Securities under Sec. 74 of the Bank Act

QUESTION 328.—Can a company having a Dominion charter borrow on the security of goods under Section 74 of the Bank Act without limitation as to the amount ?

ANSWER.—If the company is incorporated under the Companies' Act, and gives its own promissory notes with security under sec. 74, there would seem to be no limit to the amount which it may borrow. See Amendment to the Companies' Act, Chap. 27, 1897. If it should borrow in any other way, as for instance by overdraft, the limitation in the Act would apply.

If the company has a special charter, its power to borrow would depend on its own charter, or the general law if no special provisions as to borrowing were contained in the charter.

Guarantee written on a note

QUESTION 329.—(1) Could the amount of the subjoined note be collected from Jno. Smith, if at maturity Jno. Jones was unable to pay it ?

(2) Could it be collected from Smith if he had simply written his name on the back without guaranteeing it ?

(3) In question (2) would it make any difference if the proceeds of note had gone to Smith's credit, he having discounted it ?

$100. ELMIRA, ONT., 2nd Jan'y, 1900

Three months after date I promise to pay to the Federal Bank or order at the Federal Bank, here, the sum of one hundred dollars.
Value received. JNO. JONES

Endorsed :

For value received I hereby waive notice of protest of within note and guarantee payment of same. JOHN SMITH

ANSWER.—As the law at present stands, Smith is not liable as endorser, and the fact that the proceeds of the note had gone to Smith's credit would not make any difference in this respect ; but if it could be shown that the transaction was a loan to Smith on the security of the note, he would be liable, as borrower, to repay the loan, but not as endorser.

The question as to Smith's liability as guarantor is by no means easy to answer. The Statute of Frauds makes it necessary to the validity of a contract of guarantee that it should be in writing, signed by the guarantor or his authorized agent. The courts have held that under this statute all the essential parts of a contract must appear in writing. The contracting parties and the consideration are, of course, essential parts of every contract. In the case of a guarantee a subsequent statute provided that the consideration need not appear in the writing but might be proved by other evidence, but it is still necessary that the contracting parties should appear. Assuming that both the face and the back of the note may be looked at for the purpose of showing the contract in writing, the question: With whom is the contract of guarantee made? appears to be left in doubt. "I hereby guarantee payment of the within note." To whom is payment guaranteed? It is not necessarily the Federal Bank, as the promise is to pay the Federal Bank or order, and the guarantee simply means that John Jones will pay the note in accordance with his promise. If the intention was to guarantee to the holder for the time being that the note would be paid, it can hardly be said that the parties to the contract appear in the writing.

Again, it might be quite consistent with the transaction that the guarantee was made with a third party who was interested in the payee of the note and who might have given him credit on the strength of the guarantee that Jones' note would be paid. The fact that the writing does not necessarily show the person with whom the contract of guarantee is made makes it necessary to give verbal evidence, and this is what the statute prevents being given.

On the whole we think that Smith could not be made liable on his guarantee; but, if the note were held by the Federal Bank when it matured, and if the contract of guarantee were really made with the bank, and if the bank brought the action upon it, it might possibly be held that, as the name of the bank appeared in the writing, the provisions of the statute had been sufficiently complied with.

Guarantee written on a note

QUESTION 330.—A sends B in settlement of an account a promissory note payable to B and endorsed by C. Would the difficulty about C's liability be removed if he should add to his endorsement the words "for value received I hereby guarantee "payment of the witbin note"?

ANSWER.—The answer to question 330 will explain the position here.

Cheque marked "Good for two days only"

QUESTION 331.—A correspondent writes:

In your issue of July, 1899, you have answered to question No. 228, which is: Can a bank refuse payment of a cheque which it has marked "Good for two days only," if presented after the expiration of the two days? "We think that after the two days have expired, the cheque must be regarded as though it had not been marked by the bank, and if there are then no funds, its refusal would seem to be in order."

Will you allow me to express the opinion that this answer does not appear clear to me, as in accepting the cheque and stamping it "Good tor two days only," the account of the maker ot the cheque has been debited and the amount deducted from the balance. Should I understand that you mean that the debit entry be cancelled and the amount of the debit recredited if the cheque is not presented for payment within two days of its acceptance by the bank?

Besides, on general principle, I am of opinion that the acceptance of a cheque by a bank renders it liable to the same extent as its acceptance of a bill of exchange drawn upon it by a foreign customer, and its responsibility cannot be affected by limitation.

I have always been under the impression that the stamping of cheques "Good for two days only" was only to prevent accepted cheques from remaining outstanding.

What protection would there be to payees of cheques residing in a different place than where the cheques are payable, if the acceptance of a bank can be declared void on account of unavoidable delay in presentation?

ANSWER.—This subject was more fully discussed in the number of the JOURNAL for October, 1899, and we would refer you to what was there said. Our answer to Question 228 is based on the theory that at any time after the expiration of the two days the bank's liability on the cheque ceases, and that the drawer therefore has a right to request the bank to cancel the entry in his account.

No doubt the acceptance of a cheque in proper form by the bank makes it liable to the same extent as the acceptor is liable on any ordinary bill of exchange. The point is that an acceptance "Good for two days only" is not properly speaking an acceptance at all, but only a special kind of engagement, limited by its terms. We see no hardship in this view of the case, for of course no person is bound to take the cheque. If one chooses to do so he knows that if not presented within the time limit payment is not necessarily guaranteed by the bank.

The rights of holders of cheques which are accepted in the proper way differ materially from those of holders of cheques accepted conditionally on their being presented within two days.

Ninety day bills—Rate of Exchange

QUESTION 332.—What is the proper rate for a 90-day bill on London as compared with a 60-day bill, and how is it calculated?

ANSWER.—The difference between a 60 and a 90-day bill should be about half the difference between a demand and a 60-day bill. The difference in each case depends chiefly on the market discount rate in London. There are, however, minor considerations which modify the effect of the rate, as long bills sometimes command a more favourable discount rate than the shorter bills and sometimes a less favourable.

Generally speaking the difference between demand and 60-day bills is 60 days' interest at the current market rate in London, the difference in stamps being also allowed for; and between 60 and 90-day bills, 30 days' interest at the same rate.

Bank Money Orders

QUESTION 333.—A Branch office in Ontario issued a money order in favor of a Montreal firm. The firm's bankers added and collected five cents. This bank is not reported as belonging to Bankers' Association. What right has any bank to charge on a negotiable document payable in same city?

ANSWER.—The bank had a technical right to collect the commission, but we think their action was not in accordance with the spirit of the arrangement among the banks with respect to these orders.

Power of attorney to accept bills, signed by an attorney

QUESTION 334.—The power of attorney sent out by banks to procure acceptance of drafts is frequently signed by an attorney of the drawee. Has he the power to instruct the bank to accept ?

ANSWER.—Not unless the power of attorney gives him power of substitution, *i.e.* power to appoint another Attorney to act in his stead.

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Legal

THE LIABILITY OF BANKERS*

AN important decision upon the extent of the protection afforded to bankers by section 82 of the Bills of Exchange Act, 1882, has been given by Kennedy, J., in *Hannan's Lake View Central Limited v. Armstrong & Co.* That section provides that "where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur liability to the true owner of the cheque by reason only of having received such payment." Provided, therefore, a collecting banker acts without negligence and in good faith, he is perfectly safe in taking crossed cheques from a customer, and is not imperilled by the fact of the customer's title to the cheque being defective. In the case of a bank there is no difficulty about the requirement of good faith, but, as the present case shows, a serious question may arise whether the banker has acted in any particular transaction without negligence.

The point was considered, and a useful explanation of the phrase "without negligence" given by Denman, J., in *Bissel & Co. v. Fox Brothers.* There the plaintiffs had appointed S. as their traveller. All the cheques, cash, and bills received by S. were to be remitted to the plaintiffs at the end of each week, and none were to be retained without the consent of the plaintiffs. For some years S. remitted all cheques and bills to the plaintiffs by post, and sent them the cash in postal or post office orders. In 1883 he opened an account of his own with the defendants' bank, and paid into this account, without the sanction or knowledge of the plaintiffs, various cheques received by him on account of the plaintiffs, and payable to

The Solicitors' Journal, March 3, 1900.

"J. E. Bissel & Co., or order." The cheques were endorsed by S. in his own name "*per pro* J. E. Bissell & Co.," and some of them were crossed. The cheques were taken by the defendants without any enquiry as to S.'s authority to deal with them, and were immediately placed to his credit in his account as cash. Under these circumstances it was held that the bankers had not acted "without negligence," and were not entitled to the protection of section 82. "The negligence contemplated in section 82," said Denman, J., "must mean the neglect of such reasonable precautions as ought to be taken with reference to the interests, not of the customer who purports to have the authority, but of the principal whose authority he purports to have; the section being framed wholly with reference to the liability of the banker to the 'true owner' of the cheque, and not with reference to his liability to his customer." And the judgment of Denman, J., was adopted by the Court of Appeal. In applying this principle to the case in question stress was naturally laid upon section 25 of the Bills of Exchange Act, 1882, according to which "a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority." Thus the bank in taking the plaintiffs' cheques and placing them to the credit of S., without enquiry as to his authority, were neglecting a precaution imposed upon them by the Act itself.

The present case before Kennedy, J., also arose out of the misappropriation by an employee of his employer's cheque. A cheque for £542 in favour of Hannan's Lake View Central Limited was paid in by their then secretary, H. Montgomery, to his private account with Messrs. Armstrong & Co., who are bankers. The cheque was crossed generally and the endorsement consisted of the name of the plaintiff company, either stamped or type-written, followed by the signature "H. Montgomery, Secretary." The amount of the cheque was credited by the defendants to Montgomery and was drawn upon by him for his own purposes. The articles of the plaintiff company contemplated that endorsements would be made by two directors and the secretary, but in practice it is found convenient for the

secretary to endorse cheques by himself, and this practice had been adopted by the plaintiff company. Upon the evidence, however, Kennedy, J., held that the secretary was authorized to do this for one purpose only—namely for the purpose of his paying the cheques into the plaintiffs' account at their own bank, which was not the defendant bank. The evidence also showed that it is a general practice of limited companies for this particular and limited purpose to permit their secretaries to endorse cheques drawn payable to the order of their employers which come into the secretaries' hands as the servants of those employers.

The endorsements being therefore, so far as the plaintiff company were concerned, sufficiently regular, the question was whether the defendants acted negligently in receiving the cheque from the secretary and placing the proceeds to the credit of his private account. From one point of view it is hard upon the bank to have to be responsible for the misconduct of the plaintiffs' secretary. Any loss caused by him in the course of his employers' business would seem most naturally to fall upon them. But at the same time the plaintiffs were entitled to expect persons into whose hands their cheques came to adopt ordinary precautions to insure that the cheques were being properly dealt with, and under the circumstances Kennedy, J., held that the defendants had not discharged this duty. According to the evidence of their own chief accountant there was no instance known of any secretary of a limited company endorsing by himself a cheque payable to his company except for the purpose of the cheque being paid into the company's own banking account, and the bank consequently should have taken note of the departure from the invariable practice in the present case, and should have made enquiry as to the secretary's authority to deal with the cheque. Since they omitted to do so they did not act "without negligence," and they were not entitled to the benefit of section 82. They were held liable, accordingly, to account to the plaintiffs for the amount of the cheque.

COURT OF APPEAL, ENGLAND

De Braam v. Ford*

A bill of sale stipulated that the principal sum secured should be repaid "on or before 1st Nov., 1899"

Held that it was substantially in accordance with the statutory form, and was valid.

This was an appeal against a decision of Mr. Justice North (reported at page 178, Vol. VII., JOURNAL). The question raised was upon the construction of section 9 of the Bills of Sale Act, 1882, which provides that "a bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void, unless made in accordance with the form in the schedule to this Act annexed." The form given in the schedule contains (*inter alia*) the following clauses:—"And the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal —— payments of £—— on the —— day of —— [or whatever else may be the stipulated times or time of payment]. And the said A. B. doth also agree with the said C. D. that he will [here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security]." The plaintiff, Jeane André de Braam, had borrowed money from the defendant, a money-lender, of Cork street. The borrower and his wife gave to the lender a bill of sale of some furniture. It was thereby agreed that payment of the principal sum secured should be made "on or before the first day of November, 1899." The money secured was not paid, and the defendant was taking steps to realize. The plaintiff by this action claimed a declaration that the bill of sale was void, and an injunction to restrain the defendant from removing or seizing the furniture. The plaintiff applied for an interim injunction. Mr. Justice North was of opinion that an agreement to pay on or before a named day was an agreement to pay at an uncertain time, and consequently that the bill of sale was not in accordance with the statutory form and was void. He therefore granted an interlocutory injunction. The defendant appealed.

The Court allowed the appeal.

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*The Law Times Reports.

The Master of the Rolls said that in this case the Court had to do that which they seldom did, viz., to attend to form, not to substance. They were driven to that by section 9 of the Act. It was plain enough that this bill of sale was not in the statutory form; the question was whether it was "in accordance" with that form. This was an old difficulty which had puzzled the Court before. What was meant by "in accordance" with? His Lordship could only take the meaning from what was said by the House of Lords in *Simmonds v. Woodward*. There Lord Halsbury said: "If the bill of sale in substance performs the function which the statute intended to be performed by that form, it appears to me that it is complied with." It was obvious from the form that the time for the "payment" of the debt must be fixed. What was the meaning of "payment"? In his Lordship's opinion it meant the time at which payment was to become obligatory—the time at which the borrower must pay or he could be sued for the debt. The time at which the obligation to pay was to arise must be defined in the bill of sale. It had been decided in previous cases that it that time was not distinctly fixed—*e. g.*, if the money was made payable on demand, the bill of sale would be void. The Court were now asked to stretch those decisions, and to say that, although a time for payment was fixed, yet the bill of sale was void because the grantor had stipulated that he might pay off the money sooner. This was a rather startling proposition. But look at the matter a little more closely. Suppose there had been a covenant to pay the money on a fixed day, with an added proviso that the grantor should have an option to pay it sooner. That would have been, as a "defeasance of the security," perfectly in accordance with the statutory form. Could it be said that, because the bill of sale was not precisely in that form, it was not in accordance with the statutory form? His Lordship could not go that length. The learned judge had lost sight of the fact that the time of payment was the time when payment was to become obligatory. The appeal must be allowed. The costs in both Courts must be the defendant's costs of the action.

The President of the Probate Division said that two views of the construction of section 9 were obviously possible and two views had in fact been taken. But in *Ex parte Stanford* the majority of the full Court of Appeal adopted the more liberal construction. Lord Justice Bowen, who delivered the judgment of the majority, said: "A bill of sale is surely in accordance with the prescribed form if it is substantially in accordance with it—if it does not depart from the prescribed form in any material respect. But divergence only becomes substantial or material when it is calculated to give the bill of sale a legal

consequence or effect, either greater or smaller, than that which would attach to it if drawn in the form which has been sanctioned, or if it departs from the form in a manner calculated to mislead those whom it is the object of the statute to protect." That view commended itself to his Lordship rather than the narrower view which was taken by Lord Justice Fry. The majority of the Court there held that the bill of sale must be in substance in accordance with the statutory form. Here the effect of the bill of sale was to impose on the grantor an obligation to pay the money on a fixed day; but an option was given him to pay it earlier. Was that in substance in accordance with the statutory form? There must, no doubt, be a stipulated time for payment—a stipulated time at which the grantor was bound to pay. The stipulation in the present case was not at variance with the statutory form. When it came to the provision for defeasance of the security the statutory form was not so peremptory as in its earlier part. It left the terms and the language of the defeasance at the option of the parties. As to the payment of interest, though it was not so stated expressly in words, the effect of the deed was that, whenever the principal money was paid off, interest was to be paid up to the time of the payment of the principal.

LORD JUSTICE ROMER agreed. He would only add that you could not, under the guise of a defeasance, introduce a provision inconsistent with the prior part of the form. There was no such inconsistency in the present case.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

Six months ending 30th December—	1898-9		1899-1900	
Free	$31,581		$35,845	
Dutiable	43,524		52,675	
	$ 75,105		$ 88,520	
Bullion and Coin	3,856	$ 78,961	5,178	$ 93,698
Month of January—				
Free	$ 4,101		$ 5,496	
Dutiable	6,341		8,548	
	$10,442		$14,044	
Bullion and Coin	42	$10,484	81	$14,125
Total for seven months		$89,445		$107,823

EXPORTS

Six months ending 30th December--				
Products of the mine	$ 7,053		$ 6,635	
" Fisheries	6,227		7,136	
" Forest	19,112		20,979	
Animals and their produce	31,121		37,190	
Agricultural produce	14,059		14,437	
Manufactures	5,429		6,468	
Miscellaneous	111		216	
	$ 83,113		$ 93,061	
Bullion and Coin	2,240	$ 85,353	4,999	$ 98,060
Month of January—				
Products of the mine	$ 1,240		$ 1,078	
" Fisheries	560		626	
" Forest	500		785	
Animals and their produce	2,528		3,134	
Agricultural produce	1,646		2,244	
Manufactures	826		1,076	
Miscellaneous	6		16	
	$7,306		$8,959	
Bullion and Coin	76	$7,382	644	$9,603
Total for seven months		$92,735		$107,663

SUMMARY (in dollars)

For seven months—	1898-9		1899-1900	
Total imports, other than bullion and coin	85,548,000		102,564,000	
Total exports, other than bullion and coin	$ 90,419,000		$102,020,000	
Excess	(*Exp.*)	$ 4,871,000	(*Imp.*)	$ 544,000
Bullion and coin, net	(*Imp.*)	1,583,000	(*Exp.*)	384,000

STATEMENT OF BANKS acting under Dominion Government charter for the months of December, 1899, January and February, 1900, and comparison with February, 1899:

LIABILITIES

	31st Dec., 1899	31st Jan., 1900	28th Feb., 1900	28th Feb., 1899
Capital authorized	$76,108,664	$ 76,608.664	$ 77,608,664	$ 76,508,684
Capital paid up	63,584,022	63,734.845	63,876 310	63,322,585
Reserve Fund	29 967,724	30,055,896	30,261,307	28,051,254
Notes in circulation	$ 45,999,753	$ 41,320,083	41,699,231	$ 37,525,337
Dominion and Provincial Government deposits	7,087 161	6,349,582	6,044,828	5.448,147
Public deposits on demand	99,463,898	95,227,158	92,509 743	88,387,578
Public deposits after notice	173,769,968	174,614,238	174,696,918	161.832,288
Bank loans or deposits from other banks secured	506,979	520,979	489,673	.....
Bank loans or deposits from other banks unsecured	2,998,674	2,750,690	2,534,691	3,232.031
Due other banks in Canada in daily exchanges	196,372	94,022	165,932	149,019
Due other banks in foreign countries	908,901	1,039,470	1,055,258	588.609
Due other banks in Great Britain	4.360,301	5,384 295	4,809,017	3,245,428
Other liabilities	726,541	632,339	616,159	381,118
Total liabilities	336,018,630	327,932,926	324,621,528	$300,789,638

ASSETS

Specie	$9,584,702	$ 9,824,184	$ 9,740,874	$ 9,261,732
Dominion notes	17,910,241	18 412,601	17,725,845	16,269,761
Deposits to secure note circulation	2,056,344	2,056,344	2,056,344	1,995,523
Notes and cheques of other banks	12,361,732	9,684,487	8,963,163	10,748,189
Loans to other banks secured	374,930	504,968	494,461	.....
Deposits made with other banks	4,767,715	4,187,854	3,814,825	3,612,869
Due from other banks in Canada in daily exchanges	312,403	211,350	243,757	223,068
Due from other banks in foreign countries	22,291,249	19,639,957	18,116,808	21,909,685
Due from other banks in Great Britain	12,078,307	10,851,847	9,495,472	12,782,998
Dominion Government debentures or stock	4.779,102	4,766,495	4,766,992	5,049,617
Public, municipal and railway securities	31,417,765	31,436,233	31,530,274	31,989,562
Call loans on bonds and stocks	32,435,445	31,625,727	30,020,819	28,815,971
Current loans and discounts	266,678,601	268,205,970	271,858,731	234,008,496
Loans to Dominion and Provincial Governments	2,358,010	1,353,758	1,292,011	2,295,050
Overdue debts	1,899,801	1,863,071	1,879,505	2,371,322
Real estate	1,119,780	1,107,528	1,075,507	1,873,740
Mortgages on real estate sold	654,270	649,502	673,232	544,383
Bank premises	5,977,577	5,994,446	6,088,365	5,999,233
Other assets	2,660,221	2,599,572	2,793,309	1,998,032
Total assets	431,718,345	424,976,063	422,630,506	$391,749,425
Loans to directors or their firms	8,015,093	8,393,354	7,989,443	$6,939,812
Average amount of specie held during the month	9,668,691	9,883,614	9,793,677	9,162,908
Average Dominion notes held during the month	17,690,132	17,341,108	17,783,518	16,890,878
Greatest amount of notes in circulation during month	49,572,085	45,854,963	42,395,187	38,188,602

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

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	MONTREAL		TORONTO		HALIFAX		HAMILTON	
	1898-9	1899-00	1898-9	1899-00	1898-9	1899-00	1898-9	1899-00
	$	$	$	$	$	$	$	$
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
December	69,143	68,979	43,508	47,011	5,838	6,744	3,334	3,730
January ..	64,850	62,853	42,388	45,114	5,913	6,707	3,274	3,742
February .	62,432	54,250	40,818	37,864	4,583	5,354	2,807	3,040
	735,874	783,854	449,618	504,589	62,769	71,857	36,022	40,995

	WINNIPEG		ST. JOHN		VANCOUVER	VICTORIA
	1898-9	1899-00	1898-9	1899-00	1899-00	1899-00
	$	$	$	$	$	$
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
December	10,708	12,966	2,746	2,963	4,090	3,006
January ..	7,683	9,906	2,470	3,033	3,550	3,044
February .	6,209	6,702	2,212	2,342	2,881	2,324
	92,698	110,498	29,587	33,316	44,248	33,917